

# Randwick Local Planning Panel (Public) Meeting

Thursday 11 April 2024



## **RANDWICK LOCAL PLANNING PANEL (PUBLIC)**

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Team on Thursday, 11 April 2024 at 1pm

### **Acknowledgement of Country**

*I would like to acknowledge that we are meeting on the land of the Bidjigal and the Gadigal peoples who occupied the Sydney Coast, being the traditional owners. On behalf of Randwick City Council, I acknowledge and pay my respects to the Elders past and present, and to Aboriginal people in attendance today.*

### **Declarations of Pecuniary and Non-Pecuniary Interests**

#### **Address of RLPP by Councillors and members of the public**

*Privacy warning;*

*In respect to Privacy & Personal Information Protection Act, members of the public are advised that the proceedings of this meeting will be recorded.*

### **General Reports**

Nil

### **Development Application Reports**

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Kerry Kyriacou  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D25/24

**Subject:** 30-32 Moore Street, Coogee (DA/277/2022)

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### Executive Summary

<b>Proposal:</b>	Demolition of existing building and construction of a 3 storey residential flat building including 3 x 3 bedroom units, and basement parking for 5 cars.
<b>Ward:</b>	North Ward
<b>Applicant:</b>	Arkhaus Studio
<b>Owner:</b>	Mrs C. & Mr T. Panigiris
<b>Cost of works:</b>	\$3,470,359.00
<b>Reason for referral:</b>	Development that contravenes a development standard by more than 10% and that has received more than 10 public objections.

### 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 height of buildings development standard in Clause 4.3 and the Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Planning Secretary has been assumed.
- B. 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/270/2022 for demolition of existing building and construction of a 3 storey residential flat building including 3x 3 bedroom units, and basement parking for 5 cars at No. 30-32 Moore Street, Coogee, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (Residential Flat Building) - DA.277.2022 - 30-32 Moore Street, COOGEE NSW 2034 - DEV - Randwick City Council

D25/24



## 1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as:

- The development contravenes the development standard for Building Height by more than 10%.
- The proposal received more than 10 submissions by way of objection.

The proposal seeks development consent for the demolition of existing building and construction of a 3 storey residential flat building including 3 x 3 bedroom units, and basement parking for 5 cars.

The proposal was notified in accordance with Council's Community Participation Plan on two occasions at the lodgement stage and due to an amended plan submission, which reduced the overall GFA and number of units from 5 to 3 along with the basement envelope and the number of parking spaces from 7 to 5. The amendments also reduced the extent of proposed building height variation, increased setbacks and onsite landscaping. In response, Council received 18 submissions during the original notification period and 3 submissions regarding the re-notification of amended plan revision. The key issues raised in submissions were in relation to:



- Non-compliance with building height and FSR that result in further environmental impacts.
- External wall height non-compliance.
- Overdevelopment.
- View loss impacts associated with balcony columns, potential privacy screens and a request for detailed view sharing analysis.
- Inconsistent with zone objectives.
- Loss of on-street parking and insufficient car parking.
- Excessive bulk and scale resulting from the lack of articulation, top level and associated northern awning.
- Insufficient landscaping and deep soil, including along eastern secondary street frontage.
- Overshadowing and requirement for hourly shadow analysis.
- Non-compliant solar access to proposed units.
- Insufficient side setbacks and rear building alignment.
- Lack of communal open space.
- Visual privacy and overlooking.
- Provision of affordable housing inappropriate based on median local rental prices, waterfront context and concern for future management / site context.
- Excavation groundwater and structural impacts, DCP non-compliances.
- Concern for accuracy of geotechnical report assessment.
- Inconsistency with foreshore scenic protection area.
- Inconsistency with streetscape character and four storey public domain presentation.
- Loss of property values.
- Existing building visual eyesore and support for demolition.
- Acoustic / safety impacts during construction and application not accompanied by acoustic report.
- Upper level recommended to be within habitable roof form.
- Traffic safety and impacts associated with new driveway and obstruction of cul-de-sac turning circle, pedestrian access and 2A Major Street access.
- Construction vehicle congestion and obstruction of emergency access.
- Public domain impacts.
- Flooding impacts.
- Mental health impacts due to loss of amenity.
- Fire safety concerns.
- Impacts to sewer infrastructure along shared western boundary.

Each of these concerns have been addressed as a part of the assessment report, with matters addressed by way of consent conditions. The applicant was also required to provide further information to confirm that the proposed redevelopment of the residential flat building would not result in the loss of affordable rental accommodation and has satisfied assessment provisions through additional submission of detailed rental records and the submission of an addendum traffic impact assessment to confirm suitable access would be retained to Kildare Lane and No. 2A Major Street along the northern site interface.

The key issues associated with the proposal relate to non-compliance with the maximum building height development standard, streetscape compatibility, view sharing, affordable housing considerations, overshadowing, visual privacy and the external wall height control. The subject property was also identified for refurbishment in Council's 2006 Urban Design Initiative Design Ideas for Rejuvenating Residential Flat Buildings, which recommended internal amenity improvements, a revised dwelling layout and the provision of larger rear balconies that comply with private open space requirements, whilst maintaining view corridors along the rear setback towards Gordon Bay further to the north-east.

The development is permissible within the R3 zone and is considered to be compatible with the desired future character of the area in terms of the overall built form, which is commensurate of a level anticipated for the site and in accordance with the bonus provisions of the SEPP Housing 2021. The proposal as amended is considered to respond well to the constraints of the site and

shall not result in any unreasonable amenity impacts upon neighbouring properties or the streetscape, subject to the recommendations within this report.

The applicant has submitted a written request to vary the standard, which is considered to be well-founded. The variations are assessed as being in the public interest given the development is consistent with the objectives of the standard and the R3 Medium Density Residential zone. The additional height is attributed to the sloping site topography and the partial breach of the upper floor unit and associated balcony awning, which has been recessed from the lower level building alignment and will preserve the view corridor along the rear of the site for the properties further to the west of the Moore Street urban block.

The proposal is recommended for approval subject to non-standard conditions that require matters to be addressed in relation to affordable housing, view sharing, façade articulation, visual privacy, landscaping, and engineering.

## **2. Site Description and Locality**

The subject site is known as 30-32 Moore Street, Coogee and has a legal description of Lot 15 in Deposited Plan 2349. The site is rectangular in shape and has a total area of 470.2m<sup>2</sup>. The site is corner allotment and is located to the north west of the intersection of Moore and Major Street. Pedestrian access is gained via the 12.19m frontage to Moore Street. Vehicular access is gained via the Major Street cul-de-sac, with garages and hardstand parking accommodated at the rear of the site. The site experiences a fall of approximately 2.88m from the front southern boundary down towards the rear northern boundary, with an average slope of approximately 7.45% and a crossfall from west to east of 2.39m (19.6%).

The site is adjoined by a former service lane and pedestrian link along the northern (rear) boundary, known as Kildare Lane. The service lane also facilitates pedestrian and vehicular access from the Major Street cul-de-sac to No. 2A Major Street to the north of the site. The property is mapped within the foreshore scenic protection area, given the close proximity to both Gordons Bay and the Bondi to Coogee foreshore walking trail directly to the north east.

The site is zoned R3 - Medium Density Residential and is currently occupied by an existing two (2) storey Residential Flat Building (RFB) and an attached rear four car garage that presents as a part (3) storey to Major Street. The property is surrounded by residential properties to the north, south, east and west.

The existing streetscape along the subject portion of the northern side of Moore Street is predominantly renovated semi-detached dwellings of two (2) storeys and residential flat buildings ranging from two (2) to three (3) storeys in height. The eastern (Major Street) streetscape also includes dwelling houses and RFBs predominantly ranging from three (3) and four (4) storeys in height. Adjacent to the site, on the opposite side of Moore Street (further to the south) are primarily medium-density developments comprising semi-detached dwellings and RFBs ranging from two (2) to three (3) storeys.



**Figure 1** – Subject site as viewed from Moore Street.



**Figure 2** – Subject site as viewed from the rear at Major Street.

### **3. Relevant history**

The land has been used for residential purposes for an extended period as a four-unit residential flat building. A search of Council's records did not reveal any recent development applications of relevance to the subject proposal.

#### **Subject Development Application**

Development Application DA/277/2022 was lodged with Council on 26 May 2022. The application was referred to Council's Development Engineer, Landscaping Officer and the Randwick Design Excellence Advisory Panel for comment and/or recommendation.

#### **June 2022**

The application was notified from 9 June 2022 to 26 June 2022. In response, 18 submissions were received by way of objection with the key issues summarised within the below exhibition section.

October 2022

On 6 October 2022, additional information was sought in relation to concerns within the foreshore scenic protection area resulting from the proposed rear setback and the associated height breach, including unacceptable view loss, excessive bulk and scale and overshadowing. In addition, concerns were raised in relation to side and secondary street frontage setback non-compliances, limited internal solar access, the lack of deep soil and landscaping provision, the nil provision of communal open space, the extent of breach of the 8m wall height, driveway access and parking design and visual privacy impacts at the rear of the site.

Further clarification was also sought on the proximity of bus services required to support affordable housing bonuses and information in the form of the rental records for the property was sought in relation to assessment of Chapter 2 (Affordable Housing), Part 3 of the *State Environmental Planning Policy (Housing) 2021*. As a part of the RFI, Council requested amended plans, hourly shadow diagrams, a detailed streetscape, and view impact analysis.

On 26 October 2022, RFI concerns were provided by Council's Development Engineer and Landscaping Officer in accordance with the following:

- Redesign of the rear driveway crossover to ensure vehicular access is preserved for 2A Major Street and the provision of a new footpath access linking Kildare Lane to the foreshore walk via a consent condition.
- The need to address deep soil and landscaping deficiencies and provide for coastal tree species in lieu of invasive species shown in the landscape concept.

January 2023

The applicant's first amended plan set concept was provided on the 3<sup>rd</sup> of January 2023. The revisions included an increased rear setback demonstrating an improved view sharing outcome, along with the reduction of the original number of apartments to (3x) 3-bedroom units with a reduced basement carpark providing for 5 car spaces, increased onsite landscaping and side setbacks and additional side elevation articulation to improve both internal unit amenity and reduce environmental impacts to surrounding development.

N.B. The proposed reduction in apartments removed the ADG assessment requirements under SEPP 65. The reduction of the building envelope also resulted in a reduced height variation extent and a compliant FSR when accounting for the affordable housing bonus under the Housing SEPP 2021. Refer to detailed assessment below.

May 2023

After consultation with internal staff the formal RFI response and amended plans was submitted on 2 May 2023. The formal revised design package was referred to the Randwick Design Excellence Advisory Panel on the 3<sup>rd</sup> of May 2023 for consideration due to the proposed height variation and bonuses sought under the Housing SEPP 2021. In response, the Panel made the following comments in relation to the proposal:

**Context and Neighbourhood Character**

*The amended scheme with the reduced FSR and reduced number of apartments, pulled back from the northern boundary, is an improvement on the previous scheme. It is noted that the scheme still presents as very monolithic and does not respond to the particulars of the site and has inadequate street setbacks and planting. The front balconies are excessive in size and impact the views from the surrounding neighbours. The current scheme does not facilitate the existing carparking access to the northern neighbour on Kildare Lane. The northern boundary treatment and access should be adjusted to maintain vehicle access to this property.*

Officer Response: Amended plans were provided to incorporate additional articulation as a part of the primary and secondary street frontage. A consent condition is recommended to ensure the façade slot is provided to all levels of the development including the upper level to reduce the mass of the development from the Major Street frontage. The reduced balconies have also been conditioned to delete the columns and reduce the extent of the upper floor awning overhang to a maximum of 1m, to remove additional obstructions from the view corridor towards Gordons Bay. The alignment of the proposed balconies are considered to be generally consistent with



development further to the west of the site along Kildare Lane. Council's Development Engineer has reviewed the submitted addendum traffic advice and the increased driveway setback from Kildare Lane to confirm access will be retained to 2A Major Street to the north.

### **Built Form and Scale**

*The project presents a very singular, and unmodulated façade to Major Street. There is insufficient setback to support planting. The scheme should include a minimum setback of 900mm to the eastern boundary and one recess of significant size to support a substantial pocket of landscaping. This would improve the streetscape of Major Street and soften the appearance of the building. The front balconies should be reduced in size and pulled away from the western facade to increase privacy and view sharing.*

Officer Response: Amended plans were provided to incorporate additional articulation as a part of the secondary street frontage, with further improvements to be secured via consent conditions as identified above. The minimum secondary street setback was also increased from 500mm to 900mm via plan revisions in accordance with the recommendation of the Design Panel. In addition, each of the balconies and terraces are provided with an increased western side boundary setback that has incorporated screen planting to all levels in the aim of providing passive privacy mitigation and balancing the retention of the eastern view corridor.

### **Density**

*The Density of the proposal containing 3 x 3-bedroom apartments is appropriate for the site.*

Officer Response: Noted.

### **Sustainability**

*The project has unsatisfactory sustainability measures. There is insufficient sun shading on the eastern façade, there are no PV cells provided on the roof, no car charging units in the basement, no ceiling fans etc. A detailed report indicating the sustainability initiatives should be submitted as part of any revised proposal.*

Officer Response: The extent of glazing on the eastern façade has been reduced via revisions and has been coordinated with horizontal and vertical fins to enable improved shading. In addition, PV cells have been incorporated across the entirety of the roof form. The basement design is not prohibitive to the provision of EV charging facilities into the future.

### **Landscape**

*There is insufficient landscaping provided with the proposal, the Major Street setback is discussed in previous sections, further landscaping should be incorporated on the balconies to provide the necessary privacy to the western neighbour.*

Officer Response: The Major Street setback was increased as discussed above along with the provision of additional western balcony landscape screening along this interface.

### **Amenity**

*The panel support the overall amenity of the apartment however have the following comments:*

- *The amenity of bedroom 3 is inadequate. The outlook and window sizes is too small and the façade should set in to allow a bigger window and increased amenity for this room.*
- *The current living, kitchen and dining room appear out of proportion. The dining room is too small and consideration should be given to step the northern façade to give greater space for the dining room and further indent the balcony into the living space on the northeast corner. This would allow the scheme a better proportioned balcony northeastern corner, and also provide better privacy to the western neighbour.*

Officer Response: Bedroom 3 glazing was increased in size via plan amendments that provided an additional window on the western elevation. Internal reconfiguration was also undertaken to remove the study nooks from living spaces and provide additional space for dining areas in the amended plan set. The recommended changes to the rear setback to provide a north eastern corner balcony

was not supported by planning staff given the potential for additional view loss impacts resulting from this revision.

### **Aesthetics**

*The panel questions the appropriateness of the rigorous grid expression to the building. This grid appears to block the views to the northeast and Gordons Bay, and does not allow the building to adapt to the particulars of the site. The corner column on the north east, the central column on the northern balcony and the long TV/entertainment wall all appear to block the views and reduce the amenity of the building. The applicant is encouraged to review this expression to ensure that the building provides better access to views and provides a softer and more considered streetscape expression.*

Officer Response: The rear balcony columns have been conditioned for deletion in accordance with the Panel recommendation. Revisions were also made to glazing in the north-eastern corner of the building envelope to capture additional views from the living area towards Gordons Bay.

### August 2023

The amended plans to address the comments of the Panel as identified above were submitted to Council on 18 August 2023 and was accompanied by revised BASIX certificates, Rental Property Records, and an addendum traffic impact statement.

### October and November 2023

The amended plans were placed on renotification from 5 October 2023 with an extension granted to the notification period until 2 November 2023 for submissions to be made. In response, Council received 3 submissions by way of objection to the amended design.

### February 2024

On 26 February 2024, an additional request was request for the submission of an amended clause 4.6 to the building height development standard was sent to the applicant.

### March 2024

On 16 March 2023, the amended Clause 4.6 request was submitted for Council assessment.

## **4. Proposal**

The proposal seeks the demolition of existing building and construction of a 3 storey residential flat building including (3x) 3 bedroom units and basement parking for 5 cars.

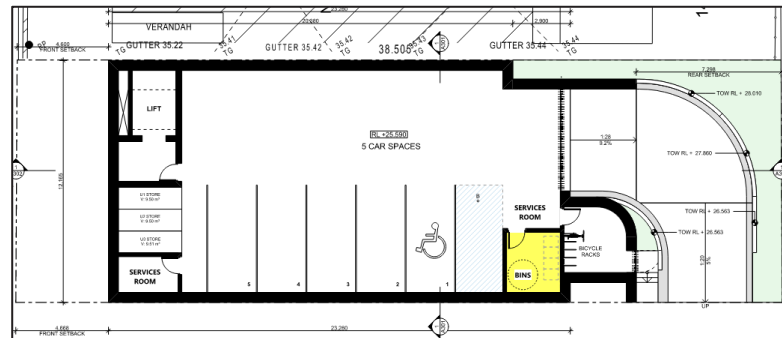
The amended scheme is a reduction from the originally lodged proposal, which sought (4x) 2 bedroom units, (1x) 3 bedroom unit, and basement parking for 7 cars. The reduction at the rear of the proposal is illustrated in **Figure 3** below.



**Figure 3 – Building Envelope Reduction**

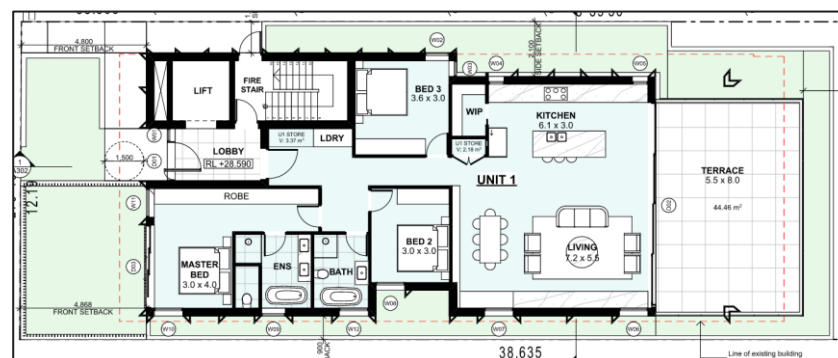
Specifically, the Applicant seeks consent for the following works:

- Demolition of the existing building.
- Basement Level
  - Lift core circulation.
  - Driveway access ramp and rear curtilage landscaping.
  - 5 Car parking spaces (including 1x disabled space).
  - Bicycle storage.
  - Waste room and Plant facilities.



**Figure 4 – Basement Level Plan.**

- Ground Floor Level (Unit 1 – Affordable Housing Dwelling)
  - Vertical circulation corridor, front yard landscaping and main pedestrian access lobby.
  - (1x) 3 Bedroom apartment with (2x) bathrooms, laundry, storage and open plan kitchen, living and dining area adjoining the rear terrace.



**Figure 5 – Ground Level Plan.**

- First Floor Level (Unit 2)
  - Vertical circulation corridor,
  - (1x) 3 Bedroom apartment with (2x) bathrooms, laundry, storage and open plan kitchen, living and dining area adjoining the rear balcony.



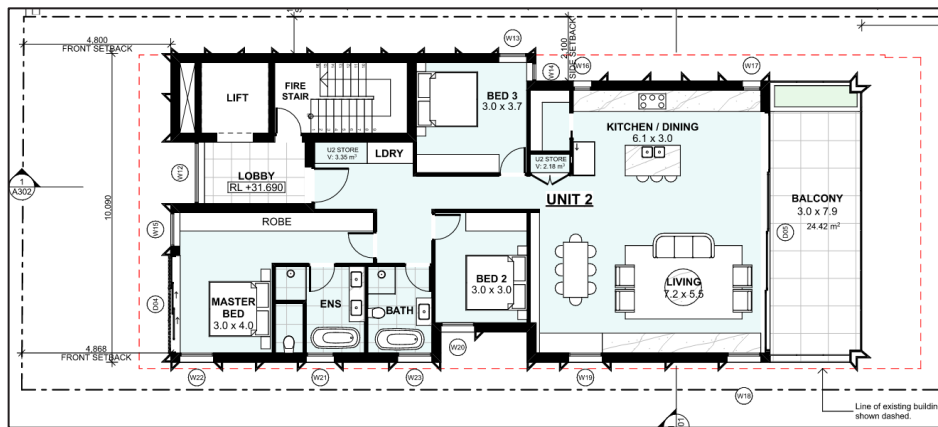


Figure 6 – First Level Plan.

- Second Floor Level (Unit 3)
  - Vertical circulation corridor,
  - (1x) 3 Bedroom apartment with (2x) bathrooms, laundry, storage and open plan kitchen, living and dining area adjoining the rear balcony.

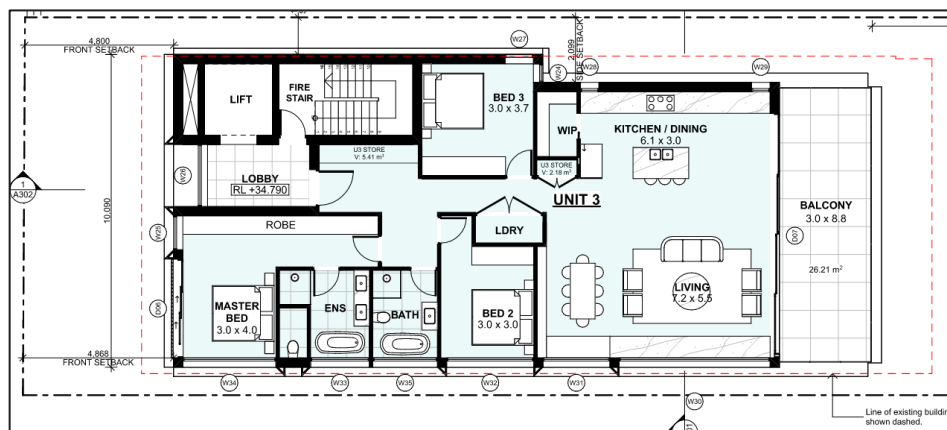


Figure 7 – Second Level Plan.

- Roof Plan and Perspectives
  - Rooftop solar panels and rear balcony operable awning.

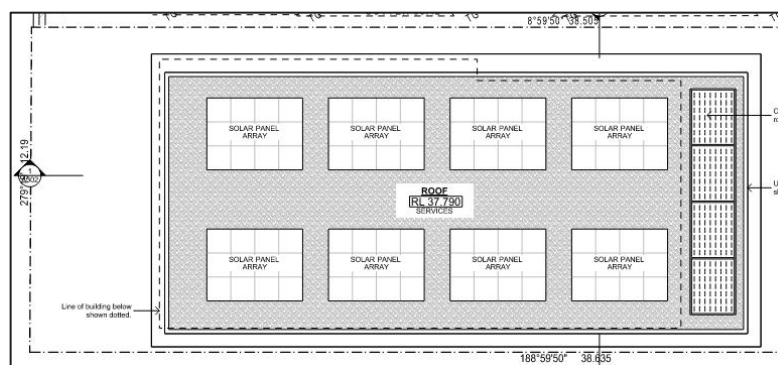


Figure 8 – Roof Plan



**Figure 9 – Southern 3D Perspective**

## 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan. The following twenty-one (21) submissions by way of objection (18 during original notification / 3 due to renotification period) were received during the notification process:

- 12/4 Major Street, Coogee
- 1/3 Major Street, Coogee
- (No number) Dudley Street, Coogee
- 5/5-7 Major Street, Coogee (2 submissions)
- 5-7 Major Street, Coogee
- 6/5-7 Major Street, Coogee
- 25 Moore Street, Coogee
- 1 Major Street, Coogee
- 13//5-7 Major Street, Coogee
- 3 Major Street, Coogee
- 11 Moore Street, Coogee
- 19 Moore Street, Coogee
- 26 Moore Street, Coogee (2 submissions)
- 22 Moore Street, Coogee
- 1, 2, 3 & 4/ 20 Moore Street, Coogee
- 24 Moore Street, Coogee
- 28 Moore Street, Coogee (2 submissions)
- 19 Gordon Avenue, Coogee

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Issue	No. of times raised	Comment
View loss along the rear boundary and the need to balance view sharing along the Kildare Lane frontage. Request for detailed view analysis.	20 submissions	The amended design has removed the rear setback encroachment and aligned the proposed terraces and balconies with the development directly to the west of the site and wider urban block. The remaining column encroachments and upper-level awning will be addressed via recommended consent conditions to remove additional headland and water view corridor obstructions. The proposed balcony landscaping will also be conditioned to maintained to appropriate height to prevent view sharing impacts. Refer to detailed merit assessment in Key issues section below.
Non-compliance with building height and FSR that result in further environmental impacts.	20 submissions	The amended plans have removed the FSR breach, and the proposal complies with the affordable housing bonus under the SEPP Housing 2021. As outlined in the Clause 4.6 to Building Height assessment below. The proposed building height breach is not considered to result in substantial or adverse amenity impacts noting the revised rear setback alignment.
Overdevelopment	8 submissions	The proposal is permissible within the zone and results in a net reduction of one apartment when compared with the existing site occupancy. In addition, the proposed design does not result in adverse amenity impacts and is compatible with the existing residential flat buildings along Major Street.
External wall height non-compliance.	5 submissions	Refer to detailed assessment below. The proposed partial wall height breach is considered acceptable on merit, given the sloping site topography, is not considered to result in adverse amenity impacts to surrounding development and is therefore considered acceptable against the objectives of the control.
Basement ceiling clearance should be lowered to reduce overall height.	3 submissions	The basement ceiling has provided for the required ramp clearances under the NCC and will ensure the proposed ground floor directly aligns with the existing natural ground level on the Moore Street frontage.
Inconsistent with zone objectives.	4 submissions	The proposal is permissible in the zone and not considered to be contrary to the relevant objectives of the R3 Medium Density Zone. Refer to detailed analysis in LEP and Clause 4.6 assessment below.
Loss of on-street parking and insufficient car parking.	11 submissions	The number of units was reduced from 5 to 3 apartments, along with a reduction from 7 to 5 off-street parking spaces. The revised design will remain compliant with Council's DCP parking rate as referenced in the below compliance table.

Issue	No. of times raised	Comment
Excessive bulk and scale resulting from the lack of articulation, top level and associated northern awning.	12 submissions	The proposed design has incorporated considerable articulation to all frontages. A consent condition is also recommended to require the continuation of the central façade secondary street frontage slot to the upper level of the development, the deletion of the balcony columns and the reduction of the rear awning to further mitigate the overall bulk of the development. The overall scale of the development is considered comparable with existing residential flat buildings along Major Street, noting the proposed height breach is limited to partial non-compliance at the rear elevation and does not result in unacceptable amenity impacts.
Insufficient landscaping and deep soil, including along eastern secondary street frontage.	14 submissions	The amended design has improved onsite landscaping along all site boundaries through the provision of additional deep soil zones and planting on structure. The submitted revisions are considered to have satisfied the relevant control objectives, Housing SEPP controls and is acceptable on merit in this instance.
Overshadowing and requirement for hourly shadow analysis. Impacts to heating and cooling of adjoining properties.	15 submissions	The site is afforded with a south-north orientation and as a result will maintain compliant levels of solar access to adjoining development to the west and to the east on the opposite side of Major Street in accordance with the relevant DCP minimum. Refer to key issues discussion below.
Insufficient side setbacks and rear building alignment.	15 submissions	Both the rear and side setbacks were increased to improve solar access and view sharing at the rear of the property for adjoining development. Refer to detailed assessment below, which notes the alignment either satisfies the relevant numeric control or has demonstrated an acceptable amenity outcome. It was also noted that the retention of the secondary street frontage setback was supported by the design excellence panel noting the provision of additional landscaping and façade articulation along the eastern interface.
Non-compliant solar access to proposed units.	2 submissions	The revised application has provided for a reduction to 3 units, which are all afforded with northern orientated living areas and private open space to ensure compliance with relevant controls.
Lack of communal open space.	6 submissions	Each of the proposed apartments are afforded with private open space that exceeds the minimum DCP requirement to offset the nil communal open space provision. It is also noted that a roof terrace would not be supported in the foreshore scenic protection area context.

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Issue	No. of times raised	Comment
Visual privacy and overlooking.	12 submissions	Refer to key issues and compliance table assessment below. It is considered that the proposal can be supported subject to conditions requiring the adoption of privacy measures to windows along the western side setback. In addition, landscaping buffers will be conditioned to all western balcony balustrades and is considered acceptable to provide passive privacy mitigation that preserves view corridors of Gordons Bay to the north east, given that mutual overlooking is typical between existing properties further to west in the aim of preventing view loss.
Provision of affordable housing inappropriate based on median local rental prices, waterfront context and concern for future management.	7 submissions	A consent condition will be applied to secure Unit 1 (ground level) as an affordable rental unit managed by a social housing provider for 15 years through the implementation of a title restriction that cannot be released without the consent of Council.
Affordable housing clarification on whether the site is within accessible 400m of bus stop and details of registered community housing provider.	3 submissions	A site inspection confirmed that the property is within 400m of a bus stop on Arden Street and the proposed site compatibility test has been met in accordance with the Housing SEPP 2021 and relevant NSW Caselaw.
No details of whether property has been previously used as a low rental dwelling.	1 submission	Additional information was submitted by the applicant to confirm all current properties were not classified as low rental dwellings. Refer to key issues assessment below.
Excavation groundwater and structural impacts. Excavation non-compliant with DCP setback and depth provisions.	6 Submissions	The submitted Geotechnical report noted that groundwater affectation within the basement excavation zone was limited to minor seepage. A consent condition is recommended to protect the structural integrity and support adjoining land during excavation works. It is considered that the proposed excavation works have satisfied both the objectives of the Randwick LEP and DCP and would be typical of basement excavation required to partially conceal onsite parking from the public domain and mitigate additional visual bulk associated with above ground parking facilities. Refer to detailed compliance assessment below.
Concern for accuracy of geotechnical report assessment.	1 submission	The report has been reviewed by Council's Development Engineer, who did not raise concerns with the recommended findings or conclusions as a part of the assessment.
Inconsistency with foreshore scenic protection area.	8 submissions	The amended design has incorporated an increased rear setback to preserve view sharing along the southern side of Kildare Lane and is not considered to result in adverse impacts to orderly use of the public domain. It is also noted that public domain improvements have been conditioned at the rear of the site as a part of the proposal.

Issue	No. of times raised	Comment
Misuse of precedent associated with adjacent historic residential flat buildings and adjoining semi-detached dwellings.	12 submissions	The proposed use is permissible within the zone and will provide for additional housing, including an affordable housing unit. Major and Moore Street include a range both newly renovated and/or constructed residential flat buildings and it is not considered that the proposed development is inconsistent with the character of surrounding residential flat buildings, which range from 3 to 4 storeys in height.
Existing development should not be relied upon to justify proposed non-compliances.	4 submissions	The proposed development is not reliant on the existing built form identified for demolition. A detailed merit assessment has been undertaken to the new building envelope, which is considered appropriate in the streetscape context that transitions from Moore to Major Street and will not result in adverse amenity impacts in accordance with the Randwick DCP 2013. The proposed development has also accommodated improved side, rear setbacks and overall articulation when compared to the existing flat building.
Inconsistency with streetscape character and four storey public domain presentation.	9 submissions	The proposed use is permissible within the zone and will provide for additional housing, including an affordable housing unit. The proposal is considered to respond to the key environmental consideration of the site in terms of view sharing, overshadowing, visual and acoustic privacy. In addition, the proposed basement level is predominantly situated below natural ground and the proposed 3 storey residential flat building form is not considered out of context with existing residential flat building along Major Street.
Loss of property values.	8 submissions	This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.
Existing building visual eyesore and support for demolition.	4 submissions	Noted
Incorrect use of the Randwick Urban Design Initiative 2006, as knock down rebuild not anticipated.	1 submission	The provision of a new building envelope is supported, given the significant improvements to the overall articulation, increased front setback and associated side and rear boundary setbacks when compared to the existing building envelope. In addition, the proposed design has adopted a unit mix and configuration that is generally consistent with the urban design initiative.
Acoustic impacts during construction / occupation and application not accompanied by acoustic report.	4 submissions	Standard consent conditions will require the preparation of a noise and vibration management, along with managing construction and demolition hours in an appropriate manner. In addition, the overall layout of the proposed development with living areas orientated to the rear of the site is consistent with the development pattern of the wider urban block.
Safety impacts during construction.	3 submissions	Standard consent conditions have been recommended to ensure safe work practices are observed during both the construction and demolition redevelopment stage.



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Issue	No. of times raised	Comment
Upper level recommended to be within habitable roof form.	1 submission	The proposed upper level is considered generally consistent with the existing residential flat buildings both along Major and Moore Street. It is also noted that the amended design has removed the previous rear setback encroachment and that the upper level will predominantly be aligned to the pitched roof form and ridge level of the directly adjoining semi-detached dwellings. As such, no further building envelope changes are recommended other than conditions requiring the reduction of the upper-level awning overhang and rear balcony columns.
Additional perspectives requested from the coastal walk viewing angle.	1 submission	Detailed 3D perspectives submitted from the rear aspect and publicly exhibited for comment as a part of the October to November 2023 renotification period.
Traffic safety and impacts associated with new driveway and obstruction of cul-de-sac turning circle.	7 submissions	The proposed driveway is generally consistent with the existing location and will service a similar number of parking spaces. The design was reviewed and supported by Council's Development Engineer, subject to recommended consent conditions.
Rear boundary fencing results in potential conflicts between vehicles accessing the site, 2A Major Street and pedestrians utilising Kildare Lane.	4 submissions	The proposed vehicular access point is generally consistent with the existing site configuration. Further, the proposed rear boundary treatment has been reviewed by Council's Development Engineer and was supported subject to recommended consent conditions to secure access to No. 2A Major Street and provide for a new pedestrian footpath from Kildare Lane to the foreshore walk.
Construction vehicle congestion and obstruction of emergency access.	2 submissions	Consent conditions will not permit any obstruction of the public road reserve and on-street work zones will only be permitted with the formal consent of Council's Integrated Transport Management team. Any ongoing compliance matters can be referred to Council Rangers for investigation.
Public domain impacts.	2 submissions	The application was reviewed by Council's Development Engineer and Landscaping Officer, who did not raise concern with the proposal subject to consent conditions for public domain improvements.
Flooding impacts.	1 submission	The application was reviewed by Council's Development Engineer, who did not raise concerns in relation to flooding impacts. In addition, the proposed site is not mapped as flood prone land.
Mental health impacts due to loss of amenity.	2 submissions	This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Notwithstanding, as outlined in the below key issues section and DCP compliance table, the resultant amenity impacts are considered acceptable on balance.
Fire safety concerns.	1 submission	The application is accompanied by a BCA report and consent conditions are recommended to ensure that all works comply with relevant BCA / NCC development standards to the satisfaction of Council's Coordinator of Compliance.



Issue	No. of times raised	Comment
Impacts to sewer infrastructure along shared western boundary.	1 submission	Consent conditions are recommended to ensure that all public utilities are protected during construction and excavation works.

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP 65 - Design Quality of Residential Apartment Developments

The [State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development](#) (SEPP 65) aims to promote quality design of Residential Flat Buildings. The proposed development is not subject to SEPP 65 as it involves the construction of a new residential flat building containing a maximum of three dwellings.

### 6.2. SEPP (Housing) 2021

#### Part 2 New affordable rental housing, Division 1 In-fill affordable housing development

The proposal seeks affordable housing subject to the provisions in Part 2 Division 1 of the SEPP for in-fill affordable housing that is within an accessible area to public transportation on Arden Street and the dedication of ground level Unit 1 will exceed the minimum 20% affordable housing building composition requirement. The proposed FSR will also remain less than the 1.06:1 bonus afforded under Clause 17 of the SEPP and conditions will secure the use of Unit 1 as affordable housing for a period of 15 years in accordance with the SEPP. The proposal as amended demonstrates compliance with the applicable provisions and objectives. See assessment in Appendix 2, and where relevant, discussion of key issues section of this report. In summary, it is considered that subject to the recommendations, the proposed development satisfies the character test satisfying key envelope controls and therefore the bonus FSR is considered appropriate in this instance.

#### Clause 18 Non-discretionary development standards—the Act, s 4.15

Control	Compliance
2(a) a minimum site area of 450m <sup>2</sup>	Yes – The proposal site has an area of 470.2m <sup>2</sup> .
2(b) for a development application made by a social housing provider—at least 35m <sup>2</sup> of landscaped area per dwelling,	N/A – Application not made by a social housing provider.
2(c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area,	Yes – Deep soil and planting on structure constitutes 144m <sup>2</sup> or 30%, subject to the additional landscaping zone conditioned on the Level 2 balcony.
2(d) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site.	Yes – 75m <sup>2</sup> or 15%.  Limited deep soil provided to the rear in order to retain the basement parking configuration in accordance with the existing onsite configuration is considered acceptable on merit in this instance with adequate planting on structure accommodated to all boundary interfaces.
2(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter.	Yes – All three apartments provided with northern orientated private open space and living rooms to capture compliant solar access during mid-winter.

2(f) the following number of parking spaces for dwellings used for affordable housing—  (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,	Yes – One parking space is afforded to Unit 1 of the development.
2(g) the following number of parking spaces for dwellings not used for affordable housing—  (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	Yes – 2 car parking spaces each are available for remaining two apartments within the development.
2(j) if paragraphs (h) and (i) do not apply, the following minimum floor areas—  (iii) for each dwelling containing at least 3 bedrooms—115m <sup>2</sup> plus 12m <sup>2</sup> for each bedroom in addition to 3 bedrooms.	Yes – All apartments are provided with an internal area that exceeds the minimum area provision.

#### Clause 19 Character of the Local Area and Desired Future Character

Clause 19 of the SEPP requires Council to consider whether the design is compatible with the character of the local area. It is considered that the area is somewhat under transition noting the age and density of the surrounding recent new and renovated developments, therefore consideration has been given to the existing character and desired future character of the area.

The existing RFBs within the vicinity along Major Street are primarily three (3) and four (4) storey developments.

The proposed development predominantly complies with the maximum height provision under RLEP 2012 and the bonus FSR provisions under the SEPP. The variation to the building height at the rear of the site results from the site topography and the extension of the upper level awning, which will be reduced via consent conditions. A detailed assessment has been undertaken of the Applicant's Clause 4.6 variation request, where it was noted that the scheme would not result in significant adverse amenity impacts and that the variation would satisfy the relevant control and zone objectives.

The proposal increases the front setback to Moore Street, provides a part compliant 1.2m to 2.1m side setback to the west (increase compared to existing) and a compliant rear setback to the north, which aligns with directly adjoining development further to the west within the urban block (subject to condition amendments for column deletion) and reduces the overall rear visual bulk when compared to the existing flat building. A variation is proposed to the Major Street frontage, which is supported given it is a secondary street frontage and shall not be detrimental to the existing streetscape, with particular regards to consideration of the existing setback, the improvement to façade articulation and the absence of appreciable amenity impacts. While there is a non-compliance with the external wall height, the upper level has incorporated an additional recess and material differentiation to reduce the overall bulk and scale.

Furthermore the proposed building footprint is not considered to be excessive, noting the variation to the landscaped open space requirements of 30% will remain compliant with the requirement of the SEPP Housing 2021. As such, the proposed built form is not considered to be excessive and would be commensurate of a level of development anticipated for the site. It is also noted that the proposed development would also not be dissimilar in height and scale to the newer development at 20 Moore Street, when considering the FSR bonus provided under the SEPP Housing. In view of the above, it is considered that the proposed development would not be incompatible with the existing or desired future character of the area.

Part 3 Retention of existing affordable rental housing

The subject site and existing RFB is currently under single ownership. As the building has not been strata subdivided, nor is social housing provider accommodation or housing for seniors or people with a disability, consideration was given to whether the provisions of Chapter 2 (Affordable Housing), Part 3 of SEPP Housing 2021, in relation to the retention of affordable rental housing was applicable.

Part 3 Retention of existing affordable rental housing, pursuant to the Housing SEPP is applicable 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 pursuant to Section 48 of the Housing SEPP.

The Housing SEPP defines a low-rental dwelling as follows:

***“low-rental dwelling means a dwelling that was let at a rental not exceeding the median rental level at any time during the relevant period, as specified in the Rent and Sales Report, in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area.”***

The relevant period is defined as “the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.”

In response to Council’s request for additional information, the Applicant submitted details of the rents received in the 5 year period prior to the lodgement of the application, being from June 2017 through to 26 May 2022, by way of a copy of the legal Residential Tenancy Agreements.

Based on Council’s records and the documentation provided, the existing four (4) units comprise the following:

- Unit 1 – Two (2) bedrooms;
- Unit 2 – Two (2) bedrooms;
- Unit 3 – Two (2) bedrooms; and
- Unit 4 – Two (2) bedrooms.

The quarterly rent and sales reports published by NSW Government Communities & Justice Department for the relevant period provides the following data:

Median rent of Units in Randwick LGA

Quarter	Median Rent – 2 Bedroom
June 2017	\$650
September 2017	\$650
December 2017	\$660
March 2018	\$650
June 2018	\$650
September 2018	\$650
December 2018	\$650
March 2019	\$630
June 2019	\$630
September 2019	\$610
December 2019	\$630
March 2020	\$630
June 2020	\$580
September 2020	\$560
December 2020	\$550
March 2021	\$550
June 2021	\$560

September 2021	\$590
December 2021	\$600
March 2022	\$600
June 2022	\$640

The information submitted to Council identifies that the four (4) existing units have been rented out as follows:

#### **Unit 1**

<b>Lease term</b>	<b>Rental Rate</b>	<b>Weekly Rental Rate</b>
September 2016 to March 2018	\$1,100.00 per week	\$1,100.00
April 2018 to June 2021	\$1,125.00 per week	\$1,125.00
July 2021 to December 2022	\$1,250.00 per week	\$1,250.00

#### **Unit 2**

<b>Lease term</b>	<b>Rental Rate</b>	<b>Weekly Rental Rate</b>
November 2016 to September 2019	\$5,648.81 per month	\$1,412.20
October 2019 to March 2022	\$1,150.00 per week	\$1,150.00
April 2022 to April 2023	\$1,400.00 per week	\$1,400.00

#### **Unit 3**

<b>Lease term</b>	<b>Rental Rate</b>	<b>Weekly Rental Rate</b>
September 2016 to May 2019	\$4,562.50 per month	\$1,140.63
June 2019 to December 2021	\$1,050.00 per week	\$1,050.00
January 2022 to September 2023	\$1,350.00 per week	\$1,350.00

#### **Unit 4**

<b>Lease term</b>	<b>Rental Rate</b>	<b>Weekly Rental Rate</b>
February 2018 to November 2019	\$1,160.00 per week	\$1,160.00
December 2019 to December 2021	\$1,200.00 per week	\$1,200.00
December 2021 to 2023	\$1,425.00 per week	\$1,425.00

In view of the above, in this instance, it is considered that the existing units would not be classified as low rental dwellings and there is unlikely to be a reduction in affordable housing on the land. Therefore, no contributions are applicable in this instance.

### **6.3. SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX and NatHERS certificate for each unit has been submitted in accordance with the requirements of the SEPP (Building Sustainability Index: BASIX) 2004.

### **6.4. State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 2 of the Biodiversity and Conservation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW. The proposal does not involve the removal of any significant trees on the site, and as such, no further consideration of the SEPP is required.

### **6.5. State Environmental Planning Policy (Resilience and Hazards) 2021**

The site is located within the Coastal Use Area Map within the SEPP (Resilience and Hazards) 2021 under Chapter 2. The proposal is supported as it is not expected to result in any adverse impacts on the coastal use area. Pursuant to required considerations in Clause 2.11 of the SEPP the proposal will not adversely impact existing safe access to the foreshore, result in

overshadowing, wind funnelling, loss of views, visual amenity, scenic qualities of the coast, Aboriginal cultural heritage, or cultural and built environment heritage.

The assessment officer is satisfied that the development is generally designed, sited, and managed to avoid or minimise any significant adverse impacts which can be reasonably managed by condition of consent to ensure that the bulk, scale, and size of the proposed development, does not have any detrimental effects on the coastal use area.

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. Noting that the site has historically been used for residential purposes, the possibility of contamination is unlikely, and the site is considered suitable for the proposed development.

## 6.6. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R3 Medium Density 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 provide for the housing needs of the community whilst enhancing the aesthetic character and will not result in any unreasonable amenity impacts upon surrounding residents, subject to the recommendations within the report.

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)	0.75:1 under RLEP 2012, 1.06:1 pursuant to SEPP ARH (498.41m <sup>2</sup> of GFA)	0.95:1 or 447.87m <sup>2</sup> of GFA.	<b>Yes</b>
Cl 4.3: Building height (max)	9.5m	10.86m (1.36m or 14.3% variation to upper-level awning).	<b>No</b>

### Earthworks – Clause 6.2

The objective of clause 6.2 of RLEP 2012 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land.

The development satisfies clause 6.2(3) in that:

- Conditions of consent are imposed to minimise impact on drainage patterns, soil stability, and adjoining structures;
- The proposed excavation area is suitably scaled for the subject site and is unlikely to have an adverse impact on the likely future use or redevelopment of the land;
- The site has been used for residential purposes for an extended period of time and is unlikely to contain contaminated soil;
- Subject to conditions, the proposed excavation will not result in any adverse impact on the amenity of adjoining properties;
- Conditions of consent are imposed to manage the removal of demolition and excavation waste;
- The proposal is unlikely to disturb relics – the site is not in a heritage conservation area nor is listed as a heritage item;

- The scale and siting of the proposal minimises impact on waterways, water catchments, and environmentally sensitive areas.

#### *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.

The proposal will not compromise the scenic qualities of the foreshore location and will not be readily perceived when viewed from the coast. The proposed development has been designed to protect existing views of Gordons Bay and the ocean from neighbouring properties. On this basis, the development is satisfactory with regard to clause 6.7 of RLEP.

#### *6.6.1. Clause 4.6 - Exceptions to development standards*

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

### **7. Clause 4.6 exception to a development standard**

The proposal seeks to vary the following development standards contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	9.5m	10.86m	1.36m	14.3%

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 the Environmental Planning and Assessment Regulation 2021, 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 Building Height development standard (Clause 4.3)

The applicant's written justification for the departure from the height of buildings standard is contained in **Appendix 2**.

#### 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?**

The applicant's written request seeks to justify the contravention of the Building Height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the proposed height would be consistent with the adjoining development and the relevant objectives of the standard are still achieved.

The objectives of the Building Height development standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

##### *(a) to ensure that the size and scale of development is compatible with the desired future character of the locality*

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed height variation is associated with a development that is compatible with the size, bulk and scale of the desired future character of the locality.

The proposed height variation associated with the 3-storey residential flat building will not be inconsistent with the desired future character as the 9.5m envisages a 3-storey scale of development. This is evidenced by the provision of a 3-storey RFB at No. 20 Moore St, to the west of the site that was approved under the same controls. Further along Moore St are numerous 3-storey residential developments. Therefore, the proposed built form, height bulk and scale are considered consistent and comparable with the existing and emerging developments in the locality. The spatial proportion of the building represents a positive outcome to the medium-density residential environment.

The confined and lightweight nature of the height variation also ensures that the variation does not generate any inconsistency with the objectives of the standard.

On this basis, it is considered that, despite the numeric non-compliance, the proposal will establish and maintain an appropriate relationship with the local area desirable character.

##### *(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*

The Applicant notes the proposed residential flat building is not located in a conservation area, is not near a heritage item and is not heritage listed. This objective is, therefore, not considered to be relevant to the proposed height assessment.

- (c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

The applicant's written justification argues that this objective is satisfied by noting that the proposed height deviation does not compromise the achievement of the objectives of the height standard as the proposal maintains an adequate relationship with the neighbouring properties and public spaces in regard to solar access, visual and acoustic privacy, visual bulk, and sharing of views.

The proposed additional height does not adversely affect the environmental amenity of neighbouring properties by the provision of adequate rear setback, lightweight and confined nature of the protrusion above the height standard. The roof overhang beyond the height limit will not generate any adverse impact on the amenity of existing and future surrounding residences, as demonstrated on the submitted architectural drawings and shadow diagrams.

The lack of visual bulk impacts combined with the absence of adverse view impacts to surrounding properties and public space and no additional detrimental shadow to adjoining neighbours confirm that the proposed height non-compliance will be inconsequential to neighbouring amenity and public domain.

Therefore, the height non-compliance will not be responsible for any unreasonable or adverse amenity impacts to neighbouring properties.

Assessing officer's comment:

The proposed development seeks a partial variation at the rear of the upper level adjacent to the living area and the rear balcony awning. The subject site experiences a considerable fall from south to north, with a drop of approximately 2.88m from the Major Street frontage down to the rear Kildare Lane. It is considered that the height variation can be attributed to the proposed upper level addition, with particular regards to potential additional bulk at the rear of the building where the land has been excavated to provide a basement parking level, and due to the topography of the site.

Notwithstanding, the maximum extent of the height variation has been recessed from lower levels at the rear and will be further improved via consent conditions that reduce the extent of the rear awning overhang. The proposed development shall predominantly present as three (3) storeys to Moore and Major Street and would not be inconsistent with the existing streetscape which contains residential flat buildings developments of three (3) and four (4) storeys. Furthermore, the proposal has incorporated a combination of articulation, built form recesses and material diversity as a part of the upper level to further minimise the visual impact. The applicant has provided a 3D analysis of the likely visual bulk as viewed from the northern aspect, which is illustrated in **Figure 10** below.



**Figure 10** – 3D view of the proposal as viewed from Major Street to the north.

The 3D perspective and **Figure 10** above, demonstrates that the proposed upper level would not be incompatible with the bulk of adjoining development and that the design has responded to sloping site topography. The proposed development seeks a 1.4m increase to the parapet height of the existing RFB at the site. As such, the proposal will remain consistent with the neighbouring properties and immediate streetscape context. No significant adverse amenity or visual impacts to the neighbouring properties or the public domain are likely to occur in terms of visual and acoustic privacy, overshadowing and view sharing noting the amended design outcome.

On this basis, compliance with the height of buildings development standard is considered unreasonable or unnecessary in the circumstances of the case as the height of the proposed development is responsive to the surrounding locality. The extent of the variation is largely a result of the site topography, and the proposal can achieve the objectives of the development standard and manage amenity impacts, subject to recommended conditions.

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

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the Building Height development standard as follows:

- The proposal is not inconsistent with the objectives of the standard and the R3 Zone.
- Absence of shadow impact from the height variation.
- Isolated drop in topography is responsible for the height variation.
- Absence of view impacts from the height variation.
- Compatibility with the character of the surrounding area is achieved despite the height variation, noting the 3-storey scale of the built form is considered a high-quality and articulated design response that is suitable in the context of numerous 3-storey flat buildings along both sides of Moore Street.
- The additional height is limited to the roof form over the northern balcony and does not contribute to any adverse privacy impacts. The recessed upper floor from the northern and eastern boundaries, combined with the delineating planter boxes which screen the POS from the adjacent dwellings and street views, effectively mitigates potential visual and acoustic privacy impacts.
- The area of the departure is predominantly related to the upper level rear awning and does not result in excessive visual bulk to Major Street or Kildare Lane.

Assessing officer's comment:

As discussed above, the proposed height is largely a result of the topography of the site and the retention of the basement level to provide off-street parking, which is primarily sited below natural ground level. The proposal is limited to a partial non-compliance of the upper-level living area and rear balcony awning and has been recessed from the lower levels and will align with directly adjoining development form within the urban block to preserve view sharing further to the north east of the site and reduce perceived bulk and scale. It is also noted that the overall height breach will be further reduced via a consent condition, which requires a reduction of the rear awning depth to 1m. The proposed upper level shall improve the internal amenity for occupants and provide additional housing stock, without unreasonably impacting upon the amenity of the neighbouring properties. In consideration of the size and scale of the surrounding developments within the vicinity of the subject site, the proposed non-complaint height is not considered to be unwarranted, and the additional height can be accommodated on the site without resulting in adverse amenity impacts.

In view of the above, it is considered that the applicant's written request has 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?**

To determine whether the proposal will be in the public interest, consideration is given to the objectives of the Building Height standard and R3 zone.

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the R3 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.3 Height of Buildings and therefore 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?*

Variation of the maximum height standard will allow for the orderly use of the site and there is no public benefit in maintaining the development standard in this instance.

**Conclusion**

Based on 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 height of buildings 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.

As the proposed development is for the purpose of alterations to a residential flat building, the provisions of Part C2 of RDCP are applicable in this instance. The relevant provisions of the DCP are addressed in the Key Issues section of the report and **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 <b>Appendix 3</b> and the discussion in key issues below.
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	<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 residential 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	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 in the public interest.



## 9.1. Discussion of key issues

### Streetscape Consistency

Submissions were received in relation to concerns regarding the proposed development with particular regards to the streetscape presentation to Major Street and Kildare Lane. The submissions raised concerns regarding the overall storey height at the rear of the development being incompatible with surrounding development and the wider locality.

Notwithstanding, the proposed design has incorporated a basement level for parking that is consistent with the existing site configuration and recessed the upper levels of the rear elevation to align and preserve amenity to adjoining development in the aim of mitigating perceived visual bulk. The change to overall bulk at the rear of the property will be improved by the increased setback, built form articulation and only presents a 1.4m building height increase when compared to the existing flat building.

The secondary street frontage has also accommodated high levels of façade articulation and material diversity to improve upon the existing blank wall presentation to the public domain. The proposed development has increased the front setback when compared to the existing structure and provided for a setback alignment that correlates with the directly adjoining semi-detached dwellings further to the west of the site. Consent conditions have been recommended to further mitigate visual bulk and height non-compliances at the rear of the site, through the deletion of balcony columns and the provision of a reduced upper level awning depth. Additional articulation to the upper level through the continuation of the central façade slot has been secured via a consent condition to also reduce visual bulk from the secondary street frontage.

In addition, the wider Moore and Major Street locality accommodates a number of 3 to 4 storey residential flat buildings and the proposal is not considered incompatible with the existing or desired future character of the area. Noting these examples within the immediate vicinity of the site, it is considered that the proposal would not be uncharacteristic of the area.

### Solar Access and Overshadowing

Submissions have been received regarding concerns for solar access and overshadowing of adjoining properties on Moore Street and on the opposite side of Major Street. Part C2, Section 5.1 of the Randwick DCP requires the retention of 3 hours solar access to neighbouring living and landscaped areas from 8am to 4pm during mid-winter. However, noting the south-north block orientation and separation distances it is not anticipated the proposal would result in significant shadow impacts when compared to the existing residential flat building.

The submitted diagrams demonstrate that more than 3 hours of solar access will be retained to the apartments of 5-7 Major Street, with minor impacts limited from 3pm to 4pm. In addition, unobstructed solar access will continue to be afforded to No's 26 and 28 Moore Street from approximately 11am to 4pm noting the orientation of living areas and primary open space to the north. No additional shadow impacts were identified for any other neighbouring properties. It is noted that the submitted diagrams demonstrate the greatest extent of impact and that all other portions of the calendar year would have a reduced shadow impact. As such, it is confirmed that the proposal will satisfy the overshadowing assessment requirements of the Randwick DCP.

### Visual Privacy

Part C2, Section 5.3 of the Randwick DCP seeks to achieve reasonable levels of external and internal visual privacy between windows and balconies of neighbouring development. Submissions have raised concerns in relation to the amenity impacts associated with western and eastern side elevation windows and the rear facing balconies.

The western elevation (shown below in **Figure 11**) includes kitchen and bedroom windows orientated towards No. 28 Moore Street. In order to address potential privacy concerns the Unit 1 to 3 Kitchen and bedroom western elevation windows will be treated with standard privacy mitigation measures up to height of 1.6m from finished floor level.

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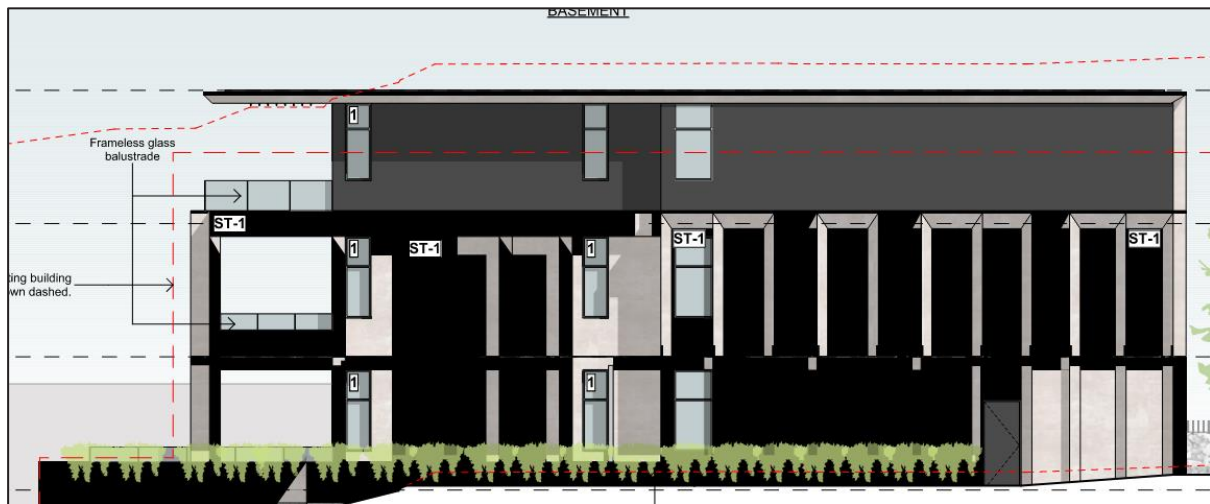


Figure 11: Western Elevation

Concerns were also raised by objectors within Unit 5, No. 5-7 Major Street in terms of overlooking from existing street facing balconies to the proposed upper-level apartment windows on the eastern elevation. However, it is noted that the separation distance is approximately 25m between the proposal site and the subject balcony, which far exceeds separation distances under the ADG. In addition, the nearest internal areas are non-habitable bedrooms and bathrooms that are fitted with internal blinds. The living areas and private open space of each apartment are located on the opposite northern end of the building envelope to mitigate interface impacts and no additional screening measures would be required in this interface. Refer to site inspection photos and the proposed eastern elevation below.

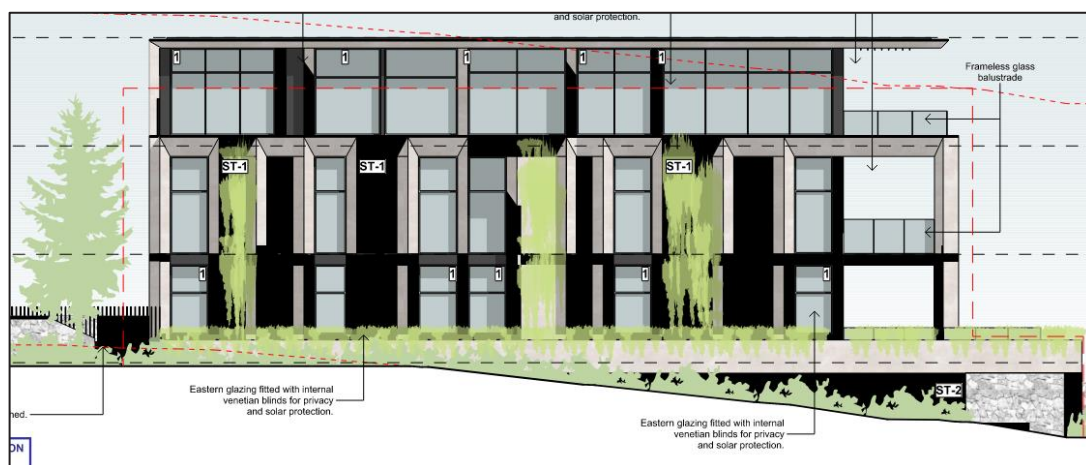


Figure 12: Eastern Elevation





**Figure 13:** Unit 5, 5-7 Major Street – Site Inspection Image – Western Balcony

The final submission concerns related to the treatment of the western balcony balustrade and potential overlooking impacts to the private open space of the semi-detached dwellings at No.'s 26 and 28 Moore Street. It was noted that these submissions also raised concerns regarding potential privacy mitigation measures further compromising both water and horizon views to the north-east of the development site.

In response to the guidance provided by the Randwick Design Excellence Advisory Panel (DEAP), the applicant has increased the western setback of the ground and first level balconies and incorporated raised planter beds to provide a passive privacy treatment. It is intended that this design element would preserve view corridors towards natural features in lieu of using solid built form elements, noting that mutual overlooking is typical of rear balconies to the west of the site to maintain view sharing. However, the Applicant has not continued this interface treatment to the western end of the Level 2 balcony and as such a consent condition has also been included to secure the continuation of planter bed treatments to all levels.

Noting the above, the proposal is considered to achieve reasonable levels of external and internal visual privacy and is therefore consistent with the controls and objectives of Part C2, Section 5.3 of the Randwick DCP.

### **View Sharing**

View sharing is to be considered where there is a potential for view loss impacts to ensure the equitable distribution of views between new development, neighbouring properties, and the public domain. The proposed development has been designed to maintain existing ocean views from neighbouring residential properties.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the Planning Principle for view sharing established by *Tenacity Consulting v Warringah [2004] NSWLEC 140* which establishes a four (4) step assessment of view sharing.

#### **1. The assessment of the views affected**

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued*

*more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

- 20 - 28 Moore Street, Coogee
- 25 – 27 Moore Street, Coogee

## 2. From what part of the property are views obtained?

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

- 20 - 28 Moore Street, Coogee – The views are obtained from the first level and ground level balconies and terraces at the rear of each property, as well as living room windows, kitchen windows. All views have been considered from a standing position.
- 25 – 27 Moore Street, Coogee – The views are obtained from second level roof terraces orientated towards the street frontage. All views have been considered from a standing position above the height of the front parapet / balustrade.

## 3. What is the extent of the impact?

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

- 20 - 28 Moore Street – as shown in **Figure's 14 to 15**, the proposal is likely to result in a minor loss of views of the horizon, ocean, land-water interface, and headland from a standing position predominantly within the existing building envelope. However, horizon views, water views, and full headland and land-water interface views will be retained of Gordon's Bay to the north-east of each property.

It is noted that these views are not iconic views, and they are obtained over the eastern side boundary. Relative to the existing building, the proposal seeks to increase the ridge height by a maximum of 1.45m (from RL 36.44 to RL 37.89), however the amended design will provide for an increased rear setback the partially improves the outlook towards ocean and horizon views, as illustrated in the below photomontage.



**Figure 14:** Existing rear setback view corridor to Gordons Bay from balcony of No. 20 Moore Street.



**Figure 15:** Photomontage of Rear Eastern View Corridor from balcony of No. 20 Moore Street.

- 25 - 27 Moore Street – as shown in **Figure's 16 and 17**, the proposal is likely to result in a minor loss of district views due to the 1.45m increase to overall building height. However, views of the ocean, land-water interface, and headland from a standing position are predominantly retained for both properties further to the north-east and will be partially improved due to the increased front setback incorporated in the proposal. The views obtained from both properties are not considered iconic.



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**Figure 16:** Perspective from second level roof terrace of No. 25 Moore Street.



**Figure 17:** Perspective from second level roof terrace of No. 27 Moore Street.

#### **4. What is the reasonableness of the proposal that is causing the impact?**

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of*

neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The Court poses two (2) questions in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* at paragraphs 23-33. The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

The following comments are made with regard to the reasonableness of the proposal:

- The proposal will have a minor impact on views obtained from 20-28 and 25-27 Moore Street. The proposal is likely to result in a minor loss of district views and a minor loss of views of the ocean, land-water interface, and headland from a standing position. Horizon views, water views, land-water interface and partial headland views will be retained for all properties to the west and south-west of the site.
- The proposal presents as a three (3) to four (4) storey RFB and predominantly complies with the 9.5m building height development standard, with only a partial breach at the rear elevation resulting in minor district view loss impacts to adjoining development. The proposal reflects the desired future character of the locality, which is a dense urban area in the foreshore area. Surrounding development comprises of three (3) and four (4) storey (or equivalent) development on Major and Moore Street.
- As shown in the above view photos, the additional view loss from the east and north east facing balconies windows (at standing position) is minor relative to the existing arrangement, which already restricts views and potential improvements have been identified to potentially result from increased front and rear setbacks.
- In aim of further mitigating view loss obstructions at the rear of the property shown in **Figure 14**. Consent conditions have been recommended for the deletion of the rear balcony columns and the reduction of the upper level rear awning to a maximum depth of 1m.
- The bulk and scale of the proposed built form is considered to be reasonable in the context of the surrounding streetscape.
- The proposal has demonstrated an outcome that protects views across the front and rear boundaries of the site as demonstrated in above analysis. It is therefore considered that the proposal represents a skilful design that minimises the impacts of the development to the neighbouring properties.
- Strict compliance with the external wall height and building height controls would not provide for improved view sharing outcomes to neighbouring properties.
- It is not considered that a more skilful design could reduce view impacts without compromising the intent of the redevelopment of the site.

In conclusion, the proposal satisfies the aims and objectives for view sharing pursuant to Part C1, Section 5.6 of RDCP 2013, as well as the case law established by *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

**Clause 4.4 (External Wall Height) of Part C2, RDCP 2013**

Clause 4.4 specifies a maximum wall height in order to control the bulk and scale of development, complement the desirable streetscape outcome and achieve a suitable urban design outcome. The provisions of Part C2 of RDCP 2013 in relation to medium density residential development would permit an external wall of 8m.

Notwithstanding, the proposed development shall have a maximum external wall height ranging from 8.47m (western side) - 10.86m (eastern side) along the rear (northern) elevation as measured from existing ground level, with only the upper level resulting in a partial variation to the limit due to the crossfall towards the foreshore from the internal side boundary to the Major Street frontage.

The objectives of clause 4.4 are as follows:

- *To ensure that the building form provides for interesting roof forms and is compatible with the streetscape.*
- *To ensure ceiling heights for all habitable rooms promote light and quality interior spaces.*
- *To control the bulk and scale of development and minimise the impacts on the neighbouring properties in terms of overshadowing, privacy and visual amenity.*

The non-compliant wall height is a result of the the proposed upper floor level. Due to the slope and crossfall of the site, which experiences a fall of 2.88m from south to north and 2.39m from west to east, achieving compliance with the maximum wall height of 8m would be difficult, unless it was in the form of a non-habitable roof space.

Rather than provide the upper level as a non-habitable roof space which would severely compromise the internal amenity of the development, the Applicant has aimed to provide an upper level with reduced visual bulk by recessing the second level from the rear boundary to correspond with the established building line of the urban block, providing for high levels of façade articulation and incorporating material diversity to soften visual impacts. The proposed design adopts a flat roof, which will minimise the overall building height.

The selected materials for the upper level (glass curtain wall) will also minimise the perceived bulk of the addition as it presents as a visually recessive element in contrast to the lower levels of the development. These design measures will minimise the visual scale and bulk of the proposed building despite non-compliance with the building and external wall height controls. Overall, the architectural character and form of the proposal are considered to carry positive design merit.

Furthermore, the proposal shall appear as a three storey (3) storey development as viewed from Moore Street, which is not inconsistent with the existing streetscape and provides a mixture of two (2) and three (3) storey developments. The proposed addition has been sited to ensure there shall be no unreasonable impacts upon neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.

The Applicant has minimised the impact of the upper level by providing a significant setback to the north, ensuring that the proposed top storey is less visually prominent when viewed from the public domain and streetscape. In this regard, it is considered that the form and massing of development is respectful of the site topography and the surrounding development context of the immediate locality. Numeric non-compliance is considered acceptable in this instance.

Noting the above, the proposed development is consistent with the objectives of Part C2, Section 4.4 of RDCP 2013 and non-compliance with the external wall height control is acceptable.

**10. Conclusion**

That the application for the demolition of existing building and construction of a 3 storey residential flat building including 3x 3 bedroom units, and basement parking for 5 cars be approved (subject to conditions) for the following reasons:



- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013 and has satisfied the matters for consideration under Clause 4.6(4) for the contravention of the building height development standard.
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community and encourage housing affordability, whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.
- The proposed development shall not result in any unreasonable impacts upon the residential amenity of surrounding properties.

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## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Development Engineer

##### General Comments

No objections are raised to the proposal subject to the comments and conditions provided in this report.

##### Drainage Comments

The Planning Officer is advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The applicant is required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.

The stormwater must be discharged (by gravity) either:

- i. Directly into Council's underground drainage system located in Major Street via a new and/or existing kerb inlet pit; or
- ii. Directly into Council's underground drainage system located in Kildare Lane via a new and/or existing grated inlet pit.

Due to the location of the development within the "Randwick City Council On-Site Detention Map", on-site detention **is not** required.

##### Parking Comments

###### Under Part B7 of DCP

Parking Requirements for the future development will be assessed as per the following applicable parking rates specified in Part B7 of Randwick Council's Development Control Plan 2013.

- 1.5 spaces per 3-bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

Parking required under DCP =  $(3 \times 1.5) + 0$  (visitor)  
= 4.5

Parking proposed = 5 spaces

###### Bicycle Parking

For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units.

Bicycle Parking Required =  $3/2 + 3/10$   
=  $1.5 + 0.3$

Bicycle Parking proposed =  $3 + 1$  (visitor)

##### Parking Layout Comments

The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of Australian Standard 2890.1:2004, with the exception of

the parking aisle width proposed as 5.765m. To compensate for this shortfall, the basement car space widths have been proposed as 2.55m each to provide additional manoeuvring area.

### **Vehicle Crossing Comments**

The existing vehicle crossing is proposed to remain but will now service a new downgrade internal driveway into the basement resulting in a crest at the front property alignment. The existing grades across the Council are marginally steeper than present standards however there is no evidence of past scraping and an analysis of ground clearances using the B-85 design template in AS 2890.1 has revealed vehicles should not experience any scraping at the new crest at the front property boundary.

### **Undergrounding of site feed power lines**

At the ordinary Council meeting on the 27<sup>th</sup> May 2014 it was resolved that;

*Should a mains power distribution pole be located on the same side of the street and within 15m of the development site, the applicant must meet the full cost for Ausgrid to relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground UGOH connection.*

The subject **is** located within 15m of a power pole on the same side of the street hence the above clause **is** applicable. A suitable condition has been included in this report.

### **Waste Management Comments**

The submitted waste management plan has not been approved as part of this consent. An amended Waste Management Plan is required to be submitted submit to Council and have approved by Council's lead specialist strategic Waste prior to commencement of any works on the site.

The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and show how the on-going management of waste for the units will operate.

#### Comments on the number of Waste Bins

Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L bin per 2 units for normal garbage and 1 x 240L bin per 2 units for recycling.

i.e. Garbage/recycling Bins Required = Number of units/2 (rounded up to nearest whole number)

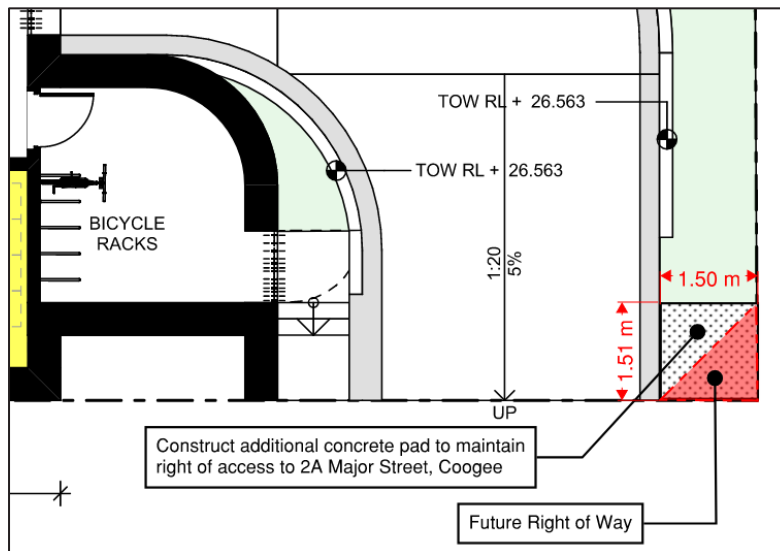
There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of 1 x 240L bins also be provided for FOGO.

Total Number of BINS required = 2 (normal) + 2 (recycling) + 1 (FOGO)  
= 5 x 240L BINS

### **Right of Access Comments**

Due to the need to maintain vehicle access into the neighbouring property at 2A Major Street the applicant is required to construct/maintain concrete pad at the northeastern corner of the site to provide and maintain right of access (refer to image below for location of concrete pad).

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A legal right of way is required to be registered on the title prior to occupation certificate to facilitate the above arrangement.

### Coastal Walk Footpath Comments

To maintain and improve pedestrian safety at Major Street/Kildare Lane, it is recommended that the applicant constructs a 1.3m wide footpath to provide direct access to the Coastal Walk. Council's landscape Officer has raised no objections to the removal of vegetation as required at this location.



## 1.2. Landscape Officer

### Landscape Comments

Inspection was undertaken on Wednesday 7<sup>th</sup> February 2024 with all vegetation found in the SEE (TRIM D05206592).

- Beyond the eastern site boundary on Council's Major Street verge are two mature, 6m tall *Lagunaria patersonia* (Norfolk Island Hibiscus), centrally across the width of the existing building, which display multiple, competing trunks and epicormic growth, and have also been

heavily modified by crown lifting (to provide sight lines/pedestrian access) as well as heavy topping away from the overhead services wires, so are regarded as being in poor condition, with a reduced lifespan even irrespective of this proposal.

They are recognised as a highly undesirable species in all instances as following flowering, their seed pods release fine 'fibreglass-like' fibres which are highly irritable to both humans and animals, so have not been planted by Council for decades, and are also listed as an exempt species in the DCP, meaning that when encountered on private property, they can be removed at any time, without requiring any form of consent.

Due to their small size and the setback to the site, demolition of the existing unit block and then piling/civil works for the basement level would unlikely threaten either tree; however, for the reasons given, as well as to provide more desirable species in keeping with such an environmentally sensitive zone as Gordons Bay Reserve nearby, conditions require their removal and replacement, wholly at the applicant's cost.

All other vegetation within the council's verge is of small size, insignificant or undesirable species, all will be removed where necessary as part of any external works and associated restorations.

The various small shrubs within the small courtyard fronting Moore Street are all insignificant and given their direct conflict with the works can be removed, along with all others elsewhere throughout the site.

The Landscaping Plan by Place Design Group dated April 2022 (Page 9) must be **amended** showing:

- a) The *Opuntia ficus-indica* (Barbary Fig/Prickly Pear) nominated in the Planting Schedule, it's use cannot be supported in such an environmentally sensitive zone immediately adjacent Gordons Bay Reserve, as this area contains remnant native coastal vegetation which Council directs significant time, funds and resources to maintaining and protecting. **This plant needs to be completely deleted** and replaced with more suitable coastal species.

To remove, stump grind and dispose of the two *Lagunaria patersonia* (Norfolk Island Hibiscus) within Council's Major Street verge, centrally across the width of the existing building due to being an undesirable/exempt species, which will then allow more desirable/beneficial local native coastal species to be provided in their place;

Council to supply and install 4 x 25 litre *Banksia seratta* (Old Man Banksia) street trees at the completion of all works, three trees will be planted back within the councils Major Street verge, first tree to be plotted, 5 metres south, of northern power pole, second and third trees will be plotted 8 metres apart, the fourth tree will be planted within the Moore Street Verge, measuring centrally adjacent the subject site, then measuring between the public footpath to the north and the Curb to its south.

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

Clause 4.6 - Height

30-32 Moore Street, Coogee

### **RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This updated Clause 4.6 variation request has been prepared to accompany the amended development application for the demolition of the existing structures on the site and the construction of a 3-storey residential flat building, basement car parking and associated landscaping works (including affordable housing) at 30-32 Moore Street, Coogee.

Clause 4.6 of the *Randwick LEP 2012* allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

#### **Clause 4.6 Exceptions to development standards**

- (1) The objectives of this clause are as follows:
  - (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.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General 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, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

#### **Development Standard to be Varied**

The proposal seeks a variation to the development standard contained within Clause 4.3 of the *Randwick LEP 2012* - maximum height of 9.5m, demonstrated on the LEP map in Figure 1 below.



Clause 4.6 - Height

30-32 Moore Street, Googee

Pursuant to Clause 4.3 of the RLEP2012, the site is subject to a maximum building height of 9.5m, with the proposal for a maximum height of 10.86m, representing a variation of 1.36m from the numerical height standard.



Figure 1: Building Height Map

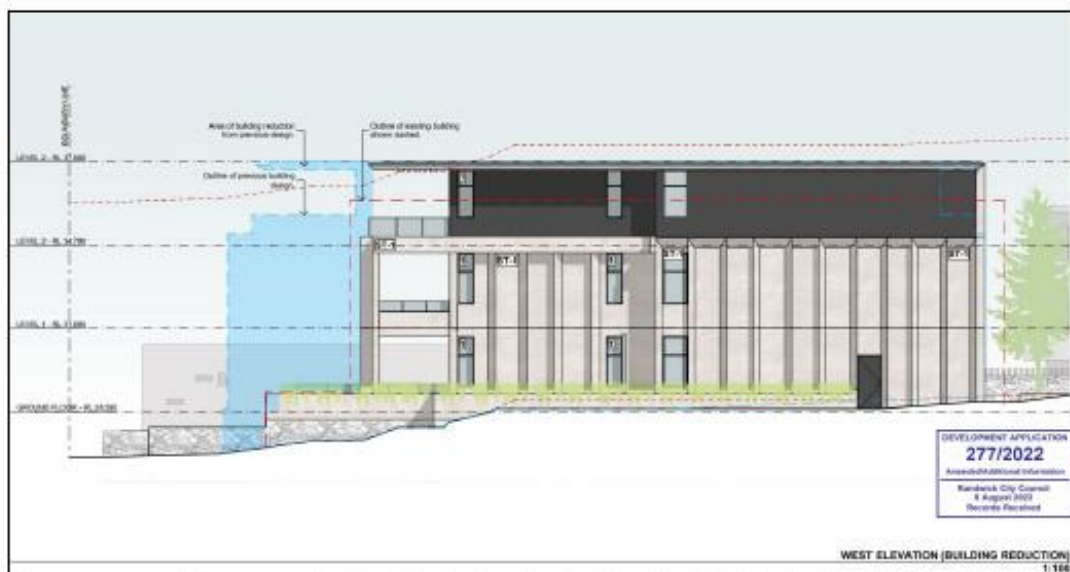


Figure 2: Excerpt of the western elevation, showing the reduction from the originally submitted application in blue and the reduction in bulk from the existing building limit on the site, along with the minor breach to the height limit

Clause 4.6 - Height

30-32 Moore Street, Coogee



Figure 2: Excerpt of the eastern elevation, showing the reduction from the originally submitted application in blue and the reduction in bulk from the existing building on the site, along with the minor breach to the height limit

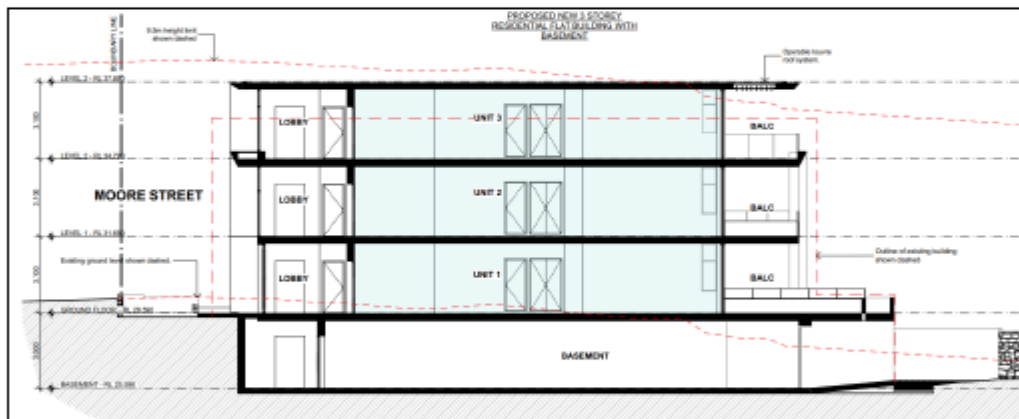


Figure 3: Height limit line demonstrating the minor variation in the longsection

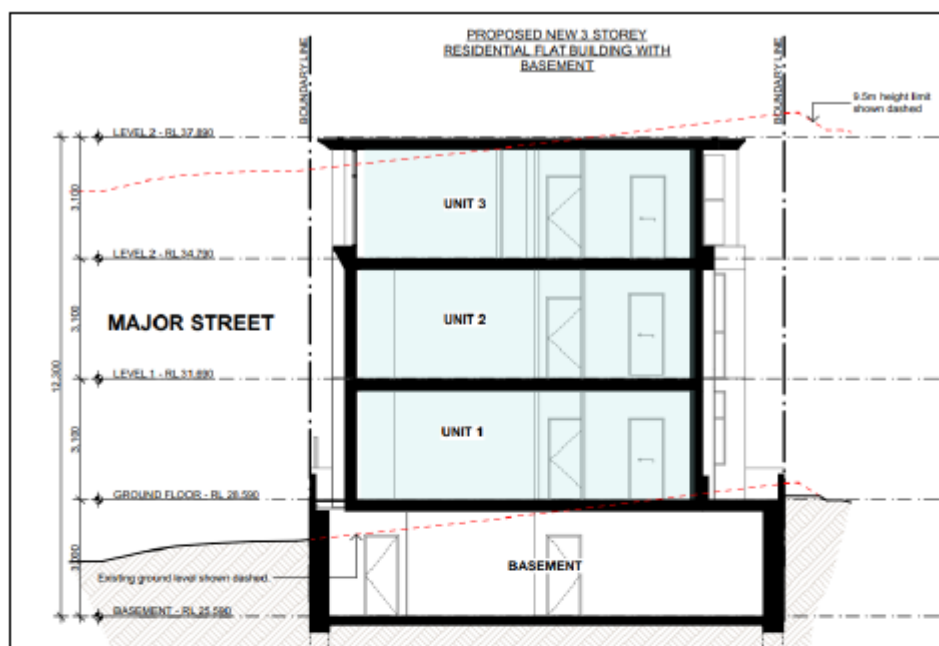


Figure 4: short section showing the minor variation to the height limit

#### Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

**Assessment:** It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal complies with the development standard's objectives and the R3 Medium Density Residential zone, indicated in the assessment in Table 1. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest, given it achieves the objectives for development within the zone, notwithstanding non-compliance.

#### Minor and isolated nature of the height variation

- The height variation is limited to a small portion of the roof overhang, as demonstrated in the accompanying sections and elevations plans. The proposed height variation will not result in additional overshadowing, view loss or visual bulk and scale impacts, noting the remainder of the proposed built form sits below the 9.5m height limit. Furthermore, the site will continue to present as a 3-storey residential flat building from the streetscapes, irrespective of the height variation.

Built form and streetscape

- The proposed height non-compliance is related to the rear portion of the upper roof overhang. Due to the recessed built form, particularly to the north, and the lightweight nature of the additional element, it does not represent an unreasonable or detrimental bulk to the building. It is reiterated that the additional bulk is not a constant element and that majority of the building is well below the maximum height limit. Notably, the RFB has a modest presentation to Moore Street and a suitable scale to Major Street. As demonstrated on the submitted elevations and sections, the non-compliant height varies following the gradient of the land that slopes down from the front to the rear of the site, and the maximum height measured refers to the suspended roof slab at the rear of the building, therefore being a discreet element.
- The three-storey scale of the building is compatible with the adjoining two-three-storey semi-detached dwellings at No. 26 and 28, which lies immediately to the west and the numerous residential flat buildings located along Moore Street to the west of the subject site, including the RFB at No. 20 Moore St. The three-storey scale is also consistent with the residential flat building to the east across Major Street at No. 5-7. The corner nature of the site ensures that there is an abundant separation between the lower density forms of development across the streets and lane adjoining the site. The lightweight and isolated nature in the height deviation ensures that the variation does not generate any inconsistency with the context of surrounding development described above. The confined location of the height extent, at the rear end of the building, ensures that the variation would be discreetly perceived in its context, being not visible from Moore Street and indiscernible from Major Street, as evident in the elevations above.



Figure 8: Aerial map showing the relationship of the site to the adjoining two-three storey (yellow) and three-storey (blue) forms which surround the subject site



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**Figure 9: The proposed 3-storey form will sit comfortably alongside the semi-detached dwellings immediately to the west of the subject site, noting the built form is below the height limit as viewed from Moore Street**

## Retention of solar access to neighbouring properties

- The portion of the height variation will not have a detrimental overshadowing impact onto adjoining neighbours beyond that of a compliant building envelope, ensuring that a minimum of 3 hours of sunlight access during the mid/winter will be maintained to living areas and private open spaces for immediate properties. Notably, the north-facing windows of the living rooms and private open space areas of the semi-detached dwelling at No. 26 and 28 are unaffected by the proposal and its additional height. Refer to the accompanying Shadow Diagrams prepared by the architects.
- The site orientation and corner nature of the site ensure retention of solar access to surrounding properties. The shadow diagrams show that the height variation is not responsible for any greater shadow impacts than a development with a compliant height, noting that the additional shadows generated by the breach of height to the rear of the building fall over on public domain. On this basis, the proposed height variation is not considered to generate any adverse or unreasonable shadow impacts.

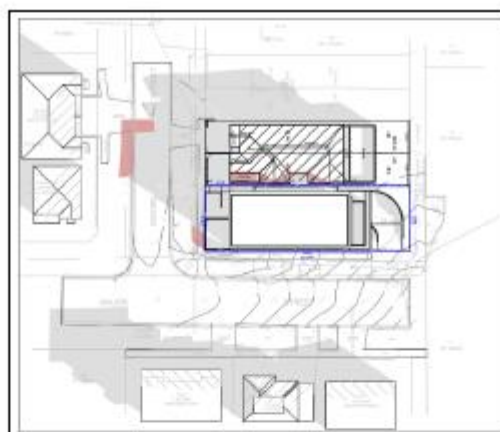


Figure 14: Shadow Diagram – 21 June 9am

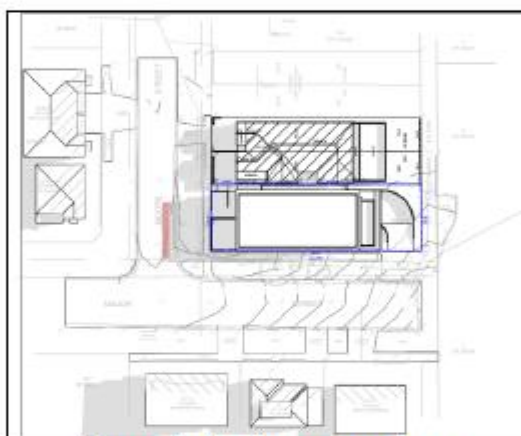


Figure 15: Shadow Diagram – 21 June 12pm

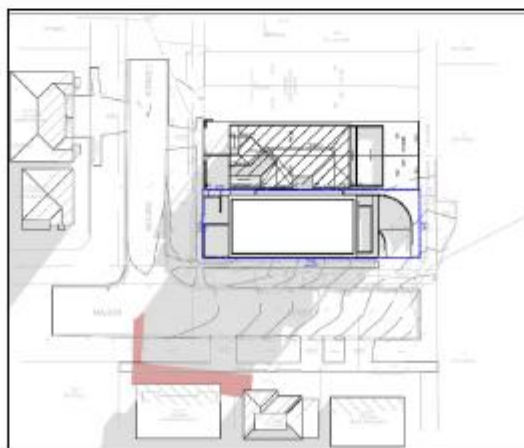


Figure 16: Shadow Diagram – 21 June 3pm



### View Impacts

- The proposed residential flat building has been designed and sited to enable a sharing of the coastal views and vistas towards Gordons Bay and the Pacific Ocean from surrounding neighbours. The proposed rear setback is setback further than the existing rear building line which ensures that the proposal does not obstruct any views from other properties within the block to the west (when looking east), as shown in the image below. Therefore, there will be no loss of view resulting from the height non-compliance to neighbouring properties and public domain beyond that of an entire compliant envelope. The coastal views from the western properties are thereby reasonably maintained.



Figure 20: Views from the western property at No. 20 Moore. Photo taken from the rear balcony on the second storey



Figure 21: Views from the western property at No. 20 Moore St. Photo taken from the rear balcony on the third storey noting the red dotted outline is the reduction in built form when compared with the existing building

**Retention of mutual privacy**

- The additional height does not generate any adverse privacy impacts given the substantial separation distance to surrounding properties to the east, which also have their primary openings towards the coast. The additional height is limited to the roof form over the northern balcony and does not contribute to any adverse privacy impacts. The recessed upper floor from the northern and eastern boundaries, combined with the delineating planter boxes which screen the POS from the adjacent dwellings and street views, effectively mitigates potential visual and acoustic privacy impacts. Detrimental noise and external lighting impacts are not expected due to the appropriate residential nature of the proposal. On this basis, the proposed height variation is not considered to generate any unreasonable privacy impacts.

**Absence of Impacts**

- The height variation is well integrated into the high-quality, articulated design of the proposal, which recess from the perimeter of the building and surrounding properties, ensuring that the built form will contribute positively to the locality. Compliance with the height development standard would preclude the dwelling of achieving higher level of private amenity with no unreasonable adverse impacts to neighbouring properties and public domain in regard to view sharing, solar access, visual and acoustic privacy, bulk, mass and scale. The proposal is considered to achieve positive outcome to the site and locality and is compatible with the sensitive context.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

**Table 1: Assessment Against the Objectives of the Development Standard and Land Use zone**

<b>Consistency with the objectives of the height standard in the LEP</b>	
<b>Objectives</b>	<b>Assessment</b>
4.3(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>As discussed above, the proposed height variation is associated with a development that is compatible with the size, bulk and scale of the desired future character of the locality.</p> <p>The proposed height variation associated with the 3-storey residential flat building will not be inconsistent with the desired future character as the 9.5m envisages a 3-storey scale of development. This is evidenced by the provision of a 3-storey RFB at No. 20 Moore St, to the west of the site that was approved under the same controls. Further along Moore St are numerous 3-storey residential developments. Therefore, the proposed built form, height bulk and scale are considered to be consistent and comparable with the existing and emerging developments in the locality. The spatial proportion of the building represents a positive outcome to the medium-density residential environment.</p> <p>The confined and lightweight nature of the height variation also ensures that the variation does not generate any inconsistency with the objectives of the standard.</p> <p>On this basis, it is considered that, despite the numeric non-compliance, the proposal will establish and maintain an appropriate relationship with the local area desirable character.</p>

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4.3(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item.	The proposed residential flat building is not located in a conservation area, is not near a heritage item and is not heritage listed. This objective is, therefore, not considered to be relevant to the proposed height assessment.
4.3(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	<p>The proposed height deviation does not compromise the achievement of the objectives of the height standard as the proposal maintains an adequate relationship with the neighbouring properties and public spaces in regard to solar access, visual and acoustic privacy, visual bulk, and sharing of views.</p> <p>The proposed additional height does not adversely affect the environmental amenity of neighbouring properties by the provision of adequate rear setback, lightweight and confined nature of the protrusion above the height standard. The roof overhang beyond the height limit will not generate any adverse impact on the amenity of existing and future surrounding residences, as demonstrated on the submitted architectural drawings and shadow diagrams.</p> <p>The lack of visual bulk impacts combined with the absence of adverse view impacts to surrounding properties and public space and no additional detrimental shadow to adjoining neighbours confirm that the proposed height non-compliance will be inconsequential to neighbouring amenity and public domain.</p> <p>Therefore, the height non-compliance will not be responsible for any unreasonable or adverse amenity impacts to neighbouring properties.</p>
<b>Consistency with the objectives of the R3 Medium Density Residential zone</b>	
<b>Objectives</b>	<b>Assessment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>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.</li> <li>To protect the amenity of residents.</li> <li>To encourage housing affordability.</li> <li>To enable small-scale business uses in existing commercial buildings.</li> </ul>	<p>The proposed residential flat building is permissible in the R3 Medium Density Residential zone and satisfies the objectives of the zone by improving housing choice and mix in proximity to nearby services and facilities within a medium-density residential environment where housing is in demand.</p> <p>The additional height is restricted to the roof overhang at the northern rear end of the building, noting that the height variation does not generate a built form that is inconsistent with the medium density residential environment, but is compatible with the existing and desired future character of the area in this part of Coogee.</p> <p>The built form is highly articulated and set in a landscape setting which also contributes to the achievement of a built form which will sit comfortably in its setting, despite the variation.</p> <p>Absence of amenity impacts from the height variation protects the amenity of surrounding properties which also satisfies the objectives.</p> <p>On this basis, the variation to the height limit does not generate any inconsistency with the zone objectives.</p>



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Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard*

**Assessment:** The assessment under the unreasonable and unnecessary section of this Clause 4.6 variation demonstrates that there are sufficient environmental planning grounds to justify varying the building height development standard in this instance.

- **Isolated drop in topography is responsible for the height variation-** the majority of the site has a consistent ground level, and the proposed height is compliant with the height limit for this component. The height variation is limited to the rear portion of the site where the ground level drops steeply in an isolated location. This particular aspect is considered to represent an environmental planning ground.
- **Absence of shadow impact from the height variation-** it is reiterated that the proposed height variation is not responsible for any greater shadowing than that of a building with a compliant height as the height variation occurs at the end of the building and the site is a corner lot with multiple frontages and substantial separation distance from surrounding properties. This portion of the built form does not generate any adverse or unreasonable shadow impact to any surrounding neighbour. This particular aspect is considered to represent an environmental planning ground.
- **Absence of view impacts from the height variation-** coastal views over Gordons Bay, headlands and the Pacific Ocean are available from the dwellings to the west. These highly valued views are not affected by the height variation given the lightweight nature of the height variation at the northern portion of the site and to the western façade, whilst the orientation and siting of surrounding buildings and their openings also assist in avoiding view impacts from the height variation. This particular aspect is considered to represent an environmental planning ground.
- **Compatibility with the character of the surrounding area is achieved despite the height variation-** the 3-storey scale of the built form is considered a high-quality and articulated design response. The height sits comfortably alongside its sole adjoining neighbour, being the 2-3-storey semi-detached dwellings to the west. The minor variation to the height limit is associated with a built form which is compatible with this existing built form as well as being compatible with numerous 3-storey flat buildings along both sides of Moore Street. This particular aspect is considered to represent an environmental planning ground.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.

#### Other Matters for Consideration

*4(a)(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*

**Assessment:** The above assessment demonstrates that the proposed height satisfies the objectives of the height standard and the R3 Medium Density Residential zone.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation.

*(5) In deciding whether to grant concurrence, the Director-General must consider:  
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed height variation allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.

The proposed height allows for the achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

Therefore, the proposed height is consistent with the State and Regional Policies, particularly urban consolidation principles, which seek to provide additional height and density near transport and established services.

#### Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

Nevertheless, the Court may wish to consider the concurrence requirements

*(b) the public benefit of maintaining the development standard*

**Assessment:** There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above.

Generally, as to concurrence, for the reasons outlined above – and particularly having regard to the site-specific nature of this clause 4.6 variation request – there is nothing about this proposed height variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development

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standard on this site. There are no other relevant matters requested to be taken into consideration before granting concurrence.

#### Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 30-32 Moore Street, Coogee, and it is requested to be looked upon favourably by the consent authority.



**Appendix 3: DCP Compliance Table****3.1 Section B6: Recycling and Waste Management**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>4.</b>	<b>On-Going Operation</b>		
	(iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.	Waste storage areas provided within basement level and screened from streetscape.	Yes
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.	Waste storage located away from habitable areas.	Yes
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.	Waste storage accommodated within enclosure to mitigate visual impacts.	Yes
	(vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).	Front waste area provided with presentation access for ease of presentation to secondary street frontage.	Yes
	(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.	Suitable storage afforded to all units within kitchens.	Yes
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.	Enclosures provided within a suitable area.	Yes

**3.2 Section B7: Transport, Traffic, Parking and Access**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>3.</b>	<b>Parking &amp; Service Delivery Requirements</b>		
	Car parking requirements: <ul style="list-style-type: none"> <li>1 space per 2 studios</li> <li>1 space per 1-bedroom unit (over 40m<sup>2</sup>)</li> <li>1.2 spaces per 2-bedroom unit</li> <li>1.5 spaces per 3 or more-bedroom unit</li> </ul>	Required = (3x) 3-bed units = 4.5 spaces 5 Spaces provided.	Yes

	<ul style="list-style-type: none"> <li>1 visitor space per 4 dwellings</li> </ul>		
	Motor cycle requirements: 5% of car parking requirement	Nil	Yes
<b>4. Bicycles</b>			
	Residents: <ul style="list-style-type: none"> <li>1 bike space per 2 units</li> </ul> Visitors: <ul style="list-style-type: none"> <li>1 per 10 units</li> </ul>	2 bike spaces required. Adequate storage available within basement for 5 bikes.	Yes

### 3.3 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.</b>	<b>Site Planning</b>		
<b>2.1</b>	<b>Site Layout Options</b>		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> <li>Two block / courtyard example</li> <li>T-shape example</li> <li>U-shape example</li> <li>Conventional example</li> </ul>	Building envelope and footprint provide as central conventional shape with articulation to side boundary and secondary street frontage.	Yes
<b>2.2</b>	<b>Landscaped open space and deep soil area</b>		
<b>2.2.1</b>	<b>Landscaped open space</b>		
	A minimum of 50% of the site area (470.2m <sup>2</sup> ) is to be landscaped open space.	235m <sup>2</sup> required.  144m <sup>2</sup> or 30% provided in compliance with Housing SEPP.	No, however acceptable on merit noting SEPP Housing prevails and due to improvement of existing landscaped area, and the proposed embellishments and new planting will soften the built form from the streetscape.
<b>2.2.2</b>	<b>Deep soil area</b>		
	(i) A minimum of 25% of the site area (117.55m <sup>2</sup> ) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	75m <sup>2</sup> or 15% provided in compliance with Housing SEPP.	No, however acceptable on merit refer to above.
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such	Area predominantly unencumbered in accordance with control provisions.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	as concrete, decks, terraces, outbuildings or other structures.		
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.	Improved landscaping included in proposal.	Yes
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.	Deep soil areas not encumbered by services or structures.	Yes
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Front and rear areas provided.	Yes
<b>2.3</b>	<b>Private and communal open space</b>		
<b>2.3.1</b>	<b>Private open space</b>		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	All open space orientated to northern rear elevation and directly accessible from living areas. Western elevation screened with planter beds via amended plans and recommended conditions.	Yes
	<b>For residential flat buildings:</b> (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m <sup>2</sup> and a minimum dimension of 2m.	Balconies and terraces provided with more than the minimum spatial requirement.	Yes
<b>2.3.2</b>	<b>Communal open space</b>		
	Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.	All dwellings afforded with private open space in excess of DCP minimum to offset nil provision of communal open space.	Yes - on merit.
<b>3.</b>	<b>Building Envelope</b>		
<b>3.1</b>	<b>Floor space ratio</b>		
	<b>Floor space ratio LEP 2012 = 0.75:1 / 1.06:1 with SEPP Housing Bonus</b>	Site area = 470.2m <sup>2</sup>	<b>Complies.</b>

D25/24

D25/24

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		Proposed FSR = 0.95:1	
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 = 9.5m</b>	Proposed = 10.86m	<b>Does not comply.</b> <i>See Clause 4.6 assessment.</i>
<b>3.3</b>	<b>Building depth</b>		
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	All apartments provided with aspects to all elevations to ensure high levels of internal amenity.	Yes
<b>3.4</b>	<b>Setbacks</b>		
<b>3.4.1</b>	<b>Front setback</b>		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street.</p> <p>Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>Front setback increased compared to existing to align with setback of adjoining semi-detached dwellings to the west of the site.</p> <p>900mm secondary street frontage with central articulation recess was reviewed and supported by the Design Excellence Panel in the context of the site and existing structures.</p>	Yes
<b>3.4.2</b>	<b>Side setback</b>		
	<p><b>Residential flat building</b></p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> <li>- 12.19m frontage: 2m</li> </ul> <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> <li>- Create articulations to the building facades.</li> <li>- Reserve open space areas and provide opportunities for landscaping.</li> <li>- Provide building separation.</li> </ul>	<p>Setback ranges from 1.2m at the front to 2.1m at the rear, with all windows incorporating visual privacy measures.</p> <p>Fire rating measures to be sought via consent conditions for the adoption of treatment measures.</p>	Yes – condition.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> <li>-Improve visual amenity and outlook from the development and adjoining residences.</li> <li>-Provide visual and acoustic privacy for the development and the adjoining residences.</li> <li>-Ensure solar access and natural ventilation for the development and the adjoining residences.</li> </ul> <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>		
<b>3.4.3</b>	<b>Rear setback</b>		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (5.77m) or 5m, whichever is the greater.	<p>7.2m to basement. 8.4m to ground. 11.1m to first and second level.</p> <p>The amended design has responded to the rear building alignment of the Moore Street urban block and has provided a design outcome that aligns with directly adjoining development to preserve view sharing between properties along the rear setback. Refer to view assessment in key issues above.</p>	Yes
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p>	<p>Ground plane interface provides pedestrian entrance to primary Moore Street frontage.</p> <p>Depth of facades limited to 10m, except for eastern elevation of level 2, which has been conditioned to provide an articulation recess in accordance with lower levels. Appropriate material finishes have</p>	Yes – condition.

D25/24



D25/24

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p>	<p>been proposed to prevent large expanses of blank walls to the public domain.</p> <p>No services are proposed with exposure to the public domain.</p>	
<b>4.12</b>	<b>Earthworks</b>		
	<p>Excavation and Backfilling</p> <p>i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification. (This does not apply to swimming or spa pool structures).</p> <p>ii) Any cut and fill outside the building footprints (for the purposes of creating useable communal or private open space) must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. The appropriate extent of site modification will be assessed on a merit basis.</p>	<p>The proposed cut is located within the proposed building footprint and does not substantially compromise landscaping and deep soil provisions. It is also noted that the excavation required to retain off street parking at the rear of the site will utilise the existing site slope to conceal parking within a subterranean area and results in an improved public domain outcome when compared with the existing hard stand and above ground garages. Accordingly, the proposed excavation works are supported on merit.</p>	Yes
<b>4.2</b>	<b>Roof design</b>		
	<p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory</p>	<p>Parapet roof form provided to reduce the overall bulk of the development. The proposed roof form is consistent with other medium density dwellings and residential flat buildings within the locality.</p> <p>No services or roof terrace proposed to be accommodated within the roof form.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> <li>-There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences.</li> <li>-The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences.</li> <li>-Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street.</li> <li>-Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building.</li> </ul> <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
<b>4.3</b>	<b>Habitable roof space</b>		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> <li>- Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation.</li> <li>- Has a maximum floor space of 65% of the storey immediately below.</li> <li>- Wholly contain habitable areas within the roof space.</li> </ul>	No habitable roof space within the proposal scope.	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> <li>- When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement.</li> <li>- Design windows to habitable roof space as an integrated element of the roof.</li> <li>- Submit computer generated perspectives or photomontages showing the front and rear elevations of the development.</li> </ul>		
<b>4.4</b>	<b>External wall height and ceiling height</b>		
	(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.	8.47m and 10.86m at rear elevation.	No - partial non-compliance related to site topography. Refer to key issues section above for merit assessment.
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	All apartments provided with 2.7m provision.	Yes
<b>4.5</b>	<b>Pedestrian Entry</b>		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Separate pedestrian and vehicular access provided to primary and secondary street frontages.	Yes
	(ii) Present new development to the street in the following manner: <ul style="list-style-type: none"> <li>- Locate building entries so that they relate to the pedestrian access network and desired lines.</li> <li>- Design the entry as a clearly identifiable element in the façade composition.</li> <li>- Integrate pedestrian access ramps into the overall building and landscape design.</li> <li>- For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible.</li> <li>- Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90</li> </ul>	Building entries and configuration retained to Moore and Major Street in accordance with existing layout to address both street frontages.  Adequate area available within front fence to accommodate mailboxes for each of the four dwellings.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>degrees to the street rather than along the front boundary).</p> <p>- Provide weather protection for building entries.</p> <p>Postal services and mailboxes</p> <p>(i) Mailboxes are provided in accordance with the delivery requirements of Australia Post.</p> <p>(ii) A mailbox must clearly mark the street number of the dwelling that it serves.</p> <p>(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.</p>		
<b>4.6</b>	<b>Internal circulation</b>		
	<p>(i) Enhance the amenity and safety of circulation spaces by:</p> <ul style="list-style-type: none"> <li>- Providing natural lighting and ventilation where possible.</li> <li>- Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors.</li> <li>- Allowing adequate space for the movement of furniture.</li> <li>- Minimising corridor lengths to give short, clear sightlines.</li> <li>- Avoiding tight corners.</li> <li>- Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor.</li> </ul>	Natural light and ventilation afforded to all lobby areas through glazing.	Yes
	<p>(ii) Use multiple access cores to:</p> <ul style="list-style-type: none"> <li>- Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites.</li> <li>- Articulate the building façade.</li> <li>- Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units.</li> </ul>	All units retain separate access from the lift core and fire stairwell. Noted that access is afforded for all dwellings to the front and rear boundary of the site.	Yes
	<p>(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.</p>	N/A only 3 units in building.	N/A
<b>4.7</b>	<b>Apartment layout</b>		
	<p>(i) Maximise opportunities for natural lighting and ventilation through the following measures:</p> <ul style="list-style-type: none"> <li>- Providing corner, cross-over, cross-through and double-</li> </ul>	All habitable rooms serviced with operable glazing and multi-aspect floor plates.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>height maisonette / loft apartments.</p> <ul style="list-style-type: none"> <li>- Limiting the depth of single aspect apartments to a maximum of 6m.</li> <li>- Providing windows or skylights to kitchen, bathroom and laundry areas where possible.</li> </ul> <p>Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.</p>		
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Open plan living area provided. Additional storage also afforded within circulation areas.	Yes
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Each dwelling has rear balconies and terraces orientated to the north.	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Kitchen separated from apartment access.	Yes
<b>4.8</b>	<b>Balconies</b>		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m <sup>2</sup> and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	All balconies meet minimum spatial requirements.	Yes
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m <sup>2</sup> . All ground floor apartments are to have direct access to a terrace.	Ground level terrace exceeds minimum spatial requirements.	Yes
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> </ul>	A condition of consent is recommended for a final colours and materials scheme to be submitted to Council for approval prior to the issue of a Construction Certification.	Complies, subject to condition.



DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> <li>- The use of natural stones is encouraged.</li> </ul> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>		
<b>5. Amenity</b>			
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access for proposed development</b>		
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	The Living areas and main POS are located to the north and shall receive adequate solar access.	Yes
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.	As above	Yes
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.	Not applicable - all units orientated to the north.	Yes
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.	Proposal will meet minimum requirement.	N/A
	<b>Solar access for surrounding development</b>		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	Due to the south-north orientation of the site, and the increased rear setback, the proposal shall not result in any unreasonable impacts upon the adjoining properties with regards to solar access. Refer to key	Yes
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>	<p>issues assessment above.</p>	
<b>5.2</b>	<b>Natural ventilation and energy efficiency</b>		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	Adequate operable glazing incorporated within proposal.	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Awning overhang provided to for partial shelter within POS and living room glazing.	Yes
	(iii) All habitable rooms must incorporate window openings to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	Living areas adjoin balconies and terraces.	Yes
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.	Development has incorporated sufficient windows to all internal areas for natural ventilation.	Yes
	(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.	Cross ventilation provided for all units.	Yes
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	All kitchens provided operable windows and sliding doors.	Yes
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.	Not applicable to subject proposal.	N/A
<b>5.3</b>	<b>Visual privacy</b>		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the</p>	<p>Refer to key issues assessment above. Privacy mitigation measures provided to western balcony edge and western elevation windows via consent conditions.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection</li> </ul>		
<b>5.4</b>	<b>Acoustic privacy</b>		
	<p>(i) Design the building and layout to minimise transmission of noise between buildings and dwellings.</p> <p>(ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities.</p> <p>(iii) Utilise appropriate measures to maximise acoustic privacy such as:</p> <ul style="list-style-type: none"> <li>- Double glazing</li> <li>- Operable screened balconies</li> <li>- Walls to courtyards</li> <li>- Sealing of entry doors</li> </ul>	<p>Living areas and open space retained to the rear northern elevation in accordance with established development pattern of the wider block. No acoustic amenity impacts identified to result from the proposed works scope.</p>	Yes
<b>5.5</b>	<b>View sharing</b>		
	<p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p>	<p>Amended design has addressed preliminary concerns for view loss of Gordons Bay within the rear setback. The revised outcome is supported subject to consent conditions for the deletion of balcony columns and the reduction of the upper level awning. Refer to key issues assessment above for detailed analysis.</p>	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		
<b>5.6</b>	<b>Safety and security</b>		
	(i) Design buildings and spaces for safe and secure access to and within the development.	No concerns for the retention of existing access configuration.	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Access paths afforded between garage and Unit's within the subject site.	Yes
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Glazing provided to both street frontages. Adequate ventilation afforded to all units.	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	No parking provided within basement and does not obstruct passive surveillance.	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Secure basement provided.	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Fencing and gate detailing provided for security.	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Capable of compliance.	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common	Adequate glazing provided to all frontages.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	areas, lobbies / foyers, hallways, open space and car parks.		
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Condition recommended.	Yes, subject to condition.
	(xi) Provide illumination for all building entries, pedestrian paths, and communal open space within the development.	Condition recommended.	Yes, subject to condition.
<b>6. Car parking and access</b>			
<b>6.1</b>	<b>Location</b>		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	Access retained from secondary frontage. No change to existing configuration.	Yes
<b>7. Fencing and Ancillary Development</b>			
<b>7.1</b>	<b>Fencing</b>		
	(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: - Steel post and chain wire - Barbed wire or other dangerous materials (iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.	Appropriate fence height and material shown on plan.	Yes
<b>7.6</b>	<b>Storage</b>		
	(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m <sup>3</sup> (b) 1-bedroom apartments – 6m <sup>3</sup> (c) 2-bedroom apartments –	Adequate area afforded for internal storage to each apartment.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	8m3 (d) 3 plus bedroom apartments – 10m3		
<b>7.7</b>	<b>Laundry facilities</b>		
	(i) Provide a retractable or demountable clothesline in the courtyard of each dwelling unit.	Adequate area afforded within balconies.	Yes
	(ii) Provide internal laundry for each dwelling unit.	Internal laundry facilities provided to each unit.	Yes
	(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.	Juliet balconies provided to front elevation.	Yes
<b>7.8</b>	<b>Air conditioning units:</b>		
	<ul style="list-style-type: none"> <li>Avoid installing within window frames. If installed in balconies, screen by suitable balustrades.</li> <li>Air conditioning units must not be installed within window frames.</li> </ul>	Condition recommended	Yes, subject to condition.

**Responsible officer:** Ferdinando Macri, Senior Environmental Planning Officer

**File Reference:** DA/277/2022

## Development Consent Conditions



D25/24

<b>Folder / DA No:</b>	DA/277/2022
<b>Property:</b>	30-32 Moore Street, Coogee NSW 2034
<b>Proposal:</b>	Demolition of existing building and construction of a 3 storey residential flat building including 3x 3 bedroom units, and basement parking for 5 cars.
<b>Recommendation:</b>	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

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:

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
A002 Demolition Plan - Issue Q	Arkhaus	24/07/2023	09/08/2023
A004 Site Plan Basement - Issue Q	Arkhaus	24/07/2023	09/08/2023
A005 Site Plan Ground Floor - Issue Q	Arkhaus	24/07/2023	09/08/2023
A101 Basement Plan - Issue Q	Arkhaus	24/07/2023	09/08/2023
A102 Ground Floor Plan - Issue Q	Arkhaus	24/07/2023	09/08/2023
A103 Level 1 Plan - Issue Q	Arkhaus	24/07/2023	09/08/2023
A104 Level 2 Plan - Issue Q	Arkhaus	24/07/2023	09/08/2023
A105 Roof Plan - Issue Q	Arkhaus	24/07/2023	09/08/2023
A201 East	Arkhaus	24/07/2023	09/08/2023

Elevation -Issue Q			
A202 North Elevation -Issue Q	Arkhaus	24/07/2023	09/08/2023
A203 West Elevation -Issue Q	Arkhaus	24/07/2023	09/08/2023
A204 South Elevation -Issue Q	Arkhaus	24/07/2023	09/08/2023
A205 External Finishes Schedule -Issue Q	Arkhaus	24/07/2023	09/08/2023
A301 Sections - Issue Q	Arkhaus	24/07/2023	09/08/2023
A302 Sections - Issue Q	Arkhaus	24/07/2023	09/08/2023

<b>BASIX / NatHERS Certificate No.</b>	<b>Dated</b>	<b>Received by Council</b>
1370190M_02	7 August 2023	9 August 2023
Class 2 Summary - 0006974220	7 August 2023	9 August 2023
Unit 1 – 0008398893-02	1 August 2023	9 August 2023
Unit 2 – 0008398927-02	1 August 2023	9 August 2023
Unit 3 – 0008398935-02	1 August 2023	9 August 2023

#### **Amendment of Plans & Documentation**

2. The approved plans and documents must be amended in accordance with the following requirements:
  - a) A BCA / fire report with final details of performance solutions, detailed fire safety measures in accordance with section 64 of the *Environmental Planning and Assessment Regulation 2021* and measures required to be implemented along the western façade must be submitted for the approval of Council's Coordinator of Compliance prior to the release of any construction certificate.
  - b) The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
    - Unit 1 – W02, W04 and W05.
    - Unit 2 – W13, W16 and W17.
    - Unit 3 – W27, W28 and W29.
  - c) The rear balcony columns between the ground floor terrace and underside of the second floor balcony must be deleted and engineered without the need for structural column support.
  - d) The second floor rear awning must be reduced to a maximum overhang / projection of 1m from the northern (rear) elevation façade.
  - e) The second floor (Unit 3) must incorporate a central façade recess that corresponds with the façade slot alignment provided on the ground and first floor adjacent to Bedroom 2. The roof form must also be coordinated in accordance with the façade recess.

- f) The western side of the Unit 3 second floor balcony is to incorporate a minimum 900mm deep landscape planter box consistent with the design of first floor planter box below.

The abovementioned additional information and plan amendments must be submitted for the approval of Council's Manager Development Assessment prior to the release of any construction certificate.

**Intercom / Locking Systems**

3. Control of visitor entry to all units and internal common areas by intercom and remote locking systems must be implemented as a part of the development.

**Lighting**

4. Adequate lighting for personal safety shall be provided in common and access areas including building entries and communal open space areas.

**Rooftop Plant**

5. No additional structures are to be located on the roof of the development, including any plant or equipment which is not permitted on the roof.

**Affordable Rental Housing Component**

6. Unit 1 shall be provided as affordable rental housing in accordance with the SEPP (Housing) 2021.
- a) The dwellings to be used for the purposes of 'affordable rental housing', as per the provisions of the SEPP (Housing) 2021 shall be used as such for at least 15 years from the date of the issue of the Occupation Certificate.
- b) The affordable rental housing component (secured for a minimum of 15 years) must be managed by a registered Community Housing Provider (CHP).
- c) The CHP must ensure compliance with the occupant restriction and others provisions of the regulatory code established through regulations under the Housing Act 2001.
- d) A restriction must be registered, before the date of the issue of the occupation certificate, against the title of the property, in accordance with Section 88E of the Conveyancing Act 1919 that will ensure that the requirements a. and b. are met and that the terms of restriction may not be varied without Council's consent.
- e) Prior to an Occupation Certificate being granted, evidence must be provided to Council demonstrating that the section 88E covenant has been registered on the title stating that the affordable rental housing component must be used for affordable rental housing and managed by a registered CHP.

**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.

#### **External Colours, Materials & Finishes**

8. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

#### **Section 7.12 Development Contributions**

9. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$3,470,359.00 the following applicable monetary levy must be paid to Council: \$34,703.60.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$\text{IDC} = \text{ODC} \times \text{CP2/CP1}$$

Where:

**IDC** = the indexed development cost

**ODC** = the original development cost determined by the Council

**CP2** = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment

**CP1** = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au).

#### **Long Service Levy**

6. Any required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, is to be forwarded to the Long Service Levy Corporation or the Council, prior to the issuing of a Construction Certificate, in accordance with the *Environmental Planning & Assessment Act 1979*.

*At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.*



**Security Deposit**

7. 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 with section 80A(6) of the *Environmental Planning and Assessment Act 1979*:

- **\$8,000.00** - 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.

**Sydney Water**

8. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water **Tap in™** online service, to determine whether the development will affect Sydney Water's waste water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The **Tap in™** service provides 24/7 access to a range of services, including:

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals
- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Change to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's **Tap in™** online service is available at:  
<https://www.sydneywater.com.au/tapin>

The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.

**Survey Infrastructure**

9. Prior to the issue of any Construction Certificate, documentary evidence must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and the Council that includes and addresses the following:

- (a) A letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI)

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identification number, stating that all investigations required under Surveyor-General's Direction No.11 have been made for the subject site.

- (b) The above letter is required to confirm if any survey infrastructure will be affected or impacted upon by the proposal. If no impact is identified this must be detailed by the Registered Land Surveyor.
- (c) In the event that survey infrastructure is identified as vulnerable or will be affected or impacted upon by the approved development, a copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject site, including all documentation submitted as part of that application (for example the survey mark audit schedule, strategy plan and strategy report) is required.

The applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace marks.

**Note:** Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate or deface any [survey mark](#) unless authorised to do so by the [Surveyor-General](#).

#### **Street Tree Removal & Installation**

10. The applicant shall submit a total payment of \$3,721.75 (GST inclusive), to cover Council's costs for the following:
  - (a) To remove, stump grind and dispose of the two *Lagunaria patersonia* (Norfolk Island Hibiscus) within Council's Major Street verge, centrally across the width of the existing building due to being an undesirable/exempt species, which will then allow more desirable/beneficial local native coastal species to be provided in their place;
  - (b) Council to supply and install 4 x 25 litre *Banksia seratta* (Old Man Banksia) street trees at the completion of all works, three trees will be planted back within the councils Major Street verge, first tree to be plotted, 5 metres south, of northern power pole, second and third trees will be plotted 8 metres apart, the fourth tree will be planted within the Moore Street Verge, measuring centrally adjacent the subject site, then measuring between the public footpath to the north and the Curb to its south.

This fee must be paid into **Tree Amenity Income** at the Cashier on the Ground Floor of the Administrative Centre **prior to a Construction Certificate being issued for the development.**

**The applicant must contact Council's Landscape Development Officer on 9093-6633 (quoting the receipt number) AND GIVING UP TO SIX WEEKS NOTICE to arrange for removal/and replacement.**

**After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's Central Area Tree Preservation & Maintenance Coordinator on 9093-6728.**

#### **Telecommunications infrastructure**

11. Prior to the issue of a Construction Certificate in connection with this development, the developer (whether or not a constitutional corporation) is to

provide evidence satisfactory to the Principal Certifier that arrangements have been made for:

- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose, and;
- (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

NOTE: Real estate development project has the meanings given in section 372Q of the Telecommunications Act.

**REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE**

The following conditions of consent must be complied with before a *Construction Certificate* is issued 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 construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

**Building Code of Australia & Fire Safety**

12. 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.

13. 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 *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
14. A copy of the Construction Certificate, the approved plans and development 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.
15. All new building work (including alterations, additions, fit-out work and fire safety works) are to be carried out in accordance with the relevant provisions of the Building Code of Australia (BCA) and details are to be included in the Construction Certificate, to the satisfaction of the Principal Certifier.

**Access & Facilities**

16. Access and/or facilities for people with disabilities must be provided to all new building work in accordance with any relevant provisions of the Building Code of Australia Disability (Access to Premises – Buildings) Standards 2010, to the satisfaction of the Principal Certifier.

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**Structural Certification**

17. A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the Principal Certifying Authority. A copy of which is to be provided to Council with the Construction Certificate.

**BASIX Requirements**

18. In accordance with section 4.17 (11) of the Environmental Planning & Assessment Act 1979 and the Environmental Planning & Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.

The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.

**Traffic conditions**

19. Adequate provisions are to be made to provide pedestrian visibility and safety. All new walls (and/or landscaping) adjacent to vehicular crossings should not exceed a height of 600mm above the internal driveway level for a distance of 1.5m within the site or new walls (including landscaping) should splayed 1.5 metres by 1.5 metres. Details of compliance, to the satisfaction of the Principal Certifier, are to be included in the construction certificate documentation.
20. The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.

**Design Alignment levels**

21. The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be:

- **Match the back of the existing footpath along the full site frontage.**

The design alignment levels at the property boundary as issued by Council and their relationship to the footpath must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6888.

22. The above alignment levels and the site inspection by Council's Development

Engineering Section have been issued at a prescribed fee of **\$2318** calculated at **\$60.00** (as of 1<sup>st</sup> July 2023) per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

23. The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.

The height of the building must not be increased to satisfy the required driveway gradients.

**Stormwater Drainage & Flood Management**

24. The building, including building footings, are to be designed to ensure that they will not be adversely affected by stormwater, floodwater and/or the water table.

All proposed footings located adjacent to drainage easements shall either be:

- a) Founded on rock, or;
- b) Extended below a 30 degree line taken from the level of the pipe invert at the edge of the drainage reserve/easement (angle of repose).

Structural details demonstrating compliance with this condition shall be submitted with the construction certificate application.

The footings must be inspected by the applicant's engineer to ensure that these footings are either founded on rock or extend below the "angle of repose". Documentary evidence of compliance with this condition is to be submitted to the Principal Certifier prior to proceeding to the subsequent stages of construction.

25. Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the Principal Certifier. The drawings and details shall include the following information:

- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
- b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
- c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
  - i. Roof areas
  - ii. Paved areas
  - iii. Grassed areas
  - iv. Garden areas



- e) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
- f) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
- g) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.

26. The site stormwater drainage system is to be provided in accordance with the following requirements;

- a) The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of this consent, to the satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.
- b) The stormwater must be discharged (by gravity) either:
  - i. Directly into Council's underground drainage system located in Major Street via a new and/or existing kerb inlet pit; or
  - ii. Directly into Council's underground drainage system located in Kildare Lane via a new and/or existing grated inlet pit.
- c) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.  
  
The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.
- d) If connecting to Council's underground drainage system, a reflux valve shall be provided (within the site) over the pipeline discharging from the site to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system.
- e) Generally, all internal pipelines must be capable of discharging a 5% AEP (1 in 20 year) storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
- f) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.

Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:

- The base of the pit being located a minimum 300mm under the invert level of the outlet pipe.
- The pit being constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent).
- The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar).
- Provision of a sign adjacent to the pit stating, "This sediment/silt arrestor pit shall be regularly inspected and cleaned".

*Sketch details of a standard sediment/silt arrestor pit may be obtained from Council's Drainage Engineer.*

- g) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

*(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).*

- h) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
- i) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.

**Site seepage**

27. The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:

- a) Sub-soil drainage must not be connected or discharged directly or indirectly to Council's street gutter.
- b) Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).

- c) Sub-soil drainage systems (if provided) must comply with one or more of the following requirements:
  - i. The system may be connected directly to Council's underground drainage system (but only with the prior written approval of Council, as required under the *Roads Act 1993*).
  - ii. Any sub-soil drainage systems must be restricted from entering the basement areas of the building and the stormwater drainage system, by tanking/waterproofing the basement areas of the building.
  - iii. Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.
- d) Details of the proposed stormwater drainage system including methods of sub-soil drainage, tanking/waterproofing (as applicable) must be prepared or approved by a suitably qualified and experienced *Professional Engineer* to the satisfaction of the Principal Certifier and details are to be included in the construction certificate. **A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier**

#### **Waste Management**

28. The submitted waste management plan has not been approved as part of this consent. An amended Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Director of City Planning.

The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development.
- Demolition and construction waste, including materials to be re-used or recycled.
- Details of the proposed recycling and waste disposal contractors.
- Waste storage facilities and equipment.
- Access and traffic arrangements.
- The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.

*Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at: [https://www.randwick.nsw.gov.au/data/assets/pdf\\_file/0007/22795/Waste-Management-Plan-Guidelines.pdf](https://www.randwick.nsw.gov.au/data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf)*

#### **Landscape Plans**

29. The Landscape Plan by Place Design Group dated April 2022 (Page 9) must be amended to now comply with the following requirements:

- a) The selection of *Opuntia ficus-indica* (Barbary Fig/Prickly Pear) the Planting Schedule cannot be supported in such an environmentally sensitive zone immediately adjacent Gordons Bay Reserve, as this area contains remnant native coastal vegetation which Council directs significant time, funds and resources to maintaining and protecting. **This plant needs to be completely deleted** and replaced with more suitable coastal species;
  - b) Be revised where necessary to now be consistent with the current set of architectural plans by Arkhaus, issue Q, dated 24/07/23, relating to areas such as the basement ramp and eastern side setback.
30. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the amended scheme, submitted for the Construction Certificate, complies with the requirements specified above, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.
- Public Utilities**
31. A *Public Utility Impact Assessment* must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.
- The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.
- Undergrounding of Site Power**
32. Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole on the corner of Major Street and Moore Street. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

The following conditions of consent must be complied with prior to the commencement of any works on the site. The necessary documentation and information must be provided to the Council or the 'Principal Certifier' (PC), as applicable.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021* and to provide reasonable levels of public health, safety and environmental amenity.

**Certification, PCA & other Regulatory Requirements**

33. Prior to the commencement of any building works, the following requirements must be complied with:
- a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.
  - b) 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**.

- c) a *Principal Certifier* (PC) must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; 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*; and
- e) at least two days notice must be given to the Council, in writing, prior to commencing any works; and
- f) the relevant requirements of the *Home Building Act 1989* (as applicable) must be complied with and details provided to the Principal Certifier and Council.

#### **Demolition Work & Removal of Asbestos Materials**

34. Demolition work must be carried out in accordance with the following requirements:

- a) Demolition work must be carried out in accordance with Australian Standard, AS2601 (2001) - The Demolition of Structures and a Demolition Work Plan is required to be developed and implemented to the satisfaction of the Principal Certifier prior to commencing any demolition works.
- b) The demolition, removal, storage and disposal of any materials containing asbestos must be carried out in accordance with the relevant requirements of WorkCover NSW, Council's Asbestos Policy and the following requirements:
  - A licence must be obtained from WorkCover NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> of bonded asbestos (i.e. fibro)
  - Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* & relevant Regulations
  - A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress"
  - A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist) upon completion of the asbestos removal works, which is to be submitted to the Principal Certifier and Council prior to issuing an Occupation Certificate.

*A copy of Council's Asbestos Policy is available on Council's web site at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.*

#### **Demolition & Construction Waste Plan**

35. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development.

The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant



guidelines and pro-forma WMP forms can be obtained from Council's Customer Service Centre or by telephoning Council on 1300 722 542.

Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.

#### **Dilapidation Reports**

36. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person, in the following cases:

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the *zone of influence* of the footings of any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- new dwellings or additions to dwellings sited up to shared property boundaries (e.g. additions to a semi-detached dwelling or terraced dwellings);
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- as otherwise may be required by the *Principal Certifier*.

The dilapidation report shall include details of the current condition and status of any dwelling (including the attached property at No. 64 Coogee Bay Road, Randwick), associated garage or other substantial structure located upon the adjoining premises and shall include relevant photographs of the structures, to the satisfaction of the *Principal Certifier*.

The dilapidation report must be submitted to the Council, the *Principal Certifier* 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 Noise & Vibration**

37. Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant provisions of the *Protection of the Environment Operations Act 1997* must be satisfied at all times.
38. Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management strategies.

A *Construction Noise and Vibration Management Plan*, prepared in accordance with the DECC Construction Noise Guideline, by a suitably qualified person is to be developed and implemented throughout the works, to the satisfaction of the Council. A copy of the plan must be provided to the Council and Principal Certifier prior to the commencement of site works.

#### **Public Utilities**

39. 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.

40. 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.

**Construction Traffic Management**

41. An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Major Street or Moore Street for the duration of the demolition & construction works.

The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.

The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.

42. A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.

The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:

- A description of the demolition, excavation and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements
- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials
- Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
- Provision for loading and unloading of goods and materials
- Impacts of the work and vehicular movements on the road network, traffic and pedestrians
- Proposed hours of construction related activities and vehicular movements to and from the site
- Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority)

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- Any activities proposed to be located or impact upon Council's road, footways or any public place
- Measures to maintain public safety and convenience

*The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.*

43. Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.

All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times.

#### **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 & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021* and to provide reasonable levels of public health, safety and environmental amenity during construction.

#### **Building Inspection Requirements**

44. The works must be inspected by the *Principal Certifier*, in accordance with sections 109 E (3) of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning & Assessment Regulation 2021*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

#### **Excavations & Support of Adjoining Land**

45. In accordance with the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning & Assessment Regulation 2021*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Retaining walls, shoring or piling must be provided to support land which is excavated in association with the erection or demolition of a building, to prevent the movement of soil and to support the adjacent land and buildings, if the soil conditions require it. Adequate provisions are also to be made for drainage.

Retaining walls, shoring, or piling must be designed and installed in accordance with appropriate professional standards and the relevant requirements of the Building Code of Australia and Australian Standards. Details of proposed retaining walls, shoring or piling are to be submitted to and approved by the Principal Certifier for the development prior to commencing such excavations or works.

#### **Site Signage**

46. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:

- name, address, contractor licence number and telephone number of the *principal 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".

**Permitted Working Hours**

47. 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"> <li>• Monday to Friday - 7.00am to 5.00pm</li> <li>• Saturday - 8.00am to 5.00pm</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Excavating or sawing of rock, use of jack-hammers, pile-drivers or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 5.00pm</li> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
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"> <li>• Monday to Saturday - No time limits (subject to column 1)</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> <li>• Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

*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 Site Management**

48. Public health, safety and convenience must be maintained at all times during demolition and building works and the following requirements must be complied with at all times:

- a) A sign must be provided and maintained in a prominent position throughout the works, which contains the following details:

- name, address, contractor licence number and telephone number of the *principal 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".
- b) The roadway, footpath and nature strip must be maintained in a good, safe condition and free from any obstructions, trip hazards, materials, soils or debris at all times. Any damage caused to the road, footway or nature strip must be repaired immediately, to the satisfaction of Council.
- c) Building materials, sand, soil, waste materials, construction equipment or other materials or articles must not be placed upon the footpath, roadway or nature strip at any time and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
- d) Bulk bins, waste containers or other articles must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container or other articles in a public place can be made to Council's Building Services section.
- e) During demolition and construction, sediment laden stormwater run-off shall be controlled using the sediment control measures outlined in the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

Details of the proposed sediment control measures are to be detailed in the *site management plan* which must be submitted to the Principal Certifier and Council prior to the commencement of any site works. The sediment and erosion control measures must be implemented prior to the commencement of any site works and be maintained throughout construction. A copy of the plan is to be maintained on-site and be made available to Council officers upon request.

- f) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding (having a minimum height of 1.5m) is to be provided to protect the public. Temporary site fences are to 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. If necessary, an overhead (B Class type) hoarding may be required to protect the public or occupants of the adjoining premises from falling articles or materials.

*If it is proposed to locate any site fencing, hoardings or items upon any part of the footpath, nature strip or any public place, a Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services department beforehand. Details and plans are to be submitted with the application, together with payment of the weekly charge in accordance with Council's adopted Pricing Policy.*

- g) 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.

- h) A Road / Asset Opening application must be submitted to and be approved by 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.

All works within or upon the road reserve, footpath, nature strip or other public place are to be completed to the satisfaction of Council, prior to the issuing of an occupation certificate for the development. For further information, please contact Council's Road / Asset Opening Officer on 9093 6939.

#### **Dust Control**

49. During demolition excavation and construction works, dust emissions must be minimised, so as not to result in a nuisance to nearby residents or result in a potential pollution incident.

Adequate dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.

*Dust control measures and practices may include:-*

- ☐ *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*
- ☐ *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- ☐ *Installation of a water sprinkling system or provision hoses or the like.*
- ☐ *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*
- ☐ *Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.*
- ☐ *Landscaping and revegetation of disturbed areas.*

#### **Building Encroachments**

50. There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.

#### **Site Seepage & Stormwater**

51. Details of the proposed connection and or disposal of any site seepage, groundwater or construction site stormwater to Council's stormwater drainage system must be submitted to and approved by Council's Development Engineering Coordinator, prior to commencing these works, in accordance with section 138 of the *Roads Act 1993*.

Details must include the following information:

- Stormwater/De-Watering Management Plan (prepared by a suitably qualified Environmental Consultant);
- Detailed plans and specifications;
- Hydraulic engineering details of the proposed disposal/connection of groundwater or site stormwater to Council/s drainage system
- Volume of water to be discharged
- Location and size of drainage pipes

- Duration, dates and time/s for the proposed works and disposal
- Details of water quality and compliance with the requirements of the *Protection of the Environment Act 1997*
- Details of associated plant and equipment, including noise levels from the plant and equipment and compliance with the requirements of the *Protection of the Environment Act 1997* and associated Regulations and Guidelines
- Copy of any required approvals and licences from other Authorities (e.g. A water licence from the Department of Planning/Department of Water & Energy).
- Details of compliance with any relevant approvals and licences

**Road/Asset Opening Permit**

52. Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:
- a) 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.
  - b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
  - c) Relevant *Road / Asset Opening Permit* fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place,
  - d) The owner/developer 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 *final occupation certificate* or occupation of the development (whichever is sooner).
  - e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
  - f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
  - g) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
  - h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
  - i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.

- j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
- k) The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

#### **Roadway**

53. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

#### **Traffic Management**

54. 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.
55. All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 - Traffic Control Devices for Works on Roads, at all times.
56. All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

#### **Stormwater Drainage**

57. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.
- The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.
58. Any required dewatering must be monitored by the consulting Engineer/s to the satisfaction of the Principal Certifier and documentary evidence of compliance with the relevant conditions of consent and dewatering requirements must be provided to the Principal Certifier and the Council.
- The site conditions and fluctuations in the water table are to be reviewed by the consulting Engineer prior to and during the excavation/construction process, to ensure the suitability of the excavation and dewatering process and compliance with Council's conditions of consent.
59. A separate written approval from Council is required to be obtained in relation to any proposed discharge of groundwater into Council's drainage system external to the site, in accordance with the requirements of Section 138 of the Roads Act 1993.

#### **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'.

*Notes: An Occupation Certificate must be obtained from the PC prior to occupation and use of the premises.*

*For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.*

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

**Occupation Certificate Requirements**

60. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation or use of the development encompassed in this development consent (including alterations, additions and 'fit-out' work to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.

An Occupation Certificate must not be issued for the development if the development is inconsistent with the development consent. The requirements of the *Environmental Planning & Assessment Act 1979* and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

**BASIX Requirements & Certification**

61. In accordance with the *Environmental Planning & Assessment Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that any relevant BASIX commitments and requirements have been satisfied.

Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the *Principal Certifier* and Council upon issuing an Occupation Certificate.

**Fire Safety Certificate Requirements**

62. Prior to issuing an interim or final Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2021*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy of the *Fire Safety Certificate* and *Fire Safety Schedule* must also be forwarded to Fire & Rescue NSW.

**Noise Emissions - Certification**

63. Where plant and equipment is installed in the premises (e.g. air-conditioners, mechanical ventilation/exhaust systems or refrigeration motors etc), a written report or statement must be obtained from a suitably qualified and experienced consultant in Acoustics.
64. The report/statement must demonstrate and confirm that noise and vibration from the development satisfies the relevant provisions of the *Protection of the*

*Environment Operations Act 1997*, NSW Office of Environment & Heritage/Environment Protection Authority Noise Control Manual & Industrial Noise Policy, Council's conditions of consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources and a copy of the report/statement must be provided to Council prior to the issue of an Occupation Certificate.

#### **Stormwater Drainage**

65. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.

#### **Waste Management**

66. Adequate provisions are to be made within the premises for the storage, collection and disposal of residential waste and recyclable materials, to the satisfaction of Council, prior to the release of any Occupation Certificate.

#### **Council's Infrastructure, Vehicular Crossings & Road Openings**

67. The owner/developer must meet the full cost for a Council approved contractor to:
- Re-construct kerb and gutter for the Major Street site frontage except opposite the vehicular entrance and exit points, to Council's specifications and requirements.
  - Carry out a full depth, 1.0m wide, road construction in front of the kerb and gutter along the Major Street site frontage, to Council's specifications and requirements.
  - Re/construct a 1.3m wide concrete footpath along the full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
  - Construct minimum 1.3m wide footpath at the northern end of Major Street between the Coastal Walk and the council crossing immediately behind the kerb line.
68. Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer 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, vehicular crossing, 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.
69. 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 with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- 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.
70. The naturestrip upon Council's footway shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu Turf or similar. Such works shall be installed prior to the issue of a final Occupation Certificate.

#### **Service Authorities**

##### **Survey Infrastructure – Restoration**

71. Where a Surveyor-General's Approval for Survey Mark Removal has been granted by NSW Spatial Services, documentary evidence of restoration of the removed survey mark must be prepared by a Registered Surveyor and submitted to the appointed certifying authority and the Council prior to the issue of an occupation certificate.

The documentary evidence is to consist of a letter Signed by a Registered Land Surveyor confirming that all requirements requested under the Surveyor-General's Approval for Survey Mark Removal under condition "Survey Infrastructure – Identification and Recovery" have been complied with.

##### **Sydney Water**

72. 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](https://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 Certifier and the Council prior to the issuing of an Occupation Certificate or Subdivision Certificate, whichever occurs first.

##### **Carparking**

73. The proposed carpark shall be finished in a manner fit for its intended use. The car spaces shall be formalised with line-marking and numbering/labelling with such works completed prior to the issuing of an occupation certificate.

##### **Undergrounding of Power**

74. The Principal Certifier shall ensure that power supply to the completed development has been provided as an underground (UGOH) connection from the

nearest mains distribution pole at the corner of Major Street and Moore Street. All work is to be to the requirements and satisfaction of Ausgrid and at no cost to Council.

NOTE: Any private poles must be removed prior to the issuing of an occupation certificate.

#### **Stormwater Drainage**

75. A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):

- Finished site contours at 0.2 metre intervals;
- The location of any detention basins/tanks with finished surface/invert levels;
- Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
- Volume of storage available in any detention areas;
- The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
- Details of any infiltration/absorption systems; and
- Details of any pumping systems installed (including wet well volumes).

76. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.

77. The applicant shall submit to the Principal Certifier and Council certification from a suitably qualified and experienced professional engineer, confirming that the walls of the basement have been fully tanked and waterproofed to prevent the entry of all groundwater in the basement level/s and that any required sub-soil drainage systems have been provided in accordance with the conditions of this consent. There must be no dry weather seepage/groundwater flows discharging to Council's street gutter.

#### **Waste Management**

78. Prior to the occupation of the development, the owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services for the premises.

79. The waste storage areas shall be clearly signposted.

#### **Creation of Right of Way**

80. Prior to occupation of the development, a splayed 1.5m x 1.5m (approximate) Right of Way shall be created on the title of the subject property at the northeastern corner to maintain vehicle access into the neighbouring property at 2A Major Street.

#### **Landscaping Certification**

81. Prior to any Occupation Certificate, certification from a qualified professional in

the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the **AMENDED** Landscape Plans by Place Design Group, Pages 1-9 dated April 2022, and any relevant conditions of consent.

82. Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
83. The nature-strip upon Council's footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

**Street and/or Sub-Address Numbering**

84. 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.

If this application results in an additional lot, dwelling or unit, 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 an occupation 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.*

**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 & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

**Fire Safety Statements**

85. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2021*.

The *Fire Safety Statement* must be provided on an annual basis, each year following the issue of the *Fire Safety Certificate* and other period if any of the fire safety measures are identified as a *critical fire safety measure* in the *Fire Safety Schedule*.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a properly qualified person and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed in the building entrance/s at all times and a copy must also be forwarded to Fire & Rescue NSW.

**Environmental Amenity**

86. The use and operation of the premises shall not give rise to an environmental health or public nuisance, cause a vibration nuisance or, result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations.
87. The proposed use and operation of the premises (including all plant and equipment) must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background ( $L_{A90}$ ), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an  $L_{Aeq, 15 \text{ min}}$  and adjusted in accordance with the NSW Office of Environment & Heritage/Environment Protection Authority Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).

**External Lighting**

88. All external lighting is to comply with the requirements of the Australian Standard AS/NZS 4282: Control of the obtrusive effects of outdoor lighting.

**Use of parking spaces**

89. The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

**Landscaping**

90. The rear balcony and terrace western planter beds are to be maintained with a maximum landscape planting height of approximately 1.5m above finished floor level in perpetuity. These planting zones cannot be removed without the consent of Council.

D25/24

## Development Application Report No. D26/24

**Subject:** 54B Bream Street, Coogee (DA/695/2023)

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### Executive Summary

<b>Proposal:</b>	Change of use at the lower ground floor level from storage area to gym (being an extension of the existing ground floor gym) and associated internal alterations and additions.
<b>Ward:</b>	East Ward
<b>Applicant:</b>	Our Gym Pty Ltd
<b>Owner:</b>	ACMP Holdsworth Pty Ltd
<b>Cost of works:</b>	\$24,000.00
<b>Reason for referral:</b>	10 or more unique submissions by way of objection were received.

### 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/695/2023 for change of use at the lower ground floor level from storage area to gym (being an extension of the existing ground floor gym) and associated internal alterations and additions, at No. 54B Bream Street, COOGEE NSW 2034, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

-  RLPP Dev Consent Conditions (commercial) - DA/695/2023 - 54B Bream Street, COOGEE NSW 2034 - DEV - Randwick City Council

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D26/24



Subject Site

Submissions received

North

Locality Plan

Note: 17x unique submissions were received, 3x by way of support and 14x by way of objection, of which are within the wider area which are not identified in the above map as well as without an address.

1. Executive Summary

The application is referred to the Randwick Local Planning Panel (RLPP) as more than ten (10) unique submissions by way of objection were received.

The proposal seeks development consent change of use at the lower ground floor level from storage area to gym (being an extension of the existing ground floor gym) and associated internal alterations and additions at 54B Bream Street, Coogee.

The proposed development is for an ancillary gym area associated with warm up/recovery activities in relation to the main gym use on the ground floor area above (currently occupied by CrossFit Coogee). The hours of operation and patron numbers are consistent with that which was approved under the previous Development Application No. DA/936/2015, being Monday to Friday: 5.45am to 9.00pm; Saturday and Sunday 8.00am to 7.00pm; and a maximum number of 15 persons at any one time.

The key issues associated with the proposal relate to the loss of common storage area and use of the lower gym area, the number of patrons, fire safety and accessibility, tenancy access, acoustic privacy, and traffic and parking. Each of these issues have been assessed in detail within the Key Issues section of the report.



The assessment of the application has found that the proposed development shall not result in any unreasonable impacts upon the amenity of adjoining and surrounding properties mainly as no additional increase in gym patron numbers/hours of operation are proposed, as well the low impact nature of the ancillary warm-up/recovery area. As such, the proposal is recommended for approval subject to non-standard conditions as follows:

- A single, comprehensive Plan of Management (PoM) for the entire gym use including strict conditions regarding the use and operation of both gym areas, patron numbers, access, and acoustic protections.
- The ancillary lower ground floor area shall not be operated as a separate business or tenancy within the building.
- The ancillary lower ground floor area shall be the subject of a 12-month trial period to confirm the effective management of the use and associated environmental impacts, which includes monitoring access within the building as well as traffic and parking, compliance with patron numbers and onsite activities.
- The completion of construction works in accordance with the Building Code of Australia and Accessibility requirements outlined in the submitted BCA & Access Capability Statement.

## 2. Site Description and Locality

The subject site is known as 54B Bream Street, Coogee, and is legally described as Lot 1502 in DP 752011. The site is located on the southern side of Bream Street between Mount and Brook Street. The site is rectangular in shape with a northern frontage to Bream Street of 30.48m, eastern and western boundaries of 13.66m and a southern boundary of 30.48m with a total site area of 418.3m<sup>2</sup>.

The site contains an existing part three part four storey commercial building containing the following:

- Lower Ground Floor: swim school (Aqua Buddies), common storage area.
- Ground Floor: Eastern Suburbs Tennis Club and a 'fitness studio' or gym (CrossFit Coogee).
- First & Second Floor: childcare centre (My Stepping Stones)

The built form facing Bream Street is three storeys with the lower ground floor level being sited below the street level facing the Tennis Courts to the south.

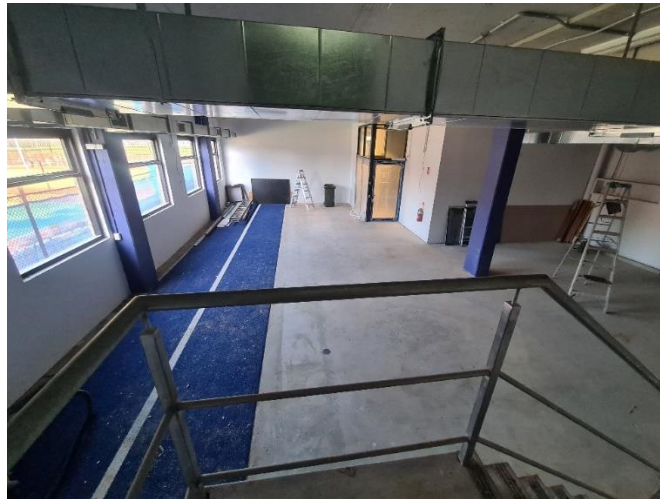
The subject site is privately owned and associated with the Tennis Club where the surrounding land taken up by Tennis Courts - identified as NSW Department of Lands - Crown Land Division (Crown Land) and is managed as a part of Council's Land Register (see Figure 8 aerial and cadastral below).

The site is not listed as a Heritage Item or within a Heritage Conservation Area.



**Figure 1:** Photo of the proposed gym area looking to the east - 54B Bream Street, Coogee (Source: Randwick City Council)

D26/24



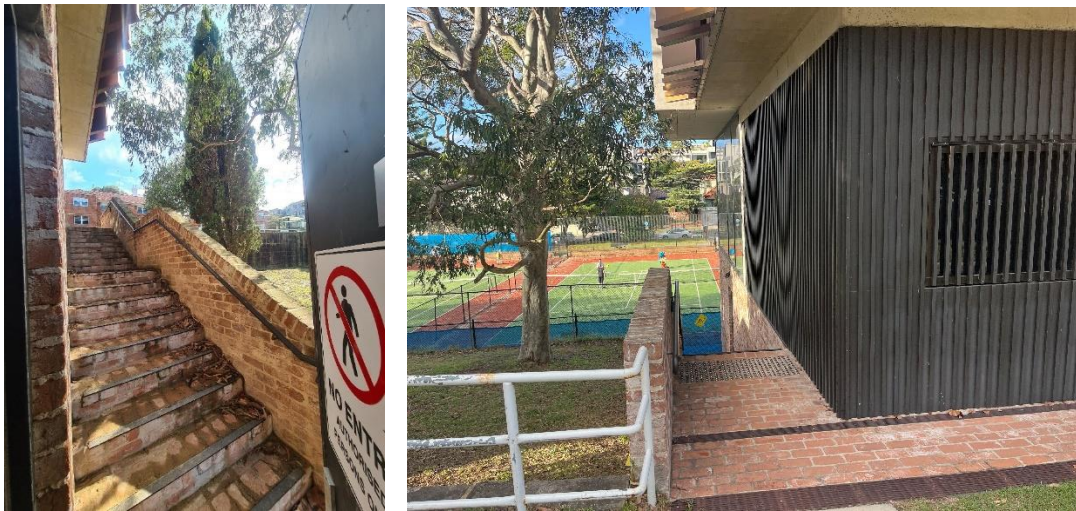
**Figure 2:** Photo of the proposed gym area looking to the west - 54B Bream Street, Coogee (Source: Randwick City Council)



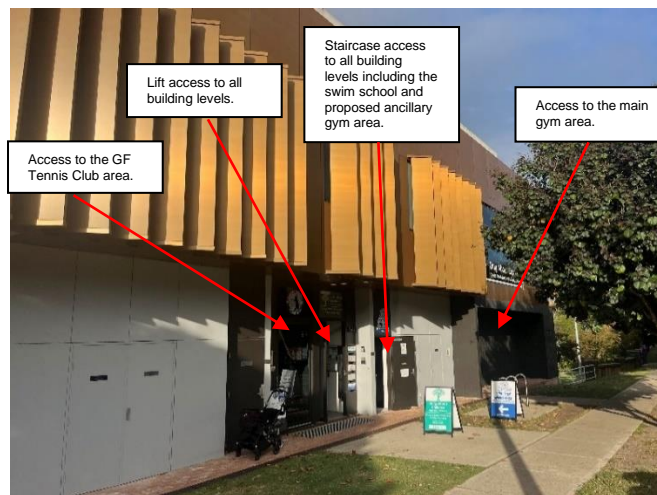
**Figure 3:** Photo of the existing bathroom within the proposed gym area - 54B Bream Street, Coogee (Source: Randwick City Council)



**Figure 4:** Photo of the lower ground floor lobby area - 54B Bream Street, Coogee (Source: Randwick City Council)



**Figure 5 & 6:** Photos of the eastern exit from the eastern side of the building - 54B Bream Street, Coogee (Source: Randwick City Council)



**Figure 7:** Photos of the front of the existing building to Bream Street with different access points - 54B Bream Street, Coogee (Source: Randwick City Council)



**Figure 8:** Aerial image of the subject site and surrounding area - 54B Bream Street, Coogee (Source: Randwick City Council)





**Figure 9:** North-west oblique view of subject site and surrounding area (May 2023) - 54B Bream Street, Coogee (Source: Nearmap)

### 3. Background

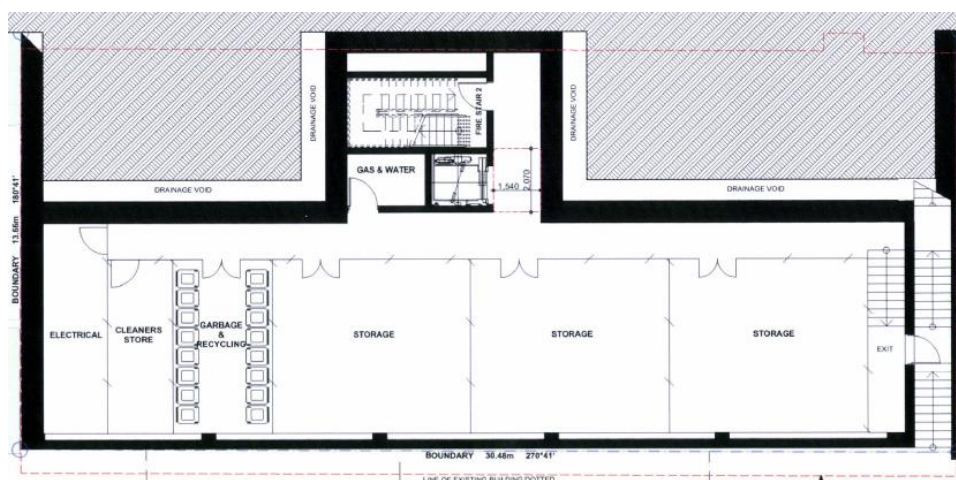
#### Previous Development (since demolished)

- BA/1056/1966: Approval of a Club House identified as the Eastern Suburbs Tennis Club.
- DA/143/1984: Approved alterations and additions to the Tennis Club to provide a mezzanine office level and other alterations.
- DA/854/2008: Approved the conversion of the Coogee Tennis Centre's auditorium/ function hall into a Personal Training and Fitness Studio with hours operation from 5.45am-9pm, Monday-Friday and 8am-7pm Saturday and Sunday.

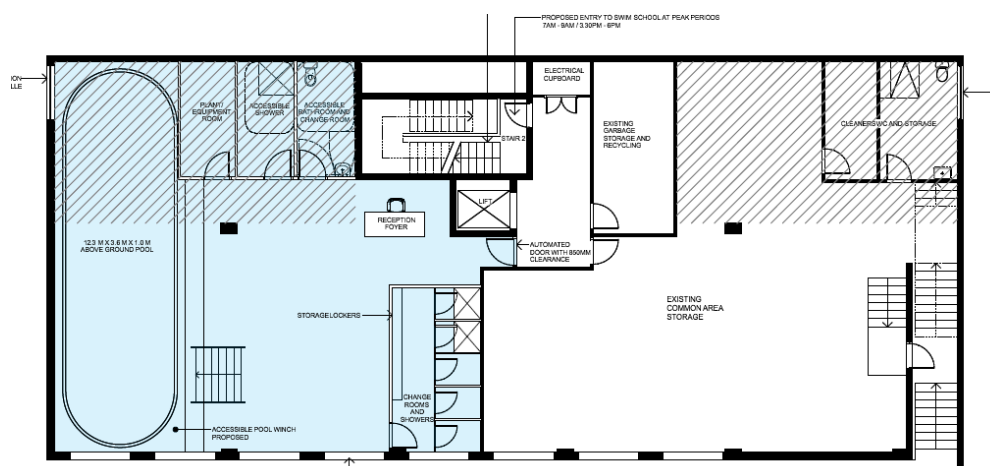
#### DA/936/2015

In December 2015, a Development Application (DA/936/2015) was lodged with Council seeking consent for demolition of the existing Eastern Suburbs Tennis Club building and construction of a 4 storey building containing a tennis club, gym and child-care centre at the subject site was approved by Council on 13 April 2016. The approved development comprised a child care centre on the upper two (2) levels, Tennis Club and Gym on the Ground Floor level, and communal Storage and Garbage room on the Lower Ground Floor level.

However, the as-built development involved unauthorised conversion of the excavated areas at the Lower Ground Floor level to the northern portion of the site (to the east and west of the internal circulation space) to additional floor area. The extent of the unauthorised floor area is demonstrated below in Figures 10 and 11 which identify the approved Lower Ground Floor plan under DA/936/2015 and the as-built floor plan approved under DA/119/2020 and BC/4/2021.



**Figure 10:** Approved lower ground floor plan under DA/936/2015 - 54B Bream Street, Coogee (Source: Ergo Architecture)



**Figure 11:** Approved lower ground floor plan under DA/119/2020 including the additional excavated areas - 54B Bream Street, Coogee (Source: Ergo Architecture)

The approved development consent included the following operational conditions of consent:

### ***"Hours of Operation***

67. *Subject to compliance with the relevant cumulative acoustic requirements under this determination, the operation of the fitness studio is limited to the following hours of operation:*
- *Monday to Friday: 5.45am to 9.00pm and*
  - *Saturday and Sunday 8.00am to 7.00pm*
68. *The use of amplified music, other than low volume background music, is prohibited within the Tennis Club and Personal fitness studio.*
69. *The number of persons operating within the fitness studio is limited to a maximum of 15 persons."*

## DA/373/2017

In June 2017, a Development Application (DA/373/2017) was lodged with Council seeking consent for fitout of ground floor level of Eastern Suburbs Tennis building including gym facilities and tennis club facilities with meeting room, staff room, bar and servery and changes to ground floor facade, enclosure of terraces on eastern and southern sides, installation of service hopper and change club hours to 6am to midnight. The application was approved by Council.

No changes to the hours of operation for the gym were approved under this subject application, only to the Club section of the ground floor plan area. The works for the gym related only to the fit out of the gym area.

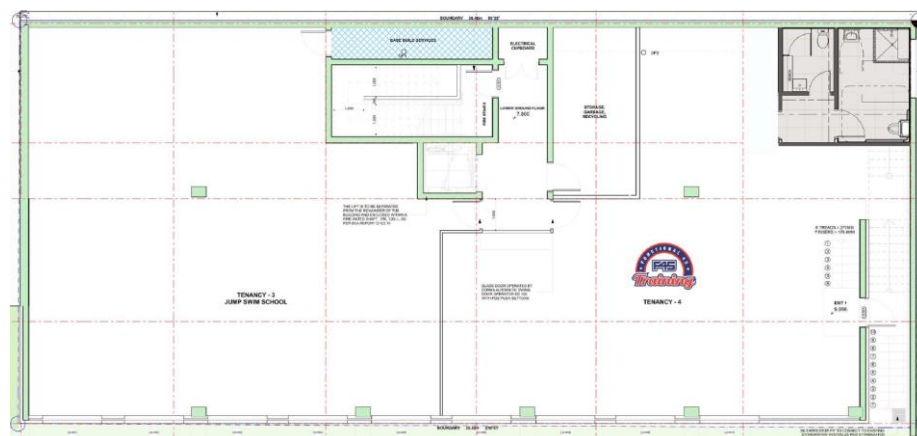
CDC/167/2018 and CDC/226/2018

Two (2) subsequent Complying Development Certificates were issued by a Private Certifier with regards to a change of use of the lower ground floor level from a storage area to a F45 Gym and Jump Swim School and associated fit-outs. The CDC's were approved as follows:

- CDC/167/2018 was issued on 22 June 2018 for fitout of part of the lower ground floor level as a JumpSwim School tenancy; and
- CDC/226/2018 was issued on 14 September 2018 for fitout of part of the lower ground floor for use as a gym facility.

The Complying Development Certificates involved occupying the unauthorised and excavated/void areas within the lower ground floor level. A stop work order was issued for the above applications, in response to an investigation by Council's Health, Building and Regulatory Services Department regarding the issuing of the CDCs and unauthorised works.

Figure 12 below is a copy of the lower ground floor plan under CDC/226/2018, showing that a separate F45 tenancy was to be provided within the existing building. Following the compliance investigation, the CDCs were never acted upon and works permitted under these consents did not proceed.



**Figure 12:** Approved lower ground floor plan under CDC/226/2018 - 54B Bream Street, Coogee (Source: Unknown)

#### DA/857/2018

In November 2018, a Development Application (DA/857/2018) was lodged with Council seeking consent for the use of the as-built lower ground floor level for a gym and swim school which aimed to legitimise the unauthorised uses and associated works which had been undertaken in the CDC applications. However, significant concerns were raised by Council in objections with regards to parking, flooding, access and egress, and acoustic privacy, and the application was subsequently withdrawn.

#### DA/370/2019

In July 2019, an amended Development Application (DA/370/2019) was lodged with Council which deleted the gym component of the proposed development and sought consent for the use of the Lower Ground Floor level for the purpose of a swim school, occupying the western side of the lower ground floor level. The application was refused by Randwick Local Planning Panel on 13 February 2020 for the following reasons:

- *The original development consent was for lower ground floor to be used as storage for the occupants of the building.*
- *The current lift and ground floor lobby are adequate for the current tenants but it has not been demonstrated how this will adequately support an additional use, without causing conflict. The Panel considers any future application should investigate opportunities to increase the lobby area, lift capacity including a possible additional lift to service the lower ground floor or alternative access.*
- *The reliance on on-street parking needs to be further justified by additional surveys including weekdays and Saturdays. The surveys should include a consideration of the topography surrounding the site and the ability of patrons to walk a suitable distance to the facility.*
- *The design, layout and facilities within the premises do not adequately demonstrate that the needs of the proposed use are met, in particular access to the pool for people with disability, size of change rooms, number of bathrooms and width of the entry door.*

In regards to the above application, the RLPP recognised that the swim school would provide an important community facility, however it was not satisfied that the development application adequately demonstrated the appropriateness of the use on this site, having regard to the reasons for refusal.

#### DA/119/2020

In March 2020, a further Development Application (DA/119/2020) was lodged with Council which sought consent for the use of the western portion of the as-built lower ground floor level of the



building as a swim school and a small area fronting Bream Street at ground floor level as a pram drop off zone. The proposal was similar in nature to DA/370/2019 and sought to address the reasons for refusal of the previous application by the RLPP. The application was approved by Randwick Local Planning Panel on 10 September 2020 for the following reasons:

- *The Panel supports the application for the reasons given in the assessment report and has imposed an additional condition to address concerns about potential impacts of the development on existing users of the building and parking availability in the locality. In this regard, the Panel notes that the concerns can be addressed if the premises is appropriately managed.*
- *Jason Perica was supportive of a trial period of one year, although was of the view this should only be applied to the hours of 4pm to 5:30pm, Monday to Wednesday, given the scale of the proposal, the proposed hours and some community benefit in the proposed use.*

The following new Condition 1A was added by the RLPP to read:

**Approved Plans & Supporting Documentation**

- 1A. *This consent is issued subject to a trial period of 1 year commencing from the date of commencement of use. Council shall be advised in writing of the commencement date. This is imposed to gauge the effective management of the use and its environmental impacts, which include access within the building as well as traffic and parking. Prior to the expiration of the one year trial period, a further application may be made to Council to allow continuation of the use. In assessing that application, Council will have regard to compliance with conditions of consent, materials submitted demonstrating adequate management and any substantiated complaints.*

In addition, the following conditions of consent were imposed on the approved development:

**As-built Works and Structures**

2. *The works that have already been constructed on site do not form part of this consent. This development consent relates to the use of the as-built Lower Ground Floor level only and any new works identified on the approved architectural plan.*
3. *A Building Information Certificate is to be obtained from Council regarding any unauthorised structures that have been constructed without development consent.*

**Floor Space**

5. *The common storage area on the eastern side of the building at the lower ground floor adjacent to the swimming school must only be used for communal storage purposes so that it does not generate any additional parking or traffic demand and shall remain accessible to all tenants within the building.*

**Plan of Management**

8. *Prior to the issue of a Construction Certificate, an updated Plan of Management is to be submitted to and approved by Council. The Plan of Management is to incorporate the following changes:*
  - a) *The hours of operation of the swim school are to be in accordance with the following:*
    - *Monday to Wednesday: 9:30am to 5:30pm;*
    - *Thursday and Friday: 9:30am to 4:00pm;*
    - *No operation on Saturdays or Sundays.*
  - b) *The hours of operation of the premises for the purpose of maintenance, servicing, preparation, opening, cleaning and management of the swim school are to be in accordance with the following:*
    - *Monday to Friday: 8:00am to 6:30pm*

- c) *All patrons of the swim school are to utilise the stair for access to the swim school, with the exception to people with disability. Lift access is only permitted to people with disability and lift access is to be granted via an access swipe which shall be provided as part of their enrolment to the swim school.*
- d) *Any recommendations of the Acoustic report that is required to be updated in accordance with condition 8 of this consent are to be incorporated into the Plan of Management.*

**Operation of the Premises and Environmental Amenity**

47. *The swim school is to operate in accordance with the development consent, which includes (but is not limited to):*

- a) *No more than 6 users in pool per half hour*
- b) *No more than two lessons per hour*
- c) *No more than two staff on the premises at any one time*
- d) *All openable windows and external doors to be kept closed during swim school activities (except for ingress and egress)*
- e) *Swim school is to operate within the following hours:*

Monday to Wednesday	9.30am – 5.30pm
Thursday & Friday	9.30am – 4.00pm
Saturday	No operation
Sundays	No operation
Public Holidays	No operation

- f) *For the purposes of maintenance, servicing, preparation, opening, cleaning and management of the swim school, the following hours are detailed:*

Monday to Friday	8.00am -6.30pm
Saturday	No operation
Sunday	No operation
Public Holidays	No operation

BC/4/2021

In April 2021, a Building Information Certificate (BC/4/2021) was lodged with Council regarding the unauthorised building works within the lower ground floor area of the subject building, including the fit out works at lower ground level, the above ground pool, toilet, shower and storeroom area. On 3 May 2021, Council issued an approval for the Building Information Certificate, certifying the following:

- (a) *There is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under the Environmental Planning and Assessment Act 1979 or the Local Government Act 1993:*
  - (i) *to order the building to be demolished, altered, added to or rebuilt, or*
  - (ii) *take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or*
  - (iii) *to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or*
- (b) *There is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.*

DA/119/2020/A

In May 2022, a Section 4.55(1A) Modification Application (DA/1191/2020/A) was lodged with Council which sought modification to the approved development to delete condition 1A and request formal application for the continued use of the approved swim school.

The following is an extract from the Planner's Report regarding the use of the existing common storage area adjacent to the swim school, of which the subject proposal DA/695/2023 is seeking consent to use for exclusive gym space purposes:

*“The submissions in objection to the proposal were received from or on behalf of the following properties:*

- *Tenants of 54B Bream Street, Coogee*
  - *Operator of My Stepping Stones Childcare, located on the upper two levels;*
  - *Eastern Suburbs Tennis Club, located on level one;*
  - *HWL Ebsworth Lawyers on behalf of My Stepping Stones and Eastern Suburbs Tennis Club.*
  - *Coogee Precinct.*

*The submissions received raised concerns with regards to the following:*

<b>Issue</b>	<b>Comment</b>
<p><i>Non-compliance with condition 5 of the development consent in relation to use of the existing common storage area adjacent to the swim school, including the following concerns:</i></p> <ul style="list-style-type: none"> <li>• <i>In contradiction to condition 5, access to the LGF common storage area has not been granted and is inaccessible to the building tenants.</i></li> <li>• <i>Request that the use of the swim school cease until the storage area is made accessible to all tenants.</i></li> <li>• <i>Request Council to enforce permanent compliance with condition 5 by having the applicant register on title an instrument mandating permanent compliance.</i></li> <li>• <i>Concerns that approval of the subject application will prevent practical opportunity to enforce condition 5.</i></li> </ul>	<p><i>See Key Issues for further discussion.</i></p>

#### **Non-compliance with condition 5**

*The submissions received raised concerns regarding non-compliance with condition 5 of the development consent in relation to the common storage areas. Condition 5 reads as follows:*

5. *The common storage area on the eastern side of the building at the lower ground floor adjacent to the swimming school must only be used for communal storage purposes so that it does not generate any additional parking or traffic demand and shall remain accessible to all tenants within the building.*

*The submissions have been received from or on behalf of the tenants of the building at 54B Bream Street who have advised that access to the common storage area at the Lower Ground Floor level has not been granted in contradiction to condition 5 of the development consent. The submissions seek to have this matter addressed as part of the subject modification application and request that the use of the swim school cease until access to the common storage area has been granted.*

*A partial Occupation Certificate was issued for the operation of the swim school on 10 May 2021 which legally authorises the use of the swim school. While Council acknowledges the concerns raised regarding the use of the common storage areas, it is considered that this is a separate matter outwith the scope of the subject application. The subject application relates to the removal of the condition in regards to the trial period only, with no other modifications proposed. The trial period was imposed by the Panel to monitor the use of the swim school to ensure that the development does not result in any adverse impacts upon the locality, and to assess the impacts of the swim school which could not be fully verified until the swim school was operational. As such, any further conditions in relation to the common storage areas would not*

*be reasonable to impose under this application. Notwithstanding the above, the matter has been referred to Council's Regulatory Compliance team for investigation separately."*

The application was approved by Randwick Local Planning Panel on 13 March 2022 for the following reasons:

- *The Panel supports the application for the reasons given in the assessment report.*
- *The Panel notes that the Council is investigating non-compliance with conditions of the development consent and this matter has been referred to Regulatory Building Compliance team. The Panel notes the objections received relating to the common storage area, and if the tenants are unable to resolve the access issue with the owner, then it recommends that they consider referring the matter to an appropriate tribunal to seek resolution of the dispute.*

#### Site Visit

On 10 November 2023, the Coordinator Major Assessments conducted a site visit of the subject building and site.

On 21 March 2024, the Assessing Officer conducted a further site visit of the subject building and site.

#### Additional Information Request

On 24 November 2023, Council sent a formal additional information request to the applicant outlining issues regarding noise concerns, compliance with the BCA, a Plan of Management confirming items including number of patrons and hours of operation and the use/access of the common storage area.

On 06 December 2023, the applicant responded to Council's additional information request with a BCA Performance Requirements Compliance Statement, a Plan of Management and Lease Agreements between the building tenants and owner.

N.B. The amended plans did not require additional works, or any changes of the operation of the supplementary gym area as proposed under the submitted development application. Therefore, re-notification of the proposal was not required in this instance.

## **4. Proposal**

The proposal seeks development consent for the change of use at the lower ground floor level from storage area to gym (being an extension of the existing ground floor gym) and associated internal alterations and additions. Specifically, the proposal is seeking the following:

#### **Lower Ground Floor**

- Use: Change of use from the existing common area storage for all building tenants and the cleaner's WC and storage to an ancillary gym space for warm up/recovery to the main gym area on the ground floor with access to separate sanitary facilities and change rooms.
- Works: Internal alterations to the new gym area including:
  - Fit out of the new warm up/recovery area.
  - Use of an area for x2 ice baths.
  - Addition of x3 change cubicles.
  - Use of the existing x2 bathrooms of the lower gym area use only.
  - Retention of an area for plant and equipment storage.
  - Use of the area beneath the staircase for an addition plant area for the hot water system.

No works are proposed to any other floor or the external facades of the existing building. The original DA submitted notations on the northern and eastern elevations that signage was to be provided to the doorways of the staircase accesses to the ancillary gym area. The applicant subsequently confirmed in writing with assessment staff that this element was to be removed from the scope of the proposed development. As such, Council has not assessed or approved any signage to the external facades of the existing building. A subsequent condition of consent has been

recommended confirming the requirement to seek separate approval for business identification signage.

The proposed warm up/recovery gym area is ancillary to the main gym use above. The main gym floor at the ground floor level will continue to operate as existing, however, with a new warm up and recovery area at the lower ground floor level to enhance the amenity of the gym and to meet the desired operating requirements of CrossFit Coogee. The new gym space at the lower ground floor level will not be used to accommodate additional crossfit classes but rather serve existing gym patrons. The proposal also provides dedicated change rooms and bathrooms for gym patrons which will enhance the amenity of the gym and the Eastern Suburbs Tennis Club as toilets facilities are currently shared between the gym and the club.

The ancillary gym area will align the proposed hours of operation with that approved under the previous Development Application No. DA/936/2015, as follows:

- Monday to Friday: 5.45am to 9.00pm;
- Saturday and Sunday 8.00am to 7.00pm.

In terms of patron capacity, the proposal does not seek to increase the number of gym patrons on the site. The provided Plan of Management provides an inconsistency with the approved gym capacity, between the approved 15 persons and proposed 16 persons. This discrepancy is recommended to be rectified through the requirement for an updated Plan of Management for the entire gym area within the building, not only the ancillary warm up/ recovery area.

## 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with Council's Community Engagement Strategy. As a result of the notification process, seventeen (17) submissions were received.

Of the 17 submissions, fourteen (14) submissions were received objecting to the proposed development from or on behalf of the following properties:

- Unit 1/27 Bream Street, Coogee
- 25A Bream Street, Coogee
- 2x 25 Bream Street, Coogee
- Unit 1/5 Carr Street, Coogee
- 76 Brook Street, Coogee
- Secretary, Coogee Croquet Club

Of the 14 objection submissions, eight (8) submissions were received from unknown addresses.

The submissions raised concerns with regards to the following which have been paraphrased and summarised below:

Issue	Comment
<b>Parking</b> -There is a lack of parking for the gym users. -Parking impacted by the parking requirements for the child care centre. -Gym patrons have been parking over residential driveways. -Gym patrons have been using the tennis club carparking which impacts parking for the tennis club members and patrons. The proposal will make parking worse for tennis club users. -The submitted traffic report is not representative of parking on a busy summers' day. Weather conditions have not been addressed sufficiently.	As the proposal does not seek to increase the patronage numbers of the gym, Council is satisfied that there will be no increase to parking demand in the area, subject to recommended conditions securing this requirement.  An independent assessment of the parking and traffic impacts has been undertaken by Council's Development Engineer. See Appendix 1 for further discussion.



D26/24

Issue	Comment
<ul style="list-style-type: none"> <li>-No additional parking spaces have been provided.</li> <li>-Differences in weekday/weekend parking considerations have not been addressed.</li> </ul>	
<u>Noise</u> <ul style="list-style-type: none"> <li>-The approved gym is already very loud. This will increase the noise impacts when playing tennis.</li> <li>-Weight training will cause additional noise impacts.</li> <li>-There is no consideration of impacts on the tennis players/swim school.</li> </ul>	<p>Council's Environmental Health Officer is satisfied that the noise impact will not have an adverse impact on the locality, subject to conditions confirming that no weight equipment is to be used to the new lower ground floor gym area. See Key Issues and referral comments in Appendix 1 for further details.</p>
<u>Common Storage Area</u> <ul style="list-style-type: none"> <li>-The approved 'common area' will not be used for its original intended use, impacting the original support for the previous DA.</li> <li>-Conflicts with DA/119/2020 – RLPP approval for floor space notes area must only be used for communal storage purposes only.</li> <li>-Proposal will result in a loss of storage for the tennis club.</li> <li>-More storage is required by the Tennis Club.</li> </ul>	<p>Council is satisfied that there is adequate storage provided to each of the building tenants to facilitate their continued use. See Key Issues for a detailed assessment of this matter.</p>
<u>Patron Numbers</u> <ul style="list-style-type: none"> <li>-Concerned about the impact of additional patrons and potential subletting of 'common area space'.</li> <li>-Current capacity issues for adequate warm up/cool down activities should not warrant additional gym use area.</li> <li>-147sqm of area for warm up/cool down, not for additional patrons. Hard to believe this.</li> <li>-BCA allows for a gym only 3sqm/person.</li> <li>-Use of the 2 separate areas in the future as x2 separate gym businesses.</li> <li>-There will likely be an overlap of patrons between classes.</li> </ul>	<p>Council is satisfied that the proposal will not result in additional gym patrons on site, subject to conditions enforcing this requirement and a 1-year trial period. See Key Issues for a detailed assessment of this matter.</p>
<u>Unauthorised Works</u> <p>Previous unauthorised works for a gym were carried out in the same location.</p>	<p>The previous fit out of the gym issued under CDC/226/2018 was the subject of Stop Works order. The approved fit out of the gym under this CDC did not continue, as confirmed in the site visit by the Assessing Officer.</p>
<u>Fire Safety/Access</u> <ul style="list-style-type: none"> <li>-Use of internal staircase for access a safety concern to children from the swim school.</li> <li>-Use of external staircase for access a safety concern to tennis club patrons.</li> </ul>	<p>Similarly, the approval for the swim school on the lower ground floor (DA/119/2020), it is recommended that the main internal staircase be used as the primary means of access for the development, with lift access only permitted for persons with a disability.</p> <p>There is a secondary external staircase access that will provide a further option for access to the warm-up/recovery gym area without impacting upon the safety of the other tenants</p>

Issue	Comment
	within the building. See Key Issues for a detailed discussion of this point.
<b>Pedestrian Safety</b> The proposal will increase foot traffic along Bream Street from the gym patrons using the footpath for running, creating a pedestrian safety issue.	Council notes that the use of the public domain has not been approved with the associated gym use. The proposal does not seek to use the public domain for gym purposes.  Any such operational concerns are to be reported to Council's Regulatory team for further investigation.
<b>Flooding</b> -There is no reference to flooding on the site which is below the 1% and 20% AEP flood plus half a metre freeboard height. -SEE does not address Clause 6.3 of the LEP regarding flooding.	An assessment of the flooding impacts as a result of the change of use and suitability of the site for the proposed development has been provided by Council's Development Engineer. See Engineering Comments in Appendix 1 for further discussion.
<b>Earthworks</b> Earthworks are to be carried out that are more than cosmetic.	Council can confirm that no earthworks are to be carried out as part of the proposal, as confirmed by the applicant and in the documentation.
<b>Electricity Supply</b> Concerns regarding inadequacy of the electricity supply to the building.	Council is satisfied that the subject building will retain sufficient electricity supply, as conditioned under the standard conditions of consent.
<b>Sanitary Facilities</b> The gym patrons have been using the tennis club facilities (i.e. bathrooms).	Council notes that the ancillary gym area will provide separate sanitary facilities for the gym patrons, separate to the existing facilities on the ground floor that are shared with the tennis club. As such, the amenity of the building visitors has been improved as part of this proposed development.

Of the 17x submissions, three (3) submissions were received supportive of the proposed development from or on behalf of the following properties:

- Owner and Director, AquaBuddies Swim School (54B Bream Street, Coogee)
- Authorised Business Representative, My Stepping Stones (54B Bream Street, Coogee)

Of the 3x supportive submissions, one (1) submission was received from an unknown address.

The submissions raised concerns with regards to the following which have been paraphrased and summarised below:

Issue	Comment
<b>My Stepping Stones:</b> Supportive of the development as long as the following:	Noted. See recommended imposition of such requirements outlined in the Key Issues

Issue	Comment
-an extension of the existing gym, not additional operator; -use for warm up/cool down activities only; -lift use for the gym's disabled customers only; -classes to continue as existing only.	section of this report and as a part of the draft development consent.
<u>AquaBuddies</u> Convenient for local parents who attend the swim school and gym. Is convenient and contributes to the health and wellbeing of families.	Noted.
<u>Community Benefit</u> The gym expansion will benefit the community and bring awareness to the importance of fitness.	Noted.

Please note that of the x3 other tenants within the building, a submission was received from the swim school (AquaBuddies) to the lower ground floor and the childcare centre (My Stepping Stones) to the first and second floors in support of the proposal. No formal submission was received from the Eastern Suburbs Tennis Club (individual submissions from members and board members only) being the third tenant in the building, apart from the gym (CrossFit Coogee) of which is seeking to extend their tenancy area.

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has not been submitted with this application, as it does not meet the requirements of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. Note, the development application was lodged on 20 September 2023 and its therefore not subject to the new SEPP (Sustainable Buildings) 2022, which is applicable to applications submitted to the NSW Planning Portal on or after 1 October 2023.

### 6.2. SEPP (Biodiversity and Conservation) 2021

The aims of Chapter 2 are:

*“(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and  
(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.”*

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

### 6.3. SEPP (Resilience and Hazards) 2021

#### Chapter 4 'Remediation of land'

Chapter 4 of SEPP (Resilience and Hazards) 2021 applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 4.6 of SEPP (Resilience and Hazards) 2021 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 subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. In this regard, it is Council's position that the site will be suitable for the proposed development, posing no risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be suitable for the proposed land use.

#### 6.4. Randwick Local Environmental Plan 2012 (LEP)

On 18 August 2023, the Department of Planning and Environment (DPE) formally notified the LEP amendment (amendment No. 9) updating the *Randwick Local Environmental Plan 2012*, and the updated LEP commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of updated RLEP 2012 (Amendment No. 9) are applicable to the proposed development, and the proposal shall be assessed against the updated RLEP 2012.

The site is zoned RE1 Public Recreation under the Randwick Local Environmental Plan 2012. The proposed building use is defined within the RLEP as 'recreation facilities (indoor)', which is permissible with Council's consent.

The objectives of the RE1 zone aim to provide a range of recreational settings and activities which are compatible land uses. The proposed change of use shall facilitate an additional recreational use on the site, being an ancillary gym area, and will enable the land to continue to be used for recreational purposes. The proposed development is contained wholly within the existing built form, and it is considered that the natural environment shall be protected and maintained, and that public accessway will not be impacted by the proposal. Furthermore, the proposal shall not result in any detrimental impacts upon the biodiversity, or ecological and aesthetic values of the site. In view of the above, the proposed development is found to be consistent with the objectives of the RE1 zone.

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

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.3: Height of Building (Maximum)	N/A	No changes are proposed to the building height as all works are proposed internally only.	Yes
Clause 4.4: Floor Space Ratio (Maximum)	N/A	No changes are proposed to the building GFA as all works are proposed internally only.	Yes
Clause 6.1: Acid Sulphate Soil	Class 5	No earthworks are proposed as part of the works.	Yes

##### 6.4.1. Clause 5.1 - Relevant acquisition authority

The subject site has been identified as a property of which the relevant State authority has sought to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

In this instance, it is confirmed that the relevant State acquisition authority is 'Council' as the site marked as "Local open space".

#### 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. 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 2 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	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

#### Use of the Lower Gym Area and Patron Numbers



Multiple submissions raised concerns regarding the use of the lower ground floor gym area and the subsequent potential additional gym patrons within the building, as well as the impact of the loss of common storage area within the existing building.

Firstly, it is noted that the reasons for refusal of the previous Development Application DA/370/2019 related to the use of the lower ground floor level, noting that this was originally intended for storage. The following DA and subsequent support of the approved DA for the swim school within the lower ground floor area (DA/119/2020) was contingent on the eastern side of the floor area being retained as common storage area. This was again reiterated as part of the approved modification (DA/119/2020/A), when access to the common storage area was raised as an issue in submissions from the childcare centre and tennis club. As part of the modification application DA/119/2021/A, tenants raised concerns noting that access had not been provided (under submissions received in June and July 2022). Council acknowledged the concerns raised regarding the use of the common storage areas however the enforcement of the use of this common area was considered a separate matter outside the scope of the subject application. The RLPP also noted the submissions in their determination, stating that "if the tenants are unable to resolve the access issue with the owner, then it recommends that they consider referring the matter to an appropriate tribunal to seek resolution of the dispute."

On both 10 November 2023 and 21 March 2024, the Council Officers attended the site and found that the common storage area was vacant and not being used for storage purposes to the building tenants. Council confirms that submissions were received from the swim school (Aqua Buddies) and childcare centre (My Stepping Stones), who both are in support of the proposed change of use of the common storage area, with neither submission raising a loss of access to this area as an issue.

Whilst Council acknowledges the history and intention of retaining this lower ground floor area as common storage, Council is satisfied that the loss of this common storage area will not adversely impact upon the operation of the building tenancies. Firstly, each tenancy within the building has individual and separate storage areas, which have sufficiently provided for the operational use of each tenancy over a number of years. Council also can confirm that comments from the building owner's legal representative that "the storage area does not form part of any existing leasing entitlement to any of the current tenants of the building, namely the Tennis Club, the childcare nor the swim school. The assertion that these tenants have been afforded this entitlement under their current lease or any other document is incorrect." Whilst Council sought to provide access to the common storage area through imposing a condition of consent, the enforcement of this was deemed a civil matter and not a requirement that Council could strictly impose on the use within the building.

In addition, there are no numerical requirements under Council's DCP for storage for commercial uses. Nor are there specific requirements for storage within the relevant sections of the BCA regarding the provision of storage to commercial uses. Council's Development Engineer is also satisfied that the use of the common storage area as a further gym area will not create a large amount of additional waste and that the existing waste storage room on the lower ground floor which is being retained onsite will continue to provide sufficient area for storage of waste services within the building.

On balance, whilst the Council previously required the retention of this common storage area in support of the previous swim school within the lower ground floor area (as per Condition 5 of DA/119/2020), Council considers the common storage area to be an underutilised space within the building envelope, which can be supported for conversion subject to an appropriate use that does not further contribute to amenity impacts to tenants within the building or the increased traffic and parking demands in the locality.

In terms of the proposed use, Council is supportive of the new ancillary warm up/recovery area on the lower ground floor for the following reasons:

1. A number of submissions raised issues regarding a potential future use of the lower ground floor gym area, separate from the existing gym tenancy to the ground floor. Council is satisfied that the proposed warm up/recovery area will be an ancillary gym area use to the main gym area on the ground floor above. The applicant has demonstrated that there is a need for the warm up / recovery area that cannot be facilitated in the main gym above due

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to the constraints of having gym equipment within the main area. The installation of ice baths and an area free of gym equipment supports the intended use ancillary to that above. In order to secure this intended use, Council's Environmental Health Officer has recommended operational conditions that the area must be exclusively used for light exercise activities, which may include dynamic stretching, power band work, and cardio exercises, among others. The use of Olympic weights, powerlifting weights, and free weights is strictly prohibited within this designated area. This will restrict the carrying out of the weight and machine use that is associated with the main cross fit gym area at the ground floor above the lower ground tenancy.

Council is not supportive of a future separate use of the lower ground floor gym area, as the patron capacity is not seeking to be increased and will only be extended over a new area. The separation of the lower gym area for a potential new tenancy will likely result in an increase of patrons and staff using the building, of which Council does not support (see in further detail below). In order to confirm that this does not happen in the future and alleviate concerns raised in submissions, a condition of consent has been recommended requiring that the lower ground floor area is only to operate as an ancillary area to the main gym area above (in alignment with the proposal from the applicant), and that the area shall not be converted into a separate business or tenancy.

2. A number of submissions raised issues regarding increased patron capacity. The applicant confirmed that there would be no increased capacity of gym patrons within the building. That being said, Council is concerned that the approval of this additional area will facilitate both a full class of 15 persons using the main gym area to the ground floor above whilst the ancillary warm up/recovery area will also be occupied by additional gym patrons either warming up/recovering from the main cross fit class. Council is concerned that this will create adverse impacts on the other building tenants in terms of capacity, noise and safety. In addition, this will impact upon the already constraint parking matters within the area. It is noted that Council's Development Engineer is only supportive of the proposed development subject to no increase in gym patrons within the building. The provided Plan of Management only relates to the use of the ancillary gym area and not the use of the whole gym area. In addition, there are concerns regarding the potential for additional staff to be employed which will impact on the parking requirements of the building, placing further parking constraints on the locality.

As such, in order to make sure that no additional patrons/staffing will be accessing the building as part of the proposed warm up/recovery area, it is recommended that an updated Plan of Management be provided for the entire gym use (covering both the main ground floor gym and ancillary lower ground floor warm up/recovery area) with the following requirements:

- The lower ground floor area is an ancillary warm up/recovery area to the main cross fit gym use to the ground floor.
- The maximum number of patrons to the gym across both the main and ancillary gym areas is 15 persons (in accordance with DA/936/2015). N.B. as classes may not always be at full capacity, the imposition of only allowing one class to be on the premises at a time is not supported as a means of limiting patron numbers. The enforcement of a strict 15 persons capacity will however be required by the gym operator so as to not generate additional traffic, noise or safety issues.
- Confirming that the staffing numbers for the areas are to remain as approved under DA/936/2015, being a maximum of 2 staff members.

Further to these requirements, in order for Council to be satisfied of the ongoing operation of the gym does not impact the successful operation of the other building tenancies as well as the locality, it is recommended that the consent is issued subject to a trial period of 1 year commencing from the date of commencement of use. This is imposed to gauge the effective management of the gym use and its environmental impacts, which include patron numbers and access within the building as well as traffic and parking. Considerations for the permanent use of the ancillary gym area will have to address adequate management and any substantiated complaints. The recommendation of such a condition aligns to the

imposed 12-month trial period that the RLPP previously imposed on the swim school under DA/119/2020.

3. Council is satisfied that the amenity of both the gym and tennis club patrons will be improved by providing the gym patrons with their separate sanitary facilities within the lower ground floor area. This will be separate to the existing facilities on the ground floor that are shared with the tennis club. The provision of change rooms for the gym patrons will allow the bathrooms to be used for their intended use, rather than being occupied by gym patrons for changing clothing for gym classes. Further, as there are no additional persons being permitted within the building beyond the existing capacity, the addition of changing and sanitary facilities for the same number of patrons is a positive improvement on the building's ongoing use and amenity.
4. No issues have been raised from the internal referrals from Council departments for the following issues (subject to relevant conditions):
  - Development Engineering: parking, waste, and flooding.
  - Environmental Health: noise in terms of building use (light exercise activities), capacity and hours of operation.
  - Building Compliance: change of building classification and use, fire safety and egress (N.B. these matters have been discussed in further detail below).

Based on these points, subject to the recommended conditions outlined above (including a 12-month trial period), Council is satisfied that the conversion of the common storage area to an ancillary warm up/recovery gym area will not substantially impact upon the operation of the building tenancies nor the amenity of the locality.

#### Building Code of Australia, including Fire Safety and Accessibility

Concerns have been raised in submissions regarding compliance with the Building Code of Australia, including compliance with the fire egress requirements in relation to the adjoining swim school and the safety of children in an emergency/evacuation.

Firstly, the reasons for refusal by the RLPP for the previous development application DA/370/2019 included concerns in relation to entry, exit and access to the proposed swim school, and concerns in relation to the design of the swim school, with regards to accessibility as follows:

#### Reason for refusal 2

*The current lift and ground floor lobby are adequate for the current tenants but it has not been demonstrated how this will adequately support an additional use, without causing conflict. The Panel considers any future application should investigate opportunities to increase the lobby area, lift capacity including a possible additional lift to service the lower ground floor or alternative access.*

#### Reason for refusal 4

*The design, layout and facilities within the premises do not adequately demonstrate that the needs of the proposed use are met, in particular access to the pool for people with disability, size of change rooms, number of bathrooms and width of the entry door.*

This was also an issue raised under the subsequent approval by the RLPP for the swim school under DA/119/2020, which has been reproduced below:

*"A series of BCA compliance reports were submitted with the previous development applications. It is noted that the original BCA report provided with DA/370/2019, dated 27 February 2018, was based on the assumption that the Lower Ground Floor level would be used for non-commercial storage and stipulated that a review would be required if the use of LGF level was to be altered. In response to concerns raised by Council requesting an updated BCA report, an additional letter was provided by the BCA Consultant, dated 24 September 2019. The letter considered the proposed fit-out and change of use to the swim school and concluded that the proposed development is capable of complying with relevant performance requirements of the BCA including Parts D3 (Accessibility) and Part E (Fire safety requirements), however no detailed assessment was submitted demonstrating how*

*compliance is achieved. No BCA or Fire Safety report has been provided with the subject application.*

*It is considered that based on the information provided to date, with regards to the previous applications, the proposed development would likely be capable of complying with the relevant provisions of the BCA, however no certification has been provided in this regard. As such, it is recommended that a condition of consent be imposed for a detailed fire engineering and BCA compliance report to be provided by a suitably qualified professional prior to the issue of a Construction Certificate, which demonstrates that the proposed development complies with the relevant provisions of the BCA with particular regards to fire safety, and provides a detailed analysis regarding how compliance is achieved. The level of detail submitted with the DA is sufficient for assessment purposes.*

*No Accessibility report which considers the proposed development in its entirety was submitted with the subject application. With the subject application, an Accessibility report was submitted by a suitably qualified access consultant to address the reasons for refusal of the previous development application (DA/370/2019) with particular regards to the use of the lift and lobby area by patrons of the swim school, and the design, layout and facilities within the premises. The report states that the existing stairway be utilised as a means of access, with the existing lift utilised for persons with a disability. The report also confirms that the proposed development, including internal floor layout and proposed facilities, shall comply with the relevant accessibility requirements of the BCA, and relevant Australian Standard.*

*Based on the professional advice submitted, it is considered that the proposed development would likely comply with the relevant provisions of the BCA and Australian Standards with regards to accessibility. Furthermore, the Access report was reviewed by Council's Senior Building Surveyor who concurred that the report's recommendations were appropriate in this instance. However, it is recommended that certification is provided by a suitably qualified Access Consultant prior to the issue of a Construction Certificate which demonstrates that the proposed development complies with the relevant provisions of the BCA with regards to accessibility, Australian Standard AS1428.1-2009 and the Disability (Access to Premises – Buildings) Standards, which is also recommended by Council's Senior Building Surveyor."*

As part of this subject proposal, the applicant has provided Council with a BCA and Access Capability Statement addressing the relevant sections of the BCA, AS1428.1-2009 (*Design for access and mobility*) and the *The Disability (Access to Premises – Buildings) Standards 2010*. The Statement was reviewed by Council's Coordinator Compliance who found the Statement satisfactory in addressing the relevant sections of the required provisions including fire safety and accessibility, subject to the implementation of the performance solution recommendations within the Statement. A relevant condition of consent has been recommended for inclusion in the consent.

In terms of accessibility, Council is satisfied that the above BCA Statement sufficiently addresses accessibility to the lower ground floor. In addition, it is noted that an Access Report was provided as part of the approval for the swim school (DA/119/2020), noting that the lift access and lobby area met the relevant requirements to the lower ground floor. As such, the requirement for another Access Report for this subject DA is not considered warranted. Subject to the recommendations within the BCA Statement being carried out as part of the construction certificate, Council is satisfied that access to the ancillary gym area will provide sufficient accessibility to all gym patrons.

In terms of fire safety, there is a secondary fire exit within the area of the proposed ancillary lower ground floor gym area to the eastern side of the building. Whilst the area between the main lobby and eastern staircase will be occupied with gym patrons, Council is satisfied that access to this exit by the swim school will be sufficiently maintained. The ancillary gym area will not permit any weights which will not block access in an emergency. In addition, the hours of which the swim school operates are wholly within the extent of hours of the proposed ancillary gym area.

None the less, Council is concerned regarding the access to this secondary fire egress through the ancillary lower ground floor gym area that is required to be accessible in the case of an emergency to any person within the lower ground floor area (including the swim school). Council understands that access to this area will be restricted to the gym operator only because it is a separate tenancy within a shared building. Council appreciates that there would not be a desire from the gym operator



to allow access to this area for anyone within the building for security reasons, however it is unclear how this access will be maintained in an emergency. When the issue of fire access was raised with the applicant, the following information was provided:

*“We understand Council still has some questions around the compliance strategy for the proposed part use of the lower ground floor as a gym.*

*Note, we have reviewed this previously and in board terms we do not believe the use of this space would contravene the building code, as outlined below –*

1. *Accessibility – the area is served by a common passenger lift, hence vertical access to and from the level is provided for users who are not able to use a stairway. The entry doorway into the gym will be automated such to ensure access to and within the building.*
2. *Egress – the subject level is not a basement, but a lower ground floor, additionally the gym won't facilitate more than 50 persons, hence the current egress strategy proposed and provided meets the DtS provisions of the BCA.”*

Council notes that at this stage, insufficient detail has been provided with regard as to how the emergency fire egress required for all occupants to the lower ground floor will be maintained. Whilst it is noted that the gym door will be automatic, Council is still unsure as to how this will be maintained as automatic when it will be locked at times to keep the area secure when not in use. The level of detail does not provide a detailed full assessment of this matter to the satisfaction of Council. As such, Council has recommended a condition that an addendum BCA Report is to be provided that demonstrate in detail compliance with the exit provisions within the BCA for both tenancies and the lobby area within the lower ground area. The addendum BCA Report is to be provided to Council prior to the issue of the Construction Certificate, in order to confirm how fire access from the entire floor will be maintained as per the BCA. Therefore, subject to recommended conditions, Council is satisfied that fire safety and access have been demonstrated as satisfactory.

#### Access

As detailed above, one of the reasons for refusal of the previous development application DA/370/2019 was in relation to access to the swim school and potential conflict for use of the lobby and lift with the existing tenancies. It was recommended that alternative options be considered including opportunities to increase the size of the lobby area and lift capacity, alternative access means and/or additional lift provisions. This was also an issue raised under the subsequent approval by the RLPP for the swim school under DA/119/2020, which has been reproduced below:

*“While it is acknowledged that a separate access and lobby area for the swim school would be preferable, the Applicant has not pursued this path and as such the application must be assessed based on what is currently proposed. The proposed development maintains the use of the existing lift and lobby space for access to the swim school and use of the existing stair.*

*The submitted Plan of Management aims to address the concerns raised by the Panel by proposing that during the hours of 3:30pm and 5:30pm on weekdays, entry and exit to the swim school shall be via the stairs only with the exception of patrons with a disability who will be given an access control swipe for the lift as part of their membership to the swim school. Furthermore, the proposed hours of operation have been amended to be sited outwith the peak hours of the childcare centre, with regards to the morning period, in order to minimise conflict between users of the floor levels.*

*However, concerns are raised regarding the management of this proposal in relation to restricting access for a limited period, and the enforcement of the lift access. As such, should the application be approved it is considered that access to the swim school be via the stair only at all times, and lift access only permitted by persons with a disability, to minimise impacts upon existing users of the building and prevent conflict with other users within the building. The stair has a separate external entrance on the front building façade and therefore appropriate signage would need to be installed to clearly identify the entrance to the swim school and ensure users utilised the stair for access and not the lobby area. The Plan of Management would also need to be updated to ensure that all patrons of the swim school*

*are advised that access to the LGF level is via the stairs only, unless persons have a disability in which case an access swipe can be allocated for lift access.*

*The existing tenancies within the building provide access solely through the lobby area and lift. Subject to the above recommendations, and taking into account the hours of operation and maximum number of patrons permitted at any one time to the swim school, it is considered that the proposed development would not result in any unreasonable impacts upon the existing tenants and users of the building with regards to access.*

With regards to access for the subject proposal, there is no direct internal access from the lower ground floor area for warm up/recovery to the main ground floor gym area. Patrons will be required to use either the existing main internal fire staircase within the building or the eastern side external staircase to access the lower area to main ground floor area above. The increased foot traffic between the main internal staircase and entrance to the gym to Bream Street will not adversely impact upon pedestrian using the footpath as there is a separate paved area away from the footpath.

However, the internal staircase will be shared with the swim school to the lower ground floor area. Whilst this will increase the use of this staircase, Council is satisfied that this will not adversely impact upon safety within the building. The approved swim school (DA/119/2020) currently has the following capacity and hours of operation:

Capacity:

- 2 staff in attendance
- 2 x 30 minute classes run every hour for 6 children (max 12 per hour)

Hours:

- Monday to Wednesday: 9:30am to 5:30pm;
- Thursday and Friday: 9:30am to 4:00pm;
- No operation on Saturdays or Sundays.

The proposed gym extension does not seek to increase have the following capacity and hours of operation (in accordance with DA/936/2015):

Capacity:

- Maximum 2 staff in attendance
- 15 persons within the fitness studio

Hours:

- Monday to Friday: 5.45am to 9.00pm and
- Saturday and Sunday 8.00am to 7.00pm

The worst-case-scenario of people within the internal stairwell would be a total 31 people (being 17x from the gym including staff and 14x from the swim school including 1x parent of a single child and staff). It is unlikely that this scenario would occur regularly within the building because of general staggered times of arrival of patrons and differences in use patterns.

It is also noted that there is a secondary fire exit within the eastern side of the proposed gym area that can be utilised by gym patrons for access to the proposed warm up/recovery area. The imposition to require gym patrons to use this access only is considered unreasonable considering that the internal staircase use will be minor for access only and will not be used for the general operational activities of the swim school or warm up/recovery area. In order to confirm that the fire staircases are used for foot traffic to the respective uses on the lower ground floor only (and not part of any gym activities), a condition of consent has been recommended to be included in a single PoM for the entire gym operation that requires that the fire staircase shall not be used for any recreational activities. All activities are to be conducted within the approved gym use areas on the lower ground and ground floor levels only.

In terms of the lift use and access, Council recommends that the same condition be imposed on the use of the staircase and lift access as per DA/119/2020 is recommended to be imposed on this subject DA. This will require that all patrons of the gym are to utilise the stair for access to the lower ground floor gym area, with the exception to people with disability. Lift access is only permitted to



people with disability and lift access is to be granted via an access swipe which shall be provided as part of their enrolment to the gym.

Therefore, whilst Council notes the previous concerns raised by the RLPP in relation to access, Council is satisfied that the patron access to the lower ground floor area will not have an adverse impact on access and safety within the existing building noting the proposed capacity of the ancillary gym area.

#### Acoustic Privacy

Concerns have been raised in submissions regarding acoustic impacts as a result of the proposed development, especially with regard to the adjoining tennis court users.

An Acoustic report was provided with the subject application which provides the following recommendations with regards to the operation of the lower ground floor gym area:

- *Prominent notices shall be placed to remind patrons that a minimum amount of noise it to be generated when entering and leaving the premises, particularly during the early morning hours.*
- *Management to minimise careless use of equipment, etc.*

The report concludes that subject to the above recommendations, the proposed development will comply with the applicable noise criteria.

The application was referred to Council's Environmental Health Officer who reviewed the submitted Acoustic report and submissions, and advised that the application was supported subject to recommended conditions of consent, including implementation of the Acoustic Report recommendations.

Submissions raised concerns regarding the acoustic impacts of the proposed change of use on the amenity of the tennis club users. Council is satisfied that the proposed use of area is of minor amenity impact, noting that it will be used for non-intensive fitness programs. In addition, Council notes that following a review of pathway records there are no noise complaints received relating to the operation of the existing gym. However, there was one noise complaint regarding the use of the tennis court in September 2020.

That being said, in order to control the use of the activities being performed in this area, Council's Environmental Health Officer has recommended a condition of consent that there is a prohibition on the use of Olympic weights, powerlifting weights, and free weights within the lower ground floor warm up/cool down/recovery area. This restriction will not require any further building works to upgrade the existing storage area use to address potential noise concerns and which aligns with the proposed intended use of the lower ground floor area. This requirement will be included as part of the updated, single PoM for the entire gym area.

#### Traffic and Parking

Numerous submissions have been received which raise concerns regarding adverse impacts upon traffic and on-street parking in relation to the proposed development. The application was referred to Council's Development Engineer for comment and/or recommendations who provided a detailed assessment in relation to the proposed development which is provided in Appendix 1.

The Development Engineer reviewed the assessment and justification provided by the Applicant's Traffic Consultant, and undertook an independent assessment of the proposed traffic and parking impacts.

In conclusion, the Development Engineer supported the proposed development as there is not proposed to be an increase in the gym patronage with the additional lower ground floor level. Appropriate conditions of consent have been recommended to confirm this via an updated Plan of Management (as outlined in detail above).

## **9. Conclusion**

That the application to change of use at the lower ground floor level from storage area to gym (being an extension of the existing ground floor gym) and associated internal alterations and additions 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 specific objectives of the RE1 Public Recreation zone in that the proposed use is a recreational activity, compatible with the existing land use, and shall not result in any adverse impacts upon the natural environment, or biodiversity, ecological and aesthetic values of the site. Furthermore, the proposed use shall provide an important community facility which shall be in the public interest.
- The proposed works are primarily contained within the existing building envelope, and the design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- Subject to the recommendations within the report, the proposed development shall not result in unreasonable amenity impacts upon the surrounding locality.

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## Appendix 1: Referrals

### 1. Internal Referral Comments:

#### 1.1. Development Engineering

Council's Development Engineer has confirmed the proposed development is satisfactory and provided the following comments:

##### **"GENERAL/SUMMARY COMMENTS"**

- *The DCP parking rates predict the proposal will generate an additional parking demand of 6 spaces (including staff) whereas the traffic study predicts only 2 spaces. This cannot be provided on the site and will be burdened by the surrounding street network.*
- *Notwithstanding, it is acknowledged the proposed additional floor area will be catering for existing gym patrons for warm-up, cool down & change room facilities and is therefore not expected to generate any significant additional parking demand.*
- *The submitted Traffic and Parking Study has overestimated the availability of on-street parking as it has misrepresented the parking capacity of at least some of the surveyed parking zones in the order of about 15%. Hence the stated minimum of 37 spaces available within 200m of the site is more likely to be in the order of 31 spaces only.*
- *The parking surveys and site inspection by the Development Engineer indicate there is very little on-street parking available within 100m of the site due to competing demands of the Coogee Tennis club, Swim school, and Child Care centre all located within the same building. Further significant parking generating activities on this site will not be supported.*
- *There appears to be a history of non-compliance of Council's past approvals on this site including the most recent approval under DA/119/2020 (condition 5). To therefore ensure the additional floor area is used in accordance with its approved use, it is strongly recommended stringent conditions be imposed prohibiting simultaneous classes or other parking generating activities for the additional floor area, should the application be approved. A suggested condition has been included in this report.*
- *Provided all recommended conditions be imposed no further objections are raised to the subject proposal.*

##### **PARKING PROVISION COMMENTS**

###### **SUMMARY**

*The application should not significantly impact the availability of on-street parking as the application is catering for existing patrons of the gym with improved facilities.*

###### **CONTEXT & EXISTING SITUATION**

*The site was previously subject to DA/936/2015 being for the demolition of the old Eastern Suburbs Tennis Club building and construction of a new 4 storey building containing a gymnasium, tennis club and a new child care centre.*

*The tennis club and gym were existing operations in the old club building that simply transferred to the new building with a virtually identical footprint hence only the additional parking demand created by the childcare centre was considered in the assessment of DA/936/2015.*

The child care centre was initially approved with a decreased patronage of 46 children but was eventually varied to 55 children under DA/936/2015/A.

The original DA application depicted the lower ground floor comprising of mainly 'storage' (including waste bin storage) associated with the uses above however illegal works added additional floor space that subsequent development applications DA's (including the current DA) relies on. Parking impacts associated with this additional floor space were never considered in the original assessment of DA/936/2015.

DA/119/2020 was approved in September 2020 by the Local Planning Panel to occupy a portion of the illegal lower ground floor area as a swimming school. Development Engineering did not support this application due to the unacceptable impacts on the availability of on-street parking in the vicinity and the conflicting parking demands with the other uses in the building. Development Engineering recommended that should the application be approved then at minimum following conditions should be imposed;

- The proposed Sunday operation was to be deleted
- Thursday and Friday operations are to cease at 4pm
- Only one class of 4-6 children is to operate at any one time

These recommendations were adopted and imposed as condition 8 in the original consent for DA/119/2020. In addition, the Local planning panel only issued approval for a trial period of 1 year however the consent was made permanent on 10<sup>th</sup> September 2020 under DA/119/2020/A after minimal complaints were received during the trial period.

#### PROPOSED DEVELOPMENT ASSESSMENT

The current proposal proposes to convert the remaining portion the originally illegally constructed floor area that is not occupied by the swimming school for use by the existing gym above for warm up and recovery area change rooms being an area of approximately 147m<sup>2</sup>. The gym currently has approved hours

#### DCP Parking Requirements

Under Table 1 Part B7 of Council's DCP, the proposed use would be classified as an indoor recreational facility, requiring parking to be provided at the rate of **1 space per 25m<sup>2</sup>** or as determined in a Transport Assessment study.

The proposed 147m<sup>2</sup> of floor area proposed to be converted to a gym will therefore generate a parking demand of **6 spaces** when adopting the DCP parking rates. As no additional off-street parking has been proposed, this demand will be totally burdened by the surrounding street network.

#### Traffic and Parking study

The applicant has submitted a Traffic and parking Report by M<sup>c</sup>Claren Traffic Engineers. The study has calculated the expected parking demand of the centre while also assessing the impacts of this demand on the surrounding street network. It has accomplished this by undertaking a number of surveys which are discussed in further detail below.

The study firstly estimates the likely parking demand of the additional gym floor area and has determined a lower parking generation than the 6 spaces the DCP predicts amounting to about 2 spaces. This is supported by the undertaking of a user mode travel survey taken of staff and patrons between 1<sup>st</sup>-6<sup>th</sup> May 2023 indicating that only 22.2% of respondents drove their vehicle to the gym. Furthermore, the Traffic study states the additional floor area will generally be used as warm-up and recovery area and won't accommodate additional classes, thereby generally catering for the existing gym patrons only which will also assist in minimising any additional parking demand generated.

Finally the study examines the availability of on-street parking with parking surveys conducted on Thurs 27<sup>th</sup>, Sat 29<sup>th</sup> and Sun 30<sup>th</sup> April 2023. It states that during the peak hours of operation of the proposed (and existing) gym there were a minimum of 80 & 67

carparking spaces available in the AM and PM periods. On weekends there were a minimum of 43 & 37 spaces available during Saturday and Sunday operations respectively. Development Engineering has identified issues with these figures however (see below) and is of the view they are being over misrepresented by about 15%.

#### Development Engineers Assessment

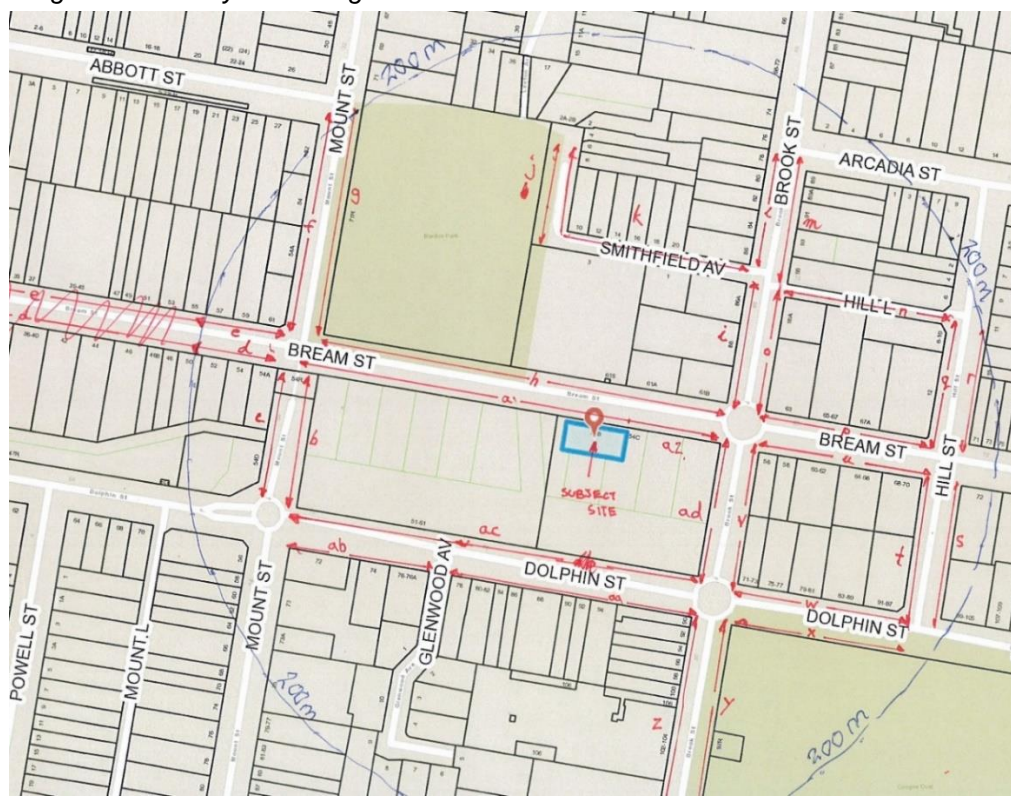
The Traffic and Parking Report has included enough data for Development Engineering to undertake an assessment although some aspects of the study are misleading and the availability of on-street parking is not quite as prevalent as the study suggests.

Firstly it is noted the parking surveys were conducted in the end of April 2023 being outside of the busy summer months where the availability of on street parking is normally much more restricted. It would therefore not be representative of summer parking availability.

Secondly the parking survey extends 200m from the site and suggests there is sufficient parking available however parking within 100m is much more restricted. The parking survey indicates parking along Bream Street itself in front of the site is at or close to capacity.

The location of the surveyed parking zones are listed in Annexure B of the study but are not presented graphically on a map making it difficult to visualise the availability of on-street parking in relation to distance from the subject site. Hence to assist assessment, the surveyed zones have been graphically presented by the Development Engineer in Figure A below. When presented visually and looking at the surveyed parking date it is more obvious that the parking zones closest to the subject site are being heavily utilised.

#### • Figure A - Surveyed Parking Zones



Indeed, at the time of site inspection on Monday 4<sup>th</sup> March 2024, Bream Street between Brook Street and Mount Street (Zones a1 & h) immediately in front of the site was parked to capacity as demonstrated in the photos below taken at 4:05pm with only 1 small space on the northern side and 2 disabled spots available.



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*Lastly the study appears to have over-estimated the number of spaces that some zones can accommodate. For example it states Zone A1 contains 18 unrestricted spaces however at the time of site inspection only 15 vehicles were counted within this zone which was at capacity. In addition the length of this zone is approximately 100.3m, which could never accommodate 18 spaces under Australian standard 2890.5 (On street parking) which states the length of a on-street space shall be between 6m and 6.7m. suggesting a capacity of about 15-16 spaces. This is consistent with site inspection observations. The parking surveys also indicate this zone was accommodating 15 vehicles but misrepresents that there was 3 vacant spaces. Similarly zones b & c are indicated as having a capacity of 7 spaces whereas a site inspection has revealed that only 6 spaces are available in each zone. The survey never indicated 7 vehicle parked in this zone.*

*Other parking zones have not been examined but if they are consistent with the above appears the availability of on street parking is being misrepresented by about 10-15%. The stated minimum of 37 spaces available within 200m of the site is therefore more likely to be in the order of 31 spaces only.*

#### Access to Alternative forms of Transport

*The subject site is located within 50m of bus stops on Bream Street that serve routes 374 Coogee To Central and 374X Coogee to City.*

*There is also an existing bike rack in front of the site on Bream Street that serves the entire building including patrons of the gym.*

*It is expected that the gym would cater for local patrons and many will likely walk or ride to the centre. The Travel mode survey also indicates only 20% of patrons drive.*

*A condition requiring submission of a Green Travel Plans has been included in this report to further encourage use of alternative forms of transport.*

**FLOODING COMMENTS**

*The site is located within a flood zone with significant flood depths of over a metre predicted on the adjacent tennis courts during major storm events. The level of the lower ground floor encompassing the proposed gym extension is below the level of the 1% AEP (1 in 100yr) flood however it was approved under DA/936/2015 to be used only as storage and suitably protected up to the flood planning level, being the level of the 1% AEP + 0.5m freeboard (RL 8.74 AHD) .*

*Initial site inspections for an earlier DA (DA/857/2018) revealed that the exterior walls did not appear to be watertight with drainage holes observed in the southern wall below the expected flood level. There was concern that these gaps may be a passage for floodwaters to enter the lower ground floor and impact on the proposed development (see pic).*



*Additional documentation was requested and subsequently submitted with DA/857/2018 indicating the building had been certified by Hydraulic Engineers AJK Design. See D03542967. The certification confirms the building is suitably waterproofed and has been structurally designed to withstand hydrostatic forces associate with the PMF (Probable Maximum flood) as required by conditions of consent for DA/936/2015 for the building. Development Engineering is therefore satisfied the proposed development is suitably protected from flooding.*

*It is also noted that two evacuation routes are available via the internal stairs and also the exterior stairs on the eastern side of the building which accesses the building above the flood planning level.*

**WASTE MANAGEMENT/STORAGE COMMENTS**

*The lower ground floor was originally intended to be dedicated for storage including waste storage under the original building approval of DA/936/2015. With the approval of the swim school under DA/119/2020 the remaining area of the lower ground floor not occupied by the swim school was required to be a common storage. Condition 5 in this consent states*

**Floor Space**

5. *The common storage area on the eastern side of the building at the lower ground floor adjacent to the swimming school must only be used for communal storage*

*purposes so that it does not generate any additional parking or traffic demand and shall remain accessible to all tenants within the building.*

*The common waste storage area will remain unchanged and the proposed additional gym area is unlikely to generate any significant additional waste hence the waste storage room will be able to accommodate the subject proposal and no objections are raised on this aspect.*

*Although not affecting Development Engineering conditions it is noted however the common storage areas as required by condition 5 will be deleted with this proposal and according to objections lodged with this application were never installed in the first place. There has been a history of non-compliance on this matter and it is noted the subject proposal will be in direct conflict with condition 5."*

## 1.2. Environmental Health

Council's Environmental Health Officer has confirmed the proposed development is satisfactory and provided the following comments:

### ***"Proposed Development:***

*Change of use at the lower ground floor level from storage area to gym (being an extension of the existing ground floor gym) and associated internal alterations and additions.*

### ***Comments:***

*The proposal seeks to convert the existing lower ground floor level storage area into a warmup and recovery area to operate in conjunction with the existing gym.*

*Warm up area is to be considered to utilise dynamic stretching, band work possibly some light cardio. No heavy weightlifting would be permitted in the warmup area and this should be conditioned as part of the consent in the form of restricting the use of free weights and Olympic weights.*

*The operation hours are proposed to be maintained in line with the existing approvals. From a search of Council records, it is noted DA/373/2017 and DA/936/2015 are the most relevant applications. CC/247/2018 - 54B Bream Street, COOGEE NSW 2034 - Fitout of ground floor level of Eastern Suburbs Tennis building including gym facilities with staff room and bar.*

*To remain consistent with the abovementioned Development Applications the hours of the gym should be restricted as follows:-*

### *Hours of Operation*

- Monday to Friday - 5.45am – 9.00pm*
- Saturday to Sunday - 8.00am – 7.00pm*

### *Noise Complaints*

*Following a review of pathway records there are no noise complaints received relating to the operation of the existing gym. However, there was one noise complaint regarding the use of the tennis court in September 2020.*

### *Proposed patron capacity*

*There is no proposal to alter patron numbers and therefore it is assumed the gym operations will be restricted to 15 patrons for the gym.*

### *Amplified noise*

*Amplified music is proposed as part of this development and must not be above 75dB(A) as per the acoustic report. As per previous consents all windows and doors must remain closed while the gym is in operation.*

*It is noted that the required 6 car parking spaces cannot be provided as stated in the application."*

### **1.3. Building Compliance**

Council's Coordinator Compliance has confirmed the proposed development is satisfactory and provided the following comments:

*"I have looked through the Building Code of Australia Report dated 4 December 2023 that has been prepared to address the use of the existing area on the eastern side of the lower ground floor of the subject premises as a gym and consider it to be satisfactory.*

*It is recommended that the said report recommendations outlined be adopted as a condition of development consent with details of the certification provided to the engaged Principal Certifier. You are further advised that if there is the need for a performance solution report, this will also need to be incorporated into the development consent and construction certificate application with a validation report provided to the Principal Certifier.*

*And, any proposed variations to the recommendations and requirements in the subject reports shall be submitted to and approved by the Director City Planning, prior to approval of the construction certificate."*

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## Appendix 2: DCP Compliance Table

### 2.1 Section B7 Transport, Traffic, Parking and Access

Table 1 Vehicle Parking Rates

B7	Transport, Traffic, Parking and Access			
3	Parking & Service Delivery Requirements			
3.2	Vehicle Parking Rates			
	Proposed use	Vehicle	Motor cycle/scooter	Compliance
	Indoor recreation facility -	<p>Car parking requirements:</p> <p><b>1 space per 25m2 GFA or Transport Assessment Study.</b></p> <p>No increases in capacity are proposed as part of the proposal.</p> <p>No off-street parking is proposed with this application.</p>	<p>5% of the car parking rate.</p> <p>0.294 car spaces, when rounded up.</p> <p>No motor cycle/scooter spaces are required.</p>	See Key Issues section of this report and Development Engineering comments below in Appendix 1.

### 2.2 Section B9: Management Plan

B7	Transport, Traffic, Parking and Access		
Clause	Control	Proposal	Compliance
1 - 9	Plan of management to accompany applications requesting late night trading or with potential amenity impacts.	<p>The submitted preliminary plan has included the information required by Council under Section B9 and has used the controls as sub-headings to guide the indoor recreation facilities management framework. As such, the preliminary document has been prepared in accordance with Council's policies and includes key information to limit patron capacity, implement acoustic.</p> <p>A final signed Plan of Management has been conditioned for the review and approval of Council prior to the commencement of occupation to ensure that the measures to control the activities of the new gym area are in place before any operation of the proposed use.</p>	Yes, subject to condition.

### 2.3 Part F - Development in Recreation Zone

#### Objective:

- To ensure any proposed development supports and complements the recreational and ecological values of existing or planned recreation areas.

The specific controls of Part F1 are addressed below:

Development proposed in a RE1 or RE2 zone must demonstrate the following as a minimum:

- (i) the need for the proposed development on that land;



The proposed development will provide an additional recreational use on the site, being an ancillary warm up/recovery gym area. The boutique gym offering by CrossFit Coogee has demonstrated that there is a need for an additional gym area without weights and machinery that allows customers to warm up/recover from their cross fit gym activities. The area will also provide additional sanitary and change room facilities, of which is a benefit to the operation of the building as a whole. As such it is considered that the proposed use is not unwarranted in this instance, given the existing uses within the subject building.

(ii) *the need to retain the land for its existing or likely future recreation use;*

The existing building on site was approved in 2016 and is a newer development. The use of the site for recreation facilities which are contained within a building was considered appropriate under the original development consent. The proposed development shall not impact upon the existing or future use of the land for recreation purposes, being contained within the existing building.

(iii) *the impact of the proposed development on the existing or likely future use of the land;*

The proposed development shall not impact upon the use of the land for recreation purposes, being contained within the existing building. The proposed use shall promote the objectives of the RE1 zone by providing additional recreation activities on the site.

(iv) *whether the proposed development is complementary to the scenic, recreational and/or ecological values of the land; and*

As the proposed development is contained within the existing building envelope, the proposal shall not impact upon the scenic, recreational or ecological values of the site, noting that the lower ground floor level is not visible from the street and shall not result in any adverse visual amenity impacts as viewed from the surrounding properties to the rear.

(v) *in the case of RE1 Public Recreation zoned land, whether the proposed development would:*  
a) *unreasonably impede or diminish the intended public use or public access to the land;*  
b) *be consistent with any relevant plan of management adopted by Council.*

The proposed development shall not impact upon the public use or access to the land, noting that it is private property which is largely occupied by the existing building. There is no Council adopted Plan of Management applicable to the subject site.

In view of the above, the proposed development is not found to be inconsistent with the provisions of Part F1, and the proposal can be supported in this regard.

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**Responsible officer:** William Joannides, Environmental Planning Officer

**File Reference:** DA/695/2023

**Development Consent Conditions  
(Commercial)**

<b>Folder /DA No:</b>	DA/695/2023
<b>Property:</b>	54B Bream Street, COOGEE NSW 2034
<b>Proposal:</b>	Change of use at the lower ground floor level from storage area to gym (being an extension of the existing ground floor gym) and associated internal alterations and additions.
<b>Recommendation:</b>	Approval

**GENERAL CONDITIONS****Condition**

1. **Approved plans and documentation**  
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:

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Lower Ground Plan, Project No. CFC01, Drg No. DA 100, Amendment A	Ergo Architecture	09/08/2023	20/09/2023

In the event of any inconsistency between the approved plans and supplementary documentation, the approved drawings will prevail.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Trial Period**  
This consent is issued subject to a trial period of 12 months, commencing from the date of commencement of use. Council shall be advised in writing of the commencement date. This is imposed to gauge the effective management of the use and its environmental impacts, which include access within the building as well as traffic and parking.

Prior to the expiration of the 12 months trial period, a further application may be made to Council to allow continuation of the use. In assessing that application, Council will have regard to compliance with conditions of consent, materials submitted demonstrating adequate management and any substantiated complaints.

Condition Reason: To ensure that the proposed lower ground floor gym extension will have adversely impact upon the ongoing use and amenity of the existing building and tenancies, and the locality.

3. **Plan of Management**  
Prior to the issue of a Construction Certificate, an updated Plan of Management is to be submitted to and approved by Council. The Plan of Management is to incorporate the following changes:

Condition
<p>a) A single, consolidated Plan of Management that includes the operation of the entire gym premises within the building, including on both the lower ground floor and ground floor areas.</p> <p>b) Confirm the lower ground floor area is an ancillary warm up/recovery area to the main cross fit gym use to the ground floor. The area is to be used for warm up/cool down change room facilities only and shall not be used for additional classes or any other parking generating activities under any circumstances, without the explicit approval of Council.</p> <p>c) The lower ground floor area must be exclusively used for light exercise activities, which may include dynamic stretching, power band work, and cardio exercises, among other light workout activities. The use of Olympic weights, powerlifting weights, and free weights is strictly prohibited within this designated area. For the purpose of this condition, the following definitions apply:</p> <ul style="list-style-type: none"> <li>• <u>Olympic weights</u>: equipment described by and or reasonably equivalent to Section 2 of the IWF (International Weightlifting) Guidelines Sport Equipment Licensing document, published by the IWF on 6 December 2013.</li> <li>• <u>Powerlifting weights</u>: equipment described by or reasonably equivalent to that described by the Bars and Discs and Collars subsection of the Equipment and Specifications section of the IPF (International Powerlifting Federation) Technical Rules Book 2021, updated on 31 December 2021.</li> <li>• <u>Free weights</u>: Heavy objects, such as dumbbells and barbells, that are lifted during exercise and are not attached to any piece of equipment.</li> </ul> <p>d) The hours of operation of the warm-up and recovery area must be in line with previously approved operational hours under DA/936/2015. In this regard the hours of the gym operation are restricted as follows:</p> <ul style="list-style-type: none"> <li>• Monday to Friday - 5.45am – 9.00pm</li> <li>• Saturday to Sunday - 8.00am – 7.00pm</li> </ul> <p>e) The maximum number of patrons to the gym across both the main and ancillary gym areas is 15 persons.</p> <p>f) The maximum number of staff to the gym across both the main and ancillary gym areas is 2 persons.</p> <p>g) The internal fire staircase shall not be used for any indoor recreational activities. All activities are to be conducted within the approved gym areas on the lower ground and ground floor levels only.</p> <p>h) All patrons of the gym are to utilise the stair for access to the warm up/recovery area, with the exception to people with disability. Lift access is only permitted to people with disability and lift access is to be granted via an access swipe which shall be provided as part of their enrolment to the gym.</p> <p>i) Any recommendations of the Acoustic Report that is required to be updated in accordance with Condition 10 of this consent are to be incorporated into the Plan of Management.</p> <p>j) All windows and doors must remain closed while the gym is in operation.</p>

Condition Reason: To ensure that the gym operates in accordance with its approved capacities and reduces the impact it will have on the ongoing use and amenity of the existing building and tenancies.

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Condition	
4.	<p><b>Use of the Warm Up/Recovery Gym Area</b></p> <p>The warm up / recovery gym area located within the lower ground floor area is only to operate as an ancillary area to the main gym area above. This area shall not be operated as a separate business or tenancy within the building.</p> <p>Condition Reason: To ensure that the ancillary gym area does not adversely impact upon the amenity of the building or the locality.</p>
5.	<p><b>Green Travel Plan</b></p> <p>A Green Travel Plan shall be prepared for the development which endeavours 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, additional bicycle parking, management of workplace parking demand, &amp; incentives for public transport use.</p> <p>The Green Travel Plan shall be submitted to and approved by Council's Department of Integrated Transport prior to the issuing of an Occupation certificate.</p> <p>Condition Reason: To ensure that gym patrons consider active transport options to reduce the impact of traffic and parking within the locality.</p>
6.	<p><b>Signage</b></p> <p>No external signage to the existing building has been approved as part of this proposed development. The provision of any signage for the lower ground floor gym premises shall be the subject of a future development application or provisions in the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</p> <p>Condition Reason: To ensure that the consideration of external signage is assessed in accordance with the relevant planning provisions.</p>

### BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
7.	<p><b>Consent Requirements</b></p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
8.	<p><b>Building Code of Australia</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, 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).</p> <p>The recommendations outlined in the BCA &amp; Access Capability Statement, prepared by Design Confidence, dated 04 December 2023, Ref: P215_160, shall be adopted as part of the development with details of the certification provided to the engaged Principal Certifier. If there is the need for a performance solution report, this will also need to be incorporated into the development consent and construction certificate application with a validation report provided to the Principal Certifier.</p>

	Condition
	Any proposed variations to the recommendations and requirements in the subject reports shall be submitted to and approved by the Director City Planning, prior to approval of the construction certificate.
	Condition Reason: Prescribed condition under section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i> .
9.	<p><b>Building Code of Australia</b></p> <p>An addendum BCA Report is to be provided that demonstrate in detail compliance with the exit provisions within the BCA for both tenancies and the lobby area within the entire lower ground area.</p> <p>The addendum BCA Report is to be provided to Council prior to the issue of the Construction Certificate.</p> <p>Condition Reason: To ensure safe and easy access to the premises for people under an emergency situation.</p>
10.	<p><b>Building Code of Australia</b></p> <p>Access and facilities for people with disabilities must be provided to new building work in accordance with the relevant requirements of the <i>Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010</i> and relevant Australian Standards, to the satisfaction of the Registered Certifier for the development and details are to be included in the construction certificate for the development.</p> <p>Condition Reason: To ensure safe and easy access to the premises for people with a disability.</p>
11.	<p><b>Acoustic Treatment</b></p> <p>Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant*. This work will be to the satisfaction of the accredited certifier.</p> <p>All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.</p> <p>*Note: <i>Suitably Qualified Acoustic Consultant</i> means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member firm.</p> <p>Condition Reason: To ensure that adequate provisions have been met to address potential acoustic impacts of the development.</p>
12.	<p><b>Sydney Water</b></p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> <li>• Building plan approvals</li> <li>• Connection and disconnection approvals</li> </ul>



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Condition
<ul style="list-style-type: none"> <li>• Diagrams</li> <li>• Trade waste approvals</li> <li>• Pressure information</li> <li>• Water meter installations</li> <li>• Pressure boosting and pump approvals</li> <li>• Change to an existing service or asset, e.g. relocating or moving an asset.</li> </ul>
<p>Sydney Water's Tap in™ in online service is available at:  <a href="https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm">https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</a></p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>

### BEFORE BUILDING WORK COMMENCES

Condition
<p>13. <b>Building Certification &amp; Associated Requirements</b></p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ul style="list-style-type: none"> <li>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</li> </ul> <p>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.</p> <ul style="list-style-type: none"> <li>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</li> <li>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 <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</li> <li>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; and</li> <li>e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</li> </ul> <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
<p>14. <b>Construction Site Management Plan</b></p> <p>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:</p>

Condition	
	<ul style="list-style-type: none"> <li>location and construction of protective site fencing and hoardings</li> <li>location of site storage areas, sheds, plant &amp; equipment</li> <li>location of building materials and stock-piles</li> <li>tree protective measures</li> <li>dust control measures</li> <li>details of sediment and erosion control measures</li> <li>site access location and construction</li> <li>methods of disposal of demolition materials</li> <li>location and size of waste containers/bulk bins</li> <li>provisions for temporary stormwater drainage</li> <li>construction noise and vibration management</li> <li>construction traffic management details</li> <li>provisions for temporary sanitary facilities</li> <li>measures to be implemented to ensure public health and safety.</li> </ul> <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>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.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
15.	<p><b>Construction Noise &amp; Vibration</b></p> <p>Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i> must be satisfied at all times.</p> <p>Condition Reason: To ensure that adequate provisions have been met to address potential noise and vibration emissions during the construction phase.</p>
16.	<p><b>Public Utilities</b></p> <p>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.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>

#### DURING BUILDING WORK

Condition	
17.	<p><b>Site Signage</b></p> <p>It is a condition of the development consent that a sign must be erected 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:</p> <ol style="list-style-type: none"> <li>showing the name, address and telephone number of the principal certifier for the work, and</li> <li>showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and</li> <li>stating that unauthorised entry to the work site is prohibited.</li> </ol>

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Condition
<p>The sign must be—</p> <ol style="list-style-type: none"> <li>maintained while the building work is being carried out, and</li> <li>removed when the work has been completed.</li> </ol> <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> <li>building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or</li> <li>Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</li> </ol>

Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

18.

**Restriction on Working Hours**

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"> <li>Monday to Friday - 7.00am to 5.00pm</li> <li>Saturday - 8.00am to 5.00pm</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> <li>Monday to Friday - 8.00am to 3.00pm</li> <li>(maximum)</li> <li>Saturday - No work permitted</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> <li>Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

*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.*

Condition reason: To protect the amenity of the surrounding area.

19.

**Construction Site Management**

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

Condition
from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
(c) 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.
(d) Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
(e) Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.
(f) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.

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.*

Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.

## BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
20. <b>Occupation Certificate Requirements</b> 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 <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> .  Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
21. <b>Fire Safety Certificate</b> A single and complete <i>Fire Safety Certificate</i> , certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> .  A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW.  Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , and that adequate provision is made for fire safety in the premises for building occupant safety.
22. <b>Mechanical Ventilation</b> Prior to issue of any Occupation Certificate and following the completion, installation, and testing of any mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause

Condition
A5.2(1)(e) of the <i>Building Code of Australia</i> , must be submitted to the Principal Certifier.

Condition Reason: To ensure that any mechanical ventilation systems comply with the relevant BCA provisions.

## OCCUPATION AND ONGOING USE

Condition
<p>23. <b>Fire Safety Statement</b></p> <p>A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i>, and in accordance with the <i>Fire Safety Schedule</i> for the building.</p> <p>The <i>Fire Safety Statement</i> is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the <i>Fire Safety Schedule</i>.</p> <p>A copy of the <i>Fire Safety Statement</i> must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire &amp; Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p>
<p>24. <b>Hours of Operation</b></p> <p>The hours of operation of the warm-up and recovery area must be in line with previously approved operational hours under DA/936/2015. In this regard the hours of the gym operation are restricted as follows:</p> <ul style="list-style-type: none"> <li>Monday to Friday - 5.45am – 9.00pm</li> <li>Saturday to Sunday - 8.00am – 7.00pm</li> </ul> <p>Condition Reason: To ensure that the approved use is operated within the approved hours of operation, to ensure safety and security and protect the amenity of surrounding areas.</p>
<p>25. <b>Plan of Management</b></p> <p>The Plan of Management received by Council on 06 December 2023 shall be updated to reflect the terms of this consent and must be implemented at all times of the operation of the gym on both the lower ground floor and ground floor levels.</p> <p>Condition Reason: To ensure that the approved use is operated within the approved hours of operation, to ensure safety and security and protect the amenity of surrounding areas.</p>
<p>26. <b>External Lighting</b></p> <p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>
<p>27. <b>Commercial Plant Noise</b></p> <p>Noise from commercial plant and industrial development must not exceed a project</p>



Condition
<p>amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA <a href="#">Noise Policy for Industry 2017 (NPfI)</a>.</p> <p>Note: The stricter of the amenity/intrusiveness criteria becomes the prevailing criteria for the development.</p> <p>Background noise monitoring must be carried out in accordance with the long-term methodology in <a href="#">Fact Sheet B</a> of the NPfI unless otherwise agreed by Councils Area Planning Manager.</p> <p>Commercial plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment.</p> <p>In addition, noise from commercial plant, when assessed as an LAeq, 15 min must not exceed the LA90, 15 min background noise level by more than 3dB when assessed inside any habitable room of any affected residence or noise-sensitive commercial premises when in use. The noise level and the background noise level shall both be measured with all external doors and windows of the affected residence closed.</p> <p>Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premise.</p> <p>Condition Reason: To ensure that any commercial plant noise complies with the relevant BCA/EPA provisions.</p>

28.

**Entertainment Noise**

The proposed development is to incorporate noise control measures to ensure the standard LA<sub>10</sub> Condition is satisfied inside those occupied spaces with doors and windows closed and any alternative ventilation system is operating as follows:

- (a) The LA<sub>10, 15 minute</sub> noise level emitted from the use must not exceed the background noise level (LA<sub>90, 15 minute</sub>) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
- (b) The LA<sub>10, 15 minute</sub> noise level emitted from the use must not exceed the background noise level (LA<sub>90, 15 minute</sub>) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, noise from the use when assessed as an LA<sub>10, 15 minute</sub> enters any residential use through an internal to internal transmission path is not to exceed the existing internal LA<sub>90, 15 minute</sub> (from external sources excluding the use) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use between the hours of 7am and 12midnight.

Where the LA<sub>10, 15 minute</sub> noise level is below the threshold of hearing, Tf at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226: 2003- Normal Equal-Loudness-Level Contours then the value of Tf corresponding to that Octave Band Centre Frequency shall be used instead.

- (d) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential use between the hours of 12.00 midnight and 7.00am.

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	Condition
	<p>(e) The <math>L_{A10, 15 \text{ minute}}</math> noise level emitted from the use must not exceed the background noise level (<math>L_{A90, 15 \text{ minute}}</math>) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.</p> <p>Note: The <math>L_{A10, 15 \text{ minute}}</math> noise level emitted from the use is as per the definition in the Australian Standard AS1055-1997 Acoustics – Description and measurement of environmental noise. The background noise level <math>L_{A90, 15 \text{ minute}}</math> is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver. Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfl unless otherwise agreed by Council's Planning Manager.</p> <p>Condition Reason: To ensure that any entertainment noise complies with the relevant AS provisions.</p>
29.	<p><b>Structure Borne Noise</b></p> <p>Structure borne noise emanating from the use of the premises is not to exceed the following criterion (when doors and windows are closed):</p> <ul style="list-style-type: none"> <li>Commercial premises - <math>L_{A1, \text{Slow } 15 \text{ minute}} \leq L_{A90, 15 \text{ minute}} + 3 \text{ dB(A)}</math></li> <li>Residential premises - <math>L_{A1, \text{Slow } 15 \text{ minute}} \leq L_{A90, 15 \text{ minute}} + 0 \text{ dB(A)}</math></li> </ul> <p>Condition Reason: To ensure that any structure borne noise emanating from the use of the premises does to have an adverse impact on the amenity of the building and locality.</p>
30.	<p><b>No Outdoor Speakers/Music</b></p> <p>Speakers and/or noise amplification equipment must not be installed or played in any outdoor areas or directed towards outdoor areas.</p> <p>Condition Reason: To ensure that noise does to have an adverse impact on the amenity of the building and locality.</p>
31.	<p><b>Offensive Noise</b></p> <p>Noise from the development must not cause an 'offensive noise' as defined in the Protection of the <i>Environment Operations Act 1997</i>.</p> <p>If "offensive noise" complaints are substantiated by an authorised officer under the <i>Protection of the Environment Operations Act 1997</i>, an acoustic report must be submitted for review and approval by the Planning Manager of Randwick City Council upon request. The submitted acoustic report must be prepared by a suitably qualified acoustic consultant and include appropriate noise mitigation measures that will ensure the premises cease to cause "offensive noise" during its permitted use.</p> <p>Note: A Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member.</p> <p>Condition Reason: To ensure that noise does to have an adverse impact on the amenity of the building and locality, in accordance with the relevant Acts.</p>
32.	<p><b>Compliance with Acoustic Report</b></p> <p>All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by Hyde Deng of Acoustic Logic, dated 14 July 2023, ref 20230274.1/2408A/R1/HD, titled 54B Bream Street Coogee – Gym Noise Emission Assessment, Council Ref: D05060771 must be implemented in the development prior to the commencement of its use.</p>

	Condition
	<p>The averaged amplified music noise level inside the warmup and recovery area of the gym must not exceed 75dB(A).</p> <p>All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.</p> <p>Condition Reason: To ensure that noise does to have an adverse impact on the amenity of the building and locality.</p>
33.	<p><b>Ventilation of premises</b></p> <p>The premises must be ventilated in accordance with the Building Code of Australia and <i>AS1668.1</i> and <i>AS1668.2 - The Use of Ventilation and Air-conditioning in Buildings - Mechanical Ventilation in Buildings</i>.</p> <p>Condition Reason: To ensure that sufficient ventilated in implemented in accordance with the relevant BCA/AS provisions.</p>