

Randwick Local Planning Panel (Electronic) Meeting

Monday 29 April 2024



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Teams on Monday 29 April 2024.

Declarations of Pecuniary and Non-Pecuniary Interests

General Reports

Nil

Development Application Reports

D32/24	19 Solander Street, Matraville (DA/395/2023).....	1
D33/24	149T Alison Road, Randwick (DA/570/2022)	25
D34/24	25 Fowler Crescent, South Coogee (DA/544/2022/A)	51
D35/24	115 Dolphin Street, Coogee (DA/1089/2023).....	63
D36/24	263-269 Clovelly Road, Clovelly (DA/538/2021/A).....	87

Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D32/24

Subject: 19 Solander Street, Matraville (DA/395/2023)


Executive Summary

Proposal: Strata subdivision of existing attached dual occupancy.
Ward: South Ward
Applicant: Ms A Massain
Owner: Ms T B C Lam and Ms T H Ngo
Cost of works: Nil
Reason for referral: Partial non-compliance with CI 4.1D of RLEP 2012

Recommendation

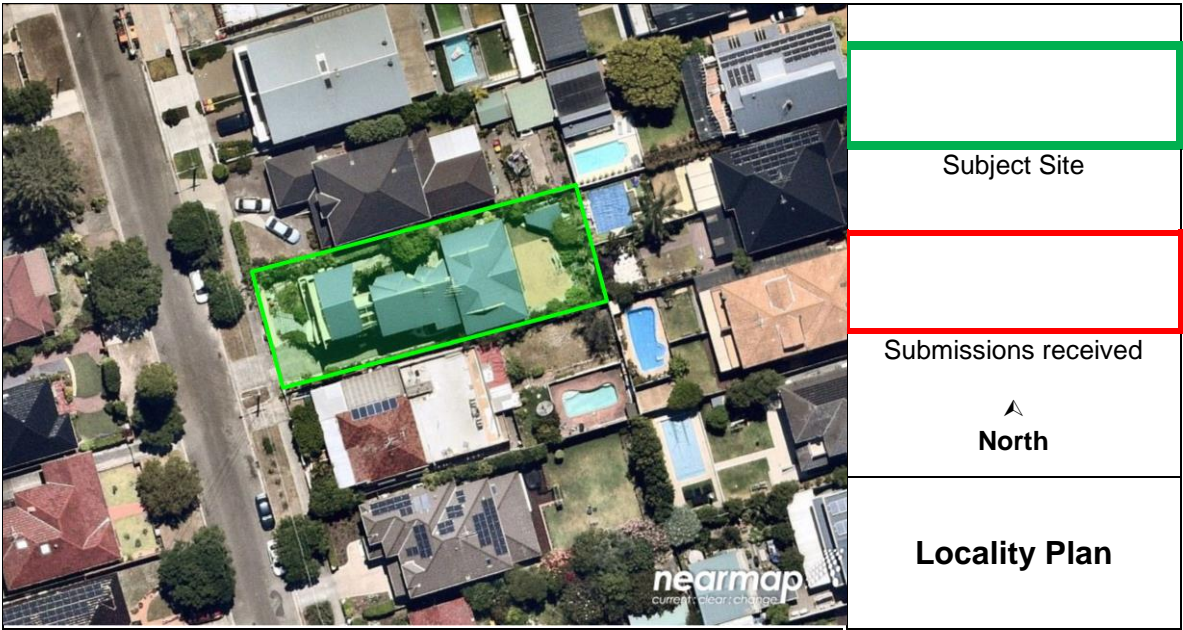
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the subdivision of dual occupancies (attached) in Zone R2 development standard in Clause 4.1D of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/395/2023 for strata subdivision of the existing dual occupancy at No. 19 and 19A Solander Street, Matraville, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions - DA/395/2023 - 19 Solander Street, MATRAVILLE

D32/24

D32/24



1. Executive summary

The application seeks a strata subdivision of the existing dual occupancy(attached) on Lot 34 in DP8963 into two separate lots with common property.

The application is referred to the Randwick Local Planning Panel (RLPP) as it partially contravenes CI 4.1D of RLEP 2012. This is the only issue identified with the application.

The proposal is recommended for approval subject to conditions in **Attachment 1**.

2. Site Description and Locality

The subject site is known as 19 & 19A Solander Street, Matraville and is legally described as Lot 34 in DP8936. The site is 664.2sqm, is rectangular in shape and has a 15m frontage to Solander Street to the west. The site contains a two storey dual occupancy with a driveway along the southern boundary providing access to both dwellings.



Figure 1: Front of dual occupancy within subject site



Figure 2: Front of dual occupancy within subject site

3. Relevant history

Council's development engineer indicates the site was approved as a dual occupancy through DA/956/2001 and CC/529/2002.

4. Proposal

The proposal seeks development consent for strata title subdivision of the existing dual occupancy into two lots.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. In response, no submissions were received during the notification period.

6. Relevant Environment Planning Instruments

6.1. SEPP (Exempt and Complying Development Codes) 2008

Clause	Assessment	Compliance (Yes/No)
6.2 Development standards <i>The standards specified for that development are as follows—</i> <i>(a) that the subdivision must not contravene any condition of any development consent or complying development certificate applying to the development</i>	The subdivision would not contravene any condition of consent.	Yes
<i>(b) in the case of a dual occupancy or multi dwelling housing (terraces)—</i> <i>(i) each dwelling must have lawful frontage to a public road (other than a lane), and</i>	The dwelling on the proposed Lot 2 would not have a lawful frontage to Solander Street.	No. Partial non-compliance however the attached dual occupancy was approved in 2001 and was assessed against the RLEP 1998 controls.

(ii) no dwelling must be located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot), and	The existing rear dwelling is behind the other dwelling	No. As existing and approved.
(iii) each resulting lot must have a minimum width (measured at the building line) of 6m,	Both lots exceed the minimum width. Lot 1 is 15.24 M and Lot 2 is 11.26 M	Yes
(c) in the case of a dual occupancy where no part of a dwelling is located above any part of another dwelling or multi dwelling housing (terraces), the Strata area (being the area of the ground floor of all dwellings) is not less than 180m ² .	Both proposed Lots exceed 180sqm. Lot 1 is 276.97sqm. Lot 2 is 387.25 sqm.	Yes

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will not change.

The following development standards in the RLEP 2012 apply to the proposal:

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.5:1	No works proposed which would alter existing FSR	Yes
Cl 4.3: Building height (max)	9.5 M	No change	Yes
Cl 4.1A: Minimum Subdivision Lot Size for strata plan schemes in Zone R2	275 sqm	Lot 1 – 276.97sqm Lot 2 – 387.25sqm	Yes
Cl 4.1D: Subdivision of dual occupancies (attached) in Zone R2	Comply with clause 6.2 of SEPP Exempt and Complying Development Codes 2008	Assessment provided in 6.1 above	Partial non-compliance

6.2.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards are discussed in section 7 below.

6.2.2. Clause 5.10 - Heritage conservation

Site is not heritage nor within a heritage conservation area.

6.2.3. Clause 6.7 Foreshore scenic protection area

Site is not in a foreshore area or shoreshore scenic protection area.

7. Clause 4.6 exception to a development standard

The proposal does not comply with the requirements of CL 4.1D: *Subdivision of dual occupancies (attached) in Zone R*.

Non-compliance is assessed in Section 6.1 of this Report and is due to the following:

- The proposed Strata subdivision involves in one of the Strata lots (Lot 2) not having a lawful frontage to Solander Street.
- The proposed Strata subdivision involves an existing dwelling that is located behind another dwelling on the same lot.

Clause 4.6 of RLEP 2012: Exception to a Development Standard relevantly states:

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the Applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the Applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ summarised the matters in Clause 4.6 (4) that must be addressed before consent can be granted to a development that contravenes a development standard.

1. *The Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

2. *The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.*

Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision** in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether 'the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard'.

The grounds relied on by the Applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

Chief Justice Preston at [24] notes that there here are two respects in which the written request needs to be "sufficient".

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The

written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and

2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [27] notes that the matter in cl 4.6(4)(a)(ii), with which the consent authority must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

4. *The concurrence of the Secretary has been obtained.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
- (b) the public benefit of maintaining the development standard

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

7.1. Exception to the Subdivision of dual occupancies (attached) development standard (CI 4.1D)

The Applicant's written justification for the departure from the non-numerical development standards are contained in Appendix 2.

In addition, the Applicant's written justification for the departure includes examples of other Strata subdivision applications which Randwick Council approved which also did not comply with CI 4.1D. DA/251/2021 sought Strata subdivision of a battle-axe lot. It did not provide a lawful frontage and involves dwellings with a front and rear arrangement. Council approved the application noting that the existing dual occupancy was assessed and approved under the RLEP 1998 controls where

battle-axe lots were permissible. DA/49/2019 and DA/845/2018 are further examples provided with similar circumstances.

1. Has the Applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In response to the above, the Applicant's written request states the following:

Compliance with the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- *The existing dual occupancy on the subject site was granted consent and approved in approximately 2002 (C.C No. BRO2162 dated 6/8/02). The existing configuration was deemed appropriate based on the applicable planning controls at the time, ensuring an end development that was sympathetic to the surrounding context.*
- *The current planning controls in the RLEP, specifically Clause 4.1D (2) (a) refer to controls applicable under SEPP (Exempt and Complying Development Codes) 2008, for dual occupancies approved as complying development under the Code (i.e. side by side or one on top of the other). These provisions should not be used to retrospectively restrict the Strata subdivision of a legitimate existing dual occupancy, approved under previous planning controls over 20 years ago.*
- *The proposed subdivision will not involve any material change to the appearance or use of the existing dual occupancy.*
- *The proposed subdivision meets the minimum lot size requirements stated in the clause 4.1A of the RLEP for Strata Plan Schemes in the R2 Zone and would otherwise be permissible and compliant, if not for the application of clause 4.1D.*
- *The proposed Strata subdivision will not result in any adverse amenity impacts to the existing streetscape or adjoining properties.*
- *Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.*

As such, there are insufficient planning grounds to justify contravening the development standard.

Chief Justice Preston of the NSW Land and Environment Court in the case of in Wehbe v Pittwater Council [2007] NSWLEC 827 established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118. The most invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict non-compliance.

Whilst there are no stated objectives of the standard in this instance, the Strata subdivision of the existing dual occupancy, approved under previous planning controls, is such that the request for contravention is entirely justified and worthy of support on this occasion.

Given the justification provided in this request, the remaining ways by which a clause 4.6 Request may be justified, do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment: *There is no clear underlying objective or purpose of the standards. However, the provision within SEPP Exempt and Complying Development Codes) 2008, if not complied with, would simply require lodgment of a DA, which would be considered on its merits. It should not be arbitrarily used to reject the Strata subdivision in this instance.*

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment: *In this instance, if compliance was required, any objective or purpose would be defeated or thwarted, as the proposed departure represents an opportunity to improve the internal amenity and land tenure, without adversely impacting on the amenity of surrounding residents or the public domain.*

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*

Comment: *Whilst the abovementioned standard has not been abandoned or destroyed by the Council's own actions, it is frequently varied by Council in justified circumstances, such as those evident on this occasion.*

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment: *The zoning of the land on this occasion is not regarded as unreasonable or inappropriate. Moreover, non-compliance will not alter the acceptable relationship of the subdivision with other applicable standards and controls within the R2 - Low Density Residential zoning.*

As such, the request on this occasion satisfies more than one (one only required) means of justifying contravention of the standard and is manifestly worthy of support.

Assessing officer's comment: The proposed Strata subdivision does not alter the existing frontages provided to each dwelling at the site. The proposed Strata subdivision also does not involve changes to the existing built form as approved under DA/956/2001, which features a front and rear dwelling arrangement (i.e. a dwelling located behind another dwelling on the same lot). Both variations are considered pre-existing – resulting from the approved design, building envelope and layout of the dual occupancy. The Applicant's written request seeks to justify the contravention of CI 4.1D of RLEP 2012 development standard by demonstrating that Randwick Council has previously approved applications which sought a similar subdivision without providing lawful frontage for both dwellings and involving dwellings with a front and rear arrangement. The Applicant's written justification is satisfactory.

2. Has the Applicant's written request adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?

In response to the above, the Applicant's written request states the following:

*The environmental grounds which justify contravening the development standard
Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:*

- *The departures from the development standard that relate only to the lawful frontage to Solander Street for the proposed Lot 2 and the location of the dwelling on lot 2 behind the dwelling on lot 1. Non-compliance will not alter the acceptable maximum building height, minimum setbacks, suitable landscaped and POS provisions, solar access and overshadowing or the visual and acoustic privacy impacts, generated by the existing dwelling.*
- *Having regard to the acceptable scale of the existing development, commensurate with those in the surrounding locality, the proposed subdivision of the existing dual occupancy will not result in any adverse amenity impacts on the streetscape or surrounding properties.*

Having due regard to the Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the existing building on the subject site.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departures from the development standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

Assessing officer's comment: The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

CI 4.1D does not provide objectives.

To determine whether the proposal will be in the public interest, an assessment against the objectives of the R2 zone is provided below:

Assessment against objectives of the R2 zone

The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*
- *To protect the amenity of residents.*
- *To encourage housing affordability.*
- *To enable small-scale business uses in existing commercial buildings.*

Assessing officer's comment: The proposed subdivision will continue to provide low density housing without detracting from the ability of other land uses to provide services. The existing built form, neighbourhood amenity, availability of affordable housing, and small scale businesses would not change as a result of the subject proposal.

The development is consistent with the objectives the R2 zone and has demonstrated that the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

Does contravention of the development standard raise any matter of significance for state or regional environmental planning?

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

Is there public benefit from maintaining the development standard?

Maintaining the development standard would be unreasonable for a Strata subdivision and would not be of public benefit.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the CI 4.1D development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the Applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

The relevant provisions of the DCP are addressed in Appendix 3.

9. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social, or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Non compliance with CI 4.1D of RLEP2012.

As discussed in Sections 6 and 7 of this Report, noncompliance with CI 4.1D is due to a lawful frontage not being provided for the proposed Lot 2.

Non-compliance with CI 4.1D is considered acceptable due to:

- The dual occupancy being approved prior to RLEP 2012;
- The Strata subdivision not altering the existing approved built form of the site;
- It would be unreasonable to enforce compliance where non-compliance has been identified to result from an approved built form;
- The site will continue to achieve the relevant zone objectives;
- Randwick Council has provided consent to other subdivision applications which similarly did not provide lawful frontages;
- Randwick Council has provided consent to other Strata subdivision applications involving a front and rear arrangement of dual occupancies (i.e. a dwelling located in front of another dwelling on the same lot) and
- It is in the public interest to maintain the existing built form and facilitate the orderly use of the site.

10. Conclusion

That the application for strata subdivision of 19 and 19A Solander Street be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the relevant objectives of the R2 zone.
- The scale and design of the dwellings would not be altered under the proposal.
- The development would not change the visual quality of the public domain/streetscape.
- It is demonstrated that non-compliance with CI 4.1D is acceptable in this instance.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for the Strata Title subdivision of the existing dual occupancy development at the above site into 2 lots.

This report is based on the following plans and documentation:

- Draft Strata Plans by Superior Designs;
- Statement of Environmental Effects by Superior Designs

General Comments

The above site was subject to a Dual Occupancy - DA/956/2001 & CC/529/2002.

The site was subject to a Dual Occupancy - DA/956/2001 & CC/529/2002.

It is unclear whether an Occupation Certificate had been issued for the development CC/529/2002.

D32/24

Appendix 2: Applicant's written request seeking to justify the contravention of the development standard



LIAISON – LAND USE APPRAISALS – EXEMPT AND COMPLYING DEVELOPMENT CHECKS – STATEMENTS OF ENVIRONMENTAL EFFECTS – ENVIRONMENTAL IMPACT STATEMENTS – PLANNING PROPOSALS – LAND & ENVIRONMENT COURT REPRESENTATION

Clause 4.6 Request for Contravention of the Development Standard under Clause 4.1D (2)(a) of the Randwick Local Environmental Plan 2012

April 2024

RANDWICK LOCAL ENVIRONMENTAL PLAN 2012 (RLEP)

CLAUSE 4.6

REQUEST FOR CONTRAVENTION OF DEVELOPMENT STANDARD

APPLICANT: Solutions Zane
ADDRESS: 19 & 19A Solander Street, Matraville. Lot 34 DP 8936
PROPOSAL: Strata Title Subdivision of Existing Dual Occupancy
DEVELOPMENT STANDARD – Clause 4.1D (2) (a) of the Randwick Local Environmental Plan 2012 (RLEP)

INTRODUCTION

This submission is a request for contravention of the above development standard in relation to the proposed Strata Title Subdivision of Existing Dual Occupancy, at Lot 34 DP 8936, No. 19 & 19A Solander Street, Matraville, on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
3. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out and as such is well founded.
4. Contravention of the standard in this instance will not raise any matters of State or Regional significance.
5. There is no public benefit in maintaining the standard on this occasion.
6. The proposal achieves the objectives of Clause 4.6 of the RLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.

The development standard to which the request relates

Clause 4.1D of the RLEP states:

- (1) *This clause applies to a dual occupancy (attached) on land in Zone R2 Low Density Residential for which development consent was granted before 6 July 2018.*
- (2) *Despite any other provision in this Plan, development consent may be granted for the subdivision of a dual occupancy to which this clause applies if the development meets the standards specified in the following provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008—*
 - (a) *for strata subdivision—clause 6.2, or*
 - (b) *for Torrens title subdivision—clause 6.4*

The existing dual occupancy (attached) was granted consent well before 6 July 2018 (C.C No. BRO2162 dated 6/8/02), with the proposed subdivision being a Strata Subdivision.

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Clause 6.2 of the SEPP(Exempt and Complying Development Codes) 2008 states:

- (a) that the subdivision must not contravene any condition of any development consent or complying development certificate applying to the development,
- (b) in the case of a dual occupancy or multi dwelling housing (terraces)—
 - (i) each dwelling must have lawful frontage to a public road (other than a lane), and
 - (ii) no dwelling must be located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot), and
 - (iii) each resulting lot must have a minimum width (measured at the building line) of 6m,
- (c) in the case of a dual occupancy where no part of a dwelling is located above any part of another dwelling or multi dwelling housing (terraces), the strata area (being the area of the ground floor of all dwellings) is not less than 180m².

The nature of the departure from the development standard

The proposed strata subdivision will result in the proposed Lot 2 not having a lawful frontage to Solander Street, rather, vehicular, and pedestrian access from Solander Street via a common property driveway area. In addition, the dwelling on Lot 2 is located behind the dwelling on Lot 1.

The above is demonstrated in the images below:

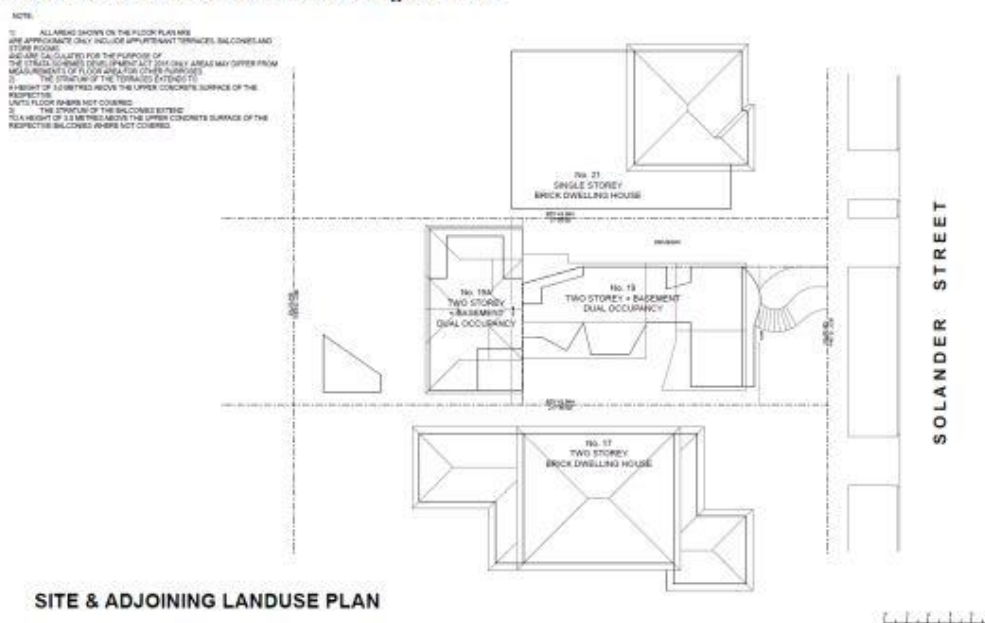


Figure 1: Site plan indicating the existing building footprints (Source: Subdivision Plans)

D32/24

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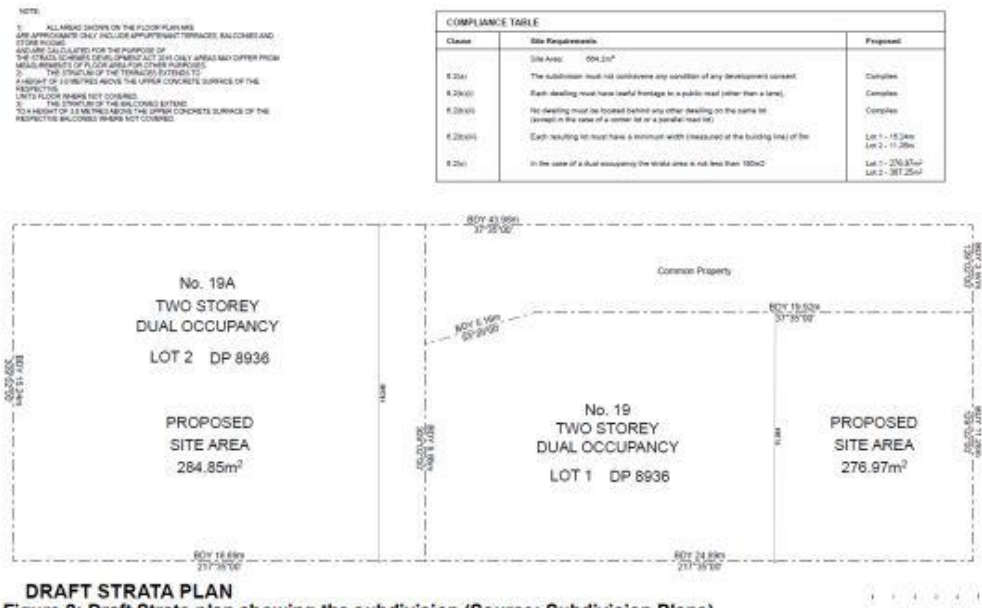


Figure 2: Draft Strata plan showing the subdivision (Source: Subdivision Plans)

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- The existing dual occupancy on the subject site was granted consent and approved in approximately 2002 (C.C No. BRO2162 dated 6/8/02). The existing configuration was deemed appropriate based on the applicable planning controls at the time, ensuring an end development that was sympathetic to the surrounding context.
- The current planning controls in the RLEP, specifically Clause 4.1D (2) (a) refer to controls applicable under SEPP (Exempt and Complying Development Codes) 2008, for dual occupancies approved as complying development under the Code (i.e. side by side or one on top of the other). These provisions should not be used to retrospectively restrict the strata subdivision of a legitimate existing dual occupancy, approved under previous planning controls over 20 years ago.
- The proposed subdivision will not involve any material change to the appearance or use of the existing dual occupancy.
- The proposed subdivision meets the minimum lot size requirements stated in the clause 4.1A of the RLEP for Strata Plan Schemes in the R2 Zone and would otherwise be permissible and compliant, if not for the application of clause 4.1D.
- The proposed strata subdivision will not result in any adverse amenity impacts to the existing streetscape or adjoining properties.
- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

Solutions Zane Land Use Planning Services

As such, there are insufficient planning grounds to justify contravening the development standard.

Chief Justice Preston of the NSW Land and Environment Court in the case of *in Wehbe v Pittwater Council* [2007] NSWLEC 827 established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The most invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict non-compliance.

Whilst there are no stated objectives of the standards in this instance, the strata subdivision of the existing dual occupancy, approved under previous planning controls, is such that the request for contravention is entirely justified and worthy of support on this occasion.

Given the justification provided in this request, the remaining ways by which a clause 4.6 Request may be justified, do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment

There is no clear underlying objective or purpose of the standards. However, the provision within SEPP Exempt and Complying Development Codes) 2008, if not complied with, would simply require lodgment of a DA, which would be considered on its merits. It should not be arbitrarily used to reject the strata subdivision in this instance.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment

In this instance, if compliance was required, any objective or purpose would be defeated or thwarted, as the proposed departure represents an opportunity to improve the internal amenity and land tenure, without adversely impacting on the amenity of surrounding residents or the public domain.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment

Whilst the abovementioned standard has not been abandoned or destroyed by the Council's own actions, it is frequently varied by Council in justified circumstances, such as those evident on this occasion.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment

The zoning of the land on this occasion is not regarded as unreasonable or inappropriate. Moreover, non-compliance will not alter the acceptable relationship of the subdivision with other applicable standards and controls within the R2 - Low Density Residential zoning.

Solutions Zone Land Use Planning Services

As such, the request on this occasion satisfies more than one (one only required) means of justifying contravention of the standard and is manifestly worthy of support.

The environmental grounds which justify contravening the development standard

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- The departures from the development standard that relate only to the lawful frontage to Solander Street for the proposed Lot 2 and the location of the dwelling on lot 2 behind the dwelling on lot 1. Non-compliance will not alter the acceptable maximum building height, minimum setbacks, suitable landscaped and POS provisions, solar access and overshadowing or the visual and acoustic privacy impacts, generated by the existing dwelling.
- Having regard to the acceptable scale of the existing development, commensurate with those in the surrounding locality, the proposed subdivision of the existing dual occupancy will not result in any adverse amenity impacts on the streetscape or surrounding properties.

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the existing building on the subject site.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departures from the development standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

The Public Interest/Consistency with the Objectives of the Standard and the objectives for development within the zone

As detailed above there are no stated objectives of the standard.

The proposed strata subdivision of the existing dual occupancy is entirely consistent with the zone objectives which are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*
- *To protect the amenity of residents.*
- *To encourage housing affordability.*
- *To enable small-scale business uses in existing commercial buildings*

As such, the proposed subdivision is in the public interest.

Significance for State and Regional Planning

The proposed development is consistent with State and Regional Planning Policies in that the proposed development, inclusive of the strict departures, will result in an orderly and economic use of the land, in accordance with the objects of the Environmental Planning and Assessment Act, 1979.

Solutions Zone Land Use Planning Services

Despite the non-compliance with the development standards, the strata subdivision is logical, of no adverse consequence and achieves general compliance with all other planning controls applicable to this type of development. The sustainable impact on the surrounding amenity has been documented in the SOEE which accompanies the application.

The proposed development in its current form will contribute to the desired future character of this established residential area, which is well located with respect to parks, community infrastructure and local shopping centres, with bus services available along Perry Street and Bunnerong Road connecting the subject site to Matraville, Maroubra and the Sydney CBD, located approximately 15km to the north. As such, the proposed development does not raise any matters of significance for State or Regional Planning.

Consistency with Clause 4.6 of the RLEP

The objectives of Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated here. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this variation is well founded and worthy of support.

Departure from the development standards on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the understood objectives of the standards and those of the R2 Low Density Residential zone, will not raise any matter of significance for State or Regional Environmental Planning and no public benefit will be served by maintaining the standard in the circumstances.

The justification for the departure from the development standards are worthy of support.

Appendix 3: DCP Compliance Table

3.1 Part C1 Low Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2.1 Minimum Lot size	<i>The lot size controls for properties in the Randwick Local Government Area (LGA) are contained in the Randwick Local Environment Plan (RLEP) Lot Size Map.</i>	The minimum strata subdivision lot size is 275 sqm. Both proposed lots exceed this.	Yes
2.2 Lot frontage	<i>ii) The minimum frontage widths for development of lots where dual occupancy development is proposed must meet the following: 15M</i> <i>iii) Any subdivision of land must not create battle-axe or hatchet shaped allotments for the purposes of dwelling houses, semi-detached dwellings or dual occupancies (attached).</i>	The existing lot frontage is 15 metres. It is not proposed to change. The existing dual occupancy was approved prior to RDCP 2013.	Yes

Responsible officer: Design Collaborative, James Lidis

File Reference: DA/395/2023

Development Consent Conditions (Dwellings and Dual Occupancies)



Folder /DA No:	DA/395/2023
Property:	19 Solander Street, MATRAVILLE NSW 2036
Proposal:	Strata subdivision of existing attached dual occupancy.
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated	Received by Council
Site & Adjoining Landuse Plan No 25/23	Superior Designs	27 June 2023	11 July 2023
Draft Strata Plan No 25/23	Superior Designs	27 June 2023	11 July 2023

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifying Authority' issuing a 'Subdivision certificate'.

These conditions have been applied to satisfy the provisions of Council's environmental plans, policies and codes for subdivision works.

Strata Plans

- All floors, external walls and ceilings depicted in the proposed strata plan must correspond to the building as constructed.
- All floors, external walls and ceilings depicted in the proposed strata plan must correspond to those depicted in the approved building plans for the site (reference DA/956/2001 & CC/529/2002).
- Prior to endorsement of the strata plans, all facilities required under previous development approvals (such as parking spaces, terraces and courtyards) must be provided in accordance with the relevant requirements.

D32/24

5. The applicant shall create suitable right of carriageway and easements as required, however generally all services lines (including stormwater) over any strata lot serving another strata lot are to be common property.

Plan of Survey

6. The applicant shall provide Council with a copy of the base plan of survey (e.g. Plan of Redefinition) for the property prior to issuing of a strata certificate.

Sydney Water

7. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

The Section 73 Certificate must be submitted to the Principal Certifying Authority and the Council prior to issuing of a Strata Certificate.

NOTE: The Section 73 certificate issued upon the completion of the dwellings will not be acceptable to comply with this condition. A separate S73 compliance certificate that specifically refers to the subdivision of the site into two lots must be provided.

Public Utilities

8. The applicant must meet the full cost for telecommunication companies, Jemena, Ausgrid and Sydney Water to adjust/relocate their services as required. This may include (but not necessarily be limited to) relocating/installing new service lines and providing new meters. The applicant must make the necessary arrangements with the service authorities.

Should compliance with this condition require works that are not exempt development, the necessary approvals must be obtained prior to any works being undertaken.

Road / Asset Opening Permit

9. A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builders must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a subdivision certificate.

For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.

Restriction and Positive Covenant

10. A certificate of title providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under condition of consent for DA/956/2001) shall be provided to Council or the accredited certifier prior to the issuing of a strata certificate.

If the restriction and positive covenant have **not** yet been registered, a "restriction on the use of land" and "positive covenant" (under section 88B of the Conveyancing Act 1919) shall be placed on the title of the subject property, in conjunction with the registration of the proposed plan of strata subdivision for this property, to ensure that the onsite detention system is maintained and that no works which could affect the design function of the detention system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The "restriction as to user" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.

Strata Certificate

11. A formal application for a strata certificate is required to be submitted to and approved by the Council or accredited certifier and all relevant conditions of this development consent are required to be satisfied prior to the release of the strata subdivision plans.
12. Details of critical stage inspections carried out by the principal certifying authority, together with any other certification relied upon, must be provided to Council or the accredited certifier prior to the issuing of a strata certificate.

Street and/or Sub-Address Numbering

13. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

An application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of a subdivision certificate.

Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.

Development Application Report No. D33/24

Subject: 149T Alison Road, Randwick (DA/570/2022)

Executive Summary

Proposal:	Installation of a telecommunications facility (payphone) with associated third-party digital signage.
Ward:	West Ward
Applicant:	Urbis Pty Ltd
Owner:	Randwick City Council
Cost of works:	\$26,376.00
Reason for referral:	The landowner is Council.

Recommendation

That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/570/2022 for installation of a telecommunications facility (payphone) with associated third-party digital signage at No. 149T Alison Road, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (commercial) - DA/570/2022 - 149T Alison Road, RANDWICK NSW 2031 - DEV - Randwick City Council

D33/24

D33/24



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development is located within the road reserve (footpath) for which the landowner is Council.

The proposal seeks development consent for the installation and use of a telecommunications facility (payphone) with associated third-party digital signage at No. 149T Alison Road, Randwick, on the public footpath adjacent to 1-3 Elizabeth Street, Randwick. The proposal forms part of Telstra's Smart Media Network initiative, which seeks to upgrade and replace existing assets. The proposal seeks to remove the existing payphone at 119T Alison Road and replace it with a new payphone (with associated signage) located approximately 108m from the existing location.

The proposed structure is defined as a telecommunications facility and incorporates third party advertising on electronic display screens (32-inch screen at the front of the payphone and 75-inch screen at the back of the payphone). It is noted that on 20 November 2020, the Federal Court of Australia determined that Telstra's Smart Media Network payphones, which were previously exempt from the requirement for development consent, do not qualify as being a 'low impact facility' under the *Telecommunications Act 1997*. As such, a Development Application (DA) is required for the construction and use of the telecommunication facility (payphone) and associated installation of digital signage.

The key issues associated with the proposal relate to pedestrian and traffic safety, illumination impacts, and heritage. Subject to conditions, the proposed payphone structure will maintain reasonable levels of safety for pedestrians and traffic. The signage will comply with relevant Australian standards for illumination and will not be inconsistent with the heritage character of the locality.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is located at No. 149T Alison Road, Randwick, on the public footpath adjacent to 1-3 Elizabeth Street, Randwick.

The site is zoned SP2 Infrastructure and is surrounded by E2 Commercial Centre and R3 Medium Density Residential zoned land. Development at No. 1-3 Elizabeth Street comprises a three (3) storey shop top housing building. The site is located directly adjacent to the Randwick Junction Commercial Centre.

The proposal seeks to remove the existing payphone located at 119T Alison Road (refer Figure 1) to replace it with a new payphone (with associated signage) located approximately 108m from the existing location (refer Figures 2 and 3).



Figure 1: Existing payphone at 119T Alison Road, viewed to east from Botany St (Source: Google Maps)



Figure 2: Location of proposed payphone (Source: Applicant)



Figure 3: Existing development at 1-3 Elizabeth Street (Source: Google Maps)

3. Relevant history

DA/841/2018

Development Application No. DA/841/2018 was approved on 15 May 2019 for 'change of advertising content from Telstra standard telephone services advertising to third party advertising on Telstra's payphone' at the subject site. The DA sought to relocate the existing payphone near 119 Alison Road (119T Alison Rd) to replace it with a new payphone (with third party advertising) near 1-3 Elizabeth Street (149T Alison Road). This consent was subsequently modified by way of (3x) S4.55 modification applications however it is understood that the approved works have not been undertaken.

Federal Court Decision

On 20 November 2020, the Federal Court of Australia (*Telstra Corporation Limited v Melbourne City Council [2021] HCASL 82*) determined that Telstra's new Smart City Payphones, which were previously exempt from the requirement for development consent, do not qualify as 'low impact facilities' under the *Telecommunications Act 1997*. As a result, all existing and proposed new payphones require development consent for its use as a telecommunication facility with associated signage.

Pre Lodgement – PL/23/2021

A Pre Lodgement meeting was held with the Applicant on 11 May 2021 in relation to Telstra payphone assets at various locations across the Randwick LGA (refer PL/23/2021). The meeting notes advised the Applicant to lodge development applications to obtain the required approvals for the installation and use of the telecommunication facilities, inclusive of signage. Council advised that each application will be assessed on its merit having regards to the following considerations:

- The siting of the telecommunications infrastructure should be demonstrated to be in line with best practice guidelines;
- An independent accredited safety audit report should be submitted as part of the development application to demonstrate that the siting of the structure does not pose a potential hazard to traffic safety;
- The proposal should demonstrate a satisfactory visual impact on the streetscape (with particular regard to any heritage conservation area), and not result in light spill; and
- The siting of the proposal should not give rise to footpath congestion and should maintain sufficient clearance for pedestrian traffic.

Council resolution

At the Ordinary Council meeting of 26 April 2022, a report was prepared to inform Council of the intention of Telstra to upgrade a number of existing payphone facilities within the Randwick City Council area with Smart City Payphones. Council resolved:

RESOLUTION: (Luxford/Neilson) that the report be received and noted and that no paid political advertising be allowed on any Telstra payphone structures on Council land and the upcoming review of the Randwick DCP include consideration on the size of these structures.

In accordance with the above resolution, a condition is included to prohibit any political advertising.

Council's Strategic Planning team are currently undertaking a review of RDCP 2013 which will include consideration of the size of any future telecommunications structures, with particular regards to payphones. In this regard, Council notes that specifications for the size of any payphone structure and advertising will likely be incorporated into the DCP in future, and therefore the approval of the proposed structure would be utilised as precedent for any future structures that may be considered under new controls.

4. Proposal

The proposal seeks development consent for installation and use of a payphone at No. 149T Alison Road, Randwick, on the public footpath adjacent to 1-3 Elizabeth Street, Randwick (refer Figure 4). The payphone is defined as a telecommunications facility and incorporates third party advertising on electronic display screens. A photomontage of the proposed payphone structure is provided at Figure 5.

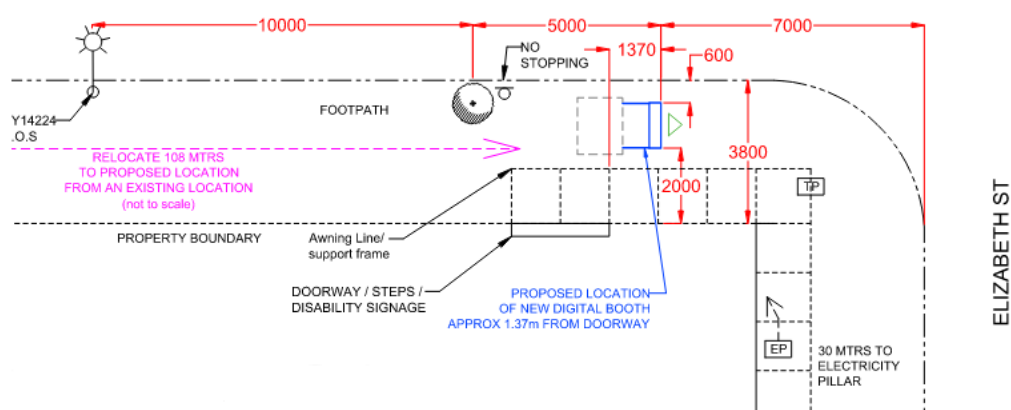


Figure 4: Proposed site plan (Source: JCDecaux)

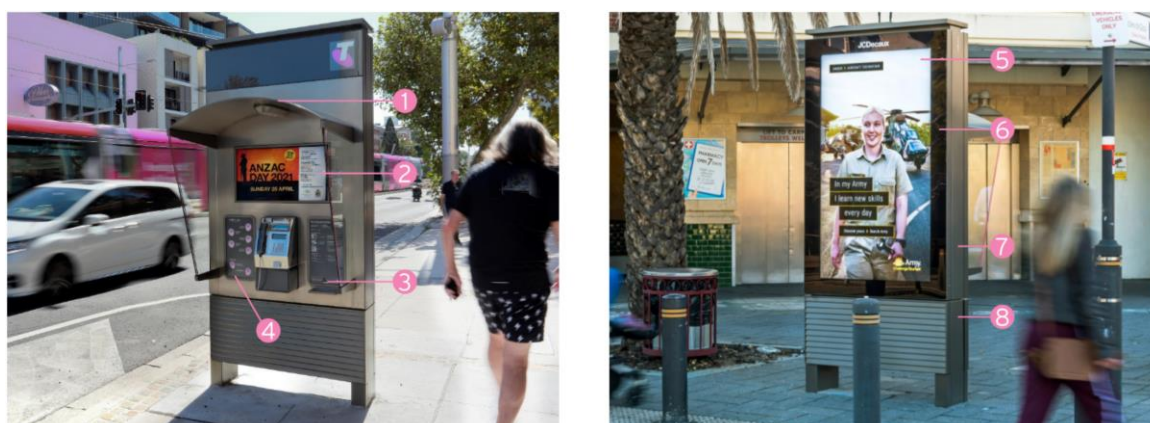


Figure 5: Photomontage of proposed payphone structure (Source: Applicant)

D33/24

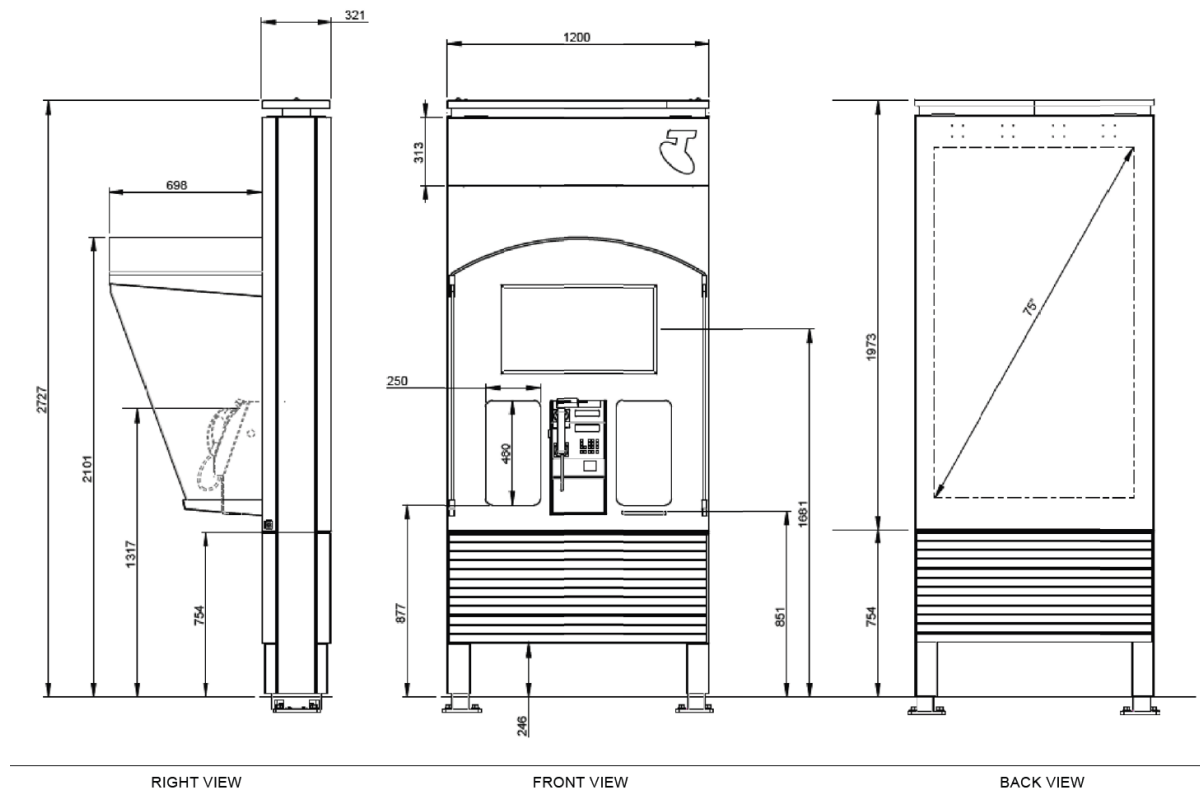


Figure 6: elevation plans of the proposed payphone structure (*Source: Applicant*)

The proposed payphone structure is 2.727m in height, 1.2m in width, 0.321m in depth. The front of the payphone includes a 32 inch digital screen to be used for third party advertising. The rear of the payphone includes a 75 inch digital screen to be used for third party advertising. The advertising screen will display multiple adverts, with six (6) adverts occurring per minute.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received as a result of the notification process.

6. Relevant Legislation

6.1. Telecommunications Act 1997

On 20 November 2020, the Federal Court of Australia determined that Telstra's Smart Media Network payphones, which were previously exempt from the requirement for development consent, do not qualify as being a 'low impact facility' under the *Telecommunications Act 1997*. As such, a Development Application (DA) is required for the construction and use of the telecommunication facility (payphone) and associated installation of digital signage.

6.2. Roads Act 1993

Pursuant to section 138 of the *Roads Act 1993*, consent may not be given with respect to a classified road except with the concurrence of Transport for New South Wales (TfNSW). Noting that Alison Road is a classified road, concurrence was provided by TfNSW, subject to conditions. Refer to Appendix 1 of this report.

7. Relevant Planning Instruments

7.1. SEPP (Transport and Infrastructure) 2021

Chapter 2 of the Transport and Infrastructure SEPP seeks to facilitate the effective delivery of infrastructure across the state.

Pursuant to Clause 2.143 of the SEPP, development for the purpose of telecommunication facilities (i.e. payphones) may be carried out by any person with consent on any land. Pursuant to subclause 2.143(2), the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Planning Secretary.

Having regard to the *NSW Telecommunications Facilities Guideline, Including Broadband* (published by Department of Planning and Environment, dated October 2022), the proposed telecommunications facility meets the following principles:

- The payphone is designed and sited such that it does not result in visual clutter;
- The payphone is co-located on the part of the footpath where other structures such as bins, signage, seating, and the like are usually located;
- The design, installation, and operation of the payphone will comply with relevant health standards for exposure to radio emissions; and
- Suitable conditions are included to ensure that the installation and operation of the payphone will minimise disturbance and risk, and maximise compliance with relevant guidelines and Australian Standards.

7.2. SEPP (Industry and Employment) 2021

Chapter 3 of the Industry and Employment SEPP seeks to ensure that signage, including advertising, is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations, and is of high quality design and finish.

The signage falls within the definition of 'advertisement', which is defined by the SEPP as follows:

Advertisement means signage to which Section 3.3 applies and includes any advertising structure for the advertisement.

Advertising structure means a structure or vessel that is principally designed for, or that is used for, the display of an advertisement.

Pursuant to section 3.11, the consent authority must not grant consent to an application to display an advertisement unless the advertisement is consistent with the objectives of Chapter 3 and has been assessed as acceptable in relation to the assessment criteria in Schedule 5.

An assessment against the relevant objects and criteria is provided in the tables below.

Industry & Employment SEPP – Chapter 3	Compliance
(a) to ensure that signage (including advertising)— (i) is compatible with the desired amenity and visual character of an area, and (ii) provides effective communication in suitable locations, and (iii) is of high-quality design and finish, and (b) to regulate signage (but not content) under Part 4 of the Act, and (c) to provide time-limited consents for the display of certain advertisements, and	<p>The proposed signage is compatible with the desired amenity and visual character of the locality. The site is located directly adjacent to the Randwick Junction Commercial Centre, which is characterised by commercial uses and signage.</p> <p>The payphone structure will display the proposed signage and is of a high-quality design and finish. Suitable conditions are included to ensure that</p>

Industry & Employment SEPP – Chapter 3	Compliance
(d) to regulate the display of advertisements in transport corridors, and	the payphone structure will maintain reasonable levels of safety for pedestrians and traffic and to ensure the signage will comply with relevant Australian standards for illumination.
(e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.	

Industry & Employment SEPP – Schedule 5	Comment
Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal is compatible with the existing character of the Randwick Junction Commercial Centre and surrounding E2 zoned land.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The locality does not have a particular theme for outdoor advertising, however it is not considered the subject design would be in contrast with the immediate locality.
Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The signage does not detract from the amenity or visual quality of the Randwick Junction Commercial Centre and surrounding E2 zoned land.
Views and vistas	
Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage does not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	The proposal does not affect the viewing rights of other advertisers.
Streetscape, setting or landscape	
Are the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The signage is compatible with the scale and proportions of the surrounding streetscape, setting, and landscape.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal does not have an adverse impact on the visual interest of the streetscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal does not create any undue clutter and is limited to a sole signage emplacement.

Industry & Employment SEPP – Schedule 5		Comment
Does the proposal screen unsightliness?		The proposal does not create any undue unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?		The proposal does not protrude above buildings.
Does the proposal require ongoing vegetation management?		The proposal does not require ongoing vegetation management.
Site and building		
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?		The proposal is located on the footpath area and is not attached to any building.
Does the proposal respect important features of the site or building, or both?		The proposal is located on the footpath area and is not attached to any building.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?		The proposal is located on the footpath area and is not attached to any building.
Associated devices and logos with advertisements and advertising structures		
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?		The signage is well integrated with the payphone structure.
Illumination		
Would illumination result in unacceptable glare?		Complies, subject to conditions.
Would illumination affect safety for pedestrians, vehicles or aircraft?		Complies, subject to conditions.
Would illumination detract from the amenity of any residence or other form of accommodation?		Complies, subject to conditions.
Can the intensity of the illumination be adjusted, if necessary?		Complies, subject to conditions.
Is the illumination subject to a curfew?		Complies, subject to conditions.
Safety		
Would the proposal reduce the safety for any public road?		The proposal will not affect the safety of Elizabeth Street and Alison Road, subject to conditions and has been reviewed by Council's Integrated Transport team.
Would the proposal reduce the safety for pedestrians or bicyclists?		The proposal will not affect the safety of pedestrians or cyclists, subject to conditions.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?		The proposal does not obscure sightlines from public areas.

Transport Corridor Outdoor Advertising and Signage Guidelines 2017

Chapter 2.5.8 of the *Transport Corridor Outdoor Advertising and Signage Guidelines 2017* ('the Guidelines') provides criteria for digital signs in transport corridors. Noting that the payphone structure is located adjacent to Alison Road (i.e. a classified road), chapter 2.5.8 is applicable.

Subject to conditions (including those provided by TfNSW), Council is satisfied that the digital signage meets the criteria listed in Table 3 of the Guidelines. Suitable conditions are included to ensure ongoing compliance with the Guidelines. These conditions relate to:

- Dwell times between displays shall be no shorter than 10 seconds.
- Limitations on flashing, animated, and complex displays.
- Displays shall not resemble traffic control devices by use of colour, shape, or words that can be construed as giving instruction to traffic.
- Limitations on the consent to 15 years.
- Criteria and requirements for illuminance by stated compliance with relevant Australian Standards.

7.3. SEPP (Resilience and Hazards) 2021

Chapter 4 of the Resilience and Hazards SEPP applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. Clause 4.6 of the SEPP requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

The site is not identified in Council's records as being contaminated and there is no specific evidence to indicate that the site is contaminated. In this regard, the site is considered suitable for the proposed development.

7.4. Randwick Local Environmental Plan (RLEP) 2012

The site is zoned SP2 Infrastructure under Randwick Local Environmental Plan (RLEP) 2012. The proposal, being for a telecommunication facility (payphone) with associated signage, is not permissible in the SP2 zone. However, as detailed at Section 7.1 of this report, development for the purposes of telecommunications facilities may be carried out by any person with consent on any land pursuant to clause 2.143 of the Transport and Infrastructure SEPP.

The proposal is not inconsistent with the objectives of the SP2 Infrastructure zone, which include:

- *To provide for infrastructure and related uses;*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure;*
- *To facilitate development that will not adversely affect the amenity of nearby and adjoining development; and*
- *To protect and provide for land used for community purposes.*

Noting that the proposed payphone location is within 4m of the adjoining E2 Commercial Centre zone, clause 5.3 of RLEP 2012 is applicable. Pursuant to clause 5.3, consent may be granted to development in the SP2 zone for any purpose that may be carried out in the adjoining E2 zone, but only if the consent authority is satisfied that the development is not inconsistent with the objectives for development in both zones, and that the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.

Signage is permissible with consent in the E2 zone. Council is satisfied that the proposal is not inconsistent with the objectives of the E2 zone, which include:

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*

- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.*
- *To support a diverse, safe and inclusive day and night-time economy.*

The payphone and associated signage will strengthen the role of the Randwick Junction Commercial Centre (and surrounding E2 zoned land) and provide a form of social infrastructure for the local community.

It is considered that the proposed third party advertising is similar to other advertising found on commercial premises within the adjacent E2 zone. In this regard, the proposal is consistent with the prevailing character of the area and will not adversely affect the amenity of nearby development. Suitable conditions are included to ensure a high level of accessibility and amenity for pedestrians and vehicles and to ensure a safe public domain.

It is noted that the subject site is located in proximity to R3 Medium Density Residential zoned land, where signage is generally not permissible unless related to building and business identification. Notwithstanding, the development remains compatible with the nearby residential zone. The digital signage is not within a direct line of sight from adjacent dwellings and the residential character of the immediate locality is already substantially compromised by the arterial nature of Alison Parade.

It is considered that the proposed location of a payphone structure on the corner of Alison Road and Elizabeth Street, amongst commercial premises and shop top housing, is suitable.

Council is also satisfied that the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity, and other planning principles relating to the efficient and timely development of land.

Heritage Conservation – Clause 5.10

The site is not listed under Schedule 5 of RLEP 2012 as being a heritage item or being located within a heritage conservation area. However, the Randwick Junction Conservation Area and 2 x heritage items ("Rexmere" Victorian terrace at No. 143 Alison Road and "Hillcrest" Victorian terrace at No. 145-147 Alison Road) are in proximity to the subject site.

The proposed works will not impact the heritage significance of the heritage item or the heritage conservation area and therefore the proposal is consistent with clause 5.10. Refer to discussion by Council's Heritage Officer at Appendix 1 of this report.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

The relevant provisions of the DCP are addressed in Appendix 2.

9. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Refer to Section 7 of this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. Refer to Appendix 2.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Not applicable.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Key Issues

Pedestrian and Traffic Safety

Council's Asset Engineer, Integrated Transport team and TfNSW have reviewed the proposal and raise no concerns regarding pedestrian and traffic safety, subject to suitable conditions.

In accordance with Council's requirements, a 2m clearway will be provided between the payphone structure and adjacent property boundary to facilitate pedestrian access.

Illumination Impacts

The illuminated signage is located on the front and back of the payphone structure and is oriented towards the east-west Alison Road corridor, away from the residential properties located towards the north, on the opposite side of Alison Road. Suitable separation is provided between the payphone location and nearby residential properties by way of the 4x lane width of Alison Road.

The digital signage is not within a direct line of sight from adjacent dwellings and the residential character of the immediate locality is already substantially compromised by the arterial nature of Alison road.

Notwithstanding, suitable conditions are included to minimise light nuisance impacts to nearby residential properties, as outlined below:

- The digital signage must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.
- The digital signage must not result in unacceptable glare or adversely impact the safety of pedestrians, residents or vehicular traffic.
- The digital signage must comply with the relevant provisions of *AS 4282 – 1997 Australian Standard – Control of the obtrusive effects of outdoor lighting*.
- Visible light reflectivity from the digital signage and payphone structure shall not exceed 20 per cent and shall be designed to minimise glare.

Streetscape Character

It is considered that the proposed third party advertising is similar to other advertising found on commercial premises within the Randwick Junction Commercial Centre and along Alison Road. The streetscape character of the immediate locality is already substantially compromised by the arterial nature of Alison Road. In this regard, the proposal is consistent with the prevailing character of the area and will not adversely affect the amenity of nearby development.

10. Conclusion

That the application to undertake the installation of a telecommunications facility (payphone) with associated third-party digital signage at No. 149T Alison Road, Randwick, be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within RLEP 2012 and the relevant requirements of RDCP 2013;
- The proposal is consistent with the relevant objectives of the Industry and Employment SEPP and the Transport and Infrastructure SEPP;
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the existing and desired future character of the locality;
- The development does not detract from the visual quality of the public domain or streetscape;
- The payphones will provide a form of social infrastructure for the local community; and
- Subject to conditions, the digital advertising incorporated into the payphone structure will be appropriately managed to minimise illumination impacts and ensure pedestrian and traffic safety.

Appendix 1: Referrals

1. Transport for NSW

TfNSW has reviewed the submitted application for the proposed relocation of the existing payphone facilities including digital advertising signage and would provide concurrence under section 138 of the Roads Act 1993, subject to the Council's approval with the following conditions included as part of determination:

1. The proposed signs shall be in accordance with the Transport Corridor Outdoor Advertising and Signage Guidelines 2017.
2. Dwell times between displays shall be no shorter than 10 seconds.
3. The images displayed on the sign must not contain/use:
 - Flashing or flickering lights or content.
 - Animated displays, moving parts or simulated movement.
 - Complex displays that hold a driver's attention beyond "glance appreciation".
 - Displays resembling traffic control devices by use of colour, shape or words that can be construed as giving instruction to traffic for example, red, amber, or green circles, octagons, crosses, triangles, and words such as 'stop' or 'halt'.
 - A method of illumination that distracts or dazzles; and
 - Dominant use of colours red or green.
4. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Alison Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

In addition to the above, Council should be satisfied that the proposed digital advertising does not impact on pedestrian amenity and flow between the building line and kerb on Alison Road. TfNSW's Walking Space Guide can assist in considering this and can be found at <https://standards.transport.nsw.gov.au/> for reference.

2. Heritage Planner

The Site

The site is located on the Alison Road public footpath, adjacent to nos.1 – 3 Elizabeth Street. The footprint introduction/impact is approximately 1m².

To the west of the site at nos.143 and nos.145 – 147 Alison Road are "Rexmere" and "Hillcrest", Victorian terraces, listed as heritage items under Randwick LEP 2012.

Background

In May 2021, Urbis met with Council to discuss the proposed Telstra payphone and associated digital signage proposals across the Randwick Local Government Authority (LGA) - (Reference PL/23/2021 Meeting Date of 11 May 2021)

Council has provided advice. Predominantly positive feedback from Council means that JCDecaux are keen to progress the project as a whole within the Local Government Area. This development application proposal located at no.223 Coogee Bay Road, is part of this larger scheme.

Proposal

The proposal is for the relocation and upgraded replacement of an existing payphone from Botany Street (around 100m to the west) to Alison Road. The structure has a double anchor and small footprint, but also includes an advertising panel on the obverse side. The proposal in detail involves:

- The removal of the existing low-impact facility payphone (located on the eastern side of Botany Street, adjacent to no.119 Alison Road)

- *Construction and use of the subject site for a telecommunication facility, including digital screens for both business identification signage (standard telephone services content) and advertising (third-party)*
- *The payphone structure measures 1,200mm wide, 2,727mm tall and 321mm deep with a projecting canopy over the payphone.*
- *Third party advertising integrated into the payphone structure, consisting of a 32-inch digital screen to the front of the structure, above the phone, and a 75-inch digital screen to the rear of the structure*

Submission

For the purposes of this proposal the Development Application is accompanied by the following documents:

- *Detailed drawings by Decaux Australia Pty Ltd, dated 7 June 2018 and 26 July 2018 (Received by Council 9 November 2022)*
- *A professionally prepared detailed and well-illustrated Statement of Environmental Effects (SEE), and also containing detailed drawings, by URBIS Pty Ltd, Prepared for JCDECAUX November 2022 (Received by Council 9 November 2022)*
- *Relevant assessment studies for area character, heritage, views and vistas, streetscape/landscape, as well as vehicular and pedestrian movement*
- *A schedule of materials colours and finishes (Received by Council 9 November 2022)*

Controls

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes an Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Comments

The subject site has no identified heritage significance. There are two heritage items in the vicinity of the site to the west.

- *The physical size however – height and footprint - of the proposed structure is deemed to be minimal*
- *The advertising screen brightness with inbuilt light adjustment sensor is also deemed to be appropriate.*

From a heritage perspective the proposal will not impact on the physical fabric of the heritage item in the vicinity. Further, it is unlikely that the proposal would have any substantial impact upon view corridors, or streetscape setting of the nearby heritage item, or vehicular and pedestrian traffic.

Recommendation

No additional consent conditions are required.

3. Development Engineer

There are no objections to the proposal from Development Engineering. A 2m wide clearance is available at his location for pedestrian use. This is consistent with other uses such as for footpath dining.

There are no existing trees, covered by Part B5 (Preservation of Trees and Vegetation) in Council's DCP 2013, that will be affected by this proposal.

4. Property Officer

No concerns raised, subject to conditions.

5. Asset Engineer

The proposal retains 2m pedestrian clearance which is considered adequate for this location. No sight line issues for vehicles existing Elizabeth Street.

6. Integrated Transport Officer

The Integrated Transport Department raises no objection to this application.

D33/24

Appendix 2: DCP Compliance Table**2.1 Part F2 – Outdoor Advertising and Signage**

DCP Clause	Control	Proposal	Compliance
2	General Design and siting		
	(i) Signage should recognise the legitimate needs for directional advice, business identification and promotion.	The signage will display content that is un-related to the service being provided by Telstra. The third-party nature of the signage is not dissimilar to advertising found on bus shelters and will provide revenue for the maintenance of the payphone.	Yes
	(ii) Signage must complement and be compatible with the development on which it is situated and with adjoining development.	The signage is compatible with surrounding development in the Randwick Junction Commercial Centre and surrounding E2 zoned land.	Yes
	(iii) Signage should not obscure architecturally decorative details or features of buildings or dominate building facades. It should be placed on the undecorated wall surfaces or designed sign panels provided.	The proposal is located on the footpath area and is not attached to any building.	Yes
	(iv) Entire building facades and /or walls must not be painted or covered with cladding or other material to act as a large billboard type.	The proposal is located on the footpath area and is not attached to any building.	Yes
	v) Where a building or site contains multiple tenancies or uses, a coordinated approach for all signs is required.	N/A	N/A
	(vi) Signage shall be displayed in English but may include a translation in another language.	Complies, subject to condition.	Yes
	vii) Signage erected or displayed on identified heritage buildings or within heritage conservation areas must not detract from the architectural character and heritage significance of such buildings or areas.	N/A	N/A
	viii) Outdoor advertising attached to vehicles or trailers which are parked for advertising purposes will not be permitted.	N/A	N/A
	(ix) Signage must not be flashing or animated. Note: Flashing or animated signs include mechanical moving signs, moving LED signs, video/television screens, projected laser advertising and other flashing, intermittently illuminated or sequenced lighting signs.	Complies, subject to condition.	Yes
3	Signage Based on land use zones		
	Special Purpose Zones		
	i) Signage must not be flashing or animated	Complies, subject to condition.	Yes
	ii) Signage must be designed and located so that it forms an integral part of the building or land upon which it is situated.	The signage is well integrated with the payphone structure.	Yes
	iii) The number of signs should be kept to	The payphone structure	Yes

D33/24

DCP Clause	Control	Proposal	Compliance
	a minimum. Where possible signs should be grouped together. Avoid a proliferation of advertising material.	includes two (2) digital signage panels only.	

2.2 Part F4 – Telecommunications and Radiocommunications

Part F4 of RDCP 2013 applies to telecommunications and radiocommunications facilities and their supporting infrastructure and ancillary development under the *Telecommunications Act 1997*. Section 5 contains guidelines for the siting, design, and installation of telecommunications and radiocommunications facilities that require development consent. Council is satisfied that the proposed development is generally consistent with the guidelines included at Section 5.

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/570/2022

Development Consent Conditions (Commercial)



Folder /DA No:	DA/570/2022
Property:	149T Alison Road, RANDWICK NSW 2031
Proposal:	Installation of a telecommunications facility (payphone) with associated third-party digital signage.
Recommendation:	Approval

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated	Received by Council
Site Plan – Rev. C	JCDecaux	17/06/2019	09/11/2022
Dwg. TEL-001, Elevations	JCDecaux	07/06/2018	09/11/2022

Consent Requirements

2. This Development Consent is valid for fifteen (15) years from the date listed on the consent and shall expire after this time.
3. A minimum **2m** wide section of footpath is to remain unimpeded for pedestrian use.

Contractual Agreement

4. Prior to the installation of the advertising panels, the advertiser shall enter into a contract with Council relating to the advertising panel to be displayed on each public phone booth. The agreement shall contain conditions relating to the payment of an annual fee, the fee is to be paid in advance and shall be set as a percentage of the advertiser's charge out rate for the advertising panel.

At the beginning of the agreement and at the end of each calendar year, the advertiser shall notify Council of its intended charge out figure to enable Council invoicing to be prepared accordingly.

Prior to the installation of the advertising panels the applicant shall meet all costs associated for Council to have the subject agreement created.

Emergency Messaging System

5. The signage operator shall provide detailed information and training for NSW Police and Council in relation the Emergency Messaging System outlined in the submitted Statement of Environmental Effects. This information/training must be provided at no cost to NSW Police or Council.

Telecommunications Act 1997

6. This consent does not relieve the applicant from any responsibility under the Telecommunications (Low-impact Facilities) Determination 2018, made pursuant to the *Telecommunications Act 1997*.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a relevant '*Construction Certificate*' is issued for the development by a Registered (Building) Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the relevant construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

7. The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.

Security Deposit

8. The following damage / civil works security deposit requirement must be complied with as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance the *Environmental Planning and Assessment Act 1979*:

- \$2000.00 - Damage / Civil Works Security Deposit

The damage/civil works security deposit may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.

The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

To obtain a refund of relevant deposits, a *Security Deposit Refund Form* is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the relevant construction certificate for the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Building Code of Australia & Relevant Standards

9. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).

Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

The following conditions of consent must be complied with prior to the commencement of works on the site. The necessary documentation and information must be provided to the Council, as applicable.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations and to provide reasonable levels of public health, safety and environmental amenity.

Building Certification & Associated Requirements

10. The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):

- a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

- b) a Registered (Building) Certifier must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an occupation certificate; and
- c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council must be notified accordingly (in writing); and
- d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier.

Dilapidation Reports

11. A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a *Professional Engineer*, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifier* for the development.

The dilapidation report must be submitted to the *Principal Certifier*, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).

Construction Site Management Plan

12. A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing and hoardings
- location of site storage areas, sheds, plant & equipment
- location of building materials and stock-piles
- tree protective measures
- dust control measures
- details of sediment and erosion control measures
- site access location and construction
- methods of disposal of demolition materials
- location and size of waste containers/bulk bins
- provisions for temporary stormwater drainage
- construction noise and vibration management

- construction traffic management details
- provisions for temporary sanitary facilities
- measures to be implemented to ensure public health and safety.

The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

Public Liability

13. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.

Public Utilities

14. A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
15. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

The following conditions of consent must be complied with during the demolition, excavation and construction of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations and to provide reasonable levels of public health, safety and environmental amenity during construction.

Site Signage

16. A sign must be installed in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
- name, address, contractor licence number and telephone number of the *principal building contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
 - name, address and telephone number of the *Principal Certifier*,
 - a statement stating that "unauthorised entry to the work site is prohibited".

Building & Demolition Work Requirements

17. Building, demolition and associated site works must be carried out in accordance with the following requirements:

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations within rock, sawing of rock, use of jack-hammers, driven-type piling or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm (maximum) • As may be further limited in Noise & Vibration Management Plan

	<ul style="list-style-type: none"> • Saturday - No work permitted • Sunday & public holidays - No work permitted
Internal work only within a commercial or industrial development, located in a commercial or industrial zone, which is not audible within any residential dwelling or commercial or industrial premises	<ul style="list-style-type: none"> • Monday to Saturday - No time limits (subject to work not being audible in any residential dwelling or commercial/industrial tenancy or building) • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building & Regulatory Services for consideration and approval to vary the specified hours may be granted in exceptional circumstances and for limited occasions (e.g. for public safety, traffic management or road safety reasons). Any applications are to be made on the standard application form and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.

Construction Noise

18. Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan* prepared for the development, and in accordance with the conditions of consent.

Temporary Site Fencing

19. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:
- Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
 - Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
 - All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
 - Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
 - Site access gates must open inwards and not onto Council land.

Notes:

- *Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.*
- *A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.*

Site Management

20. Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- g) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.
- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

Complaints Register

21. A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.

Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.

Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.

Road Occupancy Licence

22. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Alison Road during construction activities.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the *Principal Certifier* issuing an *Occupation Certificate*.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

23. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council's Infrastructure, Vehicular Crossings, street verge

24. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
25. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance the following requirements:
- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
 - b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
 - c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

OPERATIONAL CONDITIONS

The following operational conditions must be complied with at all times, throughout the use and operation of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Advertising and Signage

26. No political advertising is permitted.
27. The signs shall not display any advertising material that is considered by Council to be offensive or of a sexually explicit nature.
28. The signage shall be in accordance with the Transport Corridor Outdoor Advertising and Signage Guidelines 2017 and relevant Australian Standards.
29. Dwell times between displays shall be no shorter than 10 seconds.
30. The number of advertisements displayed on the digital screen must not exceed six (6) per minute.

31. The transition time between different static digital advertisements displayed on the digital LED screens must be no longer than 0.1 seconds.
32. The images displayed on the signage must not contain/use:
 - Flashing or flickering lights or content.
 - Animated displays, moving parts or simulated movement.
 - Complex displays that hold a driver's attention beyond "glance appreciation".
 - Displays resembling traffic control devices by use of colour, shape or words that can be construed as giving instruction to traffic for example, red, amber, or green circles, octagons, crosses, triangles, and words such as 'stop' or 'halt'.
 - A method of illumination that distracts or dazzles; and
 - Dominant use of colours red or green.
33. Signage shall be displayed in English but may include a translation in another language.
34. The digital signage shall be maintained, cleaned regularly and kept in safe working order at all times to maintain pedestrian and vehicular safety. Any damage to the signs shall be rectified within a timely manner.
- Illumination**
35. The digital signage must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.
36. The digital signage must not result in unacceptable glare or adversely impact the safety of pedestrians, residents or vehicular traffic.
37. The digital signage must comply with the relevant provisions of *AS 4282 – 1997 Australian Standard – Control of the obtrusive effects of outdoor lighting*.
38. Visible light reflectivity from the digital signage and payphone structure shall not exceed 20 per cent and shall be designed to minimise glare.
- Electronic Log**
39. An electronic log of the sign's activity must be maintained by the operator for the duration of the development consent and be available to Council to allow a review of the sign's activity for any reason, including where a complaint has been made.

Development Application Report No. D34/24

Subject: 25 Fowler Crescent, South Coogee (DA/544/2022/A)

Executive Summary

Proposal:	Section 4.55(2) application to modify Condition 2.e. in relation to the roof height and design including associated changes to the floor levels of the building.
Ward:	Central Ward
Applicant:	Ramy Tawadros
Owner:	Richard Skurnik
Cost of works:	Nil
Reason for referral:	Modification to a condition imposed by the Panel

Recommendation

That the RLPP, as the consent authority, approves the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. 544/2022 in relation to the roof height and design including associated changes to the floor levels of the building, in the following manner:

- Amend Condition 1 to read:**

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated	Received by Council
A110 Site Plan Rev C	Arquero	21 August 2023	22 August 2023
A200 Basement Rev B	Arquero	11 April 2023	22 August 2023
A201 Ground Floor Rev B	Arquero	11 April 2023	22 August 2023
A202 First Floor Rev B	Arquero	11 April 2023	22 August 2023
A203 Attic Rev C	Arquero	21 August 2023	22 August 2023
A204 Roof Rev B	Arquero	11 April 2023	22 August 2023
A 300 Front and Rear Elevations Rev B	Arquero	11 April 2023	22 August 2023
A310 Side elevation (north) Rev B	Arquero	11 April 2023	22 August 2023
A320 Side elevation (south) Rev B	Arquero	11 April 2023	22 August 2023
A330 Fence Details Rev B	Arquero	11 April 2023	22 August 2023
A400 Section Rev B	Arquero	11 April 2023	22 August 2023
A401 Section Rev B	Arquero	11 April 2023	22 August 2023

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
1298741M_02	15 September 2022	28 October 2022

EXCEPT where amended by:

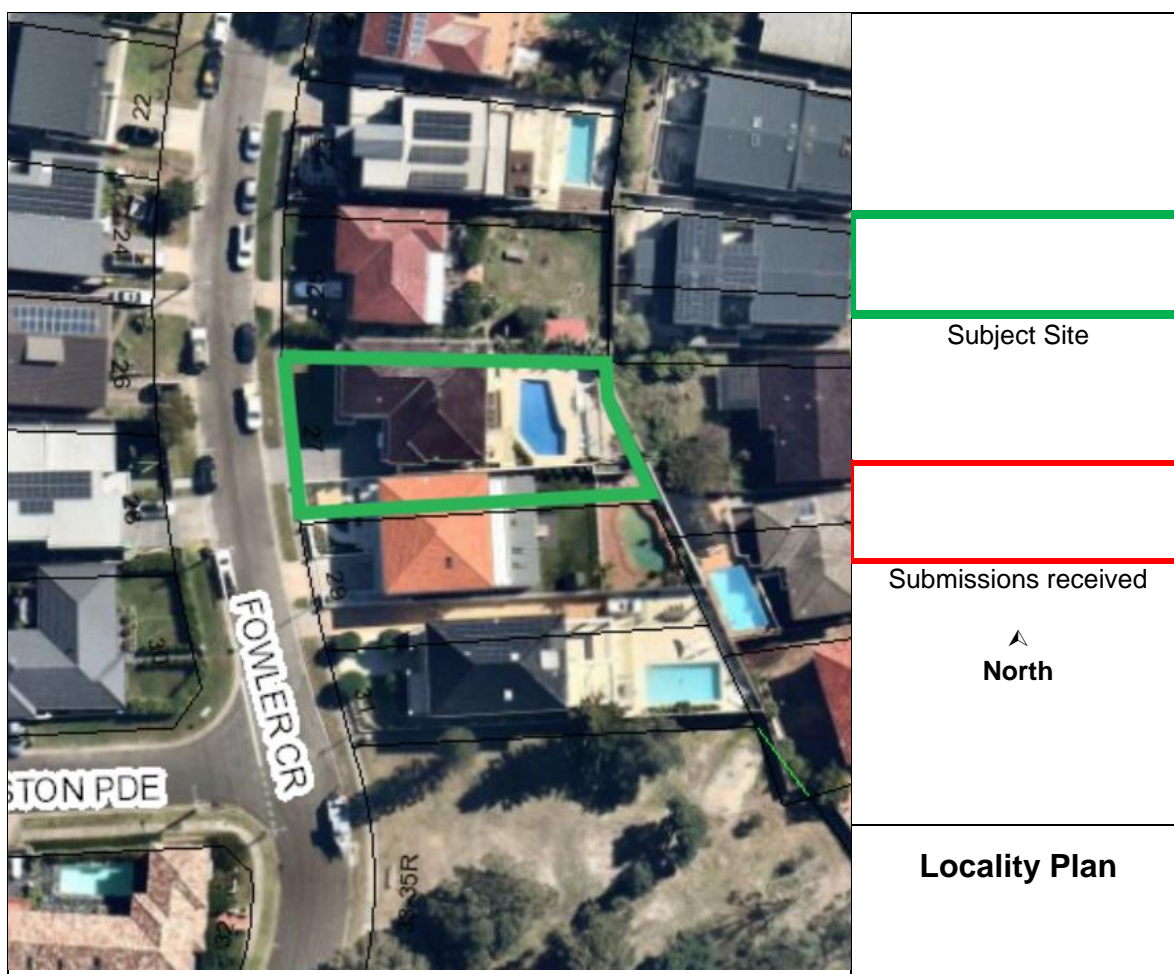
- Council in red on the approved plans; and/or
- Other conditions of this consent; and/or
- the following Section 4.55'A' plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.55'A' plans and detailed in the Section 4.55'A' application:

Plan	Drawn by	Dated	Received by Council
Site Plan A110	Arquero	23 November 2023	27 December 2023
Basement Plan A200	Arquero	23 November 2023	27 December 2023
Ground Floor Plan A201	Arquero	23 November 2023	27 December 2023
First Floor Plan A202	Arquero	23 November 2023	27 December 2023
Roof Plan A204	Arquero	23 November 2023	27 December 2023
Front and Rear Elevations A300	Arquero	23 November 2023	27 December 2023
Elevations (North) A310	Arquero	23 November 2023	27 December 2023
Elevations (South) A320	Arquero	23 November 2023	27 December 2023
Section A400	Arquero	23 November 2023	27 December 2023
Section A401	Arquero	23 November 2023	27 December 2023

- **Delete condition 2.e.**

Attachment/s:

Nil



D34/24

1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) because it is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and seeks to modify a condition imposed by the RLPP. The original development application was referred to the RLPP because more than 10 unique submissions by way of objection were received.

2. Site Description and Locality

The subject site is located on the eastern side of Fowler Crescent, between Johnstone Parade and Molloy Avenue, South Coogee. It is an irregular shaped lot with a frontage width of 16.29m, a side boundary depth of 39.3m and a total site area of 613.4m². Current development comprises a two storey brick dwelling. Refer to **Figures 1 and 2**.

The site falls approximately 2.5m from the street boundary to the rear. There is no significant vegetation on the site. The site is burdened by a 1.83m wide Council drainage easement along the southern boundary.

The adjoining property to the north at 23 Fowler Crescent contains a part 2 and 3 storey dwelling house. The adjoining property to the south at 27 Fowler Crescent contains a 2 storey dwelling house. Refer to **Figures 3 and 4**.

D34/24



Figure 1 – Existing dwelling on the subject site (street elevation)



Figure 2 – Existing dwelling on the subject site (rear elevation)



Figure 3 – Existing dwelling to the south at 27 Fowler Crescent



Figure 4 – Existing dwelling to the north at 23 Fowler Crescent

3. Details of Current Approval

The original development application was determined by the RLPP on 12 October 2023. The approved development is for demolition of existing structures on site and the construction of a two storey attached dual occupancy with associated landscaping.

The originally proposed dual occupancy development reported to the RLPP included a pitched roof form with an attic room above each dwelling. Refer to **Figure 1**.

The RLPP approved the dual occupancy development, subject to the imposition of Condition 2(e) requiring the deletion of the entire attic level as follows:

- e. *The entire attic level including the whole roof, internal stairs and skylight windows shall be deleted and replaced with a flat roof having the height of up to RL70.08. Skylight windows may be provided as required.*

The RLPP's rationale for the deletion of the attic level was to reduce the extent of the floor space ratio (FSR) non-compliance and the resultant bulk of the building.

The approved plans were subsequently amended post determination to satisfy Condition 2(e) as shown in **Figure 2**.

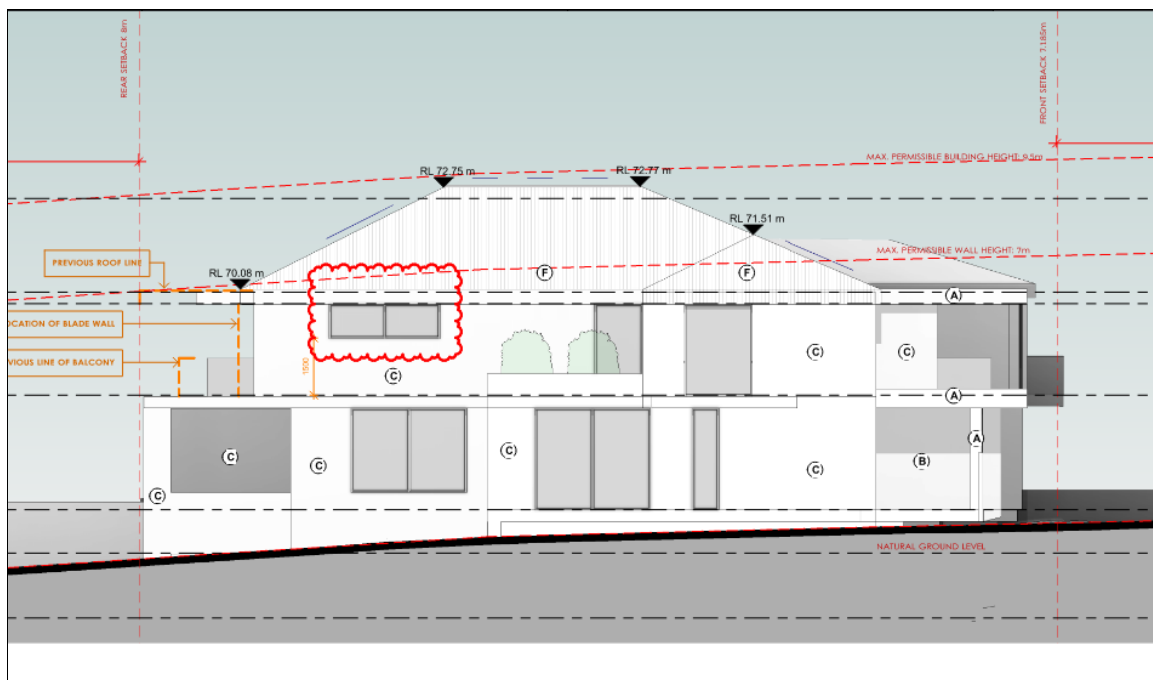


Figure 1 – The original application reported to the RLPP with an attic room above each dwelling in a pitched roof form (northern elevation)

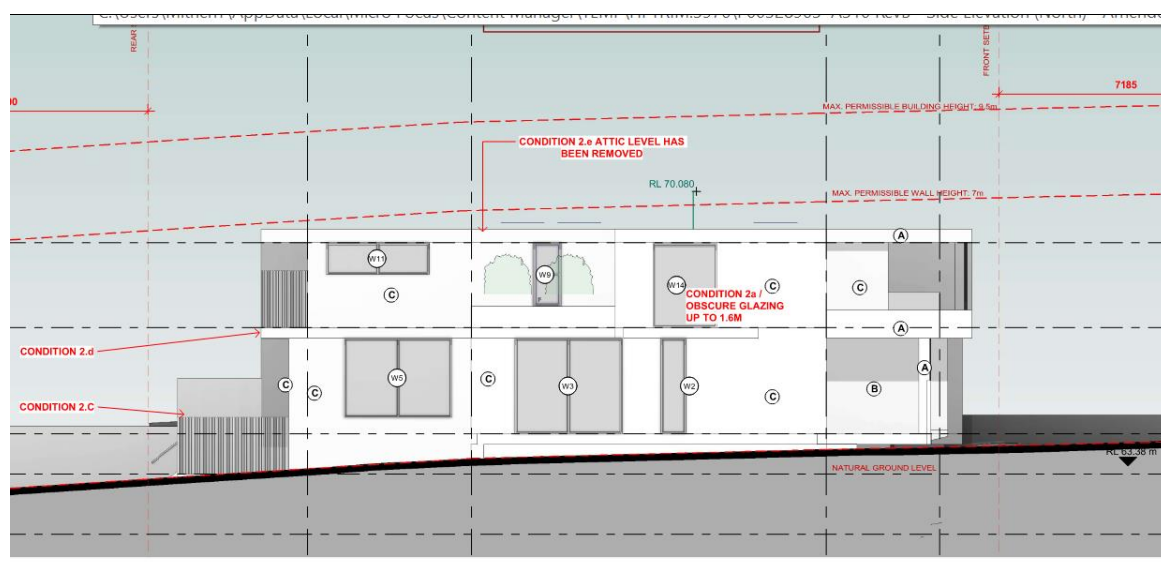


Figure 2 – The approved development showing a flat roof design in accordance with Condition 2(e) imposed by the RLPP (northern elevation)

4. Proposal

The proposed modification seeks to replace the approved flat roof design with a low pitch roof at a 5 degree angle to assist with drainage and buildability. Due to the low pitch of the roof, there will continue to be no attic space. Whilst the proposed modification will increase the overall building height by 1.34m, the approved setbacks will not change. The proposed modified development is illustrated in **Figures 3** and **4**.

The proposed modification also seeks to increase the Finished Floor Levels (FFLs) by 100mm-340mm and the first floor ceiling height by 300mm from 2.4m to 2.7m. The applicant contends the increase in floor to ceiling height will improve internal amenity for future occupants. Refer to **Table 1**.

Table 1 – Proposed Modified FFL

	Approved FFL (RL)	Proposed Modified FFL (RL)	+/- change (mm)
Basement (garage)	61.46	61.56	+100
Ground Floor	64.30	64.41	+110
First Floor	67.30	67.64	+340

D34/24

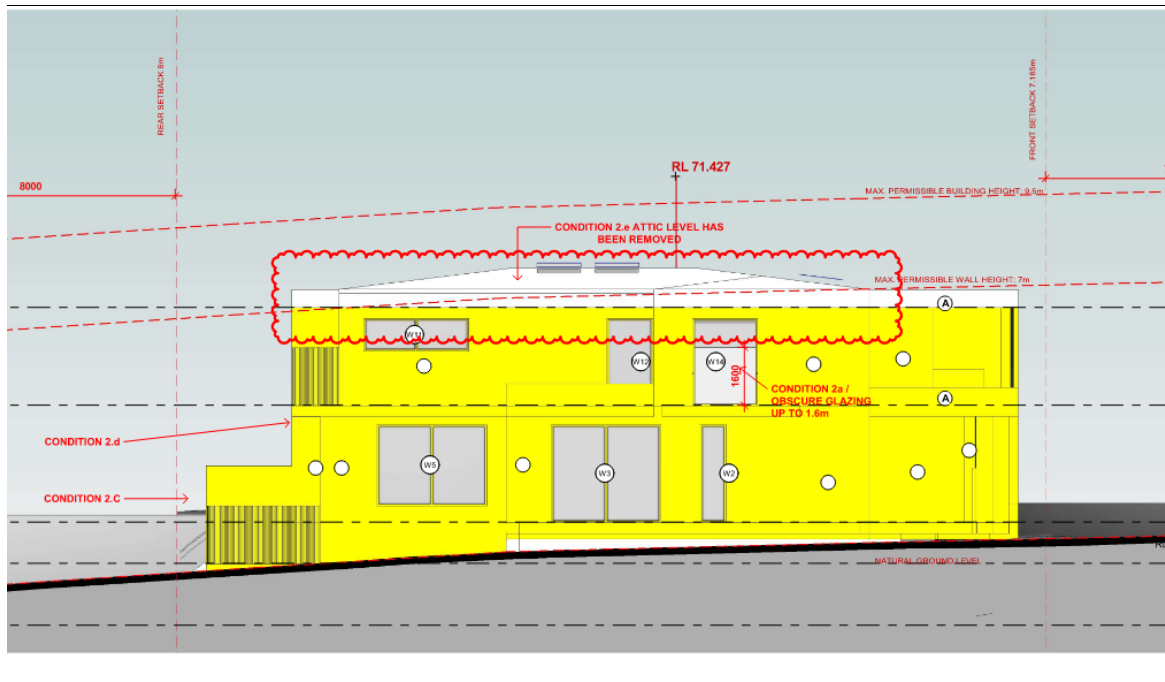


Figure 3 – The proposed modified roof form (northern elevation)

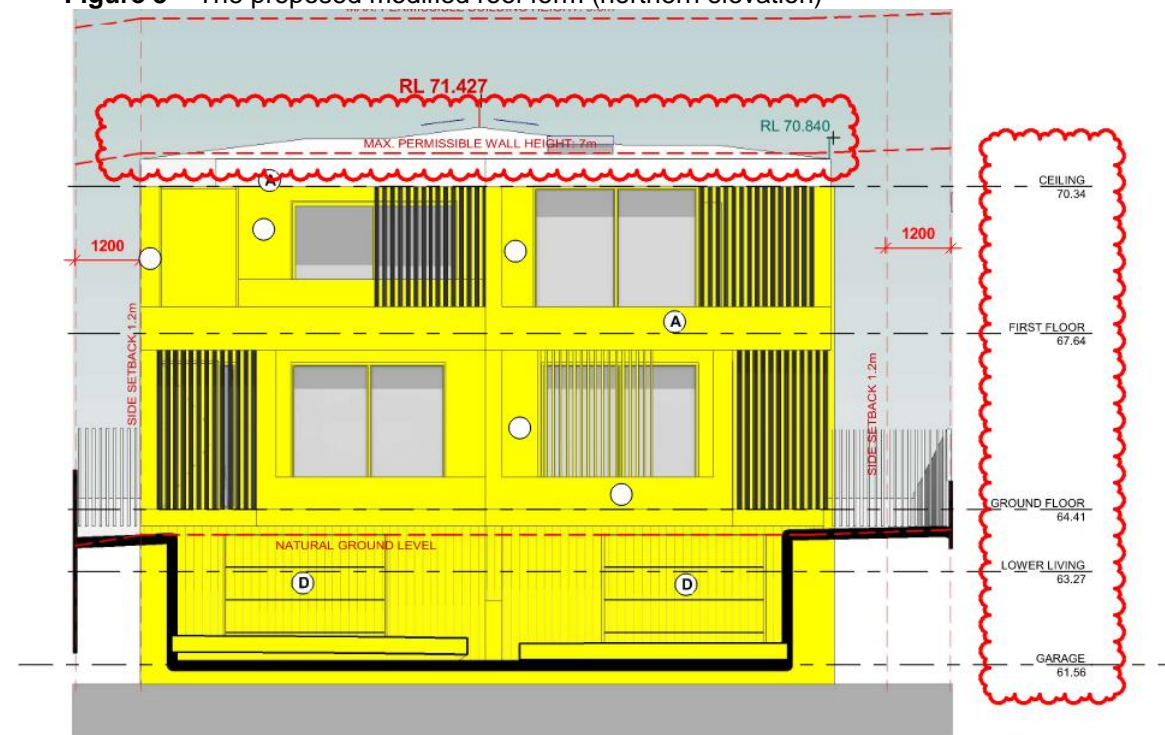


Figure 4 – The proposed modified roof form (street elevation)

5. Section 4.55 Assessment

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with:-

1. it is satisfied that the development to which the consent as modified relates is *substantially the same development* as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

2. it has consulted with any relevant public authorities or approval bodies, and
3. it has notified the application & considered any submissions made concerning the proposed modification

An assessment against the above criteria is provided below:

1. *Substantially the Same Development*

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development. The proposed modified development will not increase the quantum of floorspace or result in any significant adverse building bulk to the adjoining properties or within the streetscape. Refer to the 'Key Issues' section of this report.

2. *Consultation with Other Approval Bodies or Public Authorities:*

The development is not integrated development or development where the concurrence of another public authority is required.

3. *Notification and Consideration of Submissions:*

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received as a result of the notification process.

Key Issues

Building Height

A maximum building height of 9.5m applies to the site in accordance with Randwick Local Environmental Plan (RLEP) 2012. The proposed modification seeks to reinstate a pitched roof (albeit at a lower angle with no attic space), which will increase the approved building height by 1.34m to 8.42m (from RL70.08 to RL 71.427). The proposed modified development complies with the maximum 9.5m building height development standard under RLEP 2012.

Part C1 Section 3.2 of Randwick Development Control Plan 2013 establishes an external wall height control of 7m which operates in conjunction with the building height development standard. The SEE submitted with the application contends the proposal complies with the 7m external wall height control as it is only the roof elements which extend above the 7m height plane. However, the architectural plans show the external wall breaches the 7m height plane by 100mm at rear northern elevation and 340mm at the rear southern elevation. The objective of the external wall height control is to control the building scale and minimise impacts upon the neighboring dwellings in terms of overshadowing, view loss, privacy and visual amenity. The proposed modified development is contextually appropriate for the site and the low pitch roof is consistent with the surrounding built form character in the street. Furthermore, the proposal would not result in any adverse amenity impacts to the adjoining properties, noting that the proposed wall section that exceeds the maximum wall height provides a generous side setback above the minimum control provision. Refer to the 'Residential Amenity Impacts' below. The proposed modified development achieves the objectives of the control, and the non-compliance is therefore acceptable.

The proposed increase in overall building height is also attributed to an increase in FFLs as described in **Section 4** of this report. The increase in floor levels at the garage and ground floor level is a result of increased cavity for services at the underside of the slab at both levels. The approved floor to ceiling heights will not change at the lower levels. However, the floor to ceiling height at the first floor bedroom level will increase by 300mm from 2.4m to 2.7m. Although the requirements under the Stage 1 RDCP 2013 commenced after 1 September 2023, and do not strictly apply to the proposed modification application, it is noted that the minimum 2.7m floor to ceiling requirement previously only relating to living areas now includes bedrooms. On that basis, the proposed increase in floor to ceiling height at the top bedroom level is acceptable.

The residential amenity impacts in relation to the proposed modified building height are addressed below.

Residential Amenity Impacts

Overshadowing

Part C1 Section 5.1 of RDCP 2013 establishes the solar access controls to neighbouring development. A portion of north facing living area windows of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8:00am and 4:00pm at the winter solstice. The private open space of neighbouring dwellings must also receive a minimum of 3 hours of direct sunlight between 8:00am and 4:00pm at the winter solstice.

The modification application is accompanied by sun-eye diagrams at hourly intervals comparing the extent of approved and proposed modified overshadowing to 27 Fowler Crescent at the winter solstice. Based on the Sun-eye diagrams for the approved flat roof design, the kitchen and living rooms windows at 27 Fowler Crescent will receive direct sunlight between 9:00am to 3:00pm. The proposed modified development will reduce solar access to these windows by approximately two hours. Notwithstanding, the reduction in solar access, the subject windows will continue to receive more than 3 hours of direct sunlight between 10:00am and 2:00pm at the winter solstice, which complies with Council's solar access controls.

The modification application is accompanied by Shadow diagrams at two hourly intervals comparing the extent of approved and proposed modified overshadowing to 27 Fowler Crescent at the winter solstice. The proposed modified development will result in minor additional overshadowing to the rear private open space (POS) at 27 Fowler Crescent between 2:00pm and 4:00pm at the winter solstice. Notwithstanding the increase in overshadowing, the POS at 27 Fowler Crescent will continue to receive more than 3 hours of direct sunlight at the winter solstice, which complies with Council's solar access controls.

The proposed modified development will not result in any unreasonable overshadowing impacts to the adjoining properties.

Visual Privacy

Part C1 Section 5.3 of RDCP 2013 establishes the privacy objectives and controls to minimise cross viewing and overlooking of adjoining dwellings. The proposed modification will increase the ground floor level by 110mm and at the first floor level by 340mm. The proposed increase in floor levels is not likely to result in any significant additional privacy impacts to the adjoining properties beyond what has already been approved by the Panel, noting the arrangement and configuration of windows along the side elevations and the size of the rear facing ground floor terrace and first floor balconies will not change under the proposed modified development. In addition, the privacy measures in the existing development consent will be maintained to safeguard the privacy of the adjoining properties.

The proposed modified development will not result in any unreasonable privacy impacts to the adjoining properties.

Visual Bulk/Streetscape

The proposed pitched roof design provides articulation and adds a character element to the design that otherwise would be lacking with a flat roof design. The proposed pitched roof form is consistent with the built form character within the street. The proposed modified development will not result in any significant additional building bulk when viewed from the adjoining properties, noting the approved building setbacks will be maintained in the revised scheme.

View Impacts

Part C1 Section 5.6 of RDCP 2013 establishes the concept of view sharing to ensure equitable distribution of views between development and neighbouring dwellings and the public domain. The NSW Land and Environment Court has developed a planning principle relating to view sharing

based on the case of *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140. Where view loss is likely to occur development proposals must address the view impact requirements of RDCP 2013 and the planning principle.

The original assessment report considered by the RLPP included an analysis to assess whether the extent of view loss from 27 Fowler Crescent was reasonable with reference to the Land and Environment Court Planning Principle established in the matter of *Tenacity Consulting v Warringah* (2004) NSWLEC 140. The analysis was based on the originally proposed pitched roof incorporating attic rooms above each dwelling. Council's assessment concluded that the proposed development would remove the neighborhood view from the kitchen window to the north but the ocean view to the east would not be impacted. The view impact was considered reasonable based on compliance with the envelope controls in terms of setbacks and building height.

The reinstatement of a pitched roof, albeit at a lower pitch with no attic rooms, will result in a minor loss of sky view to the north above the parapet when viewed from the kitchen window at the first floor of 27 Fowler Crescent. The non-compliance with the 7m external wall height control is not likely to result in any significant additional view loss beyond what has already been approved by the Panel. Furthermore, there will be no change to the views attained from the subject window beyond the rear building alignment as the approved rear building setback remains unchanged. The proposed modified development complies with the overall height control and the view impact is considered minor and view sharing reasonable.

6. Section 4.15 Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p> <p><i>Clause 4.3 – Building Height</i></p> <p>A maximum building height of 9.5m applies to the proposal. The original application reported to the RLPP had a maximum building height of 9.4m. The imposition of Condition 2(e) by the RLPP, requiring deletion of the attic rooms and imposition of a flat roof design, reduced the approved building height to 7.08m, which complies with the maximum 9.5m building height development standard under RLEP 2012. The proposed modification will increase the approved building height by 1.34m from RL 70.08 to RL 71.427. Refer to the Key Issues section of this report.</p> <p><i>Clause 4.4 – Floor Space Ratio</i></p> <p>A maximum FSR of 0.5:1 applies to the proposal. The original application reported to the RLPP had a gross floor area (GFA) of 337.3m² equating to an FSR of 0.549:1. The imposition of Condition 2(e) by the RLPP, requiring deletion of the attic rooms, reduced the GFA to 321.7m², resulting in an approved FSR of 0.52:1. The proposed modification does not change the approved FSR as the reinstatement of the pitched roof form does not include attic rooms.</p>

D34/24

Section 4.15 'Matters for Consideration'	Comments
	It is also noted Council's new FSR control for semi-detached dwellings under the Amendment No. 9, permits an FSR of 0.6:1, which will remain compliant under the modification.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

7. Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.

Responsible officer: Thomas Mithen, Environmental Planner
File Reference: DA/544/2022/A

Development Application Report No. D35/24

Subject: 115 Dolphin Street, Coogee (DA/1089/2023)

Executive Summary

Proposal:	Rectification works to existing boarding house to enable the provision of 11 boarding rooms and construction of new rear fire stairs
Ward:	East Ward
Applicant:	Bradley Inwood
Owner:	Mr N Dilles
Cost of works:	\$430,000.00
Reason for referral:	The development contravenes the development standards for floor space ratio, communal open space, car parking, landscape area, room size, and lot size by more than 10%

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1089/2023 for rectification works to existing boarding house to enable the provision of 11 boarding rooms and construction of new rear fire stairs, at No. 115 Dolphin Street, for the following reasons:

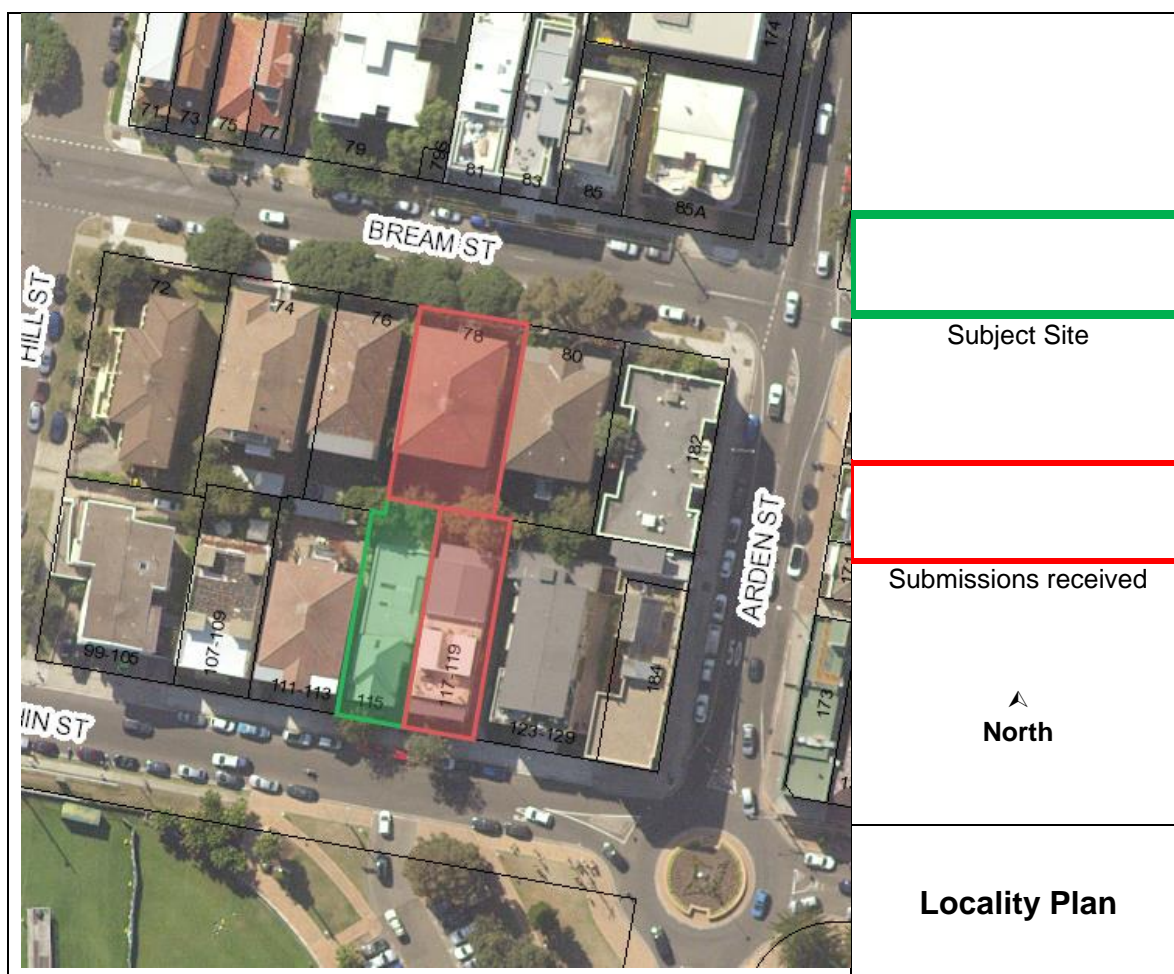
1. The proposed development is of an excessive scale and is an overdevelopment of the site, resulting in non-compliance with the floor space ratio development standard pursuant to clause 4.4 of RLEP 2012 and section 68(2)(a) of the Housing SEPP, as well as the development standards for communal open space, car parking, landscape area, room size, and lot size pursuant to sections 68(2) and 69(1) the Housing SEPP.
2. The Applicant has failed to submit a written request to vary the floor space ratio, communal open space, car parking, landscape area, room size, and lot size pursuant to clause 4.6 of RLEP 2012. The Applicant has failed demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
3. The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
4. The proposed development will result in unreasonable residential amenity impacts upon neighbouring properties with regard to visual and acoustic privacy.
5. The proposed development will result in unreasonable residential amenity and safety impacts for future occupants of the building.
6. Pursuant to section 68(2)(d) of the Housing SEPP, the proposal fails to provide sufficient communal open space area.
7. Pursuant to section 68(2)(e) of the Housing SEPP and Part B7 of RDCP 2013, the proposal fails to provide sufficient on-site car parking.
8. Pursuant to section 68(2)(f) of the Housing SEPP, the proposal fails to provide sufficient landscaped area.

D35/24

9. Pursuant to section 69(1)(a) of the Housing SEPP, the proposal fails to provide sufficient room sizes for co-living housing.
10. Pursuant to section 69(1)(b) of the Housing SEPP, the proposal fails to comply with the minimum lot size for co-living housing.
11. Pursuant to section 69(2)(a) of the Housing SEPP, the proposal fails to comply with the minimum rear setback requirements.
12. Pursuant to section 69(2)(f) of the Housing SEPP, Council is not satisfied that the proposed building design is compatible with the streetscape character and desirable elements of surrounding development.
13. Pursuant to clause 6.7 of RLEP 2012 and Part B10 of RDCP 2013, Council is not satisfied that the development contributes to the scenic quality of the foreshore.
14. A full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application including:
 - a. Insufficient information has been submitted to enable Council to undertake an assessment against section 47 of the Housing SEPP, relating to retention of affordable housing and associated impacts.
 - b. Insufficient information has been submitted to confirm that adequate tree protection measures will be undertaken to protect existing trees.
 - c. Insufficient information has been submitted to confirm if suitable solar access will be provided to the subject and neighbouring properties.
 - d. An Acoustic Report, prepared by a suitable qualified professional, has not been submitted.
 - e. A BCA Report, prepared by a suitable qualified professional, has not been submitted.
 - f. A Fire Protection Statement, prepared by a suitable qualified professional, has not been submitted.
 - g. A Plan of Management has been submitted, however, fails to address each of the matters outlined at Part B9 of RDCP 2013.
15. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
16. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

Attachment/s:

Nil



D35/24

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standards for floor space ratio, communal open space, car parking, landscape area, room size, and lot size by more than 10%.

The proposal seeks development consent for 'rectification' works to an existing building for use as a boarding house with 11 boarding rooms. The existing building previously operated as a boarding house until it was damaged by a fire on 19 August 2019. The building has remained vacant since this date.

The key issues associated with the proposal relate to non-compliances with the development standards for floor space ratio, communal open space, car parking, landscape area, room size, and lot size.

The proposed development will result in unreasonable residential amenity impacts upon neighbouring properties with regard to visual and acoustic privacy. Additionally, the proposed development will result in unreasonable residential amenity and safety impacts for future occupants of the building.

A full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application. Importantly, the Applicant has failed to provide a written request to vary the abovementioned development standards applying to the site under Randwick Local Environmental Plan (RLEP) 2012 and State Environmental Planning Policy (Housing) 2021 ('the Housing SEPP').

Therefore, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is located at 115 Dolphin Street, Coogee, and is legally described as Lot A in DP 951558. The site has an area of 340.7m² and is rectangular in shape, with a 10.19m frontage to Dolphin Street (to the south). The site falls by approximately 2.6m from the rear to the front of the site.

The site is currently occupied by a dilapidated building (refer Figure 1). The existing building previously operated as a boarding house, until it was damaged by a fire on 19 August 2019. The building has remained vacant since this date.

Surrounding development comprises residential flat buildings of two (2) to four (4) storeys in height. To the south of the site, on the opposite side of Dolphin Street, is Coogee Oval. Further to the south-east of the site is Coogee Beach.



Figure 1: Existing dilapidated building at subject site, viewed from Dolphin St (Source: Council officer)

3. Relevant history

- DA/422/1994 – approved 16 September 1994 for replacement of roof on boarding house.
- DA/583/1994 – approved 16 December 1994 for alterations to existing boarding house.
- DA/688/2002 – approved on 26 May 2003 for alterations and conversion of existing two storey boarding house containing 6 boarding rooms to a RFB containing 4 dwellings.
- DA/935/2015 – approved on 26 April 2017 for demolition of existing boarding house and construction of a 5 storey residential flat building comprising of 9 dwellings, a basement level for bicycle storage and building services, associated site and landscape works.
- DA/935/2015/A – approved on 31 May 2022 for modification to the approved RFB seeking further alterations & additions to the basement, level 1, level 2, level 3, level 4, & increase FFL of the rooftop.

Request for Information

On 16 January 2024, Council advised the Applicant that the DA was not supported in its current form and requested that the DA be withdrawn. Concern was raised regarding the following matters:

- Insufficient documentation – the DA was not supported by an Acoustic Report, BCA Report, GFA Plans, or Shadow Diagrams.

- The submitted SEE references incorrect legislation and has not included an assessment against the relevant provisions of the Housing SEPP.
- Land use – the proposed development does not fall within the Standard LEP definition of a boarding house. Advice from Council's legal counsel confirms that the existing use of the site as a boarding house has been abandoned pursuant to section 4.66(3) of the *EP&A Act 1979*. The proposed land use is therefore defined as co-living housing. No information has been provided by the Applicant to assess the proposal against the relevant standards contained at sections 68 and 69 of the Housing SEPP.

On 28 February 2024 and 22 March 2024, the Applicant submitted documents seeking to refute Council's position that the existing use of the site as a boarding house has been abandoned.

The Applicant has failed to address any of concerns raised by Council (in the letter dated 16 January 2024) relating to insufficient documentation and Housing SEPP assessment.

4. Proposal

The proposal seeks development consent for 'rectification' works to an existing building for use as a boarding house with 11 boarding rooms. As shown in Figures 2-5 the proposed works comprise:

- Ground floor – foyer, communal living/dining room, 4 x bedrooms, 3 x communal kitchens, 4 x WCs, laundry, and store room.
- First floor – 7 x bedrooms (including 1 x bedroom with internal kitchen), 2 x communal kitchens, communal living room, and 2 x WCs.
- New external metal stairs to rear of building.
- New roof.

The existing building previously operated as a boarding house until it was damaged by a fire on 19 August 2019. The building has remained vacant since this date.

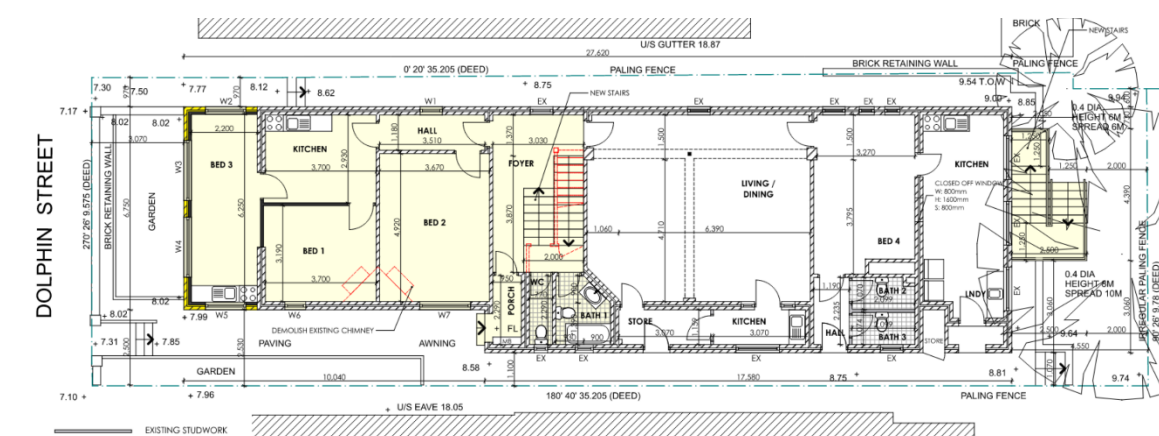


Figure 2: Proposed ground floor plan (Source: Brad Inwood Architects)

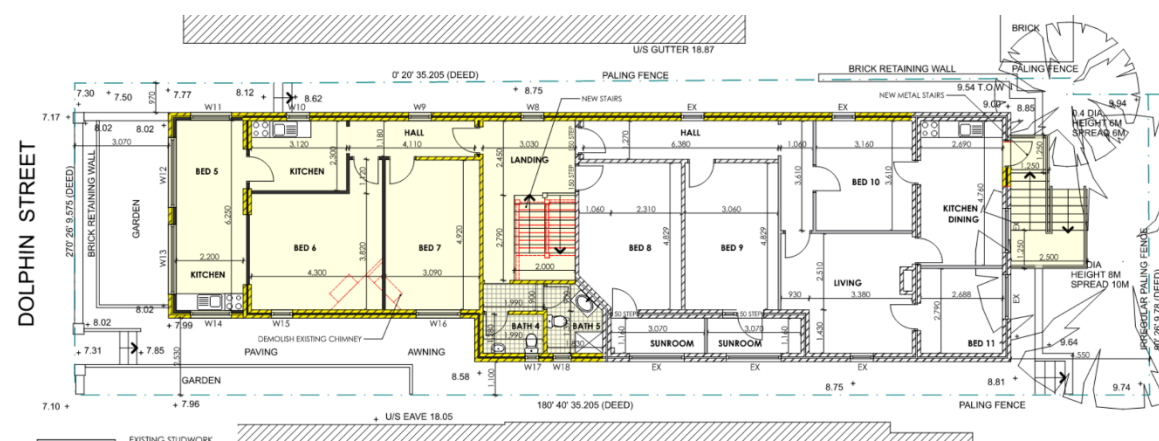


Figure 3: Proposed first floor plan (Source: Brad Inwood Architects)

D35/24

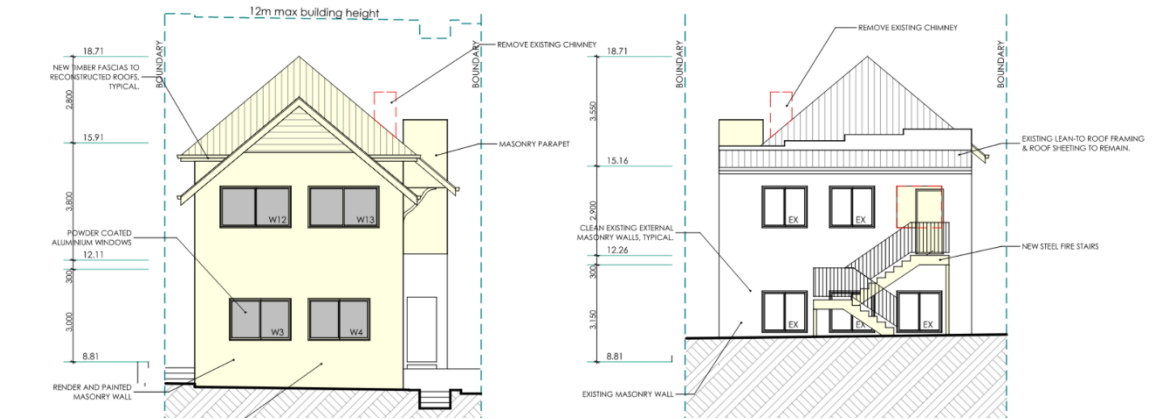


Figure 4: Proposed north and south elevations (Source: Brad Inwood Architects)

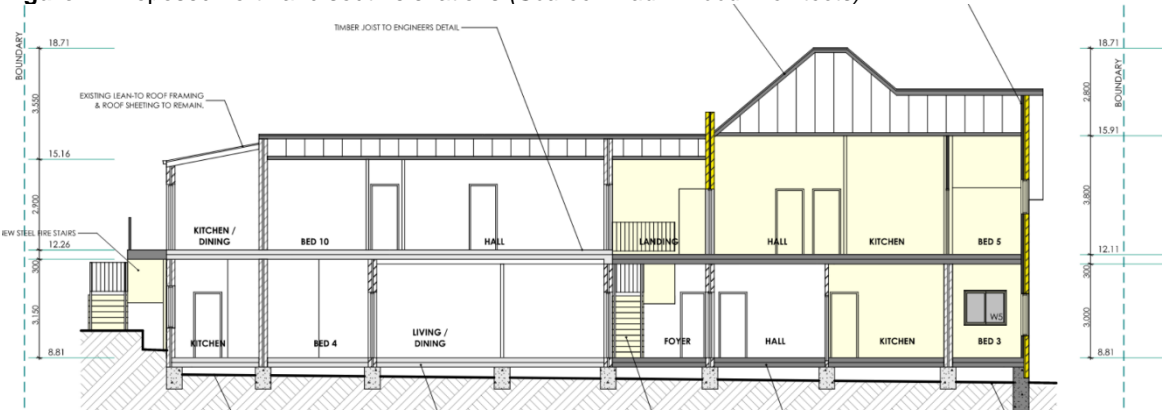


Figure 5: Proposed section plan (Source: Brad Inwood Architects)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick City Community Engagement Strategy. The following submissions were received as a result of the notification process:

- 1/117-119 & 2/117-119 Dolphin Street.
- 4/117-119 Dolphin Street.
- 5/117-119 Dolphin Street.
- 2/78 Bream Street.
- 4/78 Bream Street.
- 5/78 Bream Street.
- 6/78 Bream Street.
- 7/78 Bream Street.
- 8/78 Bream Street.

Issue	Comment
Anti-social behaviour by occupants of previous boarding house use.	Previous operations not relevant to assessment of current DA.
Poor management of previous boarding house use.	Previous operations not relevant to assessment of current DA.
Noise impacts. No acoustic report submitted.	Agree – refer to discussions in this report.
Hygiene/sanitation concerns – rodents/vermin present during previous boarding house use.	Previous operations not relevant to assessment of current DA.
Loss of property value.	Not relevant to planning assessment.
Existing building is overgrown, dilapidated, and occupied by squatters.	Not relevant to planning assessment.
No provisions for an on-site manager.	Agree – refer to discussions in this report.
Privacy concerns – lack of privacy screening, overlooking from rear windows and fire stairs.	Agree – refer to discussions in this report.

Issue	Comment
Non-compliance with minimum room size requirements for boarding house	Agree – refer to discussions in this report.
No management plan submitted.	Plan of Management submitted, however insufficient information provided and all Sections of Part B9 of the RDCP have not been addressed in satisfactory manner.
Safety of existing building is unclear.	Agree – refer to discussions in this report.
Inadequate bathroom and kitchen facilities.	Agree – refer to discussions in this report.
Traffic impacts and increased demand for on-street parking due to lack of on-site parking.	Agree – refer to discussions in this report.
Concentration of boarding houses in locality.	Not relevant to planning assessment.
No shadow diagrams submitted.	Agree – refer to discussions in this report.
The SEE does not address Housing SEPP.	Agree – refer to discussions in this report.
Non-complaint rear setback.	Agree – refer to discussions in this report.
No Waste Management Plan submitted.	Waste Management Plan submitted.
No BCA Report, Access Report, or Fire Safety Report submitted.	Agree – refer to discussions in this report.
Submitted documents do not demonstrate how existing damaged trees will be protected.	Agree – refer to discussions in this report.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policies (SEPPs)

6.1.1. SEPP (Housing) 2021

Chapter 2 – Affordable Housing

The Housing SEPP seeks to deliver more affordable and diverse forms of housing, including co-living housing and independent living units. The subject site is currently occupied by a (now vacant) boarding house comprising 11 x boarding rooms. The existing building has not previously been subdivided and is currently held in single ownership.

Chapter 2, Part 3 of the Housing SEPP applies to existing affordable housing in the form of low-rental residential buildings. Consideration of this Part is required to determine whether the proposal will result in a reduction in affordable rental housing, and therefore whether a monetary contribution might be considered to substitute any loss.

The Housing SEPP defines a low-rental residential building as follows:

a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that—

- (a) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or*
- (b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or*
- (c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.*

Noting that the subject site is vacant and the last significant use was as a boarding house, the existing building is a low-rental residential building.

Section 46 – Buildings to which Part applies

Pursuant to subsection (1) of section 46, Part 3 of the Housing SEPP applies to low-rental residential buildings on land in the Greater Sydney Region. Pursuant to subsection (2), Part 3 does not apply to a building approved for subdivision under the *Strata Schemes Development Act 2015*, or for which development consent has been granted under Part 5 of the Housing SEPP, or that is owned by, or under the care, control and management of, a social housing provider.

Noting that the existing building is a low-rental residential building, has not been strata subdivided, is not housing for seniors or people with a disability, and is not owned/managed by a social housing provider, consideration is given to Part 3 of the Housing SEPP.

Section 47 – Reduction of availability of affordable housing

The submitted SEE fails to provide any assessment against section 47 of the Housing SEPP and has failed to provide sufficient information to enable Council to undertake any such assessment. In this regard, a full assessment of whether there is likely to be a reduction in the availability of affordable housing and associated impacts cannot be undertaken.

Chapter 3 – Diverse Housing

Pursuant to section 67 of the Housing SEPP, development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings, or shop top housing is permitted under another environmental planning instrument. Noting that residential flat buildings are permitted with consent in the R3 Medium Density Residential zone pursuant to RLEP 2012, co-living housing is permitted at the subject site.

Section 68(2) of the Housing SEPP prescribes several non-discretionary development standards in relation to development for the purpose of co-living housing. The submitted SEE fails to provide any assessment against section 68(2). Notwithstanding, an assessment of the proposal against section 68(2) is provided in the below table.

Housing SEPP – section 68(2)	Compliance
(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,	Does not comply – refer to discussion at Section 6.2.1 of this report.
(b) for co-living housing containing 6 private rooms— (i) a total of at least 30m ² of communal living area, and (ii) minimum dimensions of 3m for each communal living area,	N/A
(c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	Complies – a total of 60.7m ² (approx.) communal living area is provided, in excess of the 40m ² requirement for 11 private rooms. Dimensions greater than 3m are provided.
(d) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	Does not comply – a total of 37m ² (approx.) communal open space is provided at the rear of the site, which fails to comply with the 68.14m ² (20% site area) requirement.
(e) unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	Does not comply – no on-site parking provided.

(f) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,	Does not comply – a total of 56.1m ² (approx.) landscaped area is provided, which fails to comply with the 170.35m ² (50% site area) requirement pursuant to Part C2, Section 2.2 of RDCP 2013.
(g) for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.	N/A

Pursuant to section 69(1) of the Housing SEPP, consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that the relevant development standards are achieved. The submitted SEE fails to provide any assessment against section 69(1). Notwithstanding, an assessment of the proposal against section 69(1) is provided in the below table.

Housing SEPP – section 69(1)	Compliance
(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m ² and not less than— (i) for a private room intended to be used by a single occupant—12m ² , or (ii) otherwise—16m ² , and	Does not comply – bedroom Nos. 10 and 11 are 11.4m ² and 7.5m ² in area (respectively) and fail to comply with the minimum 12m ² room size requirement.
(b) the minimum lot size for the co-living housing is not less than— (i) for development on land in Zone R2 Low Density Residential—600m ² , or (ii) for development on other land—800m ² , and	Does not comply – 340.7m ² site area does not meet minimum 800m ² lot size requirement.
(c) for development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing— (i) will not contain more than 12 private rooms, and (ii) will be in an accessible area, and	N/A
(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and	Does not comply – workspace for manager not shown on submitted plans.
(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	N/A
(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and	Suitable communal facilities (i.e. kitchen, bathroom, and laundry) are provided for 11 occupants.
(g) each private room will be used by no more than 2 occupants, and	Capable of complying.
(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.	Does not comply – no bicycle or motorcycle parking spaces provided.

Pursuant to section 69(2) of the Housing SEPP, consent must not be granted for development for the purposes of co-living housing unless the consent authority considers relevant development standards. The submitted SEE fails to provide any assessment against section 69(2). Notwithstanding, an assessment of the proposal against section 69(2) is provided in the below table.

Housing SEPP – section 69(2)	Compliance
(a) the front, side and rear setbacks for the co-living housing are not less than— (i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument, and	Front – complies – proposed 3.07m setback is generally consistent with prevailing building line. Side – merit assessment. A fire protection statement, prepared by a qualified building consultant, must be submitted where windows are proposed on the external walls of a residential flat building or multi-dwelling housing within 3m of the common boundaries. The Applicant has failed to submit a fire protection statement. Rear – does not comply – the proposed rear setback (4.55m to building façade and 2m to stair) fails to comply with the 5.28m DCP requirement.
(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	N/A
(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	Unable to assess – no solar analysis submitted.
(f) the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	Does not comply – Council is not satisfied that the proposed building design is compatible with the streetscape character and desirable elements of surrounding development, which comprises well-articulated building façades.

6.1.2. SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has previously been used for the purpose of a boarding house and as such is unlikely to contain any contamination. The nature and location of the proposal are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.1.3. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the SEPP (Sustainable Buildings) 2022.

6.2. Randwick Local Environmental Plan (RLEP) 2012

The site is zoned R3 Medium Density Residential under RLEP 2012.

The submitted SEE incorrectly refers to the proposed land use as a boarding house. Pursuant to the Standard LEP definition, a boarding house is defined as follows (emphasis added):

- “(...) a building or place –
- a) that provides residents with a principal place of residence for at least 3 months, and
 - b) that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and

- c) *that contains rooms, some or all of which may have private kitchen and bathroom facilities, and*
- d) ***used to provide affordable housing, and***
- e) ***if not carried out by or on behalf of the Land and Housing Corporation—managed by a registered community housing provider,***
but does not include backpackers' accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment."

The Applicant has failed to provide sufficient information to demonstrate that dot points (d) and (e) are satisfied. In this regard, Council is not satisfied that the proposed land use accords with the definition of a boarding house.

In a letter dated 28 February 2024, the Applicant contends that the subject site benefits from existing use rights (pursuant to section 4.66 of the *EP&A Act 1979*) for use of the site as a boarding house.

Advice from Council's legal counsel confirms that the existing use of the site as a boarding house has been abandoned pursuant to section 4.66(3) of the *EP&A Act 1979*. Section 4.66(3) of the *EP&A Act 1979* states that an existing use is presumed to be abandoned if the use ceases for a continuous period of 12 months. During the period commencing 25 March 2020 and ending 25 March 2022, the reference to 12 months is taken to be a reference to 3 years.

The subject site sustained severe fire damage on 19 August 2019, rendering the building substantially uninhabitable. Temporary 'make safe' and remediation works were undertaken to the building however it is understood that the boarding house use ceased on this date for a continuous period of approx. 4 years and 4 months (to date of DA lodgement).

It is noted that the approval was granted in 2017 for the demolition of the existing boarding house and construction of a residential flat building (DA/935/2015). A section 4.56 modification to this consent was lodged by the Applicant on 31 March 2022 (after date of fire) and approved on 31 May 2022. The Applicant submitted documentation to Council on 05 September 2023 (after date of fire) seeking to satisfy conditions of DA/935/2015 relating to waste management plan, construction noise report, geotechnical report, and temporary fencing. These actions suggests that the Applicant intended to demolish the boarding house and construct a residential flat building, which is inconsistent with the alleged intention to continue the boarding house use.

Based on the totality of the circumstances, Council can presume that the boarding house use has been abandoned.

On this basis, Council defines the proposed land use as co-living housing, which is defined as follows:

- "(...) a building or place that—*
- a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
 - b) provides occupants with a principal place of residence for at least 3 months, and*
 - c) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day, but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment."*

Whilst co-living housing is not listed as a permissible use in the R3 zone pursuant to RLEP 2012, section 67 of the Housing SEPP states that development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings, or shop top housing is permitted under another environmental planning instrument.

Noting that residential flat buildings are permitted with consent in the R3 zone pursuant to RLEP 2012, co-living housing is permitted at the subject site. Notwithstanding, the proposal is inconsistent with the objectives of the R3 zone, as outlined below:

- The proposed building design is not compatible with the streetscape character and desirable elements of surrounding development, which comprises well-articulated and visually interesting building façades.
- The proposal fails to protect the amenity of residents and results in adverse visual and acoustic amenity impacts to neighbouring properties. The proposal fails to provide adequate amenity for occupants of the premises due to inadequate rooms sizes and inappropriate internal building layout.
- The proposal exceeds the level of built form anticipated for the subject site as evidenced by way of a 9.99% variation to the FSR development standard.

The following development standards in the RLEP 2012 apply to the proposal:

Description	Development Standard	Proposed	Compliance
Floor Space Ratio (Maximum)	0.99:1 (337.29m ² GFA) NB: 0.9:1 LEP control + 10% bonus for co-living housing (refer s68(2)(a) of Housing SEPP 2021)	1.09:1 (371m ² GFA)	No
Height of Building (Maximum)	12m	9.9m (RL 18.71 roof)	Yes

6.2.1. Floor Space Ratio – clause 4.4

Pursuant to clause 4.4 of RLEP 2012, a maximum 0.9:1 floor space ratio (FSR) is applicable.

Notwithstanding, pursuant to section 68(2)(a) of the Housing SEPP, development for the purpose of co-living housing, in a zone in which residential flat buildings are permitted, benefits from an additional 10% of the maximum permissible FSR if the additional floor space is used only for the purposes of co-living housing.

As detailed above, the proposed land use is co-living housing. On this basis, a maximum FSR of 0.99:1 and a maximum gross floor area (GFA) of 337.29m² is applicable.

The Applicant has failed to submit any GFA calculation plans. However, based on Council's markup of the submitted floor plans, the proposal results in a total GFA of 376m² and FSR of 1.01:1, equating to a 11.4% (38.71m²) variation to the maximum permissible FSR.

Refer to clause 4.6 assessment at Section 7 of this report.

6.2.2. Foreshore Scenic Protection Area – clause 6.7

The subject site is located in the Foreshore Scenic Protection Area. Clause 6.7 of RLEP 2012 requires Council to be satisfied that the development has minimal visual impact on the coastline and contributes to the scenic quality of the foreshore.

Council is not satisfied that the proposal contributes to the scenic quality of the foreshore. The proposed building design is not compatible with the streetscape character and desirable elements of surrounding development, which comprises well-articulated and visually interesting building façades.

7. Exceptions to Development Standards

The proposal seeks to vary the following development standards contained in RLEP 2012 and the Housing SEPP.

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Floor Space Ratio (Max)	0.99:1 (337.29m ² GFA) NB: 0.9:1 LEP control + 10% bonus for co-living housing	1.1:1 (376m ² GFA)	38.71m ²	11.4%
Communal Open Space (Min)	68.14m ² (20% site area)	37m ²	31.14m ²	45.7%
Car Parking	3 spaces (0.2 spaces per single room)	0 spaces	3 spaces	100%
Landscape Area (Min)	170.35m ² (50% site area)	56.1m ²	114.25m ²	67%
Room Size (Min)	12m ² (single room)	7.5m ²	4.5m ²	37.5%
Lot Size (Min)	800m ²	340.7m ²	459.3m ²	57.4%

The NSW Department of Planning and Environment (DPE) made amendments to clause 4.6 of the Standard Instrument which commenced on 1 November 2023. The changes aim to simplify clause 4.6 and provide certainty about when and how development standards can be varied.

Clause 4.6 of RLEP 2012: Exception to a Development Standard relevantly states:

3. *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard*

Pursuant to section 35B(2) of the *Environmental Planning and Assessment Regulation 2021*, a development application for development that proposes to contravene a development standard must be accompanied by a document (also known as a written request) that sets out the grounds on which the applicant seeks to demonstrate the matters of clause 4.6(3).

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

Clause 4.6(3) establishes the preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

1. *The applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

2. *The applicant has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether the applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

Chief Justice Preston at [24] notes that there here are two respects in which the written request needs to be "sufficient".

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

Additionally, in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065, Commissioner Dickson at [78] notes that the avoidance of impacts may constitute sufficient environmental planning grounds "as it promotes "good design and amenity of the built environment", one of the objectives of the EPA Act." However, the lack of impact must be specific to the non-compliance to justify the breach (*WZSydney Pty Ltd* at [78]).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(3) have been satisfied for each contravention of a development standard. The assessment and consideration of the applicant's request is also documented below in accordance with clause 4.6(4) of RLEP 2012.

7.1. Floor Space Ratio

The Applicant has failed to provide a written request to vary the Floor Space Ratio development standard applying to the site under clause 4.4 of RLEP 2012 and section 68(2)(a) of the Housing SEPP.

The Applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the maximum Floor Space Ratio development standard.

7.2. Communal Open Space

The Applicant has failed to provide a written request to vary the Communal Open Space development standard applying to the site under section 68(2)(d) of the Housing SEPP.

The Applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the minimum Communal Open Space development standard.

7.3. Car Parking

The Applicant has failed to provide a written request to vary the Car Parking development standard applying to the site under section 68(2)(e) of the Housing SEPP.

The Applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the Car Parking development standard.

7.4. Landscape Area

The Applicant has failed to provide a written request to vary the minimum Landscape Area development standard applying to the site under section 68(2)(f) of the Housing SEPP.

The Applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the minimum Landscape Area development standard.

7.5. Room Size

The Applicant has failed to provide a written request to vary the minimum Room Size development standard applying to the site under section 69(1)(a) of the Housing SEPP.

The Applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the minimum Room Size development standard.

7.6. Lot Size

The Applicant has failed to provide a written request to vary the minimum Lot Size development standard applying to the site under section 69(1)(b) of the Housing SEPP.

The Applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the minimum Lot Size development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

The relevant provisions of the DCP are addressed below.

Landscaping and Biodiversity – Part B4

Insufficient information has been submitted to confirm that adequate tree protection measures will be undertaken to protect the two (2) existing trees in the rear setback area.

Transport, Traffic, Parking and Access – Part B7

It is noted that the proposed land use does **not** fall within the definition of a boarding house. However, in the absence of any DCP provisions relating to co-living housing, the DCP parking rates for boarding houses have been used as a guide. Pursuant to Part B7 of RDCP 2013, one (1) car space is to be provided per five (5) bedrooms, plus one (1) space per residential caretaker. The proposal fails to provide any on-site car parking.

Management Plan – Part B9

A Plan of Management has been submitted with the application, however, fails to address each of the matters outlined at Part B9 of RDCP 2013.

Foreshore Scenic Protection Area – Part B10

The subject site is located in the Foreshore Scenic Protection Area. Council is not satisfied that the proposal achieves the objectives and controls contained at Part B10 of RDCP 2013.

The proposed building design is not compatible with the streetscape character and desirable elements of surrounding development, which comprises well-articulated and visually interesting building façades. Insufficient details (i.e. materials schedule) have been provided to enable an assessment of the exterior colour scheme.

Boarding Houses – Part C4

It is noted that the proposed land use does **not** fall within the definition of a boarding house. However, in the absence of any DCP provisions relating to co-living housing, any assessment against Part C4 of RDCP 2013 is provided in the table below.

DCP Clause	Control	Proposal	Compliance
2	Building Design		
2.1	Boarding rooms		
	i) Orientate to receive the maximum amount of sunlight; ii) Provide a balcony, terrace or window opening to outdoor areas for natural light and ventilation; and iii) Where provided, private open space	Insufficient information has been submitted to confirm if suitable solar access will be provided to bedrooms. No private open spaces (i.e.	Insufficient information

DCP Clause	Control	Proposal	Compliance
	in the form of a balcony or terrace must have a minimum useable area of 4 square metres.	terraces and/or balconies) are provided. Bedrooms 8 and 9 and not provided with any direct window openings. It is unclear if the adjacent 'sunrooms' will provide suitable natural light and ventilation to the bedrooms.	
2.2	Outdoor communal open space		
	i) Provide for all boarding houses, with a minimum total area of 20 square metres and a minimum dimension of 3 metres; ii) Provide at ground or podium level in the form of a courtyard or terrace area, accessible to all residents; iii) Locate and orientate to maximise solar access; iv) Incorporate both hard and soft landscaped areas; v) Provide shared facilities such as fixed outdoor seating benches, barbecues and the like to allow social interaction; and vi) Provide partial cover for weather protection, such as pergola, canopy or the like, where it does not cause unreasonable overshadowing on adjoining properties.	A total of 37m ² (approx.) communal open space is provided at the rear of the site, however dimensions are less than 3m in part. The submitted plans do not indicate if suitable shared facilities (i.e. outdoor seating, BBQs, and weather protection cover) are provided. However, insufficient information has been submitted to confirm if suitable solar access will be provided to communal areas.	Insufficient information
2.3	Indoor communal living areas		
	i) Provide with a minimum dimension of 3 metres and a minimum total area of 20 square metres or 1.2 square metres/resident, whichever is greater; and ii) Orientate to maximise solar access and have a northerly aspect where possible.	A total of 60.7m ² (approx.) communal living area is provided, in excess of the 20m ² requirement for 11 private rooms. Dimensions greater than 3m are provided. However, insufficient information has been submitted to confirm if suitable solar access will be provided to communal areas. The living/dining room at ground floor level is provided with one (1) small west-facing window only and the living area at first floor level is provided with one (1) small east-facing window only.	Insufficient information
2.4	Communal kitchen, bathroom and laundry facilities		
	i) For all boarding houses, provide communal kitchen, bathroom and laundry facilities where they are easily accessible for all residents, unless these facilities are provided within each boarding room;	Suitable communal facilities (i.e. kitchen, bathroom, and laundry) are provided for 11 occupants.	Yes

D35/24

DCP Clause	Control	Proposal	Compliance
	ii) For development of over 12 boarding rooms without en suite bathrooms, provide separate bathroom facilities for male and female residents; iii) Locate and design any communal laundry room to minimise noise impact on boarding rooms and neighbouring properties; and iv) Where possible, locate clotheslines to maximise solar access while not compromising the street amenity or usability of communal open space.	A clothesline is not shown on the submitted plans.	
2.5	Safety and crime prevention		
	i) Locate building entry points and internal entries to living areas where they are clearly visible from common spaces; ii) Locate a habitable living area (such as lounge room, kitchen, dining or bedroom) to allow general observation of the street and communal open space; iii) Separate ground level private open space from public and common areas by measures such as open fencing or low level plants; and iv) Select trees and low-lying shrubs that do not interfere with sight lines nor provide opportunities for concealment or entrapment.	Concerns are raised regarding the location of the main entry door which is recessed approx. 13m behind the street façade. The pedestrian entry walkway is enclosed by way of raised planters.	No
2.6	Visual and acoustic amenity and privacy		
	i) Indicative locations of facilities and appliances for bathrooms, kitchens and laundries must be clearly shown on the DA plans/drawings; ii) Locate kitchen, dining room, lounge room and outdoor open space adjacent to or directly accessible from each other; iii) Locate similar uses (such as bedrooms or bathrooms) back to back, to minimise internal noise transmission; iv) Provide screen fencing, plantings and acoustic barriers where practicable to screen noise and reduce visual impacts; v) Where possible locate the main entry point at the front of the site, away from the side boundary and adjoining properties; vi) Locate communal open space, balconies and windows to bedrooms or communal areas, to minimise overlooking, privacy and acoustic impacts on adjoining properties; vii) An acoustic report prepared by a suitably qualified acoustic consultant must be submitted for new development or conversions/intensifications with an increase in resident numbers.	The proposal will result in unreasonable visual and acoustic privacy impacts to neighbouring properties – refer to discussion at Key Issues section of this report. The Applicant has failed to submit an Acoustic Report.	No
3	Management Plan		
	i) Submit a Management Plan with all DAs for new and existing boarding	A Plan of Management has been submitted with the	No

DCP Clause	Control	Proposal	Compliance
	houses. ii) The manager/caretaker must maintain an up-to-date accommodation register with information on residents' details, length of stay, etc. and provide to Council officers upon request.	application, however, fails to address each of the matters outlined at Part B9 of RDCP 2013.	

9. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Refer to Section 6 and 7 of this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report and are not acceptable. The proposed development is inconsistent with the dominant residential character in the locality. The proposal will result in detrimental impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site has insufficient area to accommodate the proposed land use and associated structures. Therefore, the site is not considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal is inconsistent with the objectives of the zone and will result in significant adverse impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Internal Amenity

Concern is raised regarding the internal configuration of the building and associated amenity impacts for future occupants. As shown in Figure 6, the rear kitchen/laundry is only accessible by traversing through bedroom 4. Similarly, bathroom Nos. 2 and 3 are only accessible by traversing

Page 82



Figure 7: View of subject site from living room at Unit 2/78 Bream Street (Source: Domain)



Figure 8: View of subject site from balcony at Unit 2/78 Bream Street (Source: Submission)

10. Conclusion

That the application for rectification works to existing boarding house to enable the provision of 11 boarding rooms and construction of new fire stairs to rear elevation for improved egress at 115 Dolphin Street, Coogee be refused for the following reasons:

1. The proposed development is of an excessive scale and is an overdevelopment of the site, resulting in non-compliance with the floor space ratio development standard pursuant to clause 4.4 of RLEP 2012 and section 68(2)(a) of the Housing SEPP, as well as the

D35/24

- development standards for communal open space, car parking, landscape area, room size, and lot size pursuant to sections 68(2) and 69(1) the Housing SEPP.
2. The Applicant has failed to submit a written request to vary the floor space ratio, communal open space, car parking, landscape area, room size, and lot size pursuant to clause 4.6 of RLEP 2012. The Applicant has failed demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
 3. The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
 4. The proposed development will result in unreasonable residential amenity impacts upon neighbouring properties with regard to visual and acoustic privacy.
 5. The proposed development will result in unreasonable residential amenity and safety impacts for future occupants of the building.
 6. Pursuant to section 68(2)(d) of the Housing SEPP, the proposal fails to provide sufficient communal open space area.
 7. Pursuant to section 68(2)(e) of the Housing SEPP and Part B7 of RDCP 2013, the proposal fails to provide sufficient on-site car parking.
 8. Pursuant to section 68(2)(f) of the Housing SEPP, the proposal fails to provide sufficient landscaped area.
 9. Pursuant to section 69(1)(a) of the Housing SEPP, the proposal fails to provide sufficient room sizes for co-living housing.
 10. Pursuant to section 69(1)(b) of the Housing SEPP, the proposal fails to comply with the minimum lot size for co-living housing.
 11. Pursuant to section 69(2)(a) of the Housing SEPP, the proposal fails to comply with the minimum rear setback requirements.
 12. Pursuant to section 69(2)(f) of the Housing SEPP, Council is not satisfied that the proposed building design is compatible with the streetscape character and desirable elements of surrounding development.
 13. Pursuant to clause 6.7 of RLEP 2012 and Part B10 of RDCP 2013, Council is not satisfied that the development contributes to the scenic quality of the foreshore.
 14. A full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application including:
 - a. Insufficient information has been submitted to enable Council to undertake an assessment against section 47 of the Housing SEPP, relating to retention of affordable housing and associated impacts.
 - b. Insufficient information has been submitted to confirm that adequate tree protection measures will be undertaken to protect existing trees.
 - c. Insufficient information has been submitted to confirm if suitable solar access will be provided to the subject and neighbouring properties.

- d. An Acoustic Report, prepared by a suitable qualified professional, has not been submitted.
 - e. A BCA Report, prepared by a suitable qualified professional, has not been submitted.
 - f. A Fire Protection Statement, prepared by a suitable qualified professional, has not been submitted.
 - g. A Plan of Management has been submitted, however, fails to address each of the matters outlined at Part B9 of RDCP 2013.
15. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
16. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

D35/24

Appendix 1: Referrals

1.1 Development Engineer

Referral comments and conditions not required as Application is recommended for refusal.

1.2 Environmental Health Officer

The Application was reviewed by Council's Environmental Health Officer and the following comments were made:

"In order to assess the existing and potential noise sources and emissions from the proposed development, and potential impact upon the amenity of the locality, an Acoustic Report should be provided to Council for assessment."

The Applicant has failed to submit an Acoustic Report, as requested by Council on 16 January 2024.

1.3 Building Surveyor

The Applicant has failed to submit a BCA Report (prepared by a Registered Certifier), as requested by Council on 16 January 2024.

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/1089/2023

Development Application Report No. D36/24

Subject: 263-269 Clovelly Road, Clovelly (DA/538/2021/A)

Executive Summary

Proposal:	Section 4.55(2) - Modification to the approved development to amend Condition 9 to delete the trial period.
Ward:	North Ward
Applicant:	Roly Poly Child Care Pty Ltd
Owner:	HNL Properties Pty Ltd
Cost of works:	Nil
Reason for referral:	Modify a condition imposed by the Randwick Local Planning Panel.

Recommendation

That the RLPP, as the consent authority, approves the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. 538/2021 for deletion of the trial period contained in Condition 9, in the following manner:

Amend Condition No. 4 to read:

4. The requirements and operations of the childcare centre must be carried out in accordance with the relevant acoustic reports prepared (by The Acoustic Group, dated 12 July 2021) for the proposed development, except as modified by the conditions of consent. All acoustic mitigation measures required by the selected acoustic consultant for the proposed development are to be implemented at all times and be included in the Plan of Management.

Amend Condition No. 5 to read:

5. The updated Plan of Management dated 12 June 2023 (Version 7) is to be implemented at all times and reviewed by a suitably qualified person every 12 months or as relevant legislations change. The Plan of Management shall be amended to reflect the number of children and staff as per Condition 9.

Amend Condition No. 9 to read:

9. The childcare centre shall be restricted to a total of 112 children and 18 staff at any one time.

Amend Condition No. 11 to read:

Green Travel Plan

11. The Plan of Management of the childcare centre shall now include a Workplace Travel Plan which endeavour to minimise the parking and traffic generation of the proposed development. The plan may include but not be limited to aspects such as support for walking and cycling, car sharing, management of workplace parking spaces, & incentives for public transport use.

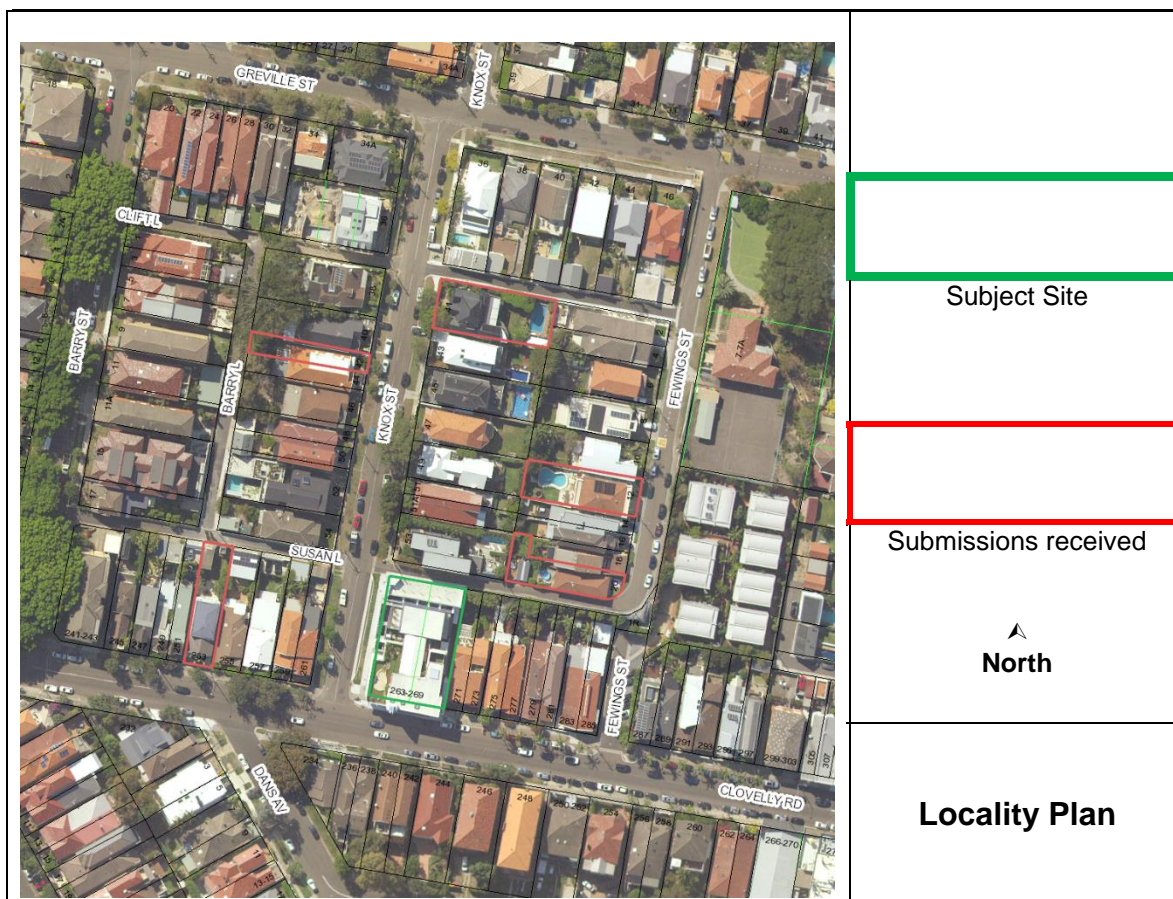
The Plan of Management/Travel Plan shall reinforce the existing road restrictions in the locality to staff and patrons of the centre including but not limited to, the existing one-way traffic flow of Susan Lane and the 'No stopping' Zone on Clovelly Road near the intersection of Knox St.

The Travel Plan shall be submitted to and approved by Council's Department of integrated Transport prior to the increase in numbers and shall be in effect for the life of the development.

Attachment/s:

Nil

D36/24



D36/24

1. Executive summary

This application is referred to the Randwick Local Planning Panel (RLPP) because it is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and seeks to modify a condition (i.e. Condition 9) which was imposed by the RLPP. The original development application was referred to the RLPP because more than 10 unique (20) submissions by way of objection were received.

The existing childcare centre is operating in accordance with the development consent granted under DA/566/2014, which was approved on 14 April 2015 for a maximum of 90 Children.

Development Application No. DA/962/2018 was approved on 12 December 2019 for the increase in capacity of the childcare centre from 90 to 102 children. The approval restricted the number of children to 102 and staff to 16 which was subject to a 12-month trial period.

Development Application No. DA/962/2018/A was approved on 8 April 2021 for the extension of the 12 month trial period for an additional 2 years. This enabled the childcare centre to operate with 102 children and 16 staff until 12 December 2022.

The original consent made under this Development Application No. DA/538/2021 was determined by the Randwick Local Planning Panel on 26 May 2022 and approved subject to condition 9 which restricted the maximum number of children to 112 and staff to 18 on a 12 month trial period, which was a reduction from the 122 & 19 staff originally sought under this application.

The site is occupied by Clovelly RSL and Air Force Club (formerly Kings Theatre) and is listed as a heritage item under Randwick LEP 2012. No heritage objections were raised by Council's Heritage officer as the proposed modifications do not involve any physical changes to the existing building and therefore, will have no adverse impact on the building's heritage significance.

A total of 21 submissions have been received supporting the subject application for the following reasons:

- the increase in number of children as it is an essential part of servicing the community needs where securing childcare places is extremely difficult,
- it provides early childhood education and helps support their transition to school and parents transitioning back into the workplace.
- The centre is well managed and a reduction in the capacity of the childcare centre would be detrimental to the community and its needs.

A total of 7 objections were received and the main issues associated with the proposal relate to the increase traffic, safety and parking impacts on surrounding road network, acoustic impacts, intensification of use in the low density residential area, waste and operation of business as a result of the proposed capacity increase.

Council's Development and Integrated Traffic Engineers in the original consent raised concerns in relation to the proposed number of children and the likely impacts on traffic and parking for parents and staff of the childcare centre and recommended the number of children and staff be reduced to a maximum of 112 children and 18 staff as a way of minimising the potential parking and traffic issues. Following completion of the trial period, Council's Development Engineer indicate that only one compliant was received during this period and the breaches raised are not considered to be serious enough to warrant refusal of the application and can be addressed by an amended Plan of Management.

Council's Environmental Health section have reviewed the validation report prepared by The Acoustic Group and notes that the modified development demonstrates compliance with the relevant noise criteria. The existing conditions alongside the updated plan of management will assist in minimising potential acoustic amenity impacts to adjoining and nearby properties and will also ensure the operation of the premises does not result in any significant detrimental adverse amenity impacts to the surrounding environment. Given the above reasons, removal of the 12 month trial period is supported and Condition No. 9 is recommended to be amended accordingly.

Subject to conditions, the proposal to amend the consent to allow the childcare centre to permanently operate at a capacity of 112 children with 18 staff will not result in any additional unreasonable amenity impacts to the streetscape and neighbouring properties and therefore, is recommended for approval subject to non-standard conditions which requires removal of the 12 month period and amending Condition No. 11 which requires the Plan of Management/Travel Plan to reinforce the existing road restrictions in the locality to staff and patrons of the centre.

2. Site Description and Locality

The subject site is located at 263-269 Clovelly Road, Clovelly, and currently contains a part 2 and part 3 storey child care centre in a former RSL and Airforce Club. The site is rectangular in shape and slopes gently to the south and east towards Clovelly Road. The site benefits from frontages to Clovelly Road, Knox Street and Susan Lane.

The site currently contains childcare centre operates in a part 2 and part 3 storey building. The existing building envelope extends across the entirety of the site, occupying a locally listed heritage item identified as the "Clovelly RSL and Air Force Club (formerly Kings Theatre)" (item 113). The heritage listed item was previously approved by Randwick Council to be retrofitted to accommodate the needs of the childcare centre. The site benefits from vehicular access from Susan Lane for access to existing staff car parking facilities (accommodating seven vehicles). Pedestrian access is available from Clovelly Road.

3. Relevant history

Child Care Centre

DA/566/2014

Development Application No. DA/566/2014 was approved at a Planning Committee Meeting on 14/04/2015 for the partial demolition, alterations and additions to the existing RSL building for the

establishment of a childcare centre catering for 90 children, 14 staff and new parking area fronting Susan Lane.

DA/566/2014/A

Development Application No. DA/566/2014/A was approved on 24/11/2015 for the change of use of the approved training room of the childcare centre to a caretaker's unit, retention of the existing rock wall and removal of the approved basement store area.

DA/566/2014/B

Development Application No. DA/566/2014/B was approved on 05/01/2016 to correct Council error in relation to the numbering of a condition.

DA/566/2014/C

Development Application No. DA/566/2014/C was approved at an Ordinary Council Meeting on 28/02/2017 for the alteration to eastern boundary fence, removal of window to meter room, demolition of existing eastern stairs, construction of new stairs, increase in finished floor level, alteration to some materials.

DA/625/2018

Development application DA/625/2018 was approved on 6/12/2018 under delegated authority for change of use of 1 room within the existing childcare centre to physiotherapy practice with hours of operation Monday to Friday 7am to 7pm.

Trial Period

DA/962/2018

Development Application No. DA/962/2018 was approved on 12/12/2019 for the increase in capacity of the childcare centre from 90 to 102 children. The approval restricted the number of children to 102 and staff to 16, subject to a 12 month trial period.

DA/962/2018/A

Development Application No. DA/962/2018/A was approved on 08/04/2021 for the extension of the 12 month trial period for an additional 2 years. This enabled the childcare centre to operate with 102 children and 16 staff until 12 December 2022.

4. Details of Current Approval

Development Application No. DA/538/2021 was determined by the Randwick Local Planning Panel on 26 May 2022 for increase in capacity to existing childcare centre from 90 to 122 children (+32), and 16 to 19 staff (+3), addition of a motorcycle parking space, conversion of one on-street accessible parking space on Clovelly Road into a multi-purpose space, reduction of the time-restriction for on-street parking from 15min between 7am-9am and 4pm-6pm, to 10min between 7am-9:30am to 2:30pm-6:30pm Monday-Friday.

The approval was subject to condition No.9 which required a 12 month trial period in order to continue to operate the childcare centre with a maximum of 112 children (+22) and 18 (+2) staff thereafter.

5. Proposal

The proposed modification seeks to amend Condition 9 to permanently allow the childcare centre to operate at a capacity of 112 children and 18 staff and delete the 12 month trial period. Condition 9 reads as follows:

Children and Staff Numbers

9. *The child care centre shall be restricted to a total of 112 children and 18 staff at any one time.*

Both 112 children and 18 staff are subject to a 12 month trial period from the date of commencement of the increased capacity for the child care centre.

A new application must be submitted to Council including appropriate supporting evidence (including, but not limited to, relevant acoustic measurements and an updated plan of management) prior to the cessation of the 12 month trial period in order to continue to operate the child care centre with 112 children and 18 staff thereafter.

If no new application is received by Council (or a new development application or modification application to extend the trial is refused) at the end of the trial period, the number of children places and staff will revert back to DA/962/2018/A as follows:

- a) 102 children at any one time;
- b) 16 staff at any one time.

6. Section 4.55 Assessment

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with:-

1. it is satisfied that the development to which the consent as modified relates is *substantially the same development* as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
2. it has consulted with any relevant public authorities or approval bodies, and
3. it has notified the application & considered any submissions made concerning the proposed modification

An assessment against the above criteria is provided below:

1. *Substantially the Same Development*

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development and subject to conditions do not result in significant adverse environmental impacts upon the amenity and character of the locality. Refer to the 'Key Issues' section of this report.

2. *Consultation with Other Approval Bodies or Public Authorities:*

The development is not integrated development or development where the concurrence of another public authority is required.

3. *Notification and Consideration of Submissions:*

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. The following submissions were received as a result of the notification process:

7 Letters of Objection	21 Letters of Support
<ul style="list-style-type: none"> • 12 Fewings Street, Clovelly • 41 Knox Street, Clovelly • 42 Knox Street, Clovelly • 20 Fewings Street, Clovelly • Resident of Knox Street, Clovelly • Local resident of Knox Street, Clovelly • 253 Clovelly Road, Clovelly 	<ul style="list-style-type: none"> • 20 Hamilton Street, Coogee • 4 x Unknown submission • 72 Canberra Street, Randwick • 95 Arden Street, Coogee • 7/1 Dove Lane, Randwick • 4/361A Bronte Road, Bronte • 2/33 Moira Crescent, Coogee • Level 28, 388 George Street, Coogee • 7A Marcel Avenue, Coogee • 31 Knox Street, Clovelly • 44 Knox Street, Clovelly • 40 Beach Street, Coogee

	<ul style="list-style-type: none"> • 24 Mount Street, Coogee • Unit 4/136 Coogee Bay Road • 81 Wentworth Street, Randwick • 3/35-37 Moria Crescent, Randwick • 7/214 Clovelly Road, Clovelly • 216 Fitzgerald Avenue, Maroubra
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Issue	Comment
<p><u>Detrimental impact on the Low Density Residential zone.</u></p> <p>The approved development already has a detrimental effect in what is zoned as a Low Density Residential area.</p> <p>There are too many children in a residential area.</p>	<p>For the reasons discussed in this report, the increased child and staff numbers are suitable for the subject site.</p>
<p><u>Unsafe and increased traffic</u></p> <p>Dangerous traffic and driving are already created as a direct result of the centres costomers. The additional children to the centre will result to an increase in traffic congestion and exacerbate the impacts.</p> <p>The location of the centre lies within an inappropriate location to a very busy road during drop off and pick up of a large number of children will cause significant problems to surrounding properties.</p> <p>Vision is blocked from turning right from Knox Street onto Clovelly Road creating significant accident risks.</p> <p>Unsafe U-turns and double parking being performed in dangerous locations (i.e. hill and corner) obscures views and creates potential hazard for cars driving near the centre.</p> <p>The potential increase of children to the centre will result in unacceptable load on streets and lanes for traffic and parking with cars and buses being stuck travelling down Clovelly Road causing additional obstruction and danger to the road network and also putting footpath users at increased risk.</p> <p>Cars being left parked in the no stopping zone while children are collected from inside the centre.</p> <p>The proposed staff increase will result in additional pressure on residential street parking.</p> <p>The safety and amenity of local residents should be strongly considered.</p>	<p>Parking, visibility, and pedestrian safety impacts are detailed below in the Development Engineering comments in Appendix 1.</p> <p>Council is satisfied that the increased numbers can be supported subject to conditions with particular regards to updating the plan of management, educating and reinforcing the existing road restrictions in the locality to staff and patrons of the centre.</p>
<p><u>New way of working post Covid 19</u></p>	<p>A total of 21 supporting letters have been received from local residents noting the</p>

D36/24

Issue	Comment
<p>There is no longer the same shortage of childcare places that existed when the Centre was originally built with a number of new Centres now operational in the area.</p> <p>Parents work more from home and now work in a more increasingly flexible environment which reduces the need for childcare.</p>	<p>benefits of the centre, the high demand for families and shortage of childcare offered in the area and reinforces the need, its essential service and benefits it provides to the community.</p>
<p><u>Incremental additional development on the site since the original DA approval</u></p> <p>There have been two additional developments on the site since the original approval. This will now represent a fourth additional development proposed on the site which increases the scale of use of the site well beyond the original approval.</p> <p>The original proposal for the Childcare Centre in 2014 requested for 145 children and 20 staff this was a massively in excess of what's appropriate for the site zoned in a Low Density residential area and was recommended to be reduced to 90 children.</p>	<p>Noted and a search of Council's system did not identify any noise related complaints since the centre commenced operating. The only complaint received by the Environmental Health team was in July 2018 alleging non-compliance with the development consent.</p> <p>During the one-year trial period only 1 complaint has been received in relation to the centre related to traffic and parking. Detailed assessment in relation to this complaint has been provided below in the Development Engineering comments in Appendix 1.</p>
<p><u>Commercial waste</u></p> <p>Increasing the commercial waste on the site will further result in a risk to their property at No. 20 Fewings Street. The garbage trucks already have damaged their property as the street is not wide enough for the</p>	<p>The Plan of Management outlines appropriate responses to the waste management of the centre and no significant adverse impacts are likely to occur.</p>
<p><u>Increased noise impacts</u></p> <p>Increased number of children on the site will create additional noise impacts.</p>	<p>Acoustic issues are detailed below in the Environmental Health comments and in the Key Issues section of this report.</p>
<p><u>Contravention of so many development guidelines</u></p> <p>It's frustrating to see the childcare centre be in contravention of so many development guidelines over the years with regards to FSR, height, noise and parking provisions.</p>	<p>Noted and a detailed assessment has been carried out for the proposed centre in the original consent. The additional impacts as a result of the increased number of children and staff have been considered and discussed in the Key Issues section of this report and under Appendix 1.</p>

6. Relevant Environmental Planning Instruments

6.1. SEPP (Transport and Infrastructure) 2021

Chapter 3 of the SEPP applies to childcare facilities. Clause 3.22 requires the consent authority to not grant development consent except with the concurrence of the Regulatory Authority (Regulatory Authority for New South Wales).

Clause 3.22 (1) states:

- (1) *This clause applies to development for the purpose of a centre-based child care facility if:*
- (a) *the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or*

- (b) *the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.*

Regulation 107 requires 3.25m² indoor space per child and 7m² outdoor space per child. The indoor space required for 112 children is 364m² and for outdoor space is 784m². The modified development will continue to satisfy this requirement under Clause 107(4) and (5) of the Regulations.

Clause 23 of the SEPP requires Council to take into consideration any applicable provisions of the *Child Care Planning Guideline* (Guideline). The Guideline contains matters for consideration in Council's assessment of the DA, including site selection, local character and streetscape, building design, landscaping, acoustic and visual privacy, hour of operation and traffic, parking and pedestrian circulation.

The Guideline provides the following considerations in relation to traffic, parking and pedestrian circulation in Clause 3.8:

- *Objective: To provide parking that satisfies the needs of users and demand generated by the centre.*
- *C31: Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.*
- *C33: A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:*
 - *the amenity of the surrounding area will not be affected*
 - *there will be no impacts on the safe operation of the surrounding road network.*

The modification proposes to permanently extend the number of children permitted at the centre from 90 to 112 and 16 to 18 staff by deleting the 12 month trial period. The site is located in the R2 Low Density Residential zone. The application has been reviewed by Council's Environmental Health Officer, Development Engineer and Heritage officer and no concerns were raised by specialist teams in relation to the removal of the trial period. Refer to the comments in Appendix 1.

Traffic and Parking

The application was originally supported by Council's traffic and parking with the reduction and final numbers (of 112 Children 18 staff) suggested by Council Development Engineering as a way of minimising the potential parking and traffic issues.

To assist in addressing the observed breaches of driver behaviour, it is recommended that Condition 11 in the original consent be amended to include a specific clause that the plan of management reinforce and educate the restrictions in the locality to staff and patrons on these particular issues to the centre. The suggested amendment has been included in this report.

Council's Development Engineer notes that the breaches are not considered to be serious enough to warrant refusal of the application and can be addressed by an amended Plan of Management. See referral comments below for detailed comments.

Acoustic and visual privacy

A validation report prepared by The Acoustic Group has been submitted by the applicant, which concludes that testing carried out at maximum capacity found compliance for both the outdoor play noise targets and mechanical plant.

Council's Environmental health section has reviewed the validation report prepared by The Acoustic Group and considers that the modified development will comply with the relevant noise criteria. The environmental officer concludes the existing conditions alongside the updated plan of management will assist in minimising potential acoustic amenity impacts to surrounding properties and ensure the operation of the premises does not result in any unreasonable adverse amenity impacts to the

surrounding environment; and therefore, supports amending Condition 9 to remove the 12 month trial period.

As conditioned, the amended proposal is consistent with the objectives and controls in Clause 3.8 of the Guideline.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal, as conditioned, is consistent with the specific objectives of the zone and will provide an essential service to the community for families who require the service to be able to return to work.

The following development standards in the RLEP 2012 apply to the proposal:

6.2.1. Clause 5.10 - Heritage conservation

The subject site is identified as an item of local heritage significance in the RLEP. As discussed in Annexure 1, Council's Heritage Officer raises no objections to the proposed development. The proposal is therefore satisfactory with regards to Clause 5.10 of the RLEP.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

The relevant provisions of the DCP are addressed in Appendix 2.

8. Section 4.15 Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Randwick Local Environmental Plan 2012 The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012. See discussion in Appendix 1 and 2.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
Agreement or draft Planning Agreement	
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

Refer to Relevant Environmental Planning Instruments above and the referral comments in Appendix 1 and the RDCP table in Appendix 2.

9. Conclusion

The application is recommended for approval for the following reasons:

- The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- Subject to conditions, the modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R2 zone.
- The proposed development will make a positive contribution to enable other land uses that provide services to meet the day to day needs to residents and community.

D36/24

Appendix 1: Referrals

1. Internal referral comments:

1.1. Environmental Health

Proposed Development:

Council has received an application to amend condition 9 of DA/538/2021 to delete the 12 month trial period restriction.

Comments:

A search of service requests in Pathway under the address 263-269 Clovelly Road, Clovelly did not identify any noise related complaints since the centre commenced operating. The only complaint received by the Environmental Health team was in July 2018 alleging non-compliance with the development consent.

A validation report prepared by The Acoustic Group dated 30 April 2023 was submitted with the application. The report concludes that testing carried out at maximum capacity found compliance for both the outdoor play noise targets and mechanical plant.

An updated Plan of Management (PoM) dated 12 June 2023 (Version 7) was submitted with the application. This document includes the hours of operation, staff and children levels, noise control and complaints procedures which will assist in minimising acoustic amenity impact. Condition 5 of the development consent requires the PoM to be reviewed every 12 months or with any legislative changes.

Condition 9 currently reads:

9. The childcare centre shall be restricted to a total of 112 children and 18 staff at any one time.

Both 112 children and 18 staff are subject to a 12 month trial period from the date of commencement of the increased capacity for the childcare centre.

A new application must be submitted to Council including appropriate supporting evidence (including, but not limited to, relevant acoustic measurements and an updated plan of management) prior to the cessation of the 12 month trial period in order to continue to operate the child care centre with 112 children and 18 staff thereafter.

If no new application is received by Council (or a new development application or modification application to extend the trial is refused) at the end of the trial period, the number of children places and staff will revert back to DA/962/2018/A as follows:

- a) 102 children at any one time;
- b) 16 staff at any one time.

Recommendation:

Should the application be approved, it is recommended that the following condition be amended to read:

9. The childcare centre shall be restricted to a total of 112 children and 18 staff at any one time.

No additional conditions are recommended as the existing conditions are adequate to minimise the potential for acoustic and environmental amenity impact.

1.2. Development Engineers

The proposal has been assessed by Council's Development Engineer in relation to traffic and parking and the following comments have been provided:

A Section 4.55(2), application has been received which seeks to modify the approved development by Section 4.55(2) - Modification to the approved development to amend Condition 9 to delete the trial period.

Original consent: Increase in capacity of children and staff numbers for the existing childcare centre.

General Comments

The original development consent DA/538/2021 was approved for 112 children and 18 staff, which was a reduction from the 122 & 19 staff originally sought. The reduction and final numbers were suggested by Development Engineering as a way of minimising the potential parking and traffic issues.

The Local Planning Panel concurred with these suggested child & staff numbers but included a condition as part of their approval requiring a 12 month trial period. This was not a Development Engineering requirement as we were satisfied with the reduced numbers outlined in the report. Further comment is now provided however following completion of the trial period.

A perusal of Council's record indicates only one complaint has been made in during the 12 month trial period relating to traffic matters. This complaint relates to following three issues

- Patrons observed to be parking within the No Stopping Zone at the corner of Clovelly Road and Knox Street.
- Patrons undertaking U-turns in Knox St predominantly at the intersection with Susan Lane.
- Staff members observed to drive the wrong way down Susan Lane to access the staff parking.

In relation to the first point, patrons pulling up in the no-stopping zone has also been personally observed by the Development Engineer during past site inspections and is rightly of concern however this type of driver behaviour is not unique to Roly Poly patrons. This issue could really only be addressed by further driver education and additional enforcement since signage at this location is already clear and adequate. The photo below is extracted from the residents objection.



D36/24

In relation to the second point a vehicle undertaking a U-turn manoeuvre in Knox St using the access to Susan Lane is not technically an illegal manoeuvre provided it is safe to do so. Recent “No stopping” signage installed at the northern corner of Knox street and Susan Lane required as part of DA/538/2021 to reinforce the 10m mandatory No- stopping zone has improved sightlines at this intersection thereby improving safety for pedestrians and drivers (see pic below). Development Engineering raises no issues on this aspect.



Finally, the third issue involving staff members driving down the wrong way in Susan Lane has not been directly observed by the Development Engineer however evidence of non-compliance could be interpreted by the orientation of the staff parked vehicles of which some were facing the wrong way in relation to the traffic flow in Susan lane (see pic below), which is one way towards Knox Steet (away from camera).

D36/24



This issue could really only be addressed by further driver education and additional enforcement since signage at this location is already clear and adequate (no entry and One Way sign).



To assist in addressing the observed breaches of driver behaviour it is suggested condition 11 be amended to include a specific clause that the plan of management educate patrons and staff on these particular issues. The suggested amendment has been included in this report.

The breaches are not considered to be serious enough to warrant refusal of the application and can be addressed by an amended Plan of Management.

COMMENTS ON TRAFFIC STUDY

The submitted Traffic and Parking Assessment confirms the findings of earlier studies and past site inspections by the Development engineer. Although the number of pick-up and drop-off spaces falls short of the DCP requirements (14 required, 8 provided) there is a large percentage of parents/carers who walk to the centre (up to 37%) which offsets this demand. In addition the reduction of the timed parking limit to 10 minutes (from 15 minutes) has assisted in increasing the turnover of the spaces.

The drop-off and pickup zone appears to be functioning well at the present time and no issues are raised about its operation. The zone satisfies the 98th percentile parking demand of the approved and proposed development based on the data provided in the traffic study.

Should the Section 4.55 application be approved the following engineering conditions shall be amended added or deleted.

RECOMMEND AMEND CONDITION 11 (amendments shown in red)

Green Travel Plan

11. The Plan of Management of the child care centre shall now include a Workplace Travel Plan which endeavour to minimise the parking and traffic generation of the proposed development. The plan may include but not be limited to aspects such as support for walking and cycling, car sharing, management of workplace parking spaces, & incentives for public transport use.

The Plan of Management/Travel Plan shall reinforce the existing road restrictions in the locality to staff and patrons of the centre including but not limited to, the existing one-way traffic flow of Susan Lane and the 'No stopping' Zone on Clovelly Road near the intersection of Knox St.

The Travel Plan shall be submitted to and approved by Council's Department of integrated Transport prior to the increase in numbers and shall be in effect for the life of the development.

There are no other engineering conditions required to be amended added or deleted.

1.3. Heritage Officer

The Site

The site is occupied by Clovelly RSL and Air Force Club (formerly Kings Theatre) listed as a heritage item under Randwick LEP 2012. The Heritage NSW database sheet for the building identifies its significance as follows:

The Clovelly RSL and Air Force Club is the last built and one of the very few surviving Kings Theatres, a Sydney chain which was part of the boom period of cinema building in New South Wales.

It is one of the few surviving works of Guy Crick and Bruce Furse show work is very influential in Australian cinema design. Although altered and internally greatly remodelled, in its setting it is a fair example of cinema architecture of the 1930s.

It is socially important as the home of The Clovelly RSL and Air Force Club from 1959 until 2012.

Background

DA/566/2014 for alterations and additions to the RSL building for the establishment of a childcare centre (catering for 90 children), and new parking fronting Susan Lane was approved in 2015. A

number of subsequent modifications to layout and function of the spaces were approved, later that year as well as in January 2016 and February 2017.

DA/962/2018 for an increase in capacity of the childcare centre to 102 children for a 12-month trial period was approved in December 2019. An amendment to consent condition no.1 for an extension to the trial period from 12 months to 36 months (an additional 2 years) was approved in April 2021. The DA was lodged following the delays arising from the challenges of the Covid-19 pandemic and the childcare centre being unable to act on the previously approved trial period.

DA/538/2021 to increase the capacity of the childcare centre to 122 children and 19 staff; remove restrictions to the on-street car parking space for multi-purpose use; reduce the time restricted on-street parking on Clovelly Road from 15min to 10mins between drop off and pick up hours and associated amendments to the existing plan of management for the use was approved in May 2022. It appears that the capacity was reduced from 122 children to 112 children.

Proposal

The current application proposes to delete the 12 month trial component in consent condition 9 to approve the capacity of the childcare centre to 112 children permanently.

Submission

The original application was accompanied by a Statement of Environmental Effects prepared by Urbis which addressed Heritage issues, and argued that "The proposal to increase the capacity of centre to accommodate 122 children and 19 staff will not result in additional heritage impacts."

Controls

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes an Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Clause 5.10(4) of Randwick Local Environmental Plan 2012 requires Council to consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area.

The Heritage section of Randwick Development Control Plan 2013 provided Objectives and Controls in relation to heritage properties.

Comments

The proposal to amend the consent to allow the childcare centre to permanently operate at a capacity of 112 children does not involve any physical changes to the existing building. The proposal will have no adverse impact on the building's heritage significance, and there are no heritage objections to the proposal.

Recommendation

No additional consent conditions are required.

Appendix 2: DCP Compliance Table**Part D11 Child Care Centre**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	Yes
2	SITE SELECTION		
	<p>i) DAs are to address the suitability and context of the proposal including:</p> <ul style="list-style-type: none"> Proposed size, number of children and age breakdown for the centre. The number of staff to be employed. Proposed hours of operation. Nature of the location and surrounding development (including proximity to residential, business, industrial uses and sex services premises etc.). Likely effect of the development on surrounding properties (e.g. privacy, noise, solar access, views and the means to offset these effects). Likely effect of the development on the road network in the surrounding area including traffic and on street parking availability. Availability of on-site vehicular access and parking. Proximity to public transport. Proximity to existing community and children's services. Demonstrated demand for the service and identification of any special needs the centre will address. 	<p>The site is a corner allotment which is a suitable location for a childcare centre.</p> <p>The additional children will not significantly vary the existing use of the site and despite the intensification of the use, subject to conditions, the removal of the trial period is supported by Council's Development Engineers and Environmental Health and remains compatible with the original development consent.</p>	Yes
4	AMENITY		
4.1	Acoustic Amenity and Privacy		
	<p>i) Submit an acoustic report prepared by an accredited acoustic consultant. The report must demonstrate that:</p> <ul style="list-style-type: none"> Adequate site planning and building design measures are proposed to minimise noise impacts. Noise levels generated from the child care centre, when measured over a 15 minute period at any point on the boundary of the site) will not exceed 5dBA above the 	<p>A validation report prepared by The Acoustic Group has been submitted by the applicant which concludes that testing carried out at maximum capacity found compliance for both the outdoor play noise targets and mechanical plant.</p> <p>Councils' Environmental health section considers that the proposed development will comply with the relevant noise criteria and the existing</p>	Yes

D36/24

DCP Clause	Controls	Proposal	Compliance
	background level. <ul style="list-style-type: none"> Suitable noise attenuation measures have been incorporated into the proposal. 	conditions along side the updated plan of management will assist in minimising acoustic amenity impacts to surrounding properties.	
5	TRAFFIC, PARKING AND PEDESTRIAN SAFETY		
	i) Submit a Parking and Access Report with the DA, by an accredited consultant. The Report must address, but is not limited to: <ul style="list-style-type: none"> prevailing traffic conditions likely impact of the proposal on existing traffic flows pedestrian and traffic safety Appropriate arrangements for safe and convenient pick up and drop off at the site. ii) A reduction in car parking controls in Part B, section B7 may be considered where: <ul style="list-style-type: none"> The site is located in proximity to high frequency public transport. The site is co-located or in proximity to other trip generators (e.g. business centres, schools, public open space, car parks). There is sufficient on street parking available at appropriate times within proximity of the site. The development is not likely to result in any adverse impact on the safe operation of the surrounding road network. 	See comments from Council's Engineer in Appendix 1.	Acceptable, subject to conditions.
6	Hours of Operation		
	i) DAs should include supporting information demonstrating that the proposed hours of operation are compatible with adjoining land uses, and in the case of multi storey buildings, that the proposed hours of operation are compatible with the upper level uses.	Unchanged. Refer to Council's Environmental Health comments in Appendix 1.	Yes

Responsible officer: Chahrazad Rahe, Senior Assessment Planner

File Reference: DA/538/2021/A