

JRPP No:	2010 SYE 020
DA No:	DA/215/2010
PROPOSED DEVELOPMENT:	<i>Demolition of existing buildings and contruction of part 4/part 5 storey residential flat building comprising 124 apartments with two levels of basement carparking for 178 vehicles with associated works at 265-271 Avoca Street, Randwick</i>
APPLICANT:	4D Property Consulting Pty Limited
REPORT BY:	Major Assessment Co-ordinator – Randwick City Council

Assessment Report and Recommendation

1. EXECUTIVE SUMMARY

Council is in receipt of a development application proposing demolition of existing buildings and contruction of part 4/part 5 storey residential flat building comprising 124 apartments with two levels of basement carparking for 178 vehicles with associated works.

The application is referred to the Joint Regional Planning Panel to determination pursuant to clause 13B (1)(a) of State Environmental Planning Policy (Major Development) 2005 as the development has a capital investment value in excess of \$10 million.

The proposed development is permissible as “multi-unit housing” within the Residential 2B zoning of the subject site.

Following concerns raised with the applicant regarding the bulk and scale of the proposal and advice provided by the SEPP 65 Design Review Panel in relation to solar access, internal planning, façade composition, building/dwelling entries, amended plans were submitted on 6 May 2010 to address these issues. Further amended plans were submitted on 11 June 2010 to articulate the proposal in terms of its scale to adjoining properties. These amended plans are the subject of this report, are considered to be satisfactory, showing an improved proposal addressing concerns raised.

The applicant initially lodged the application on the basis of existing use rights given the existing commercial use on-site, being a car sales and service yard (with development consent). Notwithstanding the claim to existing use rights, the applicant also submitted with the DA objections made under SEPP No. 1 in support of variance from the FSR, building height and landscape standards. In May 2010, in the matter of *Iris Diversified Property Pty Ltd v Randwick City Council* [2010] NSWLEC 58, Justice Pain ruled that in the case of a change of an existing prohibited use to another use permissible in a zone, the specified provisions of the LEP do not derogate from the incorporated provision cl 41(1)(d) and do have force and effect.

Accordingly, in such cases, a SEPP 1 objection is necessary for any variation to a given development standard and that a DA cannot be determined in the absence of an objection under SEPP 1. The applicant has been advised of this judgement and the SEPP 1 Objections lodged with the application have been assessed as part of the overall assessment and determination of the DA.

The amended proposal varies from the development standards of the Randwick LEP 1998 (Consolidation) in that it has an FSR of 1.7:1 (compared with the maximum 0.65:1 FSR standard applicable under the Randwick LEP 1998); a maximum building height and external wall height of 14.945m (compared with the maximum 9.5m building height and 7m wall height standard of the Randwick LEP); and a landscaped area of 46.52% compared with the minimum 50% LEP standard). The DA is accompanied by a State Environmental Planning Policy No. 1 (SEPP 1) objection to all these variations from the standard.

An assessment of the SEPP 1 objections indicates that strict compliance with the controls would be unreasonable and unnecessary as detailed in Section 5 of this report.

The site is considered suitable for the proposed development. In particular, the proposed development, notwithstanding its exceedance in height, bulk and scale, will occur in an area of the City where the character of development is expected to change significantly. The adjoining hospital and university precinct to the east is being planned by Council as a Specialised Centre for education, health and research in line with the Metropolitan Strategy which has identified a Growth Corridor through this precinct. As employment opportunities grow in this precinct in the future the need for housing for workers within walking distance will increase. The scale of the proposed development is warranted as it will be compatible with the future scale of development envisaged in the hospital/university precinct and it will provide a source of suitably located housing for workers in this precinct in the future.

The proposal complies with the objectives and preferred solutions of the DCP - Multi-unit Housing. The proposal is also consistent with the provision of the DCP No. 22 – The Spot and surrounds although the controls contained in this DCP are not directly applicable to the site.

The proposal would be suitable for the site and would have acceptable impacts on the amenity of adjoining and surrounding properties. In terms of visual bulk and scale, the applicant has provided details indicating that a total of 453.5 sqm of the total gross floor area comprises storage areas in the basement and sunken ground floor levels. A significant portion of the gross floor area is underground and therefore, would not contribute to the visual bulk and scale of the development as viewed from the street.

The proposed development was advertised for fourteen (30) days in accordance with Council's DCP – Public Notification and the Environmental Planning and Assessment Act, 1979. 19 submissions and a petition with 186 signatures were received in response to the notification and advertising of the DA.

The DA is accompanied by a draft Voluntary Planning Agreement (VPA) between the developer and Council, pursuant to Section 93E of the Act for the dedication of three

dwelling units to Council for the provision of affordable housing. As detailed in Section 10 below the VPA has been assessed against Council's Planning Agreements Policy and primarily satisfies the purpose and acceptability test set out in the policy.

A previous DA (DA/820/2004) for demolition of existing buildings and construction of a part-3 and part-4 storey mixed use development comprising 53 dwelling units, car showroom on the ground level and basement carparking for 143 vehicles was approved on 8 February 2005. The applicant has advised that this DA has been activated in through the commencement of remediation works on site.

The application is considered suitable for deferred commencement approval subject to conditions.

2. SITE DESCRIPTION AND LOCALITY:

The subject site is located on the eastern side of Avoca Street and the northern side of Barker Street (that is at the north-eastern corner of the intersection of these two roads). The site has frontages of 48m to Avoca Street, 87.79m to Barker Street and 53.89m to Dine Street and has an area of 4046 sqm. A cross fall of 5m diagonally from the north-east to the south west corner exists over the site.

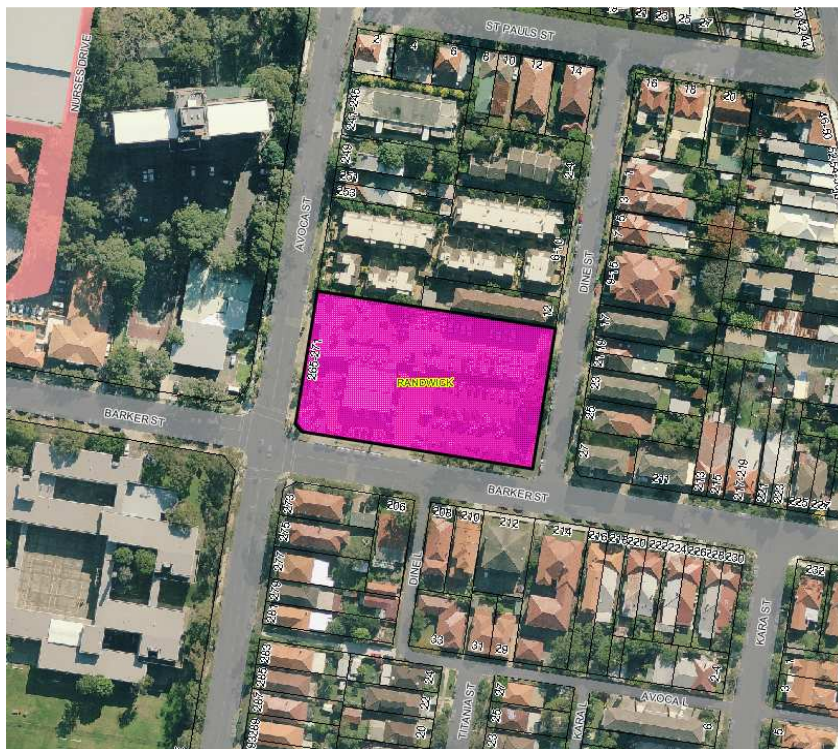


Figure 1: Aerial view of the subject site and its surrounds.

The land is currently occupied by a car sales, showroom and service centre contained within an existing part one and part two storey brick and glass building.

The surrounding area comprises predominantly residential and institutional uses. The subject site is also located at the edge of a heritage conservation area that is mainly centred around The Spot business centre further to the north east. To the north of the site is a two storey townhouse development of recent construction at No 255 Avoca

Street and an older residential flat building at No 12 Dine Street; to the south on the opposite side of Barker Street are a number of single/semi-detached dwellings, as well as several residential flat buildings; to the east on the opposite side of Dine Street are residential flat buildings of three storeys and three storeys over carparking and some single dwellings; and to the west of the site on the opposite side of Avoca Street are institutional uses, primarily, comprising the Prince of Wales Hospital and Randwick Girls High School.

3. HISTORY:

The following development applications have been previously approved for the subject site:

DA No.	Proposal	Determination
7682/1961	Temporary new motor vehicle showroom	Approved – 5 September 1961
46/1970	Extension to rear of existing workshops to enlarge its area.	Approved – 21 April 1970
1111/1970	Convert existing shop to display showroom.	Approved – 21 April 1970
211/1978	Alterations and additions to existing service station building and convert to display, service and sell motor vehicles.	Approved - 5 February 1979
153/1983	Alterations and additions to existing service station.	Approved – 9 August 1983
96/1987	Erect 2 advertising signs on premises used for non-conforming use (car sale yard) in Residential Zone.	Approved – 30 June 1987
147/1996	Use Nissan car dealership car park during evening periods for parking for Ritz Cinema.	Approved – 22 August 1996
362/1996	Extension to an existing motor showroom.	Approved – 11 October 1996
811/2003	Installation of new carwash for preparation of vehicles for display sale.	Approved – 14 October 2003
820/2004	Demolition of existing buildings and construction of a part-3 and part-4 storey mixed	Approved – 8 February 2005 The Deferred

	use development comprising 53 dwelling units, car showroom on the ground level and basement carparking for 143 vehicles	Commencement Conditions have been satisfied and the DA has been activated in that remediation works on site have been commenced.
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4. THE PROPOSED DEVELOPMENT

The proposal was lodged originally for the demolition of existing buildings and construction of part 4/part 5 storey residential flat building comprising 132 apartments with two levels of basement carparking for 178 vehicles with associated works.

An amended proposal was submitted on 6 May 2010 to address concerns raised by both Council and the SEPP 65 Design Review Panel and contained the following key amendments:

- Deletion of the section of the proposed Northern building containing units Nos. G.06, 1.07, 2.07, and 3.09, to provide for an appropriate separation and significant opening between the Northern building and the Avoca building.
- Reduction in the number of dwelling units from 132 to 124.
- The creation of an opening on the southern end of the corridor/breezeway in the Avoca Building which may entail deletion/reconfiguration of bedrooms to units Nos. 1.01, 2.01 and 3.01.
- Improvements to the lift configuration and circulation in the south-east of the proposed development which currently does not allow for convenient access to units.
- Improvements to the west-facing units (looking into the central courtyard) in the Dine Street building which will have limited aspect and solar access
- Improvements to the amenity of internal windowless study rooms and small internal kitchens.
- Improvements to the privacy of walkways/balconies of units looking into the central courtyard.

A further amended plan was lodged on 11 June 2010 indicating the following changes:

- Provision of higher floor to ceiling heights on the ground floor of the Barker Street building (in the order of 3m) to allow for the possibility of future non-residential uses at ground level which would better activate the Avoca Street frontage
- Amended treatment to the external privacy screening along Barker Street to better articulate the Barker Street elevation.
- Relocation of the roof top plant roof away from the north-western corner so as to reduce the scale of the development along Avoca Street relative to the adjoining northern town houses at No 255 Avoca Street.

Specifically, the lower levels of the proposed development contains the following uses:

Basement Level 2 (lowest of two basement levels)

76 carparking spaces
Storage areas
Garbage room
Bicycle parking area
Lift, lobby & stair access

Basement Level 1

76 carparking spaces
Storage areas
Garbage room
Bicycle parking area
Lift, lobby & stair access

Ground level

Main central entrance and lift lobby on corner Avoca and Barker Streets

The development is spread over the following 4 distinct perimeter building blocks within which a mix of 1 bedroom, 1 bedroom + study and 2 bedroom apartments are proposed:

Northern Building
Avoca Street Building
Barker Street Building
Dine Street Building

5. State Environmental Planning Policy No 1 Objections

Clause 20F Floor space ratios

The proposal seeks to vary a development standard contained with Randwick Local Environmental Plan 1998 being Clause 20F - Floor Space Ratio.

A maximum FSR standard of 0.65:1 (max 2455 sqm) is applicable to the subject site pursuant to Clause 20F of the Randwick Local Environmental Plan 1998. The proposed multi-unit housing development will result in an FSR of 1.7:1 (max 8336.01 sqm).

The applicant has submitted an objection under State Environmental Planning Policy No.1 - Development Standards, and has argued that strict compliance with Clause 20F of Randwick LEP is unreasonable and unnecessary. Principles for assessing SEPP 1 Objections have been established in the NSW Land and Environment Court case, *Wehbe v Pittwater Council* [2007] NSWLEC 827. The case has established that the upholding of a SEPP 1 objection is a precondition which must be satisfied

before a proposed development can be approved by the consent authority. The principles established in *Wehbe v Pittwater Council* are addressed in the assessment of the applicant's current SEPP 1 Objection:

Matter 1

The Court must be satisfied that "the objection is well founded" (clause 7 of SEPP 1). The objection is to be in writing, be an objection "that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case", and specify "the grounds of that objection" (clause 6 of SEPP 1).

The stated purpose of the maximum FSR standard as outlined in the LEP is:

"To establish reasonable upper limits for development in residential, business, industrial and special use zones through a limit on the amount of floor space that can be provided. This will help reduce the potential for adverse impact on nearby and adjoining development while still providing for reasonable levels of development and redevelopment."

The applicant has submitted the following arguments in support of the SEPP1 Objection:

- the apparent bulk and scale of the proposal is commensurate with the development approved under DA No, 820/2004 at the site. It is noted that the consent for the approved development has been physically commenced, and the approved development can be constructed. The proposed new development generally matches or improves upon the setbacks established by the approved development, so as to achieve a similar built form and scale, when viewed from the street;
- the proposed setbacks are commensurate with those approved under DA No. 820/2004 and in some instances, are greater than those of the approved scheme, so as to provide for additional perimeter landscaping and separation distances to neighbouring properties;
- the proposed additional floorspace, over and above that of the approved development, is generally located within the pop-up roof forms which are proposed on the upper levels of the development. These "pop-ups" are well setback from the perimeters of the development, so that they will not be overly visible from nearby properties and streets;
- the proposed bulk and scale has been tested in a detailed site analysis and was found to be acceptable in the context of the site (see Urban Design Report prepared by Jackson Teece Architecture);
- the proposed height is commensurate with a number of buildings in the immediate locality (e.g. No. 12 Dine Street and No. 209 Barker Street) and provides an appropriate visual transition in the streetscape;
- the proposal provides significant areas of landscaping, deep soil and communal open spaces, so as to ensure there is an appropriate balance between built-upon areas and areas available for recreation, landscaping and stormwater infiltration;
- the proposal provides significant areas for passive recreation around the site;
- the proposal does not give rise to any unreasonable adverse impacts in relation to the streetscape or nearby properties, particularly in relation to

overshadowing, overlooking and general overbearing impacts (see SEE report); and

- the proposal provides a stepped built form so as to minimise visual impacts and maximise sun angles.

It is considered that the proposal is satisfactory and compliance with the development standard is unreasonable and unnecessary for the following reasons:

- The Residential 2B zone envisages a range of medium density housing that is compatible with the dominant character of existing development in the area. Whilst the character of existing development in the area is tied to a degree to the character of the wider heritage conservation area, it is also equally valid that this character is shaped by that in the immediate local streets. In this context, the relationship of the proposal to adjoining development and its streetscape is obviously a key consideration and the likelihood that this development will remain in its current form needs to be considered. The site has residential flat buildings to its immediate east, north-east and south-east, and three single dwelling houses to the east on sites (Nos. 19, 21 and 25 Dine Street), which could be amalgamated, and relatively modern town house developments on the northern side have been built with scope for further construction. The dominant character of existing development in the immediate area is therefore a mixture of development ranging from single storey houses to three to four storey residential flat buildings. As such, the redevelopment of the subject site needs to be compatible with this mixture of forms, heights and styles, while recognising that the area is in a state of transition and the future character may change.
- The Residential 2B zoning and its attendant controls envisage a medium density development in the locality. The size and form of redevelopment in the area will vary depending primarily on whether it takes the form of residential flat buildings or town houses. The issue, therefore, is whether development at the scale of a residential flat development is compatible with the existing dominant character and if so whether the proposal is consistent with the scale of development envisaged under the controls for residential flat buildings. Given the possibility that single dwelling houses currently on Dine Street, and indeed in the wider heritage conservation area, that are all subject to the Residential 2B zone, will someday be amalgamated and replaced it is reasonable to assume that the future character of the area would see a different character emerging. In this context, it is recognised that the development of residential flat buildings (especially on large sites) will encounter difficulties responding to the scale of existing houses. It should therefore be acknowledged that any compatibility inherent in the planning control would be borne out of a recognition that residential flat buildings, town houses and single dwellings can co-exist and that the difference in scale is one envisaged by in the objective of the control. The site also adjoins the Hospital and broader University of NSW precinct to the west which is being planned by Council for as a 'Specialised Centre' of education, health and research given its location within the Metropolitan and draft East Sub-regional Strategies. The bulk and scale of the proposed development will be commensurate with the proposed growth strategies for the Specialised Centre which will include the development buildings of significant bulk and scale to

house the various education, health and research facilities that in turn will provide for employment in the future. In this context, despite the exceedance in FSR, the proposal will meet the underlying objectives of the standard as it has a bulk and scale that is consistent with the desired future character of the area and does not result in adverse amenity impacts.

- The excess floor area will be suitably distributed throughout the proposed building mass which is arranged in a perimeter format commensurate with the three road frontages of the subject site to provide a substantial urban edge to these streetfronts, in particular along Avoca Street and Barker Street.
- The proposed development will be in keeping with the existing height and scale of multi-unit housing development in adjoining sites, in particular, the existing 3-4 storey high residential flat buildings along Dine Street and 3 storey residential flat buildings along Barker Street are such that the proposed development will not be visually intrusive and will not read as an overdevelopment in the existing streetscape and locality. Dine Street, specifically, slopes up towards the north which means that the residential flat buildings, town houses and dwelling houses to the north along Dine Street are elevated above the site which would tend to reduce the difference in scale between the proposal and these existing developments to some extent although it is acknowledged that it will still be apparent but not in a visually intrusive manner.
- The applicant has provided details indicating that a total of 453.5 sqm of the total gross floor area comprises storage areas in the basement and sunken ground floor levels. As such, a significant portion of the gross floor area is actually underground so that this portion would not contribute to the visual bulk and scale of the development as viewed from the street.
- The proposed development is located at the edge of the heritage conservation area and the Residential 2B zone, as well as at the interface of the Special Uses 5 zone of institutional uses to the west of Avoca Street such that the additional density of the builtform can be accommodated at this location without being out of scale with existing residential flat buildings in the immediate locality along Dine and Barker Street.
- Council Heritage Planner has advised that proposed scale to Avoca Street, Dine Street and Barker Street is acceptable subject to appropriate treatment to proposed builtform to further reduce its scale and allow for a better transition in height and scale to adjoining properties. The applicant has amended the proposal to address these concerns in the amended plans lodged on 1 June 2010.
- Relocating the roof top plant away from the north-western corner will reduce the scale of the development along Avoca Street and as it interfaces with the adjoining northern town houses at No 255 Avoca Street.
- Refinement of the external privacy screening treatment in the south elevation to reduce any perception of visual bulk and scale along Barker Street has been undertaken in the amended plans lodged on 1 June 2010.

- The proposal has adequate carparking for the multi-unit residential development as it complies with the numerical requirements of Council's DCP – Parking.
- The proposal will be consistent with the objectives of the Residential 2B zone in which the site is located as primarily it will contribute towards the variety of medium housing types in the area, as well as encourage housing affordability whilst protecting the amenity of existing residents.
- The proposal will not compromise the amenity of surrounding residential areas in terms of privacy, solar access, views and bulk and scale impacts as indicated in relevant assessment sections of this report.

In conclusion, the proposal has adequately addressed the consistency of the proposed development with the underlying and stated purposes of the standard and the local planning objectives for the locality and objectives of the Act. The SEPP 1 objection has been provided that appropriately justifies that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Matter 2

The Court must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3” (clause 7 of SEPP 1).

The aims and objects of SEPP 1 set out in clause 3 are to provide “flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act”. The last mentioned objects in section 5(a)(i) and (ii) of the Act are to encourage:

*“(1) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
(2) the promotion and coordination of the orderly and economic use of developed land.”*

The variation from the FSR control is consistent with the aims of the SEPP No.1 because it would not detract from the objects of the Act under Section 5 (a) (i) and (ii) in that the resultant development would promote the orderly use and development of the subject land because

- it will have a height, bulk and scale that will not detract from the predominant existing character of its specific location containing predominantly medium to high density residential development typically older style residential flat buildings, 1970's three to four storey walk-ups and large duplexes.

- it will create additional floor area that will not negatively impact upon the amenity of adjoining and surrounding uses in terms of privacy, solar access, views and visual bulk and scale impacts.

Matter 3

The Court must be satisfied that a consideration of the matters in clause 8(a) and (b) of SEPP 1 justifies the upholding of the SEPP 1 objection. The matters in clause 8(a) and (b) are:

*“(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument”.*

The proposed development and variation from the development standard do not raise any matters of significance for State or regional environmental planning. The strict adherence to the numerical standard will not be necessary, in this case, for maintaining the low to medium density housing forms in the locality, including dwelling houses and semi-detached housing in the vicinity of The Spot business centre, where such development does not compromise the amenity of surrounding residential areas and is compatible with the dominant character of existing development.

Ways of establishing that compliance is unreasonable or unnecessary

Preston C J expressed the view that an objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways:

First *The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

Comments:

As discussed above, strict compliance with the development standard is unreasonable and unnecessary for the proposal to achieve the objectives of the development standard.

Second *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

Comments:

The underlying objective or purpose of the standard is relevant to the subject development.

Third *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

Comments:

Compliance would, in this case, be unreasonable as the underlying objectives of the standard is achieve.

Fourth *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Comments:

The maximum FSR development standard has not been abandoned or discarded by any decision or actions of Council.

Fifth *A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Comments:

The existing Residential 2B zoning is not considered to be inappropriate for the locality, which is characterised by low to medium density residential development.

Clause 20G Building Heights

The proposal seeks to vary a development standard contained within RLEP 1998 (Consolidation). A SEPP 1 objection has been submitted to Council.

Pursuant to Clause 20G of RLEP 1998, the maximum building and external wall height of a building, other than a dwelling house, within Zone No 2B is 9.5m and 7m respectively. The proposal has a maximum building and external wall height of 14.95m.

In assessing the applicant's SEPP 1 objection, the principles established from the NSW Land and Environment Court case, *Wehbe v Pittwater Council* [2007] NSWLEC 827 have been addressed. The case has established that the upholding of a SEPP 1 objection is a precondition which must be satisfied before a proposed development can be approved by the consent authority:

Matter 1

The Court must be satisfied that “the objection is well founded” (clause 7 of SEPP 1). The objection is to be in writing, be an objection “that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case”, and specify “the grounds of that objection” (clause 6 of SEPP 1).

- **Comments:**

The stated purpose of the building and wall height standard as outlined in the LEP is:

“To operate together with the controls for the floor space ratio and landscaped area to limit the size, scale and site coverage of a building having regard to the environmental amenity and aesthetic character of the area.”

The applicant has submitted the following arguments in support of the SEPP1 Objection:

- the development approved under DA No. 820/2004 did not comply with the height Standards, having a maximum external wall height of between 9m and 12.2m and an overall building height of 12.2m. In this regard, the proposed new scheme is commensurate with that already approved at the site;
- the apparent height of the proposal is minimised through the incorporation of stepped forms, with the higher elements located centrally within the proposed roof forms, so as to minimise their visibility from nearby properties and the public domain;
- the higher elements are setback from the perimeters of the building to minimise overshadowing and overlooking impacts;
- the proposal does not result in any unreasonable view loss (see SEE report);
- the proposed height is commensurate with the height of other buildings in the immediate locality, including No. 12 Dine Street (RL 64.4 or 12.96m to the ridge) and No. 209 Barker Street (RL 65.01 to its ridge);
- the proposed development has been broken up into four (4) separate forms, with each element broken down further into a series of smaller vertical bays, so as to respect and complement the established rhythm in the streetscape (see Urban Design Report prepared by Jackson Teece); and
- the site has two (2) prominent corners, where additional height is preferable so as to provide a strong address to the public domain.

It is considered that the proposal is satisfactory and compliance with the development standard is unreasonable and unnecessary for the following reasons:

- The exceedance in the building height and wall height standards would still result in a development that meets the objectives of these standards in that the height, bulk and scale impacts of the proposal are not significantly dissimilar to a development that complied with the controls. This is evident primarily in the fact that there is no material impact on overshadowing, privacy or views as a result in the breaches of the overall or wall height controls (as assessed and detailed in Section 10 below).
- Specifically, in relation to the wall height standard, the intent of this planning control is to establish a dominant wall height within which the bulk of the building is established and above which a secondary structure, appropriately articulated and modulated, can be permitted. Applying this premise to the

proposed development, the exceedance in the wall height control in the perimeter buildings the breaches in the overall height controls and the wall height control would not result in a building of a bulk, scale or mass that is dissimilar to one that complies with the controls. This is due primarily to the fact that a building with a complying wall height and a roof form with accommodation in the roof would not be significantly dissimilar in bulk to that proposed. The proposed development has upper levels which are set back from the wall height, coupled with a stepped, gap and toothed effect on the upper floors lengthwise on each block, and combined with the use of different material, all of which tends to give the upper floors the appearance of a secondary structure. The wall height generates the dominant bulk of the development and where it is exceeded, it is either measured expanses of setbacks and breaks which would have a similar impact to gables and/or where the proposal is setback sufficiently from the street or adjoining buildings the increase in wall height will have no additional impact than a lower wall height with less setback.

- The area of the site most sensitive to bulk is the north elevation of the northern, Avoca Street and Dine Street buildings as this interfaces with lower town house buildings adjoining to the north (eg., 255 Avoca Street) and the eastern elevation of the Dine Street building as this is in a prominent location in a secondary residential street in the general direction of The Spot. In particular, the latter frames the view up Dine Street north towards The Spot. However, it is on this Dine Street building alignment that the proposal has setback the upper-most fourth floor such that it not only reads as an exceptional secondary element but is virtually imperceptible from Dine Street (assisted as well by the sunken-in effect of the building into the existing slope on Dine Street). In the case of the, interface with northern town houses, the articulation of the upper floor of the northern and Avoca Street buildings achieves a similar secondary built form effect such that the proposal will not dominate the adjoining northern property. Furthermore, there are no contributory elements/facades, whether identified as Heritage Items or nominated in the DCP for The Spot, in the vicinity of the northern and Avoca Street building that would dictate strict compliance with the external wall height standard.
- The exceedance in the wall height control along the perimeter of the building blocks would appear to result in an impact beyond that envisaged by the planning controls but the development application has provided adequate and appropriate treatment to the built form above this wall height to break the overall scale of the proposal such that the exceedance in the wall height and overall height meets the objectives of the control as the proposal is of a height and bulk that would be similar to that of a building with a complying wall height with accommodation in a roof form and gables.
- The proposal will be consistent with local planning objectives for the locality in that it will promote the development of land in a location that has been identified by Council as suitable for multi-unit housing. The proposal will in effect remove existing buildings associated with the existing caryard and sales use, and replace it with part 4 and part 5 storey residential development that will be compatible in height, bulk and scale to existing surrounding residential

flat buildings and in doing so enhance the overall visual character of the locality. Furthermore, the proposal will support the aims and provisions of Randwick LEP 1998 by recognising the benefits of allowing residential development in a medium density form where such development does not compromise the amenity of surrounding residential areas and is compatible with the dominant character of existing development in the area.

- It is considered that a development compliant with the prescribed height control would be unreasonable on the subject site in that it would result in a low scaled, and noticeably restrained development relative to the large size of the site, and which may require more private access and drive ways given the extensive/sprawling nature size of the site that would in turn be out of character with the existing predominantly three storey residential flat development in the area and thus also limit the redevelopment potential of the site.
- The proposed development would allow for a reasonable redevelopment of the land and still result in a building which will be compatible in height with neighbouring buildings and the predominant scale of buildings in the locality. As discussed previously the applicant has amended the proposal to provide more breaks in the builtform and provide a better transition in height and scale to adjoining properties so as to be consistent with the heights of existing town house and residential flat buildings on adjoining and neighbouring sites.
- The additional height of the proposal in the four perimeter building blocks will not result in excessive overshadowing impacts to adjoining properties during the midwinter period as indicated in the assessment of the accompanying shadow diagrams.
- The development meets the stated and underlying objectives of the height standard. As such it is unnecessary and unreasonable to enforce the height standard in the circumstances of the case.

In conclusion, the proposal has adequately addressed the consistency of the proposed development with the underlying and stated purposes of the standard and the local planning objectives for the locality and objectives of the Act. The SEPP 1 objection has been provided that appropriately justifies that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Matter 2

The Court must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3” (clause 7 of SEPP 1).

The aims and objects of SEPP 1 set out in clause 3 are to provide “flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act”. The last mentioned objects in section 5(a)(i) and (ii) of the Act are to encourage:

*“(1) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
(2) the promotion and coordination of the orderly and economic use of developed land.”*

The variation from the maximum building and external wall height control is consistent with the aims of the SEPP No.1 because it would not detract from the objects of the Act under Section 5 (a) (i) and (ii) in that the resultant development would promote the orderly use and development of the subject land because

- it will have a height, bulk and scale that will consistent with other development in the street and will be compliant with the maximum building height control in the Randwick LEP
- it will create additional external wall height that will not negatively impact upon the amenity of adjoining and surrounding uses in terms of privacy, solar access, views and visual bulk and scale impacts.

Matter 3

The Court must be satisfied that a consideration of the matters in clause 8(a) and (b) of SEPP 1 justifies the upholding of the SEPP 1 objection. The matters in clause 8(a) and (b) are:

*“(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument”.*

The proposed development and variation from the development standard do not raise any matters of significance for State or regional environmental planning. The strict adherence to the numerical standard will not be necessary, in this case, for maintaining the low to medium density housing forms in the locality, including dwelling houses and semi-detached housing within the heritage conservation especially around The Spot, and the like, where such development does not compromise the amenity of surrounding residential areas and is compatible with the dominant character of existing development.

Ways of establishing that compliance is unreasonable or unnecessary

Preston C J expressed the view that an objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways:

First *The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The rationale is that development standards are not ends in

themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

Comments:

As discussed above, strict compliance with the development standard is unreasonable and unnecessary for the proposal to achieve the objectives of the development standard.

Second

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Comments:

The underlying objective or purpose of the standard is relevant to the subject development.

Third

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Comments:

Compliance would, in this case, be unreasonable as the underlying objectives of the standard is achieve.

Fourth

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Comments:

The maximum building and external wall height development standard has not been abandoned or discarded by any decision or actions of Council.

Fifth

A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.

Comments:

The existing Residential 2B zoning is not considered to be inappropriate for the locality, which is characterised by low to medium density residential development.

Clause 20E Landscaped Areas

The proposal seeks to vary a development standard contained within RLEP 1998 (Consolidation). A SEPP 1 objection has been submitted to Council.

Pursuant to Clause 20E of RLEP 1998, the minimum landscaped area for development, other than a dwelling house, within Zone No 2B is 50 % of the total site area. The proposal has a minimum landscaped area of 46.52% (2284.2 sqm) compared with the required 2455 sqm.

In assessing the applicant's SEPP 1 objection, the principles established from the NSW Land and Environment Court case, *Wehbe v Pittwater Council* [2007] NSWLEC 827 have been addressed. The case has established that the upholding of a SEPP 1 objection is a precondition which must be satisfied before a proposed development can be approved by the consent authority:

Matter 1

The Court must be satisfied that "the objection is well founded" (clause 7 of SEPP 1). The objection is to be in writing, be an objection "that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case", and specify "the grounds of that objection" (clause 6 of SEPP 1).

- **Comments:**

The stated purpose of the landscape standard as outlined in the LEP is:

"To operate together with controls for floor space ratio and building height to limit the size and scale and site coverage of a building having regard to the environmental amenity and aesthetic character of the area."

The applicant has submitted the following arguments in support of the SEPP1 Objection:

- the proposal provides 1,361.2m² or 27.7% of the site as deep soil, which is 145.8m² more than the scheme approved under DA No. 820/2004;
- the proposed basement footprint generally matches the ground floor footprint, so as to maximise deep soil zones and stormwater infiltration, and to provide maximum opportunity for significant planting around the site;
- the proposal provides significant additional areas of communal open space at the site, incorporating elevated communal terraces, with a combined area of 498.7m². While not technically included as landscaped area, due to the definition in LEP 1998, these areas are significant and provide additional important opportunities for more intimate and private passive recreation than the large communal courtyard in the centre of the site. If the area of these landscaped terraces is included, the proposal would have a landscaped area of 2,782.9m², representing 56.6% of the site, being more than required;
- the provision of smaller communal landscaped terraces is an important element in this large development, as it offers an alternative to the communal courtyard, in terms of an intimate area where residents can congregate and meet other residents. This is important in engendering a sense of belonging and community within the proposed development;

- the proposal provides significant areas of perimeter landscaping, which serves to permit significant perimeter planting to provide for amenity, streetscape appeal and visual privacy;
- the proposal incorporates the planting of a total of twenty-one (21) new street trees around the site's three (3) street frontages, which will significantly improve the streetscape in the locality, and soften the visual impact of the proposed development; and
- the amount of landscaping provided at the site is commensurate with, if not greater than, that provided in other multi-unit housing developments in the immediate locality, including No. 12 Dine Street and No. 209 Barker Street in the immediate vicinity.

It is considered that the proposal is satisfactory and compliance with the development standard is unreasonable and unnecessary for the following reasons:

- The proposal provides adequate areas of communal and private open space to individual units, which adds to the amenity of the units.
- The proposal complies with the LEP standard for maximum landscape area over basement podium.
- The deep soil landscaped area has been concentrated within the centre of the subject site, which provides for substantial open space and screening planting between the building blocks.
- Landscaping has also been well integrated into the two street setbacks which help to 'soften' the appearance of the development from the street in accordance with the objectives of the landscaping standards.
- The objectives of clause 20E will be met by the development despite non-compliance the statutory standard.
- The landscape plan lodged with the application indicates opportunities for a range of passive and active recreation areas suitable for the occupants of the proposed development and will also contribute to achieving privacy and separation between surrounding properties and make a streetscape contribution.

In conclusion, the proposal has adequately addressed the consistency of the proposed development with the underlying and stated purposes of the standard and the local planning objectives for the locality and objectives of the Act. The SEPP 1 objection has been provide that appropriately justifies that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Matter 2

The Court must be of the opinion that "granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3" (clause 7 of SEPP 1).

The aims and objects of SEPP 1 set out in clause 3 are to provide "flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act". The last mentioned objects in section 5(a)(i) and (ii) of the Act are to encourage:

*“(1) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
(2) the promotion and coordination of the orderly and economic use of developed land.”*

The variation from the minimum landscape area control is consistent with the aims of the SEPP No.1 because it would not detract from the objects of the Act under Section 5 (a) (i) and (ii) in that the resultant development would promote the orderly use and development of the subject land because

- it will have a height, bulk and scale that will consistent with other development in the street and will be compliant with the maximum building height control in the Randwick LEP
- it will create additional external wall height that will not negatively impact upon the amenity of adjoining and surrounding uses in terms of privacy, solar access, views and visual bulk and scale impacts.

Matter 3

The Court must be satisfied that a consideration of the matters in clause 8(a) and (b) of SEPP 1 justifies the upholding of the SEPP 1 objection. The matters in clause 8(a) and (b) are:

*“(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument”.*

The proposed development and variation from the development standard do not raise any matters of significance for State or regional environmental planning. The strict adherence to the numerical standard will not be necessary, in this case, for maintaining the low to medium density housing forms in the locality, including dwelling houses and semi-detached housing, and the like, where such development does not compromise the amenity of surrounding residential areas and is compatible with the dominant character of existing development.

Ways of establishing that compliance is unreasonable or unnecessary

Preston C J expressed the view that an objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways:

First *The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are

environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

Comments:

As discussed above, strict compliance with the development standard is unreasonable and unnecessary for the proposal to achieve the objectives of the development standard.

Second *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

Comments:

The underlying objective or purpose of the standard is relevant to the subject development.

Third *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

Comments:

Compliance would, in this case, be unreasonable as the underlying objectives of the standard is achieve.

Fourth *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Comments:

The standard has not been abandoned or discarded by any decision or actions of Council.

Fifth *A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Comments:

The existing Residential 2B zoning is not considered to be inappropriate for the locality, which is characterised by low to medium density residential development.

6. NOTIFICATION / ADVERTISING

The subject application was advertised and notified as integrated development from 14 April to 14 May 2010 in accordance with Development Control Plan – Public Notification of Development Proposals and Council Plans and the EPA Act 1979. Council has received 19 submissions objecting to the proposal. A signed petition was also received objecting to the proposal.

The amended proposal was not required to be renotified as the amendments primarily have improved the proposed development in terms of reducing the bulk and scale of the overall development as well as its amenity impact, to address issues raised by Council and the Design review Panel.

The issues raised in the letters of objection to the original proposal are detailed below:

Issues	Comments
Loss of security due to removal of a northern wall to the existing development	The loss of security currently enjoyed by the residents of the adjoining town-house development to the north (at No. 255 Avoca Street) as a result of the proposed demolition of the northern wall of the existing car sales/repair building (which currently sits directly on the common boundary) is unavoidable. The redevelopment of the site relies upon the complete removal of all buildings and structures on the site. It would be unreasonable to require the applicant to retain these northern walls given the impact this would have on the design and feasibility of the overall project. The loss in security will, however, be addressed by the requirement for a solid 2.5m high masonry fence along the relevant part of the northern boundary of the subject site.
Excessive FSR, building and external wall height that does not comply with the relevant planning standards	Whilst the proposal exceeds the maximum permissible FSR 0.65:1 (3191 m ²) with a proposed FSR of 1.7:1 (8336.01 m ²), the proposal will have a visual bulk and scale that is not considered to be out of character with the immediate adjoining residential flat buildings along Dine Street and Avoca Street and in the context of the subject site's location at the edge of the heritage conservation area and at the interface of the Prince of Wales Hospital complex which has a range of building sizes including a 12 storey high masonry building. Additionally, the non-compliant proposal is not considered to result in any detrimental impact on the amenity of adjoining residents in terms of solar access, privacy, views, visual bulk and scale, and traffic. In this regard, the assessment of the SEPP No 1 Objections lodged in relation to the breach in FSR and height shows that it is well founded and strict

Issues	Comments
	compliance with the standard would be unreasonable and unnecessary (see Section 10 below).
Loss of privacy	Loss of privacy issues are assessed in Section 10 below which address the concerns raised by objectors particularly in the adjoining northern property at No 255 Avoca Street and No 12 Dine Street. Essentially, these privacy concerns have been addressed adequately in the amended form of the proposal as well as by appropriate conditions primarily requiring additional screening measures to be included should approval be granted including the installation of privacy screens on relevant edges of balconies.
Increase traffic and loss of on-street carparking	The proposal fully complies with the numerical carparking and design requirements of the DCP – Parking such that all residential and visitor carparking spaces will be met on-site. Accordingly, refusal of the DA on the grounds that the proposal would result in loss of on-street carparking above and beyond that required by and, already provided for, under the DCP would be speculative and unreasonable. Section below assesses the traffic impact of the proposal which indicates that the expected increase in vehicular movement at the peak hour will be moderate amounting to 36 vehicles. This increase will not have any detrimental impact on the level of service in surrounding intersections and on the local road network.
The proposal will result in unreasonable overshadowing on the adjoining properties.	Overshadowing impacts are assessed in Section below. Shadow diagrams for the proposal indicate that shadows casted by the proposed development during the winter solstice morning, midday and afternoon will fall predominantly upon the roads that adjoining the subject site on three sides, that is Avoca Street, Barker Street and Dine Street respectively. Some minor overshadowing of the front yards of residences fronting Barker Street and Dine Street at midday and in the afternoon will occur but will not result in any reduction to less than the minimum 3 hours of sunlight over at least 50% of neighbouring open space area requirement of the DCP Multiunit Housing.
Loss of views	Potential loss of views from upper floor units in No 12 Dine Street and No 255 Avoca Street have been address in Section below. Essentially, applying the principles established in the case of Tenacity v Warringah council the loss of these

Issues	Comments
	views are considered acceptable as (1) they are non-iconic views and of minor significance being attained (2) across side boundaries and existing urban development, such that (3) the loss of these views are of moderate significance and an (4) a complying development with pitched roof would also give rise to loss of these views.
Minimal plans for landscaping	The landscape plans lodged with the DA have been prepared by a qualified landscape consultant. Council's landscape officer has assessed the plans and associated documents and raises no objections to the plans and their contents subject to conditions to enhance the effectiveness of the proposed landscape treatment.
SEPP 1 Objections are not well founded	The applicant is considered to have adequately addressed the purpose of the relevant standards that the proposal will breach. Council has applied its own test to these purposes and do not consider the purposes listed by the applicant (as quoted from the Randwick LEP 1998 to be "phoney" purposes as claimed by one objector. Additionally, a comprehensive test to determine whether the relevant standards are unreasonable or unnecessary have been applied in the assessment of the SEPP 1 Objections in line with the SEPP 1 principles established in the case of Wehbe v Pittwater Council [2007] NSWLEC 827. 21 December 2007 – Land and Environment Court must be applied.
Detrimental construction impacts including noise, vibration and potential damage to adjoining properties	Standard conditions will be applied to ensure protection of adjoining sites during excavation and construction including requirements for consent of adjoining property owners to be obtained prior to ground or rock anchors being installed underneath adjoining premises, and submission of documentary evidence by a qualified professional geotechnical engineer certifying the suitability and stability of the site for the proposed building and certifying the suitability and adequacy of the proposed design and construction of the building for the site. Further, a condition requiring a report by a professional engineer detailing the proposed methods of excavation, shoring or pile construction, including details of potential vibration emissions will be applied. This report also must demonstrate the suitability of the proposed methods of construction to overcome any potential damage to nearby land/premises.

Issues	Comments
Excessive number and poor mix of dwelling units	The amended proposal will have a total of 124 dwelling units which provide for a mix of 1 bedroom, 1 bedroom + study and 2 bedroom units which reflects to certain extent the demographics of the residents that would work and live in the locality. In particular, its close proximity to the Hospital/University precinct to the west would provide suitably located housing for future workers in this precinct. The number of dwelling units that can be yielded from the proposed development does not necessary reflect an overdevelopment (or underdevelopment for that matter) of a project. Rather, the design and configuration of dwellings are also influenced by solar access, cross ventilation and external amenity considerations.
Comparative analysis with previously approved scheme is not justified.	The applicant has submitted SEPP 1 Objections for the variations to planning controls and, therefore, acknowledges that these variations should be tested against the objectives of the standards. Council's report equally has not been based on any comparison between the proposed development and the previously approved scheme particularly given that the site, as it stands, does not have the benefit of existing use rights.
No bicycle parking provided	A condition will be applied requiring the provision of bicycle parking in accordance with Council's DCP Parking.
Site contamination poses detrimental health effects Misrepresentation of the remediation works onsite granted under previous approval	Conditions will be applied for remediation of the site in accordance with the provisions of SEPP 55 to ensure the site will be suitable for it intended use. Appropriate measures will be applied for remediation to occur safely and in accordance with relevant guidelines.

7. TECHNICAL OFFICER AND EXTERNAL COMMENTS

Development Engineering Comments

The development application was referred to Council's Development Engineering Department primarily in relation to stormwater drainage and landscaping. No objection is raised to the proposed development subject to conditions of consent.

Building Services and Environmental Health Comments

The development application was referred to Council's Building Services and Environmental Health sections. No objection is raised to the proposed development subject to conditions of consent.

Heritage Comments

Council's Heritage Planner advises as follows:

“The Site and Surrounding Area

The subject site has frontages to Avoca Street, Barker Street and Dine Street, with a fall from the north east to the south west corner. The site is within The Spot Conservation Area and is occupied by a car dealership and a motorcycle dealership. Buildings on the site comprise a one and two storey showroom building set back from the Barker Street frontage. To the west of the site on the opposite side of Avoca Street is the Prince of Wales Hospital's single storey Drug and Alcohol unit. To the north west of the site on the opposite side of Avoca Street are several heritage listed buildings on the Prince of Wales Hospital site including the former Main Building of the Destitute Childrens Asylum and the Catherine Hayes Hospital. To the north of the site is a two storey townhouse development of fairly recent construction, with frontages to Avoca Street and Dine Street. To the south of the site on the opposite side of Barker Street are a number of single dwellings, as well as several residential flat buildings. To the east of the site on the opposite side of Dine Street are single dwellings, together with a number of residential flat buildings.

Proposal

The application proposes a residential development of three, four and five levels over basement and sub-basement carparking. The original development was in the form of a single building which wraps around a central courtyard, partly open to the north. Amended drawings have been received however breaking up the single building into three separate buildings.

Background

A previous application (DA/820/2004) for a multi-unit housing development, with motor showroom at ground level on the Avoca Street frontage was approved in February 2005. The development generally comprised three levels over two levels of basement carparking, and was in the form of a number of perimeter buildings enclosing a central courtyard. An earlier Master Plan proposal for a development varying in height from three to five levels was refused in February 2004.

Submission

The application has been accompanied by a Heritage Impact Statement prepared by Graham Brooks and Associates. The Statement notes that the architectural character of the existing buildings on the site detracts from the surrounding area and makes no contribution to the streetscape. The Statement argues that the diverse mix of height, form and style of buildings in the vicinity allow for new development to easily 'fit' into the urban context. The Statement suggests that the scale of surrounding residential flat buildings and hospital buildings assist in ameliorating the visual impact of the proposal which is visually broken down to improve its compatibility with surrounding scale and form. The Statement considers that the proposal will have a positive impact on the area through reinstating the built street alignment and utilising the prominent corner location.

Comments

The Statement of Significance for The Spot Conservation Area prepared by Perumal Murphy in 2000 notes that the area has significance for its origins as “Irishtown”, a poor working class area on the fringe of Randwick village, dominated by Irish

Catholics. The Statement of Significance for the Conservation Area notes the aesthetic significance of the groupings of buildings from the Victorian, Federation and Inter-War periods. These are predominantly of single storey and two storey scale.

In relation to the demolition of existing buildings on the site it is noted that the existing use and buildings appear to be of relatively recent construction, and do not contribute to the streetscape of the Conservation Area. There are no heritage objections to the demolition of the existing buildings on the site. The 1890s Waterboard maps indicate a building set back from the Barker Street/Carlton Street corner (as Dine Street was then known). The Heritage Impact Statement which has been submitted considers that archaeological evidence of earlier buildings on the site has been destroyed during the construction of the present day buildings, but suggests that "the site may be monitored for any archaeological relics that may be unearthed during construction." An advisory condition should be included in any consent in relation to archaeology.

In relation to the design of the proposal, it is noted that Development Control Plan No.22- The Spot and Surrounds includes specific objectives for the Commercial and Residential zones. For the Residential Zone, the DCP includes the objective to conserve and enhance the existing residential streetscapes by ensuring that any new development respects the existing low scale character and compliments the architectural features of adjoining buildings where appropriate. In relation to building heights, the DCP includes a development control that the consent authority shall not grant consent to the erection of the building within the residential 2(b1) zone which exceeds 9.5m in height or which is greater than 2 levels above natural ground level.

The Statement of Significance for The Spot Conservation Area notes the aesthetic significance of the groupings of buildings from the Victorian, Federation and Inter-War periods. These buildings are predominantly of a single storey and two storey scale. There are a number of non-contributory buildings along Barker Street of two and three storeys and Dine Street of three storeys and three storeys over carparking. There are no heritage objections to the proposed modern design of the proposal, or to the materials and finishes which are proposed, given the varied character of surrounding buildings.

The five storey scale to Avoca Street is generally considered reasonable, given the character of this road and the scale of buildings within the hospital site. There are concerns in relation to the four storey scale of the north western corner of the development in relation to the two storey scale of the adjacent two storey residential development. It is noted that the front balconies to the proposal have a 2m setback from the street, while the adjacent development has a setback of 6m, increasing the streetscape prominence of the proposed development from the north along Avoca Street. The four storey scale to Dine Street is also considered reasonable given scale of the surrounding residential flat buildings (three storeys and three storeys over carparking). There are concerns in relation to the five storey scale to Barker Street given the single storey, two storey and three storey buildings opposite. The scale to Barker Street is accentuated by the screened balcony edges at first and second floor levels which have a setback from the street of 2m approx. and the bulk of the third and fourth level. It is considered that the generous dimensions of the site allow for a somewhat greater scale of development than would be possible on a

small infill site. However there are concerns in relation to streetscape impacts along the Barker Street and Avoca Street frontages.”

Comment: The concerns of the heritage planner in relation to streetscape impacts along the Barker Street and Avoca Street frontages have been addressed in amended plans submitted on 11 June 2010. Upon further assessment of these amended plans, the heritage planner has advised that consideration be given to further deletion of one top floor dwelling unit on the Avoca Street building immediately abutting the town house development to the north at No 255 Avoca Street. However, as detailed in the SEPP 1 assessment above, deletion of the subject unit is not considered warranted as there are no contributory elements/facades, whether identified as Heritage Items or nominated in the DCP for The Spot, in the vicinity of the northern and Avoca Street building. Accordingly, there would be no benefit to the streetscape or building interface from such a measure. Furthermore, the applicant’s relocation of the plant room away from the immediate interface with the northern town house development is considered adequate to reduce bulk and scale of the building in this location. Additionally, the separation distance between the north elevation of the Avoca Street building and the northern townhouse satisfactorily meets the separation distance of required of buildings at 4 storeys high.

“The application proposes, and to provide a landscape strip between the boundary and the building edge on the Avoca Street and Dine street frontages. Fencing and planter boxes are proposed to the Barker Street frontage, separating courtyards from the footpath. In relation to the proposed private courtyards, it is noted that the Development Control Plan for Multi-unit Housing does not encourage the provision of private open space between the front of the building and the street. Consent conditions should be included in relation to the height of fencing in order to minimise impacts on the amenity and security of the street environment.”

External Authority Comments

The Department of Environment, Climate Change and Water has raised no objections to the proposal in relation to potential dewatering of the subject site and has issued its General Terms of Approval on 1 May 2010 which will be applied as condition of consent.

The Roads and Traffic Authority have raised no objections to the proposal subject to traffic conditions as issued in a letter dated 18 June 2010.

8. RELEVANT ENVIRONMENTAL INSTRUMENTS

The applicant initially lodged the application on the basis of a claim to existing use rights in that the site is operating commercially as a car sales and service yard (with development consent) prior to the coming into force of the Randwick Local Environmental Plan 1998. Accordingly, the applicant claimed that, pursuant to Section 108(3) of the Act, any provisions in an instrument that would derogate from the “incorporated provisions” have no force or effect. Notwithstanding this, the applicant also submitted with the DA objections made under SEPP No. 1 in support of variance from the FSR, building height and landscape standards. In May 2010, in the matter of Iris Diversified Property Pty Ltd v Randwick City Council [2010]

NSWLEC 58, Justice Pain ruled that in the case of a change of an existing prohibited use to another use permissible in a zone, the specified provisions of the LEP do not derogate from the incorporated provision cl 41(1)(d) and do have force and effect. Accordingly, Justice Pain further ruled that, in such cases, a SEPP 1 objection is necessary for any variation to a given development standard and that a DA cannot be determined in the absence of an objection under SEPP 1. Having regard to this recent judgement, the subject DA for a permissible multi-unit housing use in the zone, cannot claim existing use rights for the proposed development at hand, and the SEPP 1 Objections lodged with the application for variations from the development standards in the Randwick LEP must be assessed prior to determination of the DA.

The statutory controls that apply in the assessment of the proposed development are:

1. State Environmental Planning Policy (Major Development) 2005
2. State Environmental Planning Policy No. 55 – Remediation of Land
3. State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development
4. Randwick Local Environmental Plan 1998

An assessment of the proposed development under the planning controls is provided in section 10 below.

9. POLICY CONTROLS

Development Control Plan – Multi-unit Housing

The table below assesses the proposal against the Preferred Solutions of the DCP – Multi-unit housing, and where variations occur, assessment is made against the relevant Objectives and Performance Requirements.

Performance requirements	Preferred Solution	Compliance (Whether proposal meets Performance Requirements or Preferred Solutions.)
Site Planning		
P1 Development applications accompanied by Site Analysis Plan.		Site analysis plan provided
P2 Development sites have appropriate areas/dimensions to allow for satisfactory siting of buildings.	S2 Sites are of regular shape with frontages of at least 20m.	Frontage to Avoca Street of 48m and to Barker Street of 87m.
P3 Development on corner sites responds to both street frontages.		Proposed Corner element with top level setback will emphasise prominence on both Avoca and Barker Street frontages.
Height		

Performance requirements	Preferred Solution	Compliance (Whether proposal meets Performance Requirements or Preferred Solutions.)
P1 Heights of walls, their location and orientation do not cause substantial adverse impacts on streetscape or adjoining properties.		SEPP 1 Objection for non-compliance with the building and external wall height standards has been assessed (see Section 5) and found acceptable. Location and orientation of the proposed building form will not cause substantial adverse impacts on streetscape or adjoining properties as assessed in relevant sections of this report).
P2 Variations in massing and height create visual interest, distribute the bulk of the building. g and minimise amenity impacts on the streetscape and adjoining properties.		Building bulk is distributed over a perimeter building layout comprising of 4 building blocks that creates adequate visual interest in terms of articulation and façade treatment to minimise amenity impacts on the streetscape and adjoining properties.
Building Setbacks		
P1 Front boundary setbacks The front setback consistent with streetscape /adjoining dwelling.		Front setback of max 3.93m to Avoca Street (to glass-line); 4.95m to Barker Street; and 4.07m to Dine Street consistent with setback of immediate adjoining buildings.
P2 Side boundary setbacks Side setbacks to ensure: <ul style="list-style-type: none"> Solar access maintained and overshadowing minimised. Privacy between adjoining dwellings and open spaces. Landscaping and private open space provided. Streetscape amenity is maintained. 	S2 Zone 2B <ul style="list-style-type: none"> No part closer than 2.5 metres. Minimum average setback 4 metres. Maximum length of wall without articulation is 10 metres. Minimum length of any step is 3 metres. 	North <ul style="list-style-type: none"> Yes – no part of building is closer than 2.5m from northern side boundaries. Yes – approx 5m and 6m average for northern side Yes – no wall without articulation more than 10m (max) length Yes – approx 1.5m (min) step
P3 Rear Boundary Setbacks Ensure that: <ul style="list-style-type: none"> Solar access and overshadowing are minimised. Privacy between neighbouring dwellings and their open spaces provided. Landscaping, communal recreation facilities and outdoor clothes drying spaces provided. Building built across site. 	S3 Zone 2B Minimum average setback 6 metres. No part closer than 4.5 metres. Maximum length of wall without articulation 10 metres.	N.A. (No definable rear boundary as site has 3 street frontages and one side boundary. Notwithstanding this, the proposal will ensure adequate solar access and privacy to adjoining properties, as well as adequate landscaping and useable outdoor spaces and builtform across the site as assessed in relevant sections of this report)

Performance requirements	Preferred Solution	Compliance <i>(Whether proposal meets Performance Requirements or Preferred Solutions.)</i>
P4 General Eaves, window hoods and other sun-shading or weather protection pose no significant adverse impact on adjoining properties.	S4 No device may encroach more than 25% of the Preferred Solution.	No adverse impacts on adjoining properties arising from eaves, window hoods and other sun-shading or weather protection
Density		
P1 Building bulk compatible with surrounding built forms and minimises impact on nearby buildings, open spaces and the streetscape.		The bulk and scale of the proposed building when viewed from adjoining public spaces, streetscape and private properties is visually compatible with existing 3-4 storey RFBs in immediate adjoining and surrounding properties. Specifically, appropriate amendments to reduce the bulk and scale of the proposed building have been undertaken (including, provision of a gap between the western Avoca Street and northern blocks; relocation of the plant room away from the north-western corner of the development and on
Fences		
P1 Fences to be/have: <ul style="list-style-type: none"> consistent with streetscape; Entrances highlighted; and Planting used to soften and provide privacy. 	S1 Solid front fences no higher than 1.2 metres. May increase to 1.8 metres when 50 % transparent.	Council's Heritage Planner has specified specific requirements for street fences in line with the DCP which will be applied as a condition of consent.
Landscaping and Private Open Space		
P1 Landscaped Areas Areas are sufficient size allow recreational activities and substantial vegetation.	S1 Minimum dimension for landscaped area 2 metres.	Yes - landscaped areas are sufficiently sized.
P2 Areas around multi-unit buildings are communal open space and not divided up for allocation to individual units.		Yes – landscaped areas to be made into a communal space for all future residents of the proposed development to avoid any potential whole scale privatisation/appropriation of this space to the ground floor units.
P3 Private Open Space Provides privacy for its users, is readily accessible, and provides opportunities for outdoor recreation / living.		Yes – private open space in the form of courtyard terraces for dwelling units is provided.

Performance requirements	Preferred Solution	Compliance <i>(Whether proposal meets Performance Requirements or Preferred Solutions.)</i>
P4 Private open space in front of the building only where setback and fence design sympathetic.		N.A. - no dwelling units with private open space to street front proposed.
P5 Townhouses Each dwelling is provided with an area of useable private open space or courtyard area, at ground or podium level.	S5 Minimum area of 25m ² and a minimum dimension of 3 x 4 metres.	N/A
P6 Flats and apartments Each dwelling has direct access to an area of private open space.	S6 Minimum of 8 m ² and minimum dimension of 2 metres.	Ground floor apartment will have ground level open space while apartments above will be provided with terraces/balconies.
Privacy		
P1 Visual Privacy Windows and balconies of main living areas are located to avoid overlooking windows in adjoining dwellings and private open space.	S1 Offset, angle or screen windows with less than 10m separation. Sill level of 1.6 metres above floor level.	Yes (separation distances to adjoining properties are adequate)
P2 Private open space design and location ensure privacy.		Yes
P3 Acoustic Privacy Building layout and design minimises noise transmission of noise. Quiet areas separate noise-generating activities.		Yes
P4 Building construction transmission of noise.	S4 Wall / floor insulation & sound consistent with Building Code of Australia (BCA).	Required to comply with BCA
View Sharing		
P1 Design and location of buildings considers surroundings for assessing impact on views.		Yes
P2 Development minimises effects on views and shows how view loss is minimised.		As above
P3 Buildings are aligned to maximise view corridors between buildings.		N/A
Solar Access and Energy Efficiency		

Performance requirements	Preferred Solution	Compliance (Whether proposal meets Performance Requirements or Preferred Solutions.)
P1 Solar Access to Neighbouring Properties. Design, orientation, siting and landscaping minimises loss of solar access.		Yes
P1.1 Solar access to existing solar collectors maintained between 9am and 3pm.		N/A
P1.2 Living areas of neighbours' dwellings receive 3 hours of sunlight over part of their surface throughout the year. If less currently available, the amount is not reduced.		Yes – the proposal will not result in overshadowing of living areas of adjoining properties to less than the minimum 3 hours winter solar access required under the DCP – Multi-unit Housing as assessed in Section 10 below.
P1.3 Neighbour's principal private outdoor open space receives 3 hours of sunlight over at least 50% of its area throughout the year. If less currently available, the amount is not reduced.		Yes – the proposal will not result in overshadowing of the principal private outdoor open space of adjoining properties to less than 3 hours of sunlight over at least 50% of its area throughout the year as assessed in Section 10 below.
P4 Building Layout, Design and Construction Protect from prevailing strong winds and adverse weather. <ul style="list-style-type: none"> Living areas are orientated to the north. Larger windows are located on the north. 	S4 75% of dwellings achieve 3.5star Nat HERS rating or equivalent. No dwelling achieves less than 3 stars. The Anthers rating for each dwelling (on a typical unit basis) is provided with the application.	Proposal achieves compliance with BASIX targets
P5 Buildings have roofs with pitch suitable for solar collectors.	S5 Adequate area of roof between 45 degrees east and 45 degrees west or north, and a slope between 15 and 55 degrees to the horizontal for installation of solar collectors.	N/A – solar collectors not proposed
Safety and Security		
P1 Design allows surveillance.		Yes
P2 Approaches and entries are visible.		Yes
P3 High walls and structures avoided.		Yes
P4 Resident car parking has security grilles or doors.		Yes in that overall carpark will be secured by roller door entry.

Performance requirements	Preferred Solution	Compliance (Whether proposal meets Performance Requirements or Preferred Solutions.)
P5 Visitor parking spaces clearly identifiable.		Yes by condition
P6 Adequate lighting for personal safety and security provided.		Yes by condition
P7 Adequate lighting is provided in common areas.		Yes by condition
P8 External lighting does create a nuisance.		Yes by condition
Parking		
Required On-site Parking 1 bedroom dwelling 1 space per dwelling 2 bedroom dwelling 1.2 spaces per dwelling 3 or more bedroom 1.5 spaces per dwelling Visitor parking is 1 space per 4 dwellings.		See.
P1 Garages and parking structures do not dominate the street frontage.		Yes – all carparking in basement.
P2 Parking spaces for people with a disability provided as required (refer to dwelling number requirements in P1 and P2 Barrier Free Access)		Condition to be applied for compliance.
P3 Secure storage for bicycles is provided.		Yes on basement level
Driveways and Manoeuvring Areas		
P1 Areas of driveways and manoeuvring are minimised.		Yes
P2 Vehicles enter/ leave in a forward direction.	S2 Vehicles enter with a single turn and leave in no more than 2 turns.	Yes
P3 Driveways and access roads avoid a 'gun barrel' effect.	S3 Long driveways provide passing bays.	Yes, the proposal will not have a long gun-barrel driveway.
P4 Space between boundaries and driveways, access ways and parking spaces enables landscaping and planting.	S4 Driveways have a minimum width of 3 metres and is at least 1 metre from any side or rear fence.	Yes.
P5 Materials and finishes are consistent.	S5 Large expanses of uncoloured concrete avoided.	Yes
P6 Driveway gradients safe.	S6 Driveway gradients do not exceed 1 in 6 or 1 in 5 for ramps over 20m.	Yes by condition to comply with Australian Standard

Performance requirements	Preferred Solution	Compliance <i>(Whether proposal meets Performance Requirements or Preferred Solutions.)</i>
Storage		
P1 Accessible and separate storage for each dwelling.	S1 10m2 of storage space is provided for each dwelling. Minimum clearance height of 2.1m. At least 50% of storage space is within dwelling and is readily accessible from either the hallway or main living area. Storage facilities may be in basement areas, or attached to garages.	Yes – Accessible and separate storage for each dwelling provided in basement.
Barrier-free access		
Access for people with a disability is provided to and within one dwelling at the following rate: 0-14 dwellings 0 15-29 dwellings 1 30-44 dwellings 2 45-60 dwellings 3 and so on.		A condition requiring access adaptable dwellings to be provided will be applied. .

Utilities/Site Facilities: subject to appropriate conditions of consent

Waste Minimisation and Management		
P1 Waste collection and separation facilities for each dwelling.	S1 Each kitchen has a waste cupboard for separation of recycling materials, with adequate storage for one day's waste.	Yes by condition
P2 Waste storage to be provided in a centralised position that has easy access for moving bins to the street for collection.		Yes – centralised garbage storage area provided at basement level.
P3 The location and design of waste facilities does not visually detract from the development or the streetscape.	S3 Waste facilities not to be located between the front building alignment and the road.	Waste facility provided in basement level therefore not visible from street.

The assessment in the table above indicates that the proposal would comply with all the provisions of the DCP – Multi-unit housing with the exception of the wall height control which has been addressed in the assessment of the SEPP No. 1 Objection in Section 10.1 above.

DCP No 22 – The Spot and surrounds

Required	Provided / Proposed	Y / N
1. Site Consolidation – Min. 800 sqm and frontage of 1.8m to permit development to FSR of 3:1.	1. The site has an area of 4910 sqm and frontage of 48m to Avoca Street.	Yes
2. Building Height Plan of 45 degrees above 8m to adjacent street frontages in the areas shown in Figure 4 of the DCP.	2 Does not apply to subject site.	N.A.
Building Height Plan – Residential Development in Business Zones – 45 degrees above 8m where any proposed development shares a boundary with an existing residential property.	Does not apply to subject site.	N.A.
Building Height Plan – Historic Buildings/Contributing Facades – Max 45 degrees above 1600mm above the kerb line.	Does not apply to the subject site and there are no contributory façade in or around the subject site.	No
3. Where commercial component proposed is less than 25% of gross floor area side and rear setbacks should be equivalent to SEPP No. 20 “Minimum Standards for Residential Flat development”	3. No commercial component proposed.	N.A.
4. Where possible, the original heritage shopfront and detailing should be retained.	4. There are no heritage features or elements in the existing building.	N.A.
5. Advertising structures and signs should not project above building and should respect the design of the building and not adversely affect the heritage streetscape values.	5. No advertising sign is proposed in the subject development application.	N.A.
6. Building and Streetscape Colours of new development should be sympathetic to the conservation of older buildings reflecting their cultural significance; reflect existing heritage colours in the area.	6. Council's heritage planner raises no objections to the proposed colour scheme of the new development. The proposed colour scheme is considered acceptable and consistent with the heritage colours of existing buildings in the Spot Heritage Conservation Area.	Yes
7. Facades/Infill development respect the built heritage and	7.Does not apply to the subject site and there are no contributory façade	N.A.

desired townscape character of The Spot	in or around the subject site.	
7. Continuous flat suspended/cantilevered awning to provide continuous pedestrian shelter and should be 3.5 m to 4.5 m above street level.	8. The proposal has no commercial use and is not located within a town centre.	N.A.
8. Loading and unloading facilities not on the main street.	11. The proposal has no commercial use and is not located within a town centre. Such that loading and unloading facilities are not applicable.	N.A.

The controls contained in the DCP – The Spot and surrounds aim primarily to ensure that development in the Spot Heritage Conservation Area protects and enhances the historical values of the commercial centre and the surrounding residential precinct. The provisions of the DCP are largely not applicable to the subject site given its location away from The Spot.

DCP – Parking

Compliance with DCP – Parking

USE	REQUIREMENT (DCP – Parking)	PROPOSED NUMBER AND/OR FLOOR AREA	REQUIRED PROVISION	PROPOSED PROVISION
	1 space per one bedroom dwelling	50 x one bedroom dwellings	50 spaces	178 carspaces
	1 space per one bedroom dwelling	23 x one bedroom + study dwellings	23 spaces	
	1.2 spaces per two bedroom dwelling	51 x two bedroom dwellings	61.2 spaces	
	Visitor: 1 space per 4 units	Total dwellings = 124	31 spaces	
TOTAL			165 spaces	178 spaces

Section 94 Contributions Plan

In accordance with Council's Section 94A Development Contributions Plan effective from 2 July 2007, the monetary levy shown in the below must be paid to Council.

Table 3 - Section 94A Contributions			
Category	Cost	Applicable Levy	Contribution
Development Cost More than \$200,000	\$19, 545,000	1.0%	\$195, 450

10. SECTION 79C CONSIDERATIONS:

The following sections summarise the assessment of the proposal in terms of the heads of consideration in Section 79C of the Environmental Planning and Assessment Act 1979.

(a) The provisions of:

(i) Any Environmental Planning Instrument

1. State Environmental Planning Policy (Major Development) 2005

The provisions of SEPP – Major Development 2005 apply to the proposed development as the capital investment value is in excess of \$10 million. In accordance with the requirements of Clause 13B (1)(a) the submitted application is classified as ‘regional development’ with the determining authority for the application being the Joint Regional Planning Panel (Eastern Region). The submitted application is referred to the Joint Regional Planning Panel for determination in accordance with the applicable provisions of SEPP (Major Development).

2. State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 aims to promote the remediation of contaminated land for the purposes of reducing risk of harm to human health or any other aspect of the environment. The subject site has been continuously used for a car sales yard with associated showroom and service centre for a prolonged period. A site contamination assessment has been submitted with the DA and Council’s Environmental Health Officer has recommended appropriate conditions to ensure that the site will be suitable for its intended use.

3. State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 aims to promote quality design of Residential Flat Buildings. The proposal is subject to the Policy as it involves development of a residential flat building being 3 storeys and more in height. The application also has been considered by Council’s Design Review Panel (the Panel’s comments are addressed in section below).

3. State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 aims to promote the remediation of contaminated land for the purposes of reducing risk of harm to human health or any other aspect of the environment. The subject site has been continuously used for a car sales and service yard for a prolonged period. A Remediation Action Plan Report has been submitted in relation to potential contamination of the subject site. As recommended in Section 7 above, Council’s Environmental Health Officer has advised that, based on the findings of the report, appropriate conditions can be applied to the proposal to ensure that the site is suitable for its intended use should approval be granted.

4. Randwick Local Environmental Plan 1998

The following relevant clauses apply to the proposal:

Clause 9 - Objectives

Clause 9 of RLEP 1998 requires Council to consider the aims of the LEP and Zone objectives prior to determining any DA on land to which the RLEP applies. The purpose of this Clause is *“To require the general aims of this plan and the specific objectives of each zone to be taken into account in the assessment and determination of development applications”*. With reference to the general aims, the proposed development will not compromise the aims of the LEP in relation to heritage, aesthetic character, sustainability, environmental qualities and social amenity of the locality and contribute to the variety of housing types that does not compromise the amenity of the residential area, consistent with the zone objectives.

Clause 11 Zone No 2B (Residential B Zone)

The subject site is zoned Residential B under the Randwick Local Environmental Plan 1998 (RLEP). The proposed development for multi-unit housing is permissible with Council's consent under the zoning provisions applying to the land.

The following standards of the RLEP apply to the proposal:

Residential			
Clause No.	Requirement	Provided	Compliance
31(2) - Landscaped Area	50% of site area (or 2455m ²)	46.52% (or 2284.2m ²)	No (SEPP 1 Objection)
31(3) – Landscaped Area over Basement	Max 50% of landscape area requirement (max 1227.5m ²)	18% (923 m ²)	Yes
32 - FSR	0.65:1 (3191.5m ²)	1.7:1 (8336.01 m ²)	No (SEPP 1 Objection)
33(1) – Building Height	Max 9.5m	Max 14.995m to top of roof at south west corner.	No (SEPP 1 Objection)
33(3) – External Wall Height	Max 7m	Max 14.995m to top of roof at south west corner.	No (SEPP 1 Objection)

Clause 11 Zone No 2B (Residential B Zone)

The proposal is also consistent with the following relevant objectives of the Residential B zone:

1. To provide for a low to medium density residential environment
2. To maintain the desirable attributes of established residential areas.
3. To protect the amenity of existing residents.
4. To encourage housing affordability.

In this regard the proposal will not compromise the aims of the LEP in relation to aesthetic character, environmental qualities and amenity of the locality and provide a variety of housing types that does not compromise the amenity of the residential area, consistent with the zone objectives.

Clause 40 Earthworks

Clause 40 of the RLEP contains provisions for undertaking of excavation and filling of land to ensure minimal impacts on drainage patterns, soil topography, and future redevelopment of the land. The proposal will require significant excavation to be undertaken to accommodate two basement levels of carparking. The applicant has also redesigned the lowest basement level (Basement 2) so that this basement is confined to the eastern part of the site to allow groundwater to be recharged within the site. Accordingly, the proposed excavation is unlikely to interrupt the drainage patterns of the site subject to appropriate drainage works (as addressed by Council's Development Engineer in relevant sections of this report). Additionally, the proposed excavation is not considered to result in any significant impact on the topography of the site or in any soil instability to adjoining lands subject to appropriate conditions to ensure the protection of adjoining land and properties. As such, the proposed excavation will not adversely impact upon future redevelopment of the subject and adjoining lands. Accordingly, the proposal is acceptable in relation to the provisions of Clause 40.

Clause 42B Contaminated land

Clause 42B contains provisions for remediation of contaminated land to ensure that such land will be suitable for the purpose for which development is proposed. As indicated above, the applicant has submitted, among other things, a remediation action plan report, to address contamination issue on the subject site in view of its prolonged use as a car sales and service yard. Council's Environmental health Officer has assessed all information submitted in relation to contamination and remediation of the subject land and advises that appropriate conditions can be applied to the proposal to ensure that the site is suitable for its intended use should approval be granted.

Clause 43 Heritage conservation

Clause 43, requires among other things, that Council consider the effect of proposed development on the heritage significance of heritage conservation areas. Given its location within a Heritage Conservation Area, a Heritage Impact Statement has been prepared with the development application in accordance with Clause 43, which has been assessed by Council's Heritage Planner who has found that the proposal will not have any adverse amenity or streetscape impacts. As such, no heritage objections are raised to the proposed modern design of the proposal nor to the materials and finishes which are proposed.

(ii) Any Draft Environmental Planning Instrument

No draft Environmental Planning Instrument applies in the assessment of the subject DA.

(iii) Any Development Control Plan

The Development Control Plan – Multi-unit Housing and Development Control – Parking applies to the proposed development. The proposed development has demonstrated compliance with the requirements of these DCPs as assessed in Section above.

(iiia) Any Planning Agreement

A Voluntary Planning Agreement (VPA) is proposed between the developer and Council, pursuant to Section 93E of the Act. Under the agreement, the developer has agreed to dedicate three dwelling units to Council for the provision of affordable housing comprising the following :

1 x 1 bedroom
1 x 1 bedroom + study
1 x 2 bedroom

The proposed planning agreement involves specific purposes listed in clause 2.4 of Council's Planning Agreements Policy, as it would meet demand created by the proposed development for new public infrastructure and secure planning benefits for the public. The proposed agreement also satisfies the acceptability test set out in clause 2.5 the Planning Agreements Policy through:-

- Serving proper planning purposes, having regard to statutory planning controls and providing for a reasonable means of achieving that purpose.
- Producing outcomes that meet the general values and expectations of the community and protect the public interest.
- Promoting Council's strategic objectives for planning agreements and conforming to the principles governing the Council's use of planning agreements.

The final details of the VPA still require further notification and acceptance by Council. Accordingly, there is a need to grant deferred commencement development consent to ensure that the VPA is in place prior to the consent becoming operable. The details of this deferred commencement are provided in the recommendation of this report.

(iv) The Regulations

The following Clauses of the EP&A Regulations 2000 apply to the proposed development:

Clause 7
Clause 92
Clause 93

The matters raised in these clauses have been adequately addressed in relevant sections of this report including the assessment undertaken by Council's Building Services and Environmental Health unit and, where applicable, conditions will be applied to ensure compliance with the standards referred to in these clauses.

(b) The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Natural Environment

The development site lies within the existing built-up urban area the City. The subject site contains an existing car sales and service yard with associated external outbuildings and extensive paved/slab areas within an existing built-up area in Randwick. As such, there are no threatened species, populations or ecological communities or habitats that would be affected by the proposed development either within, or in the vicinity of, the development site.

Urban Design

The proposal has a non-compliant height and density which should be assessed against the set of planning principles established by Senior Commissioner Roseth in the case of *Veloshin v Randwick Council* [2007] NSWLEC 428, addressed, in part, as follows:

The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

- ***Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)***

Comment : The impacts of the non-compliant development are considered consistent with the impacts that may be reasonably expected under the controls. In quantifying these impacts, the applicant has provided a shadow diagram showing the overshadowing impact of a compliant building which, when compared to the impact of the proposed non-compliant building, indicates that the difference in impact will be insignificant and of minimal consequence largely because the site is bounded on three sides by roads such that the additional overshadowing casted by the non-compliant building will fall upon these roads during the mid-winter morning, mid-day and afternoon. As discussed in the section below, the additional overshadowing impact that affects adjoining properties will be reasonable and acceptable.

- ***How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?***

Comment : The breach in these standards has resulted in a significantly higher and bulkier building of maximum part 5 storeys than that required under the relevant planning controls which when applied would generally result in a maximum 3 storey building. The difference in height therefore will be an additional one to two storeys which is considered reasonable and acceptable for the following reasons:

- The additional height results in an overall builtform that does not give rise to any adverse amenity impacts in terms of solar access, privacy and views as assessed in relevant sections of this report.
- The additional height has been designed to minimise its amenity and visual bulk and scale impacts including increased setback of upper level floors from the main building line on the Barker Street, Dine Street and northern buildings. These upper floors will not be obscured from view at street level. In particular, the upper floor on the Dine Street Building will not be visible from Dine Street giving the impression of a predominantly three storey building from Dine Street.
- The provision of gaps in the builtform to break its visual bulk and scale above the external wall height limit; the provision of a partial sunken ground floor along the Dine Street building; and appropriate external treatment to articulate the building to reduce its verticality including the use of appropriate screens and bays in the façade, all contribute towards a further breakdown in the visual bulk and scale of the proposed builtform relative to the existing residential buildings in the adjoining sites and locality.
- The additional height results in an overall builtform that addresses the location of the subject site at the corner of Avoca and Barker Street appropriately in terms of an built urban edge along Avoca and Barker Street and a corner building to give prominence to the intersection.
- **Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:**

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Comment : The area surrounding the proposed development has a mixed building type environment ranging from 3 to 4 storey residential flat buildings and two storey dwelling houses/dual occupancies particularly in the middle section of the heritage conservation area surrounding The Spot. The application of relevant Residential 2B planning controls is aimed at maintaining this medium density character.

Does the proposal fit into the existing character of the area?

Comments : The proposed development with its part 4 and part 5 storey block perimeter built form, on the face of it, appears physically different to the predominant medium density character that the planning controls are aimed at preserving. Notwithstanding this, the proposal's height and bulk are considered acceptable and reasonable for the following reasons:

- The location of the proposed development warrants a higher height, bulk and scale of development than that allowed under the planning controls given the subject sites its location at the edge of the heritage conservation area and the Residential 2B zone, as well as at the interface of the Special Uses 5 zone of institutional uses to the west of Avoca Street. In this context, the proposal would fit in with the immediate surrounding development (especially existing

Residential flat buildings along Barker and Dine Streets) and locality (being at the edge of the heritage conservation area and Residential 2B zone, and adjacent to institutional uses in the Prince of Wales Hospital and Randwick Girls School)

- In the case of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, Commissioner Roseth established a planning principle, that is, that *“buildings do not have to be the same height to be compatible”*, stating amongst other things, that *“the most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as conservation areas, architectural style and materials are also contributors to character.”* The proposal will have an architectural design that is both robust and adaptable to its immediate streetscape as well as to the wider heritage conservation area. The use of building edges along the streetfront with recessed top floor levels combined with articulation to the building (with breaks and openings in the builtform) will ensure that the proposal will relate well to its immediate and surrounding space.
- The subject site is a large site (maximum dimensions of 53m by 91m yielding a site area of 4,910 sqm) that dictates/prescribes in a block perimeter built form of the kind proposed as opposed to a compliant row housing, terrace apartment type format that would require internal driveways and private roads to serve each dwelling. Furthermore, the alignment of the proposed built form on the perimeter of the large site allows for the provision of a substantial deep soil landscape area in the centre of the proposed development.
- The proposal will be consistent with the aim of the relevant planning controls in the DCP Multi-unit Housing, primarily, in that as a new infill development the proposal will *create new structures that enhance and complement the existing urban character by having an appearance which is sympathetic with surrounding buildings and streets but reflect new lifestyles, materials and technologies*” (DCP – Multiunit Housing, Section 2.1.2). The proposal can and will co-exist comfortably with existing residential flat buildings, town houses and dwelling house developments in the locality.
- **Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:**

Is the proposal consistent with the bulk and character intended by the planning controls?

Comments

The planning controls contained in the DCP aim to protect and enhance the existing predominant character of the locality.

- **Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this**

question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

Comments

There is no absence of planning controls for the area.

Overall, as indicated above, the building provides a suitable interface between the existing 3-4 storey residential flat building on the adjoining eastern and southern properties and the institutional uses in the Prince of Wales Hospital complex and Randwick Girls High School to the west.

Under the provisions of SEPP 65, a Design Review Panel reviewed the proposal on 7 May 2007 and has found the proposal satisfactory on all the SEPP 65 assessment criteria as detailed below. The Panel's comments are listed below (with Council's comments in bold wherever necessary):

"INTRODUCTION

A copy of the ten SEPP 65 Design Quality Principles is attached. The Panel's comments, set out below, are to assist Randwick Council in its consideration of the application, and to assist applicants to achieve better design outcomes in relation to these principles.

The absence of a comment under any of the heads of consideration does not necessarily imply that the Panel considers the particular matter has been satisfactorily addressed, as it may be that changes suggested under other heads will generate a desirable change.

The Panel draws the attention of applicants to the Residential Flat Design Code, as published by Planning NSW (September 2002), which provides guidance on all the issues addressed below.

This document is available from the Department of Infrastructure Planning and Natural Resources.

Note: *The Panel members' written and verbal comments are their professional opinions, based on their experience.*

To address the Panel's comments, the applicant may need to submit amended plans. Prior to preparing any amended plans, the applicant should discuss the Panel's comments and any other matter that may require amendment with the assessing Planning Officer.

When addressing the Panel's comments by way of amendments, if the applicant does not propose to address all or the bulk of the Panel's comments, and wishes to make minor amendments only, then it should be taken that the Panel considers the

proposal does not meet the SEPP 65 requirements. In these instances it is unlikely the scheme will be referred back to the Panel for further review.

PANEL COMMENTS

David Chesterman declared an interest and did not represent or assist the Panel in the assessment of this item.

There is a current development approval for this site, achieved in 2005, for a mixed-use development.

This new proposal for this large site is for a perimeter block of 4 and 5 storey residential buildings.

1. Relationship to the Context of the Proposal

The site is located near "The Spot" conservation area however the surrounding development is a mix of early to mid-century, single-storey detached houses, three to four storey flats and more recent two-storey townhouses. To the west of the site are buildings up to 12 storeys in the hospital and school precincts.

The proposal would replace a long established car yard. With good detailed design, the response to context should be considered satisfactory.

2. The Scale of the Proposal

The Panel considers that the height and frontage of the proposal is satisfactory for the following reasons;

- it is set within the mixed context*
- the site enjoys three street frontages*
- the long frontages have reasonable articulation*
- there is a substantial landscape component well embodied in the site planning*
- there is no overshadowing of neighbours caused by the application*

Council's Comment: *The Panel's assessment of the scale of the proposal supports Council's assessment of the proposal against the Planning Principle in relation to height, bulk and scale.*

3. The Built Form of the Proposal

The Panel recommends that the built form can be improved as follows:

- the courtyard should have more access to northern sun. Another break in the building should be created between the north wing and west wing. The break should be of a similar size as the one provided between the north wing and the east wing. This new opening should only be bridged by an open sided, roofed pedestrian access. Alternatively, and preferably the separate north building could be provided with its own lift and stair access.

- The breezeway access to the west wing should be open to the north and the south, ie it should be extended to the Barker Street set back and there should be a view to the street from the walkway. This will require the accommodation to be reduced to no further east than grid B.

- *The access to many apartments is narrow and circuitous, and there are serious impacts on privacy from access balconies to living areas (internal courtyard). The Applicant should consider introducing a fourth lift – one for each wing – and perhaps locating each lift more centrally within a wing. This would reduce travel times, reduce overlooking, improve amenity in the corner areas and decrease the number of units that have access balconies along their full width.*
- *different planning arrangements in the east wing should be investigated to eliminate single aspect apartments. West facing single aspect apartments should be avoided and cross ventilation should be maximized.*
- *the street verges should be upgraded on all the bounding streets with new street trees.*

Council's comment: The Panel's recommendations have been incorporated in the amended plans submitted by the applicant which are considered reasonable and acceptable and are as follows:

- *A significant break has been provided between the Avoca Street and northern buildings, to provide for additional landscaping and solar access to the central courtyard. A glazed pedestrian corridor has been provided, as recommended.*
- *The breezeway to the Avoca Street building is 70% open on its eastern side to maximise natural ventilation and solar access. Given the level of solar access and natural ventilation achieved, it is not considered necessary to extend the breezeway through to the Barker Street elevation.*
- *Pedestrian access has been altered in the northern wing, as a consequence of the relocation of the lift, to allow for a gap between the northern and Avoca Street buildings. This improves access to the apartments in the northern building. Access in the Dine Street building has also been improved, with the provision of a straightened breezeway on the western side of the building.*
- *The Dine Street building has been completely replanned to provide more single level through units, allowing for dual aspect and additional solar access and natural ventilation.*
- *As per the Landscape Concept Plan, new street trees are proposed along all street frontages.*

4. The Proposed Density

Any argument for increased density needs to be supported by excellent urban design, appropriate response to the context, high quality architectural and landscape design, good amenity to all dwellings and reasonable impacts on and relationship to neighbours.

The current proposal has too much floor space. This will impact on the amenity for the occupants. The floor space should be reduced in line with comments contained in this report.

Comment: The applicant's amended proposal incorporates a reduction in the floor space of the proposal which has been reduced by approximately 174.15 sqm with the deletion of 9 dwelling units from the original to accommodate the Panel's recommended changes to the builtform listed above (including the break between the Avoca Street and northern buildings).

5. Resource and Energy Use and Water Efficiency

The acoustic report notes that windows will have to remain closed in all apartments fronting Avoca and Barker Streets in order to achieve comfort levels. As this is not consistent with achieving cross ventilation, and there would be a requirement for continued use of air conditioning. The Panel considers the ground floor apartments should be planned as Soho style accommodation for professional offices or the like and apartments on the upper floors should have a ventilation system specifically designed by an environmental engineer to make natural ventilation a workable, acoustically appropriate solution.

The internal planning for the apartments indicates that optimum natural day lighting will not be achieved to many of the interior spaces, particularly the internal studies.

Ceiling fans should be provided in bedrooms.

Window types to all rooms should be considered to accommodate different weather conditions, and allow occupants a variety of ventilation options. Appropriate sun-shading to glazed areas should be provided.

The various levels of roof slabs will require foam insulation covered with pebble ballast (or other method of shading) to provide effective thermal comfort to the top floor apartments. More detail should be provided for the roof design, for instance there is no information about the roof to the Dine Street wing.

Outdoor clothes drying areas should be provided.

Council's comments: The applicant has incorporated the Panel's recommendation in the amended proposal as follows:

- *Natural ventilation to the Avoca Street units will be achieved via the eastern breezeway, despite the recommendation for the Avoca Street openings to be generally closed. Ceiling fans are provided to these units.*
- *Commercial uses are prohibited in the zone under LEP 1998, however, there may be scope in a future application, for the introduction of a medical centre (or similar use), subject to the provisions of SEPP (Infrastructure) and Council approval. However, this is not a matter of relevance to this current DA.*
- *Glazing is used in many internal studies to maximise solar access. In those studies adjacent to a kitchen, glazed louvres are proposed above the kitchen cabinetry, to allow for additional light and ventilation into the studies.*
- *Ceiling fans have been provided to units within the Avoca Street wing.*

- *Sliding and awning windows will be provided to allow for flexibility of use. Sunshading is provided by balcony overhangs, eaves and screens.*
- *Appropriate insulation will be provided within the roofs, with additional detail to be provided prior to the issue of a CC. Council can condition this requirement. The amended architectural documents provide details in relation to proposed roofs, including the Dine Street roof.*
- *There is no external area appropriate for the provision of clothes lines, so it is proposed that clothes will be dried within the apartments.*

6. The Proposed Landscape

The retention of deep soil to the courtyard and the landscape proposal are commended. The additional light to the courtyard should benefit this space.

The landscape design seems to be well handled, with consideration of appropriate planting strategies particular to each part of the site.

Council's comment:: Additional landscaped area has been provided in the amended proposal as a result of the creation of a break between the northern and Avoca Street buildings. An amended landscape plan is enclosed.

7. The Amenity of the Proposal for its Users

Issues of reduced amenity have been listed above and particularly the problems with access, overlooking, orientation, ventilation and traffic noise.

The ground floor dwellings fronting busy Avoca Street (and particularly if they are Soho style) should all have direct street access.

Apartments such as 1.34 (south west inner corner) are extremely compromised in amenity, privacy, solar access and outlook and do not meet SEPP 65 standards.

These issues have been addressed in the amended plans, as discussed in our correspondence dated 5 May 2010.

Direct pedestrian access has been provided to the ground floor units fronting onto Avoca Street.

Unit 1.34 achieves northern sunlight and cross flow ventilation, due to the incorporation of a void adjacent to the breezeway.

8. The Safety and Security Characteristics of the Proposal

An independent BCA assessment report should be provided.

9. Social issues

It is desirable that affordable, accessible, medium density dwellings are available in this area due to proximity to the city, the university, the hospital, schools and good public transport.

10. The Aesthetics of the Proposal

Generally the aesthetics could be acceptable however there is not enough detail to be certain of quality. The Panel recommends that more detail be provided for further assessment.

A perspective view should also be provided showing the curved building form in relation to the south wing. This perspective should be a view from Barker Street looking back towards Avoca Street.

Summary and Recommendations

The drawings provided were at a smaller scale than 1:200. A more thorough assessment can be made if appropriate drawings are submitted. Detailed sections (1:50) through the different wall, balcony and roof conditions should be provided, combined with matching part elevations.

Generally there are a number of amenity and performance issues that do not satisfy the requirements of SEPP 65. As this is a major application, the Panel would prefer to review the design when the above issues have been addressed."

Council's comment: The applicant has adequately addressed a majority of the Panel's concerns through the amended plans lodged during the assessment process. The amended plans represent a significant improvement over the earlier design of the original proposal. Where deficiencies still exist, conditions can be appropriately applied to ensure the provisions of SEPP 65 are met. Accordingly it is considered that the application does not require any further referral to the Panel.

Sunlight, Privacy and Views

Sunlight

The submitted shadow diagrams indicate that at 9.00 am in the winter solstice, the proposal will mainly overshadow Avoca Street and the Prince of Wales and Randwick Girls High School grounds beyond, as well as Barker Street with some overshadowing of the front yards of the existing residences fronting Barker Street. By winter mid-day, these front yards will be largely free of overshadowing from the proposal with overshadowing falling mainly on Barker Street. By 3.00 pm in winter overshadowing will occur predominantly on Barker Street and Dine Street with some minor overshadowing of the front yards of the existing residential flat buildings on the opposite eastern side of Dine Street. Overall, the proposal will have minimal overshadowing impact on adjoining and surrounding residential properties given the corner location of the subject site bounded on three sides by streets, namely, Avoca, Barker and Dine Streets.

Privacy

Concern has been raised by residents in the adjoining properties to the north in relation to loss of privacy, particularly from balcony areas on high upper floor levels of the proposal. The residents in the complex of town houses at No. 255 Avoca Street have referred to the existing high level of privacy they enjoy as a result of the northern wall of the existing car repair workshop being built to the common boundary

between the two sites. Whilst the significant degree of privacy afforded by this wall is recognised, it is considered unreasonable to expect this level of privacy to be maintained by requiring the wall to be retained given that the wall is required to be demolished as part of the redevelopment of the subject site. The proposal will give rise to some degree of overlooking of the courtyard/living areas of south-facing dwelling units in No. 255 Avoca Street from the proposed development. However, it is considered that this loss of privacy will be mitigated by the following factors:

- A separation distance in excess of 10m between the northern glass line of the proposed northern building and the southern wall of the adjoining northern town houses at No 255 Avoca Street. This separation distance is well in excess of the minimum required under the DCP – Multi-unit housing and the Residential Flat Design Code for privacy.
- The amended plans included a deletion of units from ground to third floor (to provide for a break between the northern building and the Avoca Street building) which effectively removes 4 dwelling units with north-facing terraces that potentially overlook into the rear yard of No. 22/255 Avoca Street.
- No balconies or windows to living rooms are proposed on the north elevation of the Dine Street building.
- The provision of aluminium privacy screening fixed to window reveals on all north-facing levels of the northern buildings as indicated in the north elevation drawings.
- A requirement for additional privacy measures in the form of extended ledges from the edge of all north-facing balconies on the northern building to act as a barrier to downward views into the courtyard of the adjoining northern town houses.
- The provision of medium to tall landscaping along part of the northern boundary as indicated in the submitted landscape plan will provide additional privacy screening between the two properties.
- The application of a condition requiring details of a 2m high masonry fence to be provided along the northern boundary of the subject site to provide privacy and security for residents in No. 255 Avoca Street should approval be granted.

Another objection concerning loss of privacy was received from a resident in the adjoining residential flat building to the north at No. 12 Dine Street. The loss of privacy to the living areas of this adjoining building is considered minimal for the following reasons:

- There are no balconies or windows to living rooms proposed on the north elevation of the Dine Street building.
- The section of the proposed northern building that will face No 12 Dine Street will have a separation distance in excess of 10 between the northern glass line of the proposed northern building and the southern wall of the No. 12

Dine Street. The separation distance is well in excess of the minimum required under the DCP – Multi-unit housing and the Residential Flat Design Code for privacy.

- Aluminium privacy screens fixed to window reveals as indicated in the north elevation drawings will be provided along the section of the proposed northern building that will face No 12 Dine Street.
- A requirement for additional privacy measures in the form of extended ledges from the edge of all north-facing balconies on the northern building will act as a barrier to downward views into the courtyard of no 12 Dine Street.
- The provision of medium to tall landscaping along part of the northern boundary as indicated in the submitted landscape plan will provide additional privacy screening between the two properties.

Loss of privacy to adjoining/neighbouring properties to the south across Barker Street will be minimal for the following reasons;

- There will be a separation distance mainly in excess of 25m between the edge of proposed upper floor building line and the north-facing wall of the adjoining properties across Barker Street to the south. This separation distance is provided largely by Barker Street which has a road reserve width of 19-21 m. Accordingly, the separation distance is well in excess of the minimum required under the DCP – Multi-unit housing and the Residential Flat Design Code for privacy.
- The Barker Street elevation contains trafficable breezeway corridors which are not considered balconies that can hold groups of people for recreational or leisure purposes and as such, these breezeways are not areas of high people traffic and are not anticipated to be conducive to, nor result in, unreasonable overlooking and loss of privacy to adjoining properties.
- There will be no elevated south-facing living room windows / balconies facing existing southern properties except for an elevated common landscaped terrace area on the fourth floor. This terrace area will be significantly setback from the edge of the building by a 3m ledge comprising a 1.5m wide planter bed strip and a 1.5m glazed roof strip (for light-wells to dwelling units below so that overlooking of existing residences across Barker Street will be significantly curtailed.
- The proposed landscaping treatment (comprising medium to tall high trees) along the proposal's Barker Street frontage together with existing trees on Council's footpath along Barker Street will provide additional screening measures between the proposal and existing eastern residences on dine Street.

Loss of privacy to adjoining/neighbouring properties to the east across Dine Street will be minimal for the following reasons;

- There will be a separation distance in excess of 20m between the edge of proposed east-facing upper floor balconies and the west-facing wall of the adjoining properties across Dine Street to the east. This separation distance is

provided largely by Dine Street which has a road reserve width of approximately 15m. Accordingly, the separation distance is well in excess of the minimum required under the DCP – Multi-unit housing and the Residential Flat Design Code for privacy.

- The proposed landscaping treatment (comprising medium to tall high trees) along the proposal's Dine Street frontage together with existing trees on Council's footpath along Dine Street will provide additional screening measures between the proposal and existing eastern residences on Dine Street.

There will be minimal, if no, loss of privacy issues along the western Avoca Street frontage given the existing institutional uses across Avoca Street.

Views

Objection has been raised by residents in No 12 Dine Street to loss of views. An inspection of the site reveals that there are some district views across the development site currently available to the upper levels of No 12 Dine Street and No 255 Avoca Street that potentially will be lost. However, the loss of these views, pursuant to the planning principles established in *Tenacity v Warringah Council*, are considered acceptable as (1) they are non-iconic views and of minor significance being attained (2) across side boundaries and existing urban development, such that (3) the loss of these views are of moderate significance and (4) a complying development with pitched roof would also give rise to loss of these views.

Parking, Traffic and Transport

The proposal complies with the total carparking requirement given that 178 carparking spaces will be provided on-site.

A Traffic Impact Assessment has been submitted for the proposed development. The proposal for 124 dwelling units is expected to result in an expected peak flow volume of approximately 36 vehicles per hour which is considered moderate and no delays should be experienced in immediate intersections as a result of this development. Accordingly, there will be adequate capacity in the surrounding road network to cater for the traffic generated by the proposed development. It should be noted that the traffic report advises that the proposal will have a net generation of 15 vehicles per hour over and above the existing generation of the subject site which equates to one additional vehicle movement every 4 minutes. The report advises that this increase is well within the range of daily fluctuations in volumes along Avoca Street and Barker Street. No objections have been raised by the RTA to the proposed development subject to conditions should approval be granted.

Overall, the increase in traffic generation in the proposed development is not considered to have a significant traffic impact on the adjacent classified road network and intersections nor on the amenity of adjoining and surrounding

Ecologically Sustainable Development

The applicant has provided an amended BASIX assessment of the amended proposal in accordance with BASIX modelling requirements which indicates compliance with the targets for multi-unit housing for water saving, energy consumption and Thermal comfort.

Specifically, the proposal achieves good cross-ventilation for all dwelling units; and will include appropriate energy efficiency and water conservation measures.

The proposed development will be well served by public buses along Avoca Street and Barker Street, linking the subject site to the CBD and Randwick Junction in keeping with the promotion of public transport usage as a primary means of enhancing ecological sustainability and the reduction of greenhouse gases in the Sydney Region. The proposal would assist in encouraging the use of public transport in line with urban consolidation and ESD principles.

Overall, the proposal is considered acceptable in relation to Ecologically Sustainable Development issues.

Social and Economic Impacts

The Proposal will increase the availability of housing and promote the key directions and actions for the Randwick City Plan and the objectives of the Residential 2B zone contained in the Randwick LEP 1998 (Consolidation). The effect of the proposal would be to bring more people to the locality potentially linking them to existing economic, institutional and service facilities in the area. Overall the proposal presents a positive impact within the site and locality.

Suitability of the site

The subject site is located on the intersection a major thoroughfares, being Avoca Street and Barker Street. The high degree of exposure of these roads would be conducive to strong builtforms to act as urban edges which the proposed development will provide. The proposal will also provide an appropriate accentuation of the corner of these two roads through the use of a prominent curved element in which the highest section of the proposed building will occur.

The subject site is also located at the periphery of the heritage conservation area and the residential 2b zone. As such, it is located further away from the lower density predominant dwelling house development centred around The Spot to the north-east. The subject site is also surrounded by 3-4 storey residential flat buildings to the east and south-east along Dine Street and Barker Street to which the proposed development will relate in terms of bulk and scale. As such, the potential for the subject sit to be developed to the scale proposed is recognised. This is supported further by the design of the proposed development which has largely mitigated amenity impacts upon adjoining properties in terms of solar access, privacy, and views.

Any submissions made

The proposal was notified and advertised from 14 April to 14 May 2010. The issues raised in submissions to this notification/advertising process have been addressed in relevant sections of this report as indicated in Section 6 above.

The public interest

The proposed development will be in the public interest as it will provide additional housing stock in an area that is highly accessible by public buses and private vehicles. The proposal will also involve a Voluntary Planning Agreement for the provision of 3 dwellings for affordable housing which will be a significant material public benefit for the community. In addition, the proposal will consolidate the residential character of the locality by enabling residential development of a medium density housing form without compromising the amenity of surrounding residential area and heritage conservation area in accordance with the Randwick City Plan and the Randwick LEP 1998.

Financial Impact Statement

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Conclusion

The proposal is permissible with the consent of Council on the subject site. The proposal does not comply with the maximum FSR, building and wall height, and landscape area standards contained in the RLEP. SEPP No.1 objections in relation to these breaches have been submitted with the application and considered to be well founded in the circumstances. In particular, the proposal will be consistent with the objectives of the planning controls and the local planning for the locality; the proposal is not considered to be visually intrusive or bulky in relation to surrounding residential development and the heritage conservation area as well as and the future desired character of the area; the development overall is considered to be consistent with the character of existing development; and the additional density and height will not give rise to any detrimental impacts to surrounding uses in terms of ventilation, sunlight, privacy, views, traffic and parking impacts.

The proposal generally complies with the relevant preferred solutions and performance requirements in the DCP - Multi-unit Housing. The proposal readily complies with the carparking requirement under the DCP – Parking. The proposal is also consistent with the provision of the DCP No. 22 – The Spot and surrounds although the controls contain in this DCP are not directly applicable to the site.

The proposal will not have a significant impact on the amenity of surrounding properties in terms of visual bulk and scale, solar access, privacy and views.

The recommendation is for approval of the deferred commencement approval of the application subject to conditions.

10. RECOMMENDATION

THAT the Joint Regional Planning Panel support the objection under State Environmental Planning No. 1 (SEPP No.1) in respect to non-compliance with Clauses 20E, 20F and 20G of the Randwick Local Environmental Plan 1998

(Consolidation), relating to maximum floor space ratio, maximum building and external wall height, and minimum landscape area on the grounds that the proposed development is consistent with the relevant objectives of the clauses and will not adversely affect the amenity of the surrounding locality and that the Department of Planning be advised accordingly.

AND

THAT the Joint Regional Planning Panel as the responsible authority grant its development consent as a Deferred Commencement under Section 80(3) of the Environmental Planning and Assessment Act 1979 (as amended) to Development Application No DA/215/20010 for the demolition of existing buildings and construction of part 4/part 5 storey residential flat building comprising 124 apartments with two levels of basement carparking for 178 vehicles with associated works at Lot 1 DP 700196, 265-271 Avoca Street, Randwick, subject to the following conditions:

Deferred Commencement Conditions

This consent does not operate until the applicant satisfies the Council, in accordance with the Regulations, as to all matters specified in this condition:

- a) Enter into a voluntary planning agreement (VPA) to the satisfaction of the council generally in accordance with the Draft VPA annexed to this development consent providing for the dedication of 1 x 1 bedroom, 1 x 1 bedroom + study and 1 x 2 bedroom to Randwick City Council which will be applied towards the provision of affordable housing in Randwick City.
- b) The Registration of the VPA upon the title to the land subject of this determined development application.
- c) Council has acknowledged compliance with this condition in writing.

Period within which evidence must be produced

The applicant must produce evidence to Council sufficient enough to enable it to be satisfied as to those matters above within 365 days (1 year) of the date of determination.

Clause 95(4) of the Regulation:

"The applicant may produce evidence to the consent authority sufficient to enable it to be satisfied as to those matters and, if the consent authority has specified a period for the purpose, the evidence must be produced within that period."

No development can lawfully occur under this consent unless it operates.

Note: Nothing in the Act prevents a person from doing such things as may be necessary to comply with this condition. (See section 80(3) of the Act)

Note: Implementing the development prior to written confirmation of compliance may result in legal proceedings. If such proceedings are required Council will seek all costs associated with such proceedings as well as any penalty or order that the Court may impose. No Construction Certificate can be issued until all conditions including this condition required to be satisfied prior to the issue of any Construction Certificate have been satisfied.

Evidence required to satisfy these conditions must be submitted to Council within **12 months** of the date of this consent.

Subject to compliance with the deferred commencement conditions, to the satisfaction of the Director of City Planning, development consent is granted under Section 80 & 80A of the Environmental Planning and Assessment Act 1979 subject to the following conditions:

GENERAL

1. The development must be carried out substantially in accordance with plans and details listed below except where amended by other conditions of consent:

Plan Number	Revision	Description	Dated	Received	Prepared By
DA100	C	Basement 2 Plan	11/06/2010	11/06/2010	Jackson Teece
DA105	C	Basement 1 Plan	11/06/2010	11/06/2010	
DA110	B	Ground Floor Plan/Landscape Plan	05/05/10	11/06/2010	
DA120	C	First Floor Plan	11/06/2010	11/06/2010	
DA130	C	Second Floor Plan	11/06/2010	11/06/2010	
DA140	C	Third Floor Plan	11/06/2010	11/06/2010	
DA150	C	Fourth Floor Plan	11/06/2010	11/06/2010	
DA160	C	Roof Plan	11/06/2010	11/06/2010	
DA300	C	Elevation North and South	11/06/2010	11/06/2010	
DA310	C	Elevation East and West	11/06/2010	11/06/2010	
DA330	C	Courtyard Elevation North Courtyard Elevation South	11/06/2010	11/06/2010	
DA350	C	Courtyard Elevation East Courtyard Elevation West	11/06/2010	11/06/2010	
DA370	B	Courtyard Elevation East Courtyard Elevation West	11/06/2010	11/06/2010	
DA400	C	Section AA Section BB	11/06/2010	11/06/2010	
DA410	C	Section CC	11/06/2010	11/06/2010	

The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of safety and environmental amenity:

2. The finished ground levels external to the building are to be consistent with the development consent and are not to be raised (other than for the provision of paving or the like on the ground) without the written consent of Council.

3. Lighting to the premises shall be designed in accordance with AS4282 – 1997 "Control of the Obtrusive Effects of Outdoor Lighting" so as not to cause a nuisance to nearby residents or motorists and to ensure that light overspill does not affect the amenity of the area.
4. Public access to the visitor's carparking spaces is to be maintained at all times and an intercom system is to be provided adjacent to the vehicular entrance to the carpark, together with appropriate signage providing instructions for use.
5. In accordance with Section 80A (11) of the Environmental Planning and Assessment Act 1979 and Clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a prescribed condition that all of the required commitments listed in the relevant BASIX Certificate for this development are fulfilled.
6. In accordance with the provisions of the Environmental Planning & Assessment Regulation 2000, a relevant BASIX Certificate and associated documentation must be submitted to the Certifying Authority with the Construction Certificate application for this development.

The required commitments listed and identified in the BASIX Certificate are to be included on the plans, specifications and associated documentation for the proposed development, to the satisfaction of the Certifying Authority.

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.

The following conditions are applied to ensure that the development satisfies the provisions of the Environmental Planning and Assessment Act 1979 and Regulations:

7. The requirements and provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000, must be fully complied with at all times.

Failure to comply with these legislative requirements is an offence and may result in the commencement of legal proceedings, issuing of `on-the-spot` penalty infringements or service of a notice and order by Council.

8. All building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA), in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000.

The following conditions are applied to provide for heritage and archaeological protection of the area :

9. In the event that historical archaeological remains or deposits are exposed during the works, all work shall cease while an evaluation of their potential extent and

significance is undertaken and the NSW Heritage Office notified under the requirements of the Heritage Act.

The following conditions are applied to maintain reasonable levels of environmental health, safety and amenity:

10. Remediation and validation works shall be carried out in accordance with the Interim Advice Letter prepared by the appointed site auditor Dr Ian C Swane, dated 18 May 2010 including all the documents forming part of the review, as listed by the auditor in the interim advice letter and Remediation Action Plan, 265 Avoca Street, Randwick NSW, Ref: ES3147 prepared by Aargus Pty Ltd, dated February 2010, except as may be amended by the conditions of this consent.
11. The Site Audit Statement must, where no guideline made or approved under the NSW Contaminated Land Management Act is available (as with asbestos), clearly state the source of the standard adopted in determining the suitability of the land for the intended development and use and must also demonstrate its suitability to Council.

In relation to any asbestos contamination, a comprehensive remediation strategy and remedial action plan must be developed, to the satisfaction of the Site Auditor and NSW Department of Health or other suitably qualified and experienced specialist to the satisfaction of the Site Auditor.

The remediation strategy and remedial action plan must demonstrate that the land will be remediated in accordance with relevant guidelines (if any) and to a level or standard where no unacceptable health risk remains from asbestos exposure, which shall be verified upon completion of the remediation works to the satisfaction of the Site Auditor.
12. Underground tanks shall be removed in accordance with relevant NSW DEC/EPA Guidelines; Australian Institute of Petroleum's (AIP) Code of Practice for the Design, Installation and Operation of Underground Petroleum Storage Systems (CP4-1998); and WorkCover NSW requirements. In the event of conflict between AIP Code of Practice and WorkCover requirements the latter shall prevail.
13. Any odours from excavated materials shall be mitigated by the use of an odour suppressant, such as Biosolve, and shall not give rise to an offensive odour as defined in the Protection of the Environment Operations Act 1997. Stockpiles shall also be covered and dampened down to reduce odour and dust impacts.
14. On-site land farming of contaminated soil is not permitted, except with the written approval of Council's Manager of Environmental Health & Building Services.
15. All trucks and service vehicles leaving the site shall go through a suitably constructed on site truck wash down area, to ensure no tracking of material occurs from the site onto roads adjoining the site. Details are to be submitted to Council in the Site Management Plan.

16. As a minimum, the building is required to be provided with a smoke alarm system complying with Clause 3 of Specification E2.2a of the Building Code of Australia or a smoke detection system complying with Clause 4 of Specification E2.2a of the Building Code of Australia or a combination of a smoke alarm system within the sole-occupancy units and a smoke detection system in areas not within the sole-occupancy units. The smoke detectors located within the stairway, corridors or the like must be interconnected.

Additional requirements regarding the design and installation of the smoke detection and alarm system may be specified in the construction certificate for the development.

17. Any electricity substation required for the site as a consequence of this development shall be located within the site and shall be screened from view. The proposed location and elevation shall be shown on all detailed landscape drawings and specifications. The applicant must liaise with Energy Australia prior to lodging the construction certificate to determine whether or not an electricity substation is required for the development.

The following conditions are applied to provide adequate provisions for drainage and associated infrastructure:

Protection from flooding

18. The floor level of all habitable and storage areas (excluding those areas in the basement carpark) shall be at a minimum RL of 48.38 (AHD) or suitably waterproofed up to this same level.
19. The proposed internal driveway (and any other openings into the basement carpark from Barker Street) must be designed with a high point to a minimum RL of 48.23 (AHD).
20. There shall be no windows, vents or other openings into the basement carpark (excluding the driveway opening) that are located below RL 48.38.
21. On-site stormwater detention must be provided to ensure that the maximum discharge from the above site is not to exceed that which would occur during a 1 in 5 year storm of 1 hour duration for the existing site conditions. All other stormwater run-off from the above site for all storms up to the 1 in 20 year storm is to be retained on the site for gradual release to the kerb and gutter or drainage system as required by Council. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur.

Should no formal overland escape route be provided for storms greater than the design storm, the on-site detention system shall be sized for the 1 in 100 year storm event.

For small areas up to 0.5 hectares, determination of the required cumulative storage must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

Where possible the detention tank must have an open base to infiltrate stormwater to the groundwater. Note that the ground water and any rock stratum has to be a minimum of 2.0 metres below the base of the tank.

22. The detention area must be regularly cleaned and maintained to ensure it functions as required by the design. Any onsite detention systems shall be located areas accessible by residents of all units.
23. The maximum depth of ponding in above ground detention areas (and/or infiltration systems with above ground storage) shall be as follows:
 - a) 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
 - b) 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10.
 - c) 1200mm in landscaped areas where a childproof fence is provided around the outside of the detention area

Notes:

- It is noted that above ground storage will not be permitted in basement car parks or in any area which may be used for storage of goods.
- Mulch/bark must not be used in onsite detention areas

24. Any above ground stormwater detention areas (and/or infiltration systems with above ground storage) must be suitably signposted where required, warning people of the maximum flood level.
25. The floor level of all habitable and storage areas adjacent to the detention area (and/or infiltration systems with above ground storage) must be a minimum of 300mm above the maximum water level in the detention area for the design storm or alternately a permanent 300mm high water proof barrier is to be constructed.

(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).

26. A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
27. A 'V' drain is to be constructed along the perimeter of the property, where required, to direct all stormwater to the detention/infiltration area.
28. A reflux valve shall be provided (within the site) over any pipelines discharging from the site to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system. (TO BE INCLUDED IF CONNECTING TO COUNCIL'S UNDERGROUND DRAINAGE SYSTEM)
29. 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 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 "Section 8.4 PUMP SYSTEMS" as stipulated in Randwick City Council's Private Stormwater Code.

30. A sediment/silt arrester pit must be provided:-

- d) within the site at or near the street boundary prior to the site stormwater discharging by gravity to the kerb/street drainage system; and
- e) prior to stormwater discharging into any absorption/infiltration system.

The sediment/silt arrester pit shall be constructed in accordance with the following requirements:-

- The base of the pit located a minimum 300mm under the invert level of the outlet pipe.
- The pit constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes 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 located 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 provided for the access grate (e.g. spring loaded j-bolts or similar).
- A sign adjacent to the pit stating:

"This sediment/silt arrester pit shall be regularly inspected and cleaned."

Note: Sketch details of a standard sediment/silt arrester pit may be obtained from Council's Drainage Engineer.

The following conditions are applied to provide adequate provisions for future civil works in the road reserve:

31. The Council's Department of Asset & Infrastructure Services has inspected the above site and have determined that the design alignment level (concrete/paved/tiled level) at the property boundary for driveways, access ramps and pathways or the like, shall be:

- **Avoca Street frontage:** Match the levels at the back of the existing footpath along the full site frontage.
- **Barker Street frontage:** Match the levels at the back of the existing footpath along the full site frontage.
- **Dine Street frontage:** Match the levels at the back of the existing footpath along the full site frontage.

Any enquiries regarding this matter should be directed to Council's Assets & Infrastructure Services Department on 9399 0923.

The design alignment level at the property boundary must be strictly adhered to.

The following conditions are applied to provide adequate consideration for service authority assets:

32. 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.
33. The applicant must meet the full cost for telecommunication companies, gas providers, Energy Australia and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

The following conditions are applied to ensure that the development satisfies relevant standards of construction, and to maintain adequate levels of health, safety and amenity during construction:

34. The adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of any building located on an adjoining allotment of land, the person causing the excavation must:

- preserve and protect the building /s on the adjoining land from damage; and
- effectively support the excavation and building; and
- at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land (including a

public road or public place), give notice of the intention and particulars of the works to the owner of the adjoining land.

Notes

- *This consent and condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the principal contractor or owner-builder must obtain:*
 - a) *the consent of the owners of such adjoining or supported land to trespass or encroach, or*
 - b) *an access order under the Access to Neighbouring Land Act 2000, or*
 - c) *an easement under section 88K of the Conveyancing Act 1919, or*
 - d) *an easement under section 40 of the Land & Environment Court Act 1979, as appropriate.*
- *Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).*

35. Except with the written approval of Council's Manager of Health, Building & Regulatory Services, all building, demolition and associated site works (including site deliveries) must only be carried out between the hours of 7.00am to 5.00pm on Monday to Friday inclusive and (except as detailed below) between 8.00am to 5.00pm on Saturdays.

All building, demolition and associated site works are strictly prohibited on Sundays, Public Holidays and also on Saturdays adjacent to a Public Holiday.

In addition, the use of any rock excavation machinery or any mechanical pile drivers or the like is restricted to the hours of 8.00am to 5.00pm (maximum) on Monday to Friday only, to minimise the noise levels during construction and loss of amenity to nearby residents.

36. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:
- a) The roadway, footpath and nature strip must be maintained in a good, safe condition and free from any obstructions, 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.
 - a) 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.
 - b) 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 Health, Building & Regulatory Services department.

- c) Building operations such as brick cutting, washing tools or equipment and mixing mortar are not permitted on public footpaths, roadways, nature strips, in any public place or any location which may lead to the discharge of materials into the stormwater drainage system.
- d) A temporary timber, asphalt or concrete crossing is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council, unless access is via an existing concrete crossover.
- e) A local approval application must be submitted to and be approved by Council's Building Services section prior to commencing any of the following activities on a footpath, road or nature strip or in any public place:-
 - Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip or any other container or article on the road, nature strip or footpath.
- f) The applicant/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to Council.
- g) A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.

The owner/builder 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 for the development.

For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 9399 0999.

- h) Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, to the satisfaction of WorkCover NSW and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

Planting of new street trees

37. The applicant must also submit a payment of \$3,225.75 (including GST), being the cost for Council to supply, plant and maintain a total of seventeen (17) new 45 litre trees around the perimeter of the site, as follows:
- a) A total of four (4) new *Corymbia maculata* (Spotted Gums) spaced evenly along the length of Council's Avoca Street footpath, being three (3) between the northern site boundary and the existing tree about halfway along this frontage, and one (1) more to the south of the existing tree, at a distance of 10 metres off the corner of Barker Street;
 - b) A total of eight (8) new *Eucalyptus haemastoma* (Scribbly Gums) spaced evenly along the length of Council's Barker Street footpath, commencing at a setback of 10 metres from the corner of Avoca Street, and finishing a distance of 7 metres off the western edge of the proposed vehicle crossing;
 - c) A total of five (5) new *Eucalyptus haemastoma* (Scribbly Gums) spaced evenly along the Dine Street frontage, commencing a distance of 10 metres off the corner of Barker Street, and finishing a distance of 7 metres off the northern site boundary.

Removal of trees within the site

38. Approval is granted for the removal of all existing vegetation within the site where necessary in order to accommodate the proposed works as shown, subject to full implementation of the approved landscape plan, including:
- a) The *Grevillea robusta* (Silky Oak) located about halfway along the length of the northern boundary, between the existing building and timber fence, near the junction of the common boundary between this site, 12 Dine Street and 6-10 Dine Street;
 - b) The *Syagrus romnzoifianum* (Cocos Palm) about halfway along the length of the western boundary, fronting Avoca Street, as it is an exempt species from Council's Tree Preservation Order (TPO);
 - c) In the garden bed along the southern boundary, fronting Barker Street, and to the east of the existing vehicle crossing, from west to east, two closely planted, semi-mature *Melaleuca quinquinervia* (Broad Leafed Paperbarks), then a smaller *Eucalyptus nicholii* (Willow Leafed Peppermint) and *Melaleuca armillaris* (Bracelet Honey Myrtle), as well as a further 3 Willow Leafed Peppermints and 3 more Bracelet Honey Myrtles, around the southeast corner of the site, at the corner of Barker and Dine Streets;
 - d) The row of six recently planted Gum trees in Council's Barker Street verge as part of the footpath re-construction;
 - e) Along the eastern site boundary, fronting Dine Street, from south to north, a *Melaleuca armillaris* (Bracelet Honey Myrtle), a *Eucalyptus nicholii* (Willow Leafed Peppermint) another Bracelet Honey Myrtle, a *Metrosideros excelsa* (NZ Xmas Tree) and another Willow Leafed Peppermint;

- f) The mature *Melaleuca quinquinervia* (Broad Leafed Paperbark) about halfway along the length of the eastern boundary, fronting Dine Street;

Protection of Council's Street Trees

39. In order to ensure retention of the two existing *Corymbia maculata* (Spotted Gums) located within Council's Avoca Street footpath, being one just beyond the northern site boundary, and then a larger specimen to its south, about halfway along the length of this frontage in good health, the following measures are to be undertaken:
- a. All documentation submitted for the construction certificate application must show the retention of both of these street trees, with the position and diameter of both of their trunks and canopies to be clearly shown on all drawings, together with the new street tree locations as specified above.
 - b. Any new services, pipes, stormwater systems or similar that need to be installed over public property along this frontage, must be done so at a distance of 3.5 metres off their trunks so as to minimise root damage and future maintenance issues.
 - c. Both street trees must be physically protected by installing a total of four star pickets at each corner of each of their existing tree squares, to which shade cloth, safety tape, para-webbing or equivalent shall be permanently attached so as to completely enclose each tree for the duration of works.
 - d. This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE, DO NOT REMOVE".
 - e. The applicant is not authorised to perform any works to either of these street trees, and shall contact Council's Landscape Development Officer on 9399-0613 should pruning or any similar such work appear necessary, with the applicant required to cover all associated costs with such work, to Council's satisfaction, prior to the issue of a final occupation certificate.
 - f. Within the zones specified in point 'c' above, there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble.
 - g. Any roots encountered during the course of the approved works must be cut cleanly by hand, and the affected area backfilled with clean site soil as soon as practically possible.
 - h. A refundable deposit in the form of cash, credit card or cheque for an amount of **\$2,000.00** shall be paid at the Cashier on the Ground Floor

of the Administrative Centre, **prior to a Construction Certificate being issued for the development**, in order to ensure compliance with the conditions listed in this consent, and ultimately, preservation of these street trees.

The refundable deposit will be eligible for refund following the issue of a Final Occupation Certificate, subject to completion and submission of Council's 'Security Deposit Refund Application Form', and pending a satisfactory inspection by Council's Landscape Development Officer (9399-0613).

Any contravention of Council's conditions relating to either tree at any time during the course of the works, or prior to the issue of a final occupation certificate, may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 80A (6) of the Environmental Planning and Assessment Act 1979.

Protection of neighbouring tree

40. In order to also ensure preservation of the *Persea americana* (Avocado) located within the rear paved courtyard of the most easterly unit at 6-10 Dine Street, against the northern (common) boundary of the subject site in good health, the following measures are to be undertaken:
- i. All documentation submitted for the construction certificate application must show the retention of this neighbouring tree, with the position and diameter of both its trunk and canopy to be clearly shown on all drawings.
 - j. Any roots encountered during the course of the approved works must be cut cleanly by hand, and the affected area backfilled with clean site soil as soon as practically possible, with roots not to be left exposed to the atmosphere.
 - k. There must be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble within a radius of 2 metres of the boundary, adjacent this tree, with all Site Management Plans needing to acknowledge these requirements.
 - l. Should the selective pruning of only those lower growing, lower order branches from its southern aspect be necessary in order to avoid damage to the tree or interference with the works during either demolition or construction, this pruning must only be performed by an Arborist who holds a minimum of AQF Level III in Arboriculture, and who is also a registered member of a nationally recognised organisation/association, with all pruning to be performed to Australian Standard AS 4373-1996 'Pruning of Amenity Trees.'
 - m. This approval does not imply any right of entry onto the neighbouring property, nor does it allow pruning beyond a common boundary;

however, where such measures are desirable in the best interests of correct pruning procedures, and ultimately, the ongoing health of this tree, the applicant must negotiate with the neighbour/tree owner for access to perform this work.

Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.

B. OPERATIONAL MATTERS

The following conditions are applied to satisfy the relevant pollution control criteria and to maintain reasonable levels of health, safety and amenity to the locality:

41. The operation of all plant and equipment shall 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 plant and equipment (excluding plant and equipment during the construction phase) shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Department of Environment & Conservation Noise Control Guidelines.

42. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations.
43. Except with the written approval of Council's Manager of Health, Building & Regulatory Services, all building, demolition and associated site works (including site deliveries) must only be carried out between the hours of 7.00am to 5.00pm

on Monday to Friday inclusive and (except as detailed below) between 8.00am to 5.00pm on Saturdays.

All building, demolition and associated site works are strictly prohibited on Sundays, Public Holidays and also on Saturdays adjacent to a Public Holiday.

In addition, the use of any rock excavation machinery or any mechanical pile drivers or the like is restricted to the hours of 8.00am to 5.00pm (maximum) on Monday to Friday only, to minimise the noise levels during construction and loss of amenity to nearby residents.

C. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following condition is applied to meet the requirements of the NSW Office of Water (Integrated Development Referral):

44. The issues raised in the letter from the NSW Office of Water dated 17 May 2010 and the issues raised in the General Terms of approval attached to that letter shall be addressed and satisfied and details shall be submitted to and approved by Council's Director of City Planning, in accordance with section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the relevant building works.

The following condition is applied to meet the requirements of the NSW Roads and Traffic Authority :

45. The applicant/developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the RTA for assessment prior to issue of construction certificate for the proposed development. The developer is to meet the full cost of the assessment by the RTA.

This report is to address the following key issues:

- a) The impact of excavation/rock anchors on the stability of Avoca Street and detailing how the carriageway would be monitored for settlement.
 - b) The impact of the excavation on the structural stability of Avoca Street.
 - c) The other issues that may need to be addressed (Contact Geotechnical Engineer Stanley Yuen on 8837 0246 or Graham Yip on 8837 0245)
46. The issues raised in the letter from the NSW Office of Water dated 17 May 2010 and the issues raised in the General Terms of approval attached to that letter shall be addressed and satisfied and details shall be submitted to and approved by Council's Director of City Planning, in accordance with section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the relevant building works.

The following condition is applied to meet additional demands for public facilities:

47. In accordance with Council's Section 94A Development Contributions Plan effective from 2 July 2007, the following monetary levy must be paid to Council.

Category	Cost	Applicable Levy	S94A Levy
Development Cost more than \$200,000	\$ 2,149,000	1%	\$21,490

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.

Council's Section 94A Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of environmental amenity:

48. The colours, materials and finishes of the external surfaces to the proposed development are to be compatible with adjacent developments to maintain the integrity and amenity of the building and the streetscape. Specifically, the use of natural materials rather than the proposed predominantly painted surface shall be provided.

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 Director of City Planning, in accordance with section 80A (2) of the *Environmental Planning and Assessment Act 1979* prior to a construction certificate being issued for the relevant building works.

49. Details of bicycle storage as required in the Development Control Plan – Parking shall be submitted to and approved by Council's Director City Planning Council prior to a Construction Certificate being issued for the development in accordance with section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

50. The following amendments to the proposal shall be undertaken:

- *Installation of an appropriately sized screening ledge along all north-facing edges of the north-facing balconies in the Northern building to screen overlooking of adjoining rear yards, courtyards and living areas of the adjoining northern property at No. 255 Avoca Street and no. 12 Dine Street.*

- *Installation of mature planting of medium to tall height along the northern and eastern boundary to screen overlooking of adjoining properties.*
- *Provision for a 2m high masonry fence along the common boundary between the subject site and the adjoining town house development to the north.*
- *Provision of appropriate sunshading and weather protection to all openings.*
- *Provision of ceiling fans in bedrooms.*
- *Provision of water retention for garden watering and car washing. Rainwater tanks will need to be provided for irrigation.*

Details shall be submitted to and approved by Council's Director City Planning prior to a Construction Certificate being issued for the development in accordance with section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

51. In accordance with the provisions of clauses 143A and 154A of the Environmental Planning & Assessment Regulation 2000, a 'Design Verification Certificate' must be provided to the Certifying Authority and the Council, prior to issuing a construction certificate and an occupation certificate, respectively.
52. The 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 Section 109F of 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 \$25,000 or more, at the rate of 0.35% of the cost of the works.

The following conditions are applied to provide for heritage and archaeological protection of the area :

53. Details of the design and height, materials and structure of the fencing adjacent to the Barker Street of the property are to be submitted to and approved by Council's Director of Planning and Community Development, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. Fencing is not to exceed a height of 1.5m.

The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of safety and environmental amenity:

54. The 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 Section 109F of 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 \$25,000 or more, at the rate of 0.35% of the cost of the works.

The following conditions are applied to maintain reasonable levels of environmental health, safety and amenity:

55. The land must be remediated to meet the relevant criteria in the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999 and the following requirements must be complied with:

- a) A NSW Department of Environment & Climate Change (formerly EPA) Accredited Site Auditor, accredited under the *Contaminated Land Management Act 1997*, must be appointed to assess the suitability of the site for its intended development and use.
- b) A Site Audit Statement and Summary Site Audit Report is to be submitted to Council which verifies that the land has been remediated and the site is suitable for the intended development and satisfies the relevant criteria in the NEPM 1999.

Any requirements contained within an Environmental Management Plan (EMP) which forms part of the Site Audit Statement and Site Audit Report, form part of this consent and must be implemented accordingly. Council is required to be consulted with prior to the development of the EMP and any comments made by Council are required to be taken into consideration prior to finalising the EMP.

- c) The site remediation must be carried out to the satisfaction of the Accredited Site Auditor and a Site Audit Statement and Summary Site Audit Report must be submitted to Council **prior to**:
 - i) **a construction certificate being issued for the development.**
 - ii) **a construction certificate being issued for any building work** (other than shoring work, piling work and retaining structures or other work which is necessary to carry out the remediation works).
 - iii) **a subdivision certificate being issued** for the development.
- d) Remediation works shall be carried out in accordance with the requirements of the *Contaminated Land Management Act 1997*, environmental planning instruments applying to the site, guidelines made by the NSW Department of Environment & Climate Change and Department of Infrastructure Planning & Natural Resources, Randwick

City Council's Contaminated Land Policy 1999 and the *Protection of the Environment Operations Act 1997*.

- e) Should the remediation strategy including the 'capping' or 'containment' of any contaminated land, details are to be included in the Site Audit Statement (SAS) and Environmental Management Plan (EMP) to the satisfaction of the Site Auditor.

Details of the SAS and EMP (including capping and containment of contaminated land) are also required to be included on the Certificate of Title for the subject land under the provisions of section 88 of the *Conveyancing Act 1919*.

- f) Any fill importation to the site is to be monitored and classified by the Site Auditor appointed for remediation of the site or a person with his qualifications. Only 'Virgin Excavated Natural Material' (VENM) is to be imported to the site, as detailed in the NSW DECC Waste Classification Guidelines (2008).
- g) A Site Remediation Management Plan must be prepared prior to the commencement of remediation works by a suitably qualified environmental consultant and be implemented throughout remediation works. The Site Remediation Management Plan shall include measures to address the following matters:
- general site management, site security, barriers, traffic management and signage
 - hazard identification and control
 - worker health & safety, work zones and decontamination procedures
 - prevention of cross contamination
 - site drainage and dewatering
 - air and water quality monitoring
 - disposal of hazardous wastes
 - contingency plans and incident reporting
 - details of provisions for monitoring implementation of remediation works and persons/consultants responsible.

A copy of the Site Remediation Management Plan is to be forwarded to Council prior to commencing remediation works.

- h) Hazardous or intractable wastes arising from the demolition, excavation and remediation process being removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority, and with the provisions of:
- *New South Wales Occupational Health and Safety Act, 2000;*
 - *The Occupational Health and Safety (Hazardous Substances) Regulation 2001;*
 - *The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;*

- *Protection Of the Environment Operations Act 1997 (NSW) and*
 - *NSW DECC Waste Classification Guidelines (2008).*
- i) The works must not cause any environmental pollution, public nuisance or, result in an offence under the *Protection of the Environment Operations Act 1997* or *NSW Occupational Health & Safety Act (2000) & Regulations (2001)*.
 - j) Any variations to the proposed remediation works or remediation action plan shall be approved by the Site Auditor and a written statement is to be provided to the Council by the Site Auditor prior to the commencement of such works, which confirms the Site Auditors approval of the amended remediation action plan / works.
 - k) Any new information which is identified during remediation, demolition or construction works that has the potential to alter previous conclusions about site contamination or the remediation strategy shall be notified to the Site Auditor and Council immediately in writing.

The written concurrence of the Site Auditor and Council must be obtained prior to implementing any changes to the remediation action plan or strategies.

The following group of conditions have been applied to ensure the structural adequacy and integrity of the proposed building and adjacent premises:

56. Documentary evidence prepared by a suitably qualified professional geotechnical engineer shall be submitted to the certifying authority prior to the issuing of a construction certificate, certifying the suitability and stability of the site for the proposed building and certifying the suitability and adequacy of the proposed design and construction of the building for the site.
57. A report shall be prepared by a professional engineer and submitted to the certifying authority prior to the issuing of a construction certificate, detailing the proposed methods of excavation, shoring or pile construction, including details of potential vibration emissions. The report, must demonstrate the suitability of the proposed methods of construction to overcome any potential damage to nearby land/premises.

Any practices or procedures specified in the engineer's report in relation to the avoidance or minimisation of structural damage to nearby premises, must be fully complied with and incorporated into the documentation for the construction certificate.

A copy of the engineers report is to be submitted to the Council, if the Council is not the certifying authority.
58. Driven type piles/shoring must not be provided unless a geotechnical engineer's report is submitted to the certifying authority, prior to the issuing of a construction

certificate, which demonstrates that damage should not occur to any adjoining premises and public place as a result of the works.

Any practices or recommendations specified in the engineer's report in relation to the avoidance or minimisation of structural damage to nearby premises or land must be fully complied with and incorporated into the documentation for the construction certificate.

The following conditions are applied to provide adequate security against damage to Council's infrastructure:

59. The following damage/civil works security deposit requirement is to be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to the roadway, footway, verge or any public place; or 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:

a) \$10000.00 - Damage / Civil Works Security Deposit

The damage/civil works security deposit may be provided by way of a cash or cheque with the Council and is refundable upon:

- A satisfactory inspection by Council that no damage has occurred to the Council assets such as roadway, kerb, guttering, drainage pits footway, or verge; and
- Completion of the civil works as conditioned in this development consent by Council.

The applicant is to advise Council, in writing, of the completion of all building works and/or obtaining an occupation certificate, if required.

The applicant is 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.

The following conditions are applied to provide adequate provisions for access, transport and infrastructure:

60. All new walls adjacent to vehicular crossings must be lowered to a height of 600mm above the internal driveway level for a distance of 1.50m within the site or splayed 1.5 metre by 1.5 metre to provide satisfactory sight lines. Details are to be submitted to the Certifying Authority prior to the release of the construction certificate showing compliance with this condition.
61. The driveway opening at the Barker Street frontage must be a minimum of 6.0 metres wide and located at least 1.5 metres clear of the side property.
62. Prior to the issue of a construction certificate, the applicant shall submit for approval and have approved by Council's Traffic Engineer a detailed construction traffic management plan. The plan shall demonstrate how construction and

delivery vehicles will access the development site during the demolition and construction phase of the development.

All traffic associated with the subject development shall comply with the terms of the approved construction traffic management plan.

63. The carpark layout and the proposed vehicle circulation paths must conform to the requirements of AS2890.1-2004 with respect to:

- Carspace dimensions, aisle widths, dead end aisles and column placements;
- Access and crossover widths;
- Manoeuvring requirements of vehicles within the carpark;
- Ramp grades and transitions; and
- Sight distance at potential vehicle/vehicle and vehicle/pedestrian conflict points.

The Construction Certificate plans must demonstrate compliance with this requirement. A suitably qualified traffic consultant must review the proposed carpark layout and provide appropriate certification to Council that the relevant sections of AS 2890.1-2004 have been complied with, such certification to be provided prior to the issuing of a construction certificate.

64. The design alignment levels (concrete/paved/tiled level) issued by Council and their relationship to the footpath must be indicated on the building plans for the construction certificate.

65. The above alignment levels and the site inspection by Council's Department of Asset & Infrastructure Services have been issued at a prescribed fee of \$8340 calculated at \$44.00 (inclusive of GST) per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

66. Documentary evidence from the relevant public utility authorities confirming that their requirements have been satisfied, must be submitted to the certifying authority prior to a construction certificate being issued for the development.

67. Any electricity substation required for the site as a consequence of this development shall be located within the site and shall be screened from view. The proposed location and elevation shall be shown on all detailed landscape drawings and specifications. The applicant must liaise with Energy Australia prior to lodging the construction certificate to determine whether or not an electricity substation is required for the development.

The following conditions are applied to provide reasonable levels of access for people with disabilities:

68. Access and provisions for people with a disability are to be provided to the development generally in accordance with the relevant requirements of Part 5.4 of Council's Development Control Plan for Multi-Unit Housing, AS 1428.1 – Design for Access and Mobility and AS 4299 – Adaptable Housing. Details are to be included in the Construction Certificate to the satisfaction of the certifying authority.
69. To provide reasonable access for persons with disabilities, suitable access ramp/s are to be provided from the entry to the premises and to the building entrance to the satisfaction of the certifying authority and details are to be included in the construction certificate.

Road/Asset Openings (Unless otherwise specified by City Services or Development Engineer)

70. All drainage details (for the external drainage works) shall be prepared by a suitably qualified hydraulic consultant who shall, at the completion of the works, certify that the drainage works have been constructed in accordance with the approved drainage plans and relevant standards. The plans and specifications for all works on Council property shall be submitted to and approved by the Director of Asset and Infrastructure Services prior to the issuing of a construction certificate.

Internal Drainage

71. 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 submitted to and approved by the certifying authority 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 certifying authority. 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) Generally all internal pipelines must be capable of discharging a 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 (ie. above the 1 in 20 year storm) to the proposed drainage system.

- d) 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.

72. A report must be submitted to and approved by the Certifying Authority or an accredited certifier prior to issuing the Construction Certificate, detailing the proposed method of excavation and dewatering process. Prior to the issuing of a Construction Certificate the approved report must be forwarded to Council, (if Council is not the Certifying Authority). This report is to be prepared by suitably qualified and experienced Geotechnical, Hydrological and Structural Engineers and is to include but not limited to:

- The proposed method of shoring/piling and dewatering.
- The zone of influence of any possible settlement.
- The location of any proposed re-injection points in relation to the property boundaries (where re-injection equipment is to be located on land other than the subject premises, the written consent of the owner must also be provided to Council).
- Monitoring of fluctuations of the water table during dewatering/construction to be undertaken by consulting engineers to ensure that the conditions of consent and other relevant requirements are satisfied.
- The location of all proposed monitoring equipment in relation to the property boundaries (where monitoring equipment is to be located on land other than the subject premises, the written consent of the owner must also be provided to Council).
- Details of any consultation and arrangements made with owners of any potentially affected nearby premises (ie in relation to access, monitoring and rectification of possible damage to other premises).
- Details of groundwater quality and proposed disposal of any potentially contaminated groundwater in accordance with relevant requirements of the Department of Environment & Conservation, Council and the

Protection of the Environment Operations Act 1997, in an environmentally sensitive manner.

- The location of all pumping equipment in relation to the property boundaries.
- The proposed method of noise attenuation for all pumping equipment, so as not to be more than 5dB (A) greater than the A – weighted L90 background sound pressure level between the hours of 7am to 10pm within any residential premises and not to be audible at all between the hours of 10pm and 7am within any residential dwelling.
- Confirmation that the proposed methods of dewatering and excavation are appropriate and in accordance with 'best practice' principles and should not result in any unacceptable levels of settlement or damage of the adjoining or nearby buildings within the zone of influence.

The dewatering process must be monitored by the consulting Engineer/s to the satisfaction of the principal certifying authority and documentary evidence of compliance with the relevant conditions of consent and dewatering requirements must be provided to the principal certifying authority 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.

73. Prior to lodgement of a Construction Certificate application the applicant must obtain from the Department of Natural Resources, the general terms of approval and any specific requirements for dewatering of the site to facilitate construction of the basement carpark levels. In particular, the applicant must obtain in writing the Department's general terms of approval for the issuing of a Part V license under the Water Act 1912.

The Construction Certificate application must demonstrate compliance with the general terms of approval for a Part V License. No construction certificate is to be issued until such time as the applicant demonstrates to the satisfaction of the Department of Natural Resources and the Certifying Authority that the proposed method for construction of the basement carpark and dewatering of the site is strictly in accordance with the Department of Natural Resources' requirements and best current engineering practice.

No dewatering of the site shall take place until such time as a Part V license has been obtained. A copy of the Part V license must be forwarded to Council prior to the commencement of any dewatering on the site.

74. Details of any proposed connection and / or disposal of groundwater to Council's external stormwater drainage system must be submitted to and approved by Council's Development Engineer, prior to commencing these works, in accordance with section 138 of the Roads Act 1993.

The subject details must include the following information:

- Site plan
- 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

The following conditions are applied to provide adequate provisions for waste management:

75. The garbage room areas will have to be designed so as to be able to contain a total of 84 x 240 litre bins (30 garbage bins & 54 recycle bins) whilst providing satisfactory access to these bins. Details showing compliance with this requirement are to be shown on the plans submitted to the certifying authority for the construction certificate.
76. The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water. The waste storage areas shall be clearly signposted.
77. Prior to the issuing of a construction certificate for the proposed development the applicant is to submit to Council and have approved by Council's Manager of Waste Services, a Waste Management Plan detailing waste and recycling storage and disposal for the development 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 the on-going management of waste.

78. The applicant must submit a payment of \$638.00 (including GST), being the cost for Council to remove the larger Jacaranda mimosifolia (Jacaranda), located within Council's Dine Street footpath, towards the northern site boundary.

This amount shall 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 will be required to contact Council's Landscape Development Officer on 9399-0613 (quoting the receipt number), and giving at least four working weeks notice to arrange for removal of this street tree, prior to the commencement of site works.

D. PRIOR TO ANY WORK COMMENCING ON THE SITE

The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of safety and environmental amenity:

79. **Prior to the commencement of any building works, 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 and Environmental Planning & Assessment Regulation 2000.

A copy of the construction certificate, the approved plans & specifications 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.

80. **Prior to the commencement of any building works**, the **person** having the benefit of the development consent must:-

- i) appoint a *Principal Certifying Authority* for the building work, and
- ii) appoint a *principal contractor* for the building work, or in relation to residential building work, obtain an *owner-builder* permit in accordance with the requirements of the Home Building Act 1989, and notify the *Principal Certifying Authority* and Council accordingly in writing, and
- iii) unless the person having the benefit of the consent is the *principal contractor* (i.e. *owner-builder*), notify the *principal contractor* of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifying Authority*, and
- iv) give at least two days notice to the Council, in writing, of the persons intention to commence building works.

In relation to residential building work, the principal contractor must be the holder of a contractor licence, in accordance with the provisions of the Home Building Act 1989.

81. All stormwater run-off naturally draining to the site must be collected and discharged through this property's stormwater system. Such drainage must, if necessary, be constructed prior to the commencement of building work.

82. In accordance with clause 98 of the Environmental Planning & Assessment Regulation 2000, it is a prescribed condition, that in the case of residential building work, a contract of insurance must be obtained and in force, in accordance with the provisions of the Home Building Act 1989.

Where the work is to be done by a licensed contractor, excavation or building work must not be carried out unless the Principal Certifying Authority (PCA):

- has been informed in writing of the licensee's name and contractor number; and
- is satisfied that the licensee has complied with the insurance requirements of Part 6 of the *Home Building Act 1989*, or

Where the work to be done by any other person (i.e. an *owner-builder*), excavation or building work must not be carried out unless the Principal Certifying Authority:

- has been informed of the person's name and *owner-builder* permit number, or
- has been given a declaration, signed by the owner of the land that states that the market cost of the labour and materials involved in the work does not exceed \$5,000.

Details of the principal building contractor and compliance with the provisions of the *Home Building Act 1989* (i.e. *Details of the principal licensed building contractor and a copy of the Certificate of Insurance*) are to be submitted to Council **prior to the commencement of works**, with the notice of appointment of the PCA / notice of intention to commence building work.

The following conditions are applied to maintain reasonable levels of environmental health, safety and amenity:

83. Prior to the commencement and throughout the duration of the remediation and construction works adequate sediment and stormwater control measures shall be in place and maintained on site at all times. Sediment laden stormwater shall be controlled using measures outlined in the manual Managing Urban Stormwater Soils and Construction produced by the NSW Department of Housing.
84. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved Construction Certificate plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to commencing any building or excavation works, to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

If suitable, the plans will be appropriately stamped. For Quick Check agent details please refer to Sydney Water's web site at www.sydneywater.com.au and go to

the Building, Developing and Plumbing, then Quick Check or Building and Renovating or telephone 13 20 92.

The principal certifying authority must ensure that a Quick Check Agent/Sydney Water has appropriately stamped the plans before commencing any works.

85. A Construction Noise & Vibration Management Plan, prepared in accordance with the Department of Climate Change Guidelines for Construction Noise and Assessing Vibration, by a suitably qualified person, is to be developed and implemented prior to commencing site work and throughout the course of construction, to the satisfaction of the Council.

- a) 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.

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.

- b) The *Construction Noise & Vibration Management Plan* must include details of measurements, analysis and relevant criteria and demonstrate that the noise and vibration emissions from the work satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997*, current DECC Guidelines for Construction Noise and Assessing Vibration and Councils conditions of consent.
- c) A further report/correspondence must be obtained from the consultant as soon as practicable **upon the commencement of works**, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.
- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council and the PCA.

A copy of the *Construction Noise & Vibration Management Plan* and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to Council and the Principal Certifying Authority accordingly.

86. A dilapidation report prepared by a professional engineer or suitably qualified and experienced building surveyor shall be submitted to the certifying authority prior to

the commencement of demolition, excavation or building works detailing the current condition and status of all buildings, including ancillary structures (i.e. including dwellings, residential flat buildings, commercial/industrial building, garages, carports, verandah's, fences, retaining walls, swimming pools and driveways etc.) located upon all of the premises adjoining the subject site.

The report is to be supported with photographic evidence of the status and condition of the buildings and a copy of the report must also be forwarded to the Council and to the owners of each of the abovementioned premises, prior to the commencement of any works.

87. The installation of ground or rock anchors underneath any adjoining premises must not be carried out without specific written consent of the owners of the affected adjoining premises (including the Council if bounding a public roadway or public place) and where applicable, details of compliance must be provided to the certifying authority prior to the commencement of any excavation or building works.

The following conditions are applied to ensure that the development satisfies relevant standards of construction, and to maintain adequate levels of health, safety and amenity during construction:

88. 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 Certifying Authority for the development prior to commencing such excavations or works.

89. A separate written approval from Council is required to be obtained in relation to all works which are located externally from the site within the road reserve/public place, in accordance with the requirements of the Roads Act 1993. Detailed plans and specifications of the proposed works are to be submitted to and approved by the Director of City Services prior to commencing any works within the road reserve/public place.

All works within the road reserve/public place must be carried out to the satisfaction of Council and certification from a certified practicing engineer is to be provided to Council upon completion of the works.

Relevant Council assessment and inspection fees, as specified in Council's adopted Pricing Policy, are required to be paid to Council prior to commencement of the works.

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

The owner/builder 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 for the development.

For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 9399 0999.

91. A Construction Site Management Plan is to be developed and implemented prior to the commencement of demolition, excavation or building works. The site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective fencing / hoardings to the perimeter of the site;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- site access location and construction
- details and methods of disposal of demolition materials;
- protective measures for tree preservation;
- provisions for temporary sanitary facilities;
- location and size of waste containers/bulk bins;
- details of proposed sediment and erosion control measures;
- construction noise and vibration management;
- construction traffic management provisions.

The site management measures are to be implemented prior to the commencement of any site works and be maintained throughout the works, to maintain reasonable levels of public health, safety and convenience to the satisfaction of Council. A copy of the approved Construction Site Management Plan must be maintained on site and be made available to Council officers upon request.

92. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures.

The Work Plan must include the following information (as applicable):

- The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor
- Details of hazardous materials, including asbestos
- Method/s of demolition and removal of asbestos
- Measures and processes to be implemented to ensure the health & safety of workers and community
- Measures to be implemented to minimise any airborne asbestos and dust
- Methods and location of disposal of any asbestos or other hazardous materials
- Other relevant details, measures and requirements to be implemented as identified in the Asbestos Survey
- Date the demolition and removal of asbestos will commence

The Demolition Work Plan must be submitted to the Principal Certifying Authority (PCA), not less than two (2) working days before commencing any demolition works. A copy of the Demolition Work Plan must be forwarded to Council and a copy must also be maintained on site and be made available to Council officers upon request.

The following conditions are applied to provide adequate provisions for landscaping and to maintain reasonable levels of environmental amenity:

93. The PCA must ensure that landscaping at the site is installed substantially in accordance with the Landscape Plan & Landscape Elevations by Aspect Studios, drawings 10006-DA01 & 02, revision E & D respectively, and dated 13.05.2010, subject to the following changes being made on an amended, which shall be submitted for approval of the PCA, prior to the commencement of site works:
 - n. Additional notation showing soil, mulch, gravel/pebble details, irrigation details, edging, paving, decking, fencing, lighting details, surface finishes, retaining wall, seating details, and any other landscape elements in sufficient detail in order to fully describe the proposed landscape works.
 - o. If fencing is to be installed along the eastern and western boundaries, adjacent the WSUD planted detention swales, suitable access for the purposes of maintenance needs to be provided in these areas.
 - p. In order to maintain clear lines of sight on both sides of the basement entry/exit ramp, species selection at the southern end of the planted swale facing Dine Street, at the intersection of Barker Street, beyond the southern edge of the proposed building, must be those which will not exceed 600mm in height at maturity, and should be a similar treatment to what is proposed for the southwest corner of the site.
 - q. All planter boxes and garden beds constructed on slab/podium must have a minimum soil depth of 600mm and all lawn areas must have a minimum soil depth of 300mm. Where trees are proposed for use in raised planters, they are to be suitably located so that they have sufficient soil volume to accommodate their future growth requirements

and the lateral spread of their roots.

- r. All detention tanks and below ground stormwater infiltration systems located within the landscaped areas shall have a minimum soil cover of 600mm to ensure sufficient soil depth to permit the establishment of landscaping.
- 94. Prior to the PCA issuing a Final Occupation Certificate for this development, certification from a qualified professional in the landscape industry (must be a registered member of AILDM, AILA or equivalent) must be provided, and will need to confirm that all landscape works on site have been installed in accordance with the approved plans and relevant conditions of development consent.
- 95. The owners corporation/body corporate will need to ensure that suitable management plans and strategies are put in place to ensure the ongoing maintenance of all landscaping in a healthy, vigorous state within those common areas throughout the site, for the life of the development.
- 96. The nature-strip part on Council's new footways 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 Soft Leaf Buffalo turf, Kikuyu or similar, all at the applicants cost, to Council's satisfaction, and prior to the issue of a Final Occupation Certificate.

Removal of existing Street Trees

- 97. Approval is granted for the applicant to remove and dispose of (at their own cost) the small, recently planted row of six Gum trees on Council's Barker Street frontage, between the existing vehicle crossing and the corner of Dine Street, as well as the small *Acmena smithii* (Lilly Pilly) located in Council's Dine Street footpath, about halfway along the length of this frontage, as part of the works, but must satisfy themselves as to the location of all site services, prior to the commencement of any works on public property.

E. DURING CONSTRUCTION/ WORKS

The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of safety and environmental amenity:

- 98. The building works must be inspected by the Principal Certifying Authority (or another certifying authority if the Principal Certifying Authority agrees), in accordance with sections 109 E (3) of the Environmental Planning & Assessment Act 1979 and clause 162A of the Environmental Planning & Assessment Regulation 2000, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

The *Principal Certifying Authority* must specify the relevant stages of construction to be inspected in accordance with section 81A (2) (b1) (ii) of the Environmental

Planning & Assessment Regulation 2000 and a satisfactory inspection must be carried out, to the satisfaction of the *Principal Certifying Authority*, prior to proceeding to the subsequent stages of construction or finalisation of the works (as applicable).

Documentary evidence of the building inspections carried out and details of compliance with Council's consent is to be maintained by the *Principal Certifying Authority*. Details of *critical stage inspections* carried out and copies of certification relied upon must also be forwarded to Council with the *occupation certificate*.

The *principal contractor* or *owner-builder* (as applicable) must ensure that the required critical stage and other inspections, as specified in the *Principal Certifying Authority's* "Notice of Critical Stage Inspections", are carried out to the satisfaction of the *Principal Certifying Authority* and at least 48 hours notice (excluding weekends and public holidays) is to be given to the *Principal Certifying Authority*, to carry out the required inspection, before carrying out any further works.

99. 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 Certifying Authority*,
 - a statement stating that "unauthorised entry to the work site is prohibited".

The following conditions are applied to maintain reasonable levels of environmental health, safety and amenity:

100. A sign displaying the contact details of the remediation contractor (and the site manager if different to remediation contractor) shall be displayed on the site adjacent to the site access. This sign shall be displayed throughout the duration of the remediation works.
101. A Works Zone is to be provided in Barker Street for the duration of the construction works. The 'Works Zone' shall be provided to the satisfaction of the Randwick Traffic Committee and shall have a minimum length of 12 metres. The prescribed fee for the Works Zone must be paid to Council at least four (4) weeks prior to the commencement of work on the site.

It is noted that the requirement for a Works Zone may be waived if it can be demonstrated (to the satisfaction of Council's traffic engineer) that all construction related activities (including all loading and unloading operations) may be undertaken wholly within the site.

102. 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.

Noise and vibration from any rock excavation machinery and pile drivers (or the like) must be minimised by using appropriate plant and equipment and silencers and a construction noise and vibration minimisation strategy, prepared by a suitably qualified consultant is to be implemented during the works, to the satisfaction of the Principal Certifying Authority.

103. A report prepared by a suitably qualified and experienced person shall be submitted to the Principal Certifying Authority (PCA) and a copy is to be provided to Council upon commencement of works or as otherwise specified by the PCA or Council, certifying that noise and vibration emissions from the construction of the development satisfies the relevant provisions of the Protection of the Environment Operations Act 1997, Councils conditions of consent and relevant Standards relating to noise and vibration. In support of the above, it is necessary to submit all relevant readings and calculations made.

Any recommendations and requirements contained in the report are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the PCA and Council.

104. A Registered Surveyor's check survey certificate or compliance certificate is to be forwarded to the principal certifying authority (and a copy is to be forwarded to the Council, if the Council is not the principal certifying authority), detailing compliance with Council's approval at the following stage/s of construction:

- a) Prior to construction of the first completed floor/floor slab (prior to pouring of concrete), showing the area of land, building and boundary setbacks and verifying that the building is being construction at the approved levels.
- b) On completion of the erection of the building showing the area of the land, the position of the building and boundary setbacks and verifying the building has been constructed at the approved levels.

105. 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.
- Revegetation of disturbed areas.

106. During construction stages, 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 the NSW Department of Housing

Details of the proposed sediment control measures are to be detailed in the Site Management Plan and must be submitted to and approved by the principal certifying authority 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 approved details must be forwarded to the Council and a copy is to be maintained on-site and be made available to Council officers upon request.

Details of proposed sediment and erosion control measures shall include; a site plan; indicating the slope of land, access points & access control measures, location and type of sediment & erosion controls, location of existing vegetation to be retained, location of material stockpiles and storage areas, location of building operations and equipment, methods of sediment control, details of drainage systems and details of existing and proposed vegetation.

Stockpiles of soil, sand, aggregate or other materials must not be located on any footpath, roadway, nature strip, drainage line or any public place and the stockpiles must be protected with adequate sediment control measures.

A warning sign for soil and water management must be displayed in a prominent position on the building site, visible to both the public and site workers. The sign must be displayed throughout the construction period. Copies of a suitable warning sign are available at Council's Customer Service Centre for a nominal fee.

107. Public safety must be maintained at all times and public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5 metres). Temporary fences are to have a minimum height of 1.8 metres and

be constructed of cyclone wire fencing, with geotextile fabric attached to the inside of the fence to provide dust control, or other material approved by Council.

If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient or the building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected sufficiently to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises.

Temporary fences or hoardings 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.

The public safety provisions and temporary fences must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

If it is proposed to locate any site fencing, hoardings or amenities upon any part of the footpath, nature strip or any public place, the written consent from Council's Building Services section must be obtained beforehand and detailed plans are to be submitted to Council for consideration, together with payment of the weekly charge in accordance with Council's adopted fees and charges.

108. The demolition, removal, storage, handling and disposal of materials and all building work must be carried out in accordance with the following requirements (as applicable):

- Australian Standard 2601 (2001) – Demolition of Structures
- Occupational Health and Safety Act 2000
- Occupational Health and Safety (Hazardous Substances) Regulation 2001
- Occupational Health and Safety (Asbestos Removal Work) Regulation 2001
- WorkCover NSW – Guidelines and Codes of Practice
- Randwick City Council's Asbestos Policy
- The Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Waste) Regulation 1996.

109. Any work involving the demolition, storage and disposal of asbestos products and materials must be carried out in accordance with the following requirements:

- a) Randwick City Council's Asbestos Policy (adopted 13 September 2005).

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

- a) A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as

otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence.

- b) On sites involving the removal of asbestos, a professionally manufactured sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and include details of the licensed contractor. The sign shall measure not less than 400mm x 300mm and the sign is to be installed prior to demolition work commencing and is to remain in place until such time as all asbestos has been safely removed from the site.
- c) Asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 1996. Asbestos waste must be disposed of at an approved waste disposal depot (refer to the DEC or Waste Service NSW for details of sites). Copies of all receipts detailing method and location of disposal must be maintained on site and be provided to Council officers upon request, as evidence of correct disposal.
- d) A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos removal contractor, building consultant, architect or experienced licensed building contractor), must be provided to Council upon completion of the works **prior to an Occupation Certificate being issued**, which confirms that the asbestos material have been removed appropriately and the relevant requirements contained in the Asbestos Survey and conditions of consent in relation to the safe removal and disposal of asbestos, have been satisfied.

External Drainage Conditions

- 110. All site stormwater leaving the site must be discharged by gravity to the underground drainage system in Avoca Street and/or Barker Street, via new and/or existing kerb inlet pits. With the exception of the site discharge pipe, all new pipelines constructed within council's road reserve shall be minimum 375 mm diameter, spigot and socket rubber ringed jointed, steel reinforced concrete pipeline (RRRCP). Prior to backfilling, all pipelines in council's road reserve shall be inspected and approved by the Hydraulic Engineer certifying the works and Council.
- 111. 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.
- 112. Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line.

The following condition is applied to meet the requirements of the NSW Roads and Traffic Authority :

113. The issues raised in the letter from the NSW Roads and Traffic Authority dated 18 June 2010 shall be addressed and satisfied in the construction of the proposed development.

F. PRIOR TO OCCUPATION OF THE BUILDING/ PREMISES

114. The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of safety and environmental amenity:
115. A report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Council prior to an occupation certificate being issued for the development, which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the Protection of the Environment Operations Act 1997, NSW Environmental Protection Authority Noise Control Manual & Industrial Noise Policy and conditions of Council's approval, to the satisfaction of Council's Manager Health, Building & Regulatory Services.
116. An Occupation Certificate must be obtained from the Principal Certifying Authority prior to any occupation of the building 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 relevant requirements of the Environmental Planning & Assessment Act 1979 and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

117. Prior to the issuing of an interim or final occupation certificate, a statement is required to be obtained from the Principal Certifying Authority, which confirms that the development is not inconsistent with the development consent and the relevant conditions of development consent have been satisfied.

Details of critical stage inspections carried out by the principal certifying authority together with any other certification relied upon must also be provided to Council with the occupation certificate.

118. A Fire Safety Certificate must be submitted to Council prior to the issuing of an Occupation Certificate, in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.

A single and complete Fire Safety Certificate must be provided which includes details of all of the fire safety measures contained in the building and as detailed in the fire safety schedule attached to the Construction Certificate.

Prior to issuing any Occupation Certificate the Principal Certifying Authority must be satisfied that all of the relevant fire safety measures have been included and are sufficiently detailed within the Fire safety Certificate.

A copy of the fire safety certificate must be displayed in the building near the entrance and a copy must be forwarded to the NSW Fire Brigades.

The following conditions are applied to provide adequate provisions for access, transport and infrastructure:

119. Prior to the issuing of an Occupation Certificate the applicant must meet the full cost for Council or a Council approved contractor to:
 - a) Construct a full width concrete commercial vehicular crossing and layback at kerb opposite the proposed vehicular entrance to the site in Barker Street.
 - b) Remove all redundant concrete vehicular crossings and laybacks along the site frontages and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.
 - c) Reconstruct the kerb and gutter along the full site frontages except opposite the vehicular entrance and exit point. It is noted that the kerb and gutter along the Avoca Street site frontage shall be constructed in accordance with appropriate RTA guidelines/specifications.
 - d) Carry out a full depth minimum 1.0 metre wide, road construction in front of the new kerb and gutter along the full site frontages. Additional road reconstruction works will be required around the existing converter drain at the intersection of Barker Street and Dine Street.
 - e) Construct a concrete footpath along the Dine Street frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
 - f) Construct/reconstruct concrete footpaths along the Avoca Street and Barker Street site frontages. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
120. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

121. 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 Policy for "Vehicular Access and Road and Drainage Works" and the following requirements:
- a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.
 - b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a *Pre-paid Works Application Form*, prior to issuing an occupation certificate, together with payment of the relevant fees.
 - c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.
 - d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.
122. Prior to the issuing of an Occupation Certificate the applicant shall dedicate a 3m x 3m splay corner at the southeast corner of the development site (intersection of Barker St & Dine Street). The applicant shall meet all cost associated with the dedication. Note: No portion of the development shall encroach into the splay corner.
123. A Certificate prepared by a professional engineer shall be submitted to the certifying authority (and the Council, if the Council is not the certifying authority) prior to occupation of the building, which certifies that the building works satisfy the relevant structural design requirements of the Building Code of Australia.

The following conditions are applied to provide adequate provisions for infrastructure and services:

124. 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) 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* for the development.
- 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) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
- e) 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.
- f) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
- g) 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.
- h) Public and vehicular safety must be maintained at all times and any related directions issued by Council officers must be complied with.
- 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) 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.
- k) Not more than half of any road is to be opened up at any one time and excavations must be provided with suitable fencing/ barricades and flashing amber lights if not completed by the end of the day.
- l) Any necessary approvals must be obtained from NSW Police, Roads & Traffic Authority, State Transit Authority 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 & Traffic Authority, State Transit Authority and Council must be complied with at all times.

- m) A detailed Traffic Management Plan must be submitted to and approved by Council and relevant Authorities, prior to carrying out any work which results in the closure or partial closure of a State or Regional Road, as identified by the NSW Roads & Traffic Authority.
- n) 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.
- o) 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.
- p) 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.

125. The applicant must meet the full cost for any signposting of the streets surrounding / fronting the development site as required by Council, (including the creation of a loading zone in Barker Street should such loading zone be supported by the Randwick Traffic Committee). All required signage must be installed prior to the issuing of an Occupation Certificate.

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

The owner/builder 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 for the development.

127. The applicant shall meet the full cost of the overhead power lines and telecommunication cables located in the vicinity of the development site to be relocated underground and all redundant power poles to be removed. The applicant shall liaise directly with the relevant service utility authorities to organise for the wires/cables to be relocated. All wires cables must be relocated underground to the satisfaction of the relevant service utility authority prior to the issuing of an occupation certificate for the development.

For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 9399 0999.

128. A Section 73 Compliance Certificate under the Sydney water Act 1994 must be obtained. Application must be made through an authorised Water Servicing

Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at www.sydneywater.com.au then the “e-developer” icon or telephone 13 20 92.

Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Notice must be issued to the Principal Certifying Authority prior to the construction certificate being issued.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

129. A work-as-executed plan prepared and signed by the hydraulic engineer or a registered surveyor, must be submitted to Council's Director of Asset and Infrastructure Services prior to the issuing of an occupation certificate, detailing the as constructed details for all works within Council's road reserve (including detailed levels).
130. Prior to occupation of the development, a "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/infiltration system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The “restriction on the use of land” and “positive covenant” are to be to the satisfaction of Council. A copy of Council’s standard wording/layout for the restriction and positive covenant may be obtained from Council’s Development Engineer.
 - b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the “restriction on the use of land” and “positive covenant” being executed by Council.
131. Three covered car washing bays shall be provided for this development.
 - a) The car washing bays must be drained to sewer to the requirements of Sydney Water and proof of compliance is to be submitted to the certifying authority, prior to an occupation certificate being issued for the proposed development.
 - b) The car washing bays must be located outside any required/approved stormwater detention system.

- c) The car washing bays may be located within the visitor parking spaces provided they are signposted with *'Exclusive Carwash Bay Use Sat 2:00pm – 5:00pm and Sunday 10:00am – 2:00pm, Visitor parking at other times'*
- d) The car washing bays must be constructed with a minimum 20mm bund around the perimeter of the car washing bay/s (or equivalent)
- e) A water tap shall be located adjacent to the car washing bay/s.

132. Prior to the issuing of an occupation certificate, the applicant shall submit to Council, a works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced Hydraulic Engineer. The works-as-executed drainage plan shall be to the satisfaction of the Principal Certifying Authority (PCA) and shall include the following details:

- f) The location of the detention basin with finished surface levels;
- g) Finished site contours at 0.2 metre intervals;
- h) Volume of storage available in the detention areas;
- i) The location, diameter, gradient and material (i.e PVC, RC etc) of all stormwater pipes;
- j) The orifice size(s) (if applicable);
- k) Details of any infiltration/absorption systems; and
- l) Details of any pumping systems installed (including wet well volumes).

133. Prior to the issuing of an occupation certificate, the applicant shall submit to the Principal Certifying Authority (PCA) and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with the conditions of development consent. 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 PCA.

134. As the above site will encounter groundwater within the depth of the basement excavation, the basement carpark is to be suitably tanked and waterproofed. A Structural Engineer/Geotechnical Engineer shall certify the tanking & waterproofing has been carried out to an acceptable standard and a copy of the certification is to be forwarded to Council.

Notes:-

- a) Any subsoil drainage (from planter boxes etc) is to be disposed of within the site and is not to be discharged to Council's kerb & gutter and/or underground drainage system.
- b) Adequate provision is to be made for the groundwater to drain around the basement carpark (to ensure that the basement will not dam or slow the movement of the ground water through the development site).

ADVISORY MATTERS:

1. The applicant is advised that the Construction Certificate plans and specification must comply with the provisions of the Building Code of Australia (BCA).

In this regard, the development consent plans do not show compliance with the deemed-to-satisfy provisions of the BCA, including:

- | | | | |
|----|------------------|---|---|
| a) | Part B1 | - | Structural provisions |
| b) | Part C1 | - | Fire resistance and stability |
| c) | Part C2 | - | Compartmentation and separation |
| d) | Clause C2.6 | - | Vertical separation of openings in external walls |
| e) | Part C3 | - | Protection of openings |
| f) | Clause C3.2&C3.4 | - | Protection of openings in external walls |
| g) | Part D1 | - | Provisions for escape |
| h) | Clause D1.3 | - | When fire-isolated exits are required |
| i) | Clause D1.4 | - | Exit travel distances |
| j) | Clause D1.5 | - | Distance between alternative exits |
| k) | Part D2 | - | Construction of exits |
| l) | Clause D2.4 | - | Separation of rising and descending stair flights |
| m) | Part E1 | - | Fire fighting equipment |
| n) | Part E2 | - | Smoke Hazard Management |
| o) | Part E3 | - | Lift Installations |
| p) | Part E4 | - | Emergency lighting, exit signs & warning systems |
| q) | Part F1 | - | Damp and weatherproofing |
| r) | Part F2 | - | Sanitary and other facilities |
| s) | Part F4 | - | Light and ventilation |
| t) | Part F5 | - | Sound Transmission and Insulation |
| u) | Section J | - | Energy efficiency |

Details of compliance with the relevant provisions of the Building Code of Australia and conditions of development consent are to be provided in the plans and specifications for the construction certificate.

The applicant/developer is advised to ensure that the development is not inconsistent with Council's consent and if necessary consult with Council's Building Certification Services or your accredited certifier (as applicable) prior to submitting your construction certificate application to enable these matters to be addressed accordingly.

2. The applicant is 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.

