

**Joint Regional Planning Panel
(Sydney East Region)**

JRPP No.	2015SYE153
DA No.:	Section 96 modification of the approved development (S96B) comprising of alterations to building adjacent to Coogee Bay Road including additional level on eastern and western wings of seventh floor, additional level on eighth floor, alterations to building envelope and reconfiguration of units resulting in an increase from 36 units to 42 units. Original Consent: Concept Plan and Stage 1 DA for seniors housing development comprising independent living units, a residential care facility with 93 beds and 20 x 1 bedroom serviced apartments in 4 building elements ranging from 5 to 8 storeys in height, basement parking for 154 vehicles and associated works.
Street Address	57-63 St. Pauls Street, Randwick
Applicant	Momentum Project Group
Owner	St. Basils Home
Number of Submissions	4
Recommendation	Approval
Report By	Matthew Choi

1. Executive Summary

Council is in receipt of a Section 96(2) application seeking modification of the consent DA/493/2012; which was approved by the Joint Regional Planning Panel (JRPP) on the 5 December 2012 for the Concept Plan and Stage 1 DA for seniors housing development comprising independent living units, a residential care facility with 93 beds and 20 x 1 bedroom serviced apartments in 4 building elements ranging from 5 to 8 storeys in height, basement parking for 154 vehicles and associated works.

This S96B application (DA/493/2012/B) seeks alterations and additions to the northern building fronting Coogee Bay Road including incremental increases to the building envelope to the basement level 02 and level 03 - 05, an additional storey to the eastern and western wings of the northern tower fronting Coogee Bay Road with new 2 x 3 bedroom plus study unit and increase to the number of apartments from 36 units to 42 units and new solar panels to the rooftop to the building.

The S96B application is referred to the Joint Regional Planning Panel for determination, as the application is made pursuant to S96(2) of the Environmental Planning and Assessment Act 1979 and Part 4 of State Environmental Planning Policy (State and Regional Development) 2011.

The S96B application was publicly exhibited, advertised within the local newspaper and site notification attached to the subject premise as per the requirements of the Randwick Development Control Plan 2013 (RDCP2013) for Public Notification. The application was formally notified between the periods on the 16 September 2015 to the 30 September

2015 with a total of four objections received. The objections include: the modifications do not constitute a development that is substantially the same as per the requirements of Section 96 of the Environmental Planning and Assessment Act; incompatibility in height to the adjacent buildings; adverse visual bulk and scale impacts from the existing streetscape; inconsistencies within the submitted statement of environmental effects and the modifications not being within the public interest.

The proposal involves amendments to the building heights and the number of storeys to the northern-most building block fronting Coogee Bay Road. The modifications include an additional storey to the eastern wing and increase to the approved building height from RL76.7 to RL79.8 and an additional storey to the western wing and increase to the approved building height from RL 79.8 to RL83.0. The additional storey to the northern building will maintain a similar roof form as the approved development consisting of a low profile skillion roof.

The visual bulk and scale of the new upper floor addition to the northern building has been designed to be set well within the building footprint comprising of an increased side and front setback to the property boundaries. The scale of the development will partially remain aligned with the tree canopy when viewed from the public open space area at High Cross Park; the building will retain a stepped built form from the front building alignment which will alleviate the visual massing of the development when viewed from the northern aspect of Coogee Bay Road and the additional storey will still remain within a consistent building height plane to other similarly large developments given its location between the Central Tower and the Clinical Sciences Building and/Edmund Blacket Building at the Prince of Wales Hospital site when viewed from the Coogee Basin.

The increase to the number of apartments within the northern building from 36 to 42 apartments is achieved through a reconfiguration of the existing floor plates and increases to the building envelope with the inclusion of the upper floor addition sought as part of the Section 96 modifications. The amended apartment layout does not deviate from the Apartment Design Guidelines as required by SEPP 65 with regards to amenity controls or building configuration given all units will continue to enjoy a northern aspect and receive direct sunlight between the hours of 8am – 4pm, 21 June.

In terms of additional shadowing impact to the adjoining neighbours, the shadows cast that arise from the extended building envelopes and the additional storey to the northern building does not contribute to any significant appreciable impacts which may compromise the amenity of the adjacent dwellings. To the east, the shadowing will remain largely unchanged from the approved development and will continue to shade a portion of the vehicular access handle and the outdoor private open space play area of the Brigidine College, Randwick. Between the periods of 9am – 2pm the development will overshadow the subject site itself and will fall on the lower level units of the Central Tower development. The extent of overshadowing to the lower level units is acceptable in that it more than 70% of the units will receive a minimum of two hours as per the Apartment Design Guidelines of SEPP 65. To the west, the adjacent residential flat building fronting Coogee Bay Road will continue to maintain a northern aspect and achieve the minimum required three hours of direct solar access. The building block fronting Daintrey Crescent will receive a reduction in direct solar access between the hours of 1.30pm – 3pm and is acceptable given the northern facing window openings will maintain uninterrupted direct solar access between the hours 9am – 1.30pm.

The distant water views that are available to the eastern neighbour will also not be impinged by the section 96 modifications. The view corridor between the northern and central building will not reduce the 25 metre building separation between the two building blocks and the outlook will remain uninterrupted by the subject section 96 amendments. The additional storeys will not contribute to any reduction to the distant

water views over Coogee and will maintain a reasonable level of view sharing to the eastern neighbour of the Brigidine Covenant.

The proposed modifications and the associated impacts have been carefully considered and the new addition will remain not adversely affect the character of the building within the streetscape. Further, the upper floor addition and the additions to the building envelope at the lower levels will not contribute to any significant amenity impacts to the neighbouring development and is recommended for approval, subject to conditions.

2. The Proposal

The subject section 96 applications seeks approval to modify the original design scheme to the northern building block fronting Coogee Bay Road. The proposed section 96 modifications involve the following:

Basement level 2:

- Increase floor space to western-most unit

Basement level 1:

- Delete portion of west facing balcony to western-most unit

Level 1:

- Delete portion of west facing balcony to western-most unit

Level 3:

- Increase floor space to north-facing unit to the eastern wing of the northern tower

Level 4:

- Increase in building envelope to eastern wing by an additional 125sqm
- Increase in size of living/dining to north facing unit of western wing

Level 5:

- Increase to building envelope to the western wing by an additional 133sqm
- An additional storey to the eastern wing comprising 3 x bedroom plus study

Level 6:

- Installation of new solar panels on rooftop to the eastern wing
- An additional storey to the western wing comprising 1 x 3 bedroom plus study

Level 7:

- Installation of new solar panels on rooftop to the western wing

The table below contained in the SEE accompanying the S96 applications summarises the modifications to the apartment mix which is as follows:

Table 1: Development statistics

Level	Existing East wing	Proposed East Wing	Existing West Wing	Proposed West Wing
Ground Level (Basement Level 3 – RL53.90)	3 x 1 bedroom	2 x 1 bedroom units 1 x 2 bedroom unit	N/A	N/A
First Floor (Basement Level 2 – RL57.10)	2 x 1 bedroom units 1 x 2 bedroom unit	2 x 1 bedroom units 1 x 2 bedroom unit	3 x 1 bedroom units	3 x 1 bedroom units
Second Floor (Basement Level 1 – 60.30)	3 x 2 bedroom units	3 x 2 bedroom units	3 x 2 bedroom units	3 x 2 bedroom units
Third Floor (Level 01 – RL63.50)	3 x 2 bedroom units	3 x 2 bedroom units	3 x 2 bedroom units	3 x 2 bedroom units
Fourth Floor (Level 02 – RL66.70)	3 x 2 bedroom units	3 x 2 bedroom units	3 x 2 bedroom units	3 x 2 bedroom units
Fifth Floor (Level 03 – RL69.9)	2 x 3 bedroom units	3 x 2 bedroom units Extension of living space for one unit	3 x 2 bedroom units	3 x 2 bedroom units
Sixth Floor (Level 04 – RL73.10)	2 x 3 bedroom unit plus study	2 x 3 bedroom units Extension of floor	2 x 3 bedroom units	3 x 2 bedroom units Extension to floor space mainly

Level	Existing East wing	Proposed East Wing	Existing West Wing	Proposed West Wing
		space for all units		living areas in two of the units
Seventh Floor (Level 05 – RL76.30)	Roof – Lift overrun	1 x 3 bedroom unit plus study	1 x 3 bedroom unit plus study	2 x 3 bedroom units Extension of floor space
Eighth Floor (Level 06 – RL79.50)	Roof	Lift overrun	Lift overrun	1 x 3 bedroom unit plus study
Ninth Floor (Level 07 – RL82.70)	N/A	Roof	Roof	Lift overrun
Roof (RL85.1)	N/A	N/A	N/A	Roof

Existing	Proposed
8 x 1 bedroom units	7 x 1 bedroom units
22 x 2 bedroom units	29 x 2 bedroom units
7 x 3 bedroom units	6 x 3 bedroom units
Total: 36 units	Total: 42 units

Source: Excerpt from the Statement of Environmental Effects

Application History

Approved Development Application DA/493/2012:

A development application was approved on the 5 December 2015 by the Joint Regional Planning Panel for the Concept Plan and Stage 1 DA for seniors housing development comprising independent living units, a residential care facility with 93 beds and 20 x 1 bedroom serviced apartments in 4 building elements ranging from 5 to 8 storeys in height, basement parking for 154 vehicles and associated works.

Approved Section 96A(1A) Application DA/493/2012/A:

A section 96(1A) modification was approved on the 23 May 2014 seeking to amend condition no. 51 relating to the Section 94 Contributions.

Approved Section 96C(1A) Application DA/493/2012/C:

A section 96(1A) modification was approved on the 5 November 2015 seeking to delete condition no. 136 relating to the undergrounding of power lines.

Subject Site

The subject site is located at No. 57-63 St Pauls Street, Randwick, and has frontages to St Pauls Street and Coogee Bay Road and Daintrey Crescent. The subject site comprises Lot 1 DP 776899 and Lot 1494 DP 752011. It has an area of 1.252 ha.

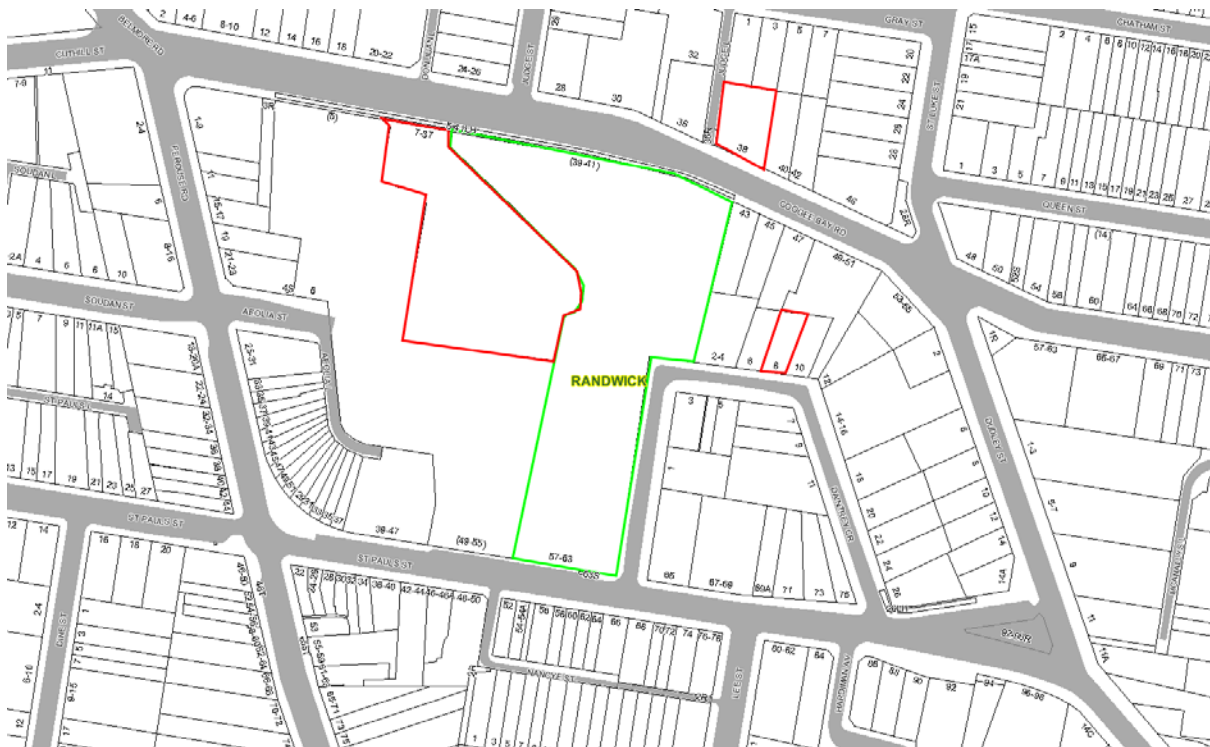
Topographically, the subject site runs along a ridge through the centre of the site which is its highest point. From this central east-west ridge line, the subject site falls steeply towards Coogee Bay Road to the north and more gently towards St Paul Street to the south.

The immediate context of the subject site, to the north, east and south of the site, is residential in nature, comprising predominantly residential flat buildings with isolated detached and semi-detached dwellings to the south. Development to the west comprises the Brigidine College and Brigidine Convent with the Spot town centre further to the west.

The subject site is currently under construction.

3. Community Consultation:

The owners of adjoining and neighbouring properties were notified of the proposed development; and the proposed development was also advertised, in accordance with the DCP – Public Notification. Four (4) submissions were received from the following properties. The issues raised in the submissions are addressed below and in the subsequent sections of this report.



Map of subject site (shown in green) and objectors premises (shown in red)

- **8 Daintrey Crescent, Randwick (two submissions received)**

Issues	Comments
The proposed modifications do not constitute as 'substantially the same development' in accordance with Section 96 of the Environmental Planning and Assessment Act, 1979 (as amended)	Refer to Section 96 Assessment for further details.
The additional two storeys will create excessive visual bulk and scale impacts from the existing streetscape and be not be in keeping with the character of the streetscape.	Refer to Assessment of Key Issues: Visual Bulk and Scale for further details.
The increase in the number of units from 36 to 42 will reduce the availability of off-street parking within Daintrey Crescent.	The proposal will comply with the minimum off-street parking requirements and will continue to provide in excess of approximately 50 spaces over a compliant development. There is not expected to be any significant spillage to the availability of on-street parking spaces.
The proposed modifications will result in adverse vehicular traffic within the surrounding street network.	The proposal will continue to comply with the minimum standards for off-street parking and the additional units will not compromise the vehicular traffic flow within the surrounding street network given the nominal increase in the number of units.

- **7-37 Coogee Bay Road, Coogee**

Issues	Comments
The additional stories will contribute	Refer to Assessment of Key Issues: Solar

Issues	Comments
to additional overshadowing impacts to the outdoor recreation area and buildings of the Brigidine College and Aged Care Facility.	Access and Overshadowing for further details.
The section 96 modifications will exacerbate privacy levels to the play/recreational area to the Brigidine College.	Refer to Assessment of Key Issues: Visual Privacy for further details.

- **8/38 Coogee Bay Road, Coogee**

Issues	Comments
The modifications are considered to be an overdevelopment, in particular given a deferred commencement condition was included as part of the original consent to delete two stories from the central building block.	Noted. Refer to Section 96 Assessment for further details.
The additional storeys will result in a development that will remain incompatible in height to the neighbouring buildings.	Refer to Assessment of Key Issues: Visual Bulk and Scale for further details.
The additional storeys will create excessive visual bulk and scale impacts from the existing streetscape.	
The proposal will create significant overshadowing impacts to the neighbouring dwellings.	Refer to Assessment of Key Issues: Solar Access and Overshadowing for further details.
There are several inconsistencies that are evident within the submitted statement of environmental effects.	The submitted plans include sufficient information to ensure a proper assessment of the development application.
The proposal is not within the public interest.	The Section 96 modification is within the public interest having regards to the amenity impacts and the appearance of the building within the streetscape. Refer to the latter sections of this report for further details.

4. Design Review Panel Comments:

The following comments have been received from Council's Design Review Panel:

INTRODUCTION

A copy of the 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.

Your attention is drawn to the following;

SEPP 65, including the 9 Design Quality Principles and the requirements for a Qualified Designer (a Registered Architect) to provide Design Verification Statements throughout the design, documentation and construction phases of the project.

The Apartment Design Code (ADG), as published by Planning NSW (July 2015), which provides guidance on all the issues addressed below.

Both documents are available from the Department of Planning.

Note: The Design Review Panel members are appointed by the NSW Minister for Planning, on the recommendation of Council.

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 JULY 2015

The Panel has been requested to express a view on a proposed variation to this approved major proposal. The Panel understands that the buildings are at present under construction.

The approval granted in December 2012 by the JRPP required a reduction in the height of the tallest building on the site by two floors. The applicant, a not-for-profit organisation, wishes to compensate for this loss of floor space by adding a floor to the building with frontage to Coogee Bay Road.

The Panel understands that this amendment to the project is already provided with required parking and infrastructure within the current approval.

The issues that the Panel has been requested to comment on are essentially those of bulk and visual impact. Would increasing the height of the Coogee Bay Road Building have an adverse impact on people on Coogee Bay Road and likewise on long distance views.

The Panel suggested that consideration could also be given to placing two floors on half the building (preferably the western half) and not increasing the height of the other half. It was also suggested that more consideration should be given to deepening the articulation between the two halves of the building (which could be easily achieved without loss of any units), as currently the Coogee Bay Road façade risks being too monolithic, particularly due to the extra height now being sought.

It was agreed that in order to enable the Panel to make a proper assessment, photo-montages should be prepared showing these changes from two locations on the opposite side of Coogee Bay Road and from the distant viewpoint used by the JRPP in its determination of the application.

THE APPLICANT RESPONSE

The applicant has respectfully considered the suggestions raised by the Panel relating to:

- placing the two floors on the western half of the building only
- deepening the articulation between the two halves of the building.

The project team has retained the original scheme for the following reasons:

- placing two additional floors on the western portion of the building would have adverse impacts in terms of view loss and overshadowing on the neighbouring properties and locality. By sharing the floor space across the building minimises the such impacts
- deepening the articulation by a further cut between the two wings of the building would not result in any significant difference in articulation to the façade along Coogee Bay Road.

PANEL COMMENTS JANUARY 2016

Six additional apartments are now proposed. The floor area and dimensions of the new apartments have not been included in the information provided to the Panel however the subject building has grown by 782m². The Panel considers that there are significant impacts caused by the extra size and bulk of the building. Our concerns are as follows:

- RL 57 - Basement 2 Plan - the proposed reduction in the size of the light well to the western unit should not occur. The bedroom of the unit is too deeply embedded in the excavated area. Contours are shown but their levels are not noted and so it is difficult to relate the floor plan to the external ground area. The balcony of the west unit on the level above (Basement 1 Plan RL 60.3) could be reduced to allow more light and ventilation below. All the levels above could have this area of balcony removed so that more light is available on the lower floors.
 - Comments from Planning Officer: Noted. A condition has been included that this consent does not grant approval to increase the size of the living area to the western-most unit at Basement level 2 to provide a reasonable level of internal amenity to the occupants.
- Although not subject of this Section 96 consideration the planning of these levels, in the Panel's opinion, does not meet SEPP 65; the lobbies are internal, the corridor doglegged, mean and internalised, the majority of units are single orientation and the garbage room appears to have doors directly into the corridor. The levels of the paths are not shown so it is not know if are they raised or ramped.
 - Comments from Planning Officer: The comments relating to the internalised lobby areas, the dog-legged nature of the corridors, the single orientation of majority of the units and the access of the garbage room does not bear any relationship to the subject section 96 modification and was subject to consent under the original development application.
- The central balcony area that adjoins the two buildings makes the bulk monolithic and could be removed to increase light, air and articulation. Apartments are generally oversized and could be reduced without losing bedrooms.
 - Comments from Planning Officer: The connection between the central balconies at the Level 04 will not contribute to any additional visual bulk and scale impacts from the existing streetscape. The approved balconies of the northern building block adjoining the eastern and western wings of the building are connected through a planter and the visual bulk will remain consistent with the original development consent. At Level 05, a condition of

consent has been included that the balcony on the western edge of the eastern wing of the northern tower be deleted to improve the amenity to the lower level apartment.

- The Panel has noted that the building is bulky and should be more articulated. A visit to the building under construction clearly shows its bulk (a combination of unrelieved width, height and depth) has a heavy presence on Coogee Bay Road. Such articulation has not been attempted. It is proposed that the building is bigger, more bulky and less articulated. Images have been provided in the SEE to demonstrate that there would be little difference if the building was more articulated however these images do not portray the extra daylight that would be available. A building separation would also allow for more vistas and breezes.
 - Comments from Planning Officer: There is no recourse to improve the level of articulation to the eastern and western wings of the northern tower given they have been granted development consent by the Joint Regional Planning Panel. The Section 96 modification involves strictly minor modifications to the building envelope and an additional storey to the northern tower. The façade expression of the upper floor levels will generally remain consistent with the approved design scheme and the lower levels in terms of the use of materials and external finishes to the building. Furthermore, it should be noted that the upper floor additions comprises of a reduced building envelope and greater separation is provided between the eastern and western wings at the top most levels which offers distinction to the two tower envelopes.
- On the southern facade there are some overlooking issues where bedrooms of different apartments are close and view lines possible and glazed lobbies look back into bedrooms areas as well.
 - Comments from Planning Officer: The section 96 modifications do not involve any significant changes to the southern façade. The new upper floor level of the eastern and western wing is significantly separated to the central tower and will not compromise the visual privacy levels of the occupants. The southern façade will not contribute to significant overlooking impacts and will offer a reasonable level of visual and acoustic privacy between the two buildings.
- As the top of the building is not well resolved - the number of steps and styles make for a weak and confused facade and profile against the sky (Perspectives 01 and 02).
 - Comments from Planning Officer: The new upper floor addition is contained entirely within the building footprint of the eastern and western wings of the northern tower with the front façade comprising mostly of translucent glazing along the visible facades from the streetscape. The proposal includes the use of lightweight materials to lessen the visual bulk of the new upper floor addition and the style and design of the top most level will generally remain consistent with the approved development of the lower level apartments. The visual appearance of the upper floor addition against the sky is acceptable given the roof comprises of a low profile skillion roof form which minimises the visual bulk of the building.
- Perspectives 04 and 05 show the building as seen across the amphitheatre of the Coogee basin. While the Panel has no issue in principle with new tall buildings visible on the ridgeline, the additional height sought makes the building much more prominent, and clearly diminishes the visibility of the mature tree canopies which for long have been such a characteristic element of this site and the wider Randwick /

Coogee environment. In the Panel's assessment, the extra height would make the foreground buildings merge with the taller building behind, giving them more prominence than the tree canopy. Therefore the Panel does not support the extra height and bulk being sought in the current Section 96 Application.

- Comments from Planning Officer: The view of the proposed development from the Coogee Basin is acceptable given the additional building height will remain within the building height plane between the adjoining buildings including the central tower development and the Clinical Sciences Building and Edmund Blacket Building at the Prince of Wales Hospital. Both buildings extend beyond the mature tree line as seen from the Coogee Basin and will not be out of character from the built form of the neighbouring buildings as seen from a distance. With regards to the Perspective 05 image, it should be noted that the additional storey height will remain dwarfed by the central tower development which is significantly higher than that of the proposed development. The northern building block which lies in the foreground will visually remain of a smaller and less obtrusive scale in comparison to the central tower and will not contribute to the perceivable visual bulk and scale of the development.

5. Technical Officers Comments:

5.1 Heritage Planning Officer

The following comments have been received by Council's Heritage Planning Officer:

The Site

The subject site was formerly part of the Brigidine Convent site which had frontages to St. Paul's Street, Coogee Bay Road and Daintrey Crescent. In 2004 the original site was sub divided into three- the convent site in Coogee Bay Road, the school site with St. Paul's Street and Aeolia Street frontages, and the subject site. All three sites, "Aeolia", Brigidine convent and chapels, and associated boundary walls, landscape and gardens, are listed as heritage items under Randwick LEP 2012. The Randwick Heritage Study Inventory Sheet for "Aeolia" notes that the site commands sweeping views to the east and west and contains many mature Moreton Bay fig trees. The Inventory Sheet notes that the building stands on an eminence, screened from Coogee Bay Road by a fine stand of trees. The nearby Ritz Cinema in St Pauls Street is listed as a heritage item and The Spot heritage conservation area includes adjacent properties in Perouse Road and St Pauls Street. The sandstone and brick retaining walls on Council land along Coogee Bay Road are also listed as a heritage item.

Background

The original application proposed a seniors housing development, providing a 113 bed residential care facility and 82 serviced self-care units, in the form of three separate buildings. The building at the northern end of the site, facing Coogee Bay Road is to comprise 7 levels of self-care units, stepping from west to east with the fall of the land. The building in the south western half of the site fronting St Pauls Street and Daintrey Crescent is to comprise 6 and 7 levels containing the residential care facility. The building in the centre part of the site is to comprise 10 levels of self-care units. Two basement levels are to be provided with vehicular access from St Pauls Street and pedestrian access from Coogee Bay Road, St Pauls Street and Daintrey Crescent.

A previous Section 96 application for change to a consent condition was approved in May 2014. The development is now under construction.

Proposal

A further Section 96 application has been received which proposes an additional storey to the northern (Coogee Bay Road) buildings.

Submission

A thorough Conservation Analysis and Guidelines by Clive Lucas Stapleton and Partners was completed for the Brigidine College and Convent site in 1998. The original application was accompanied by a Heritage Impact Statement prepared by Urbis Pty. Ltd, with landscape input provided by Chris Betteridge of Musecape. The HIS provided the following Statement of Significance *"the site has the historical, associational and aesthetic significance at a local level, particularly for 'The Grove' on the Coogee Bay Road side of the site, but its heritage values have been compromised by changes of use, lack of maintenance and loss of original fabric. It retains some evidence of its former use as a pleasure garden, particularly derived from the large mature Moreton Bay Fig trees which enhance the setting of the adjoining 'Aeolia', the streetscape of Coogee Bay Road and the Randwick townscape generally."* The HIS assessed the impact of the proposal on nearby heritage items including 'Aeolia' and the Ritz Cinema, and The Spot heritage conservation area.

The HIS noted that the new buildings have been located with regard to the significant trees and walls on the site, with the buildings located within areas currently without significant vegetation, that have been extensively modified, and are relatively level. The HIS considered that the new buildings have a height that respects the tree canopy and the views from the first floor verandah of 'Aeolia' on the Brigidine convent site. The HIS considered that the landscape retained on both the St Pauls Street frontage and 'The Grove' fronting Coogee Bay Road would provide a strong framework for the proposal so that it does not detrimentally impact on the surrounding significant items and the locality. The HIS noted that the landscape proposal would also restore elements of 'The Grove' gardens, to integrate them with the historic gardens on the site.

The current application has been accompanied by a Heritage Impact Statement letter prepared by Urbis. The HIS considers that due to the topography of the site, the Coogee Bay Road building sits relatively low in the landscape, compared to other buildings on the site, and the new height will sit considerably lower than the building to the south. The HIS advises that the northern elevation of the Coogee Bay Road building will not be readily visible from 'Aeolia' and therefore have no additional impact on views to and from this significant building, and will similarly have no additional impact on views to and from the nearby conservation areas.

Comments

Heritage comments on the original application addressed the relationship of the gardens to 'Aeolia', views to 'Aeolia' from within the subject site and from the surrounding area, views from 'Aeolia', visibility in relation to The Ritz cinema and The Spot heritage conservation area, landscape management, and boundary walls and retaining walls. Heritage comments concluded that, subject to consent conditions, the proposal would reasonably maintain views to and from the site and would not be overly dominant in relation to its built and landscape context. Consent conditions were included in relation to materials and finishes, retaining walls, and conservation works.

The proposed Coogee Bay Road buildings occupy a section of the original gardens in the north eastern corner of the site. The HIS and supplementary submission note that 'The Grove' historically comprised a more defined landscape concentrated on the north western boundary of the site. 1943 aerial photographs show established trees in the north western corner with sparser vegetation in the north east corner. 'The Grove' now features large mature Moreton Bay and Port Jackson figs, as well as dense undergrowth of mainly invasive weeds, together with a number of eucalypts planted along the Coogee Bay Road boundary in the 1970s.

A Tree Management Plan was prepared for existing vegetation to ensure that significant trees are able to survive in conjunction with the development and Tree Assessment drawings indicated retention of a substantial number of significant trees on the site which contribute to its heritage values and assist in screening the new development.

The proposed amendments will not further impact on the relationship of the gardens to 'Aeolia', views to 'Aeolia' from within the subject site, views from 'Aeolia', visibility in relation to The Ritz cinema and The Spot heritage conservation area, landscape management, or boundary walls and retaining walls.

Views towards 'Aeolia and the gardens from the surrounding area

In terms of aesthetic significance, the HIS considers that the mature canopy of figs make an important contribution to the streetscape of Coogee Bay Road and the Randwick townscape. The Arboricultural Report and Tree Management Plans indicate that all 18 of the most significant trees (No.1 rating) on the subject site and the adjoining site are to be retained, as well as 10 of the 22 No.2 rating trees. As the footprint of the northern buildings is unchanged, it appears that there will be no additional impact on the existing tree canopy, maintaining the aesthetic significance of the site.

'Aeolia' is set well back from Coogee Bay Road, with minimal visibility in the streetscape due to the topography and vegetation of the site. The proposed northern building is considerably closer to Coogee Bay Road than 'Aeolia'- having adopted similar front setbacks to the adjacent buildings to the east, but will be several levels higher. The Coogee Bay Road photomontages (Perspectives 01, 02 and 03) indicate that the enlarged northern building relies on new in-ground and balcony planting to integrate it with the landscape character of this street frontage. As compared to the submitted perspectives, inspections from the same viewpoints to the west along Coogee Bay Road (Perspectives 1 and 2) at this point in time indicate improved screening of the enlarged northern building by existing planting within 'The Grove'. The enlarged northern building in any case will remain in scale with adjacent development and plantings.

The extensive north to east viewscape offers the best opportunities of appreciating the intactness and scale of the original 19th century landscape design. Despite the removal of existing vegetation in the north eastern corner of the site, the extent of the gardens can still be appreciated from the surrounding area, including viewpoints in Dunningham Reserve at Coogee Beach and Glen Avenue on the opposite side of Glebe Gully. Perspective 04 (Dunningham Reserve) and Perspective 05 (Glen Avenue) in the SEE submission confirm that the enlarged northern building will remain in scale with the tree canopy on the site and will not impact on public appreciation of the landscape values of the original gardens.

Perspective 05 (Glen Avenue) in the SEE submission indicates that the northern elevation of 'Aeolia' and the Kilbride/Tully wing? on the Brigidine site will remain visible from the high ground on the eastern side of Glebe Gully. Perspective 04 (Dunningham Reserve) indicates that views of 'Aeolia' from further to the east are remain obscured, not by the enlarged northern building, but by existing mature trees on the sites.

Conclusion

The current proposal will not affect the relationship between 'Aeolia' and its historic garden, including 'The Grove' immediately to the east. The current proposal will not affect views to 'Aeolia' from within the subject site, or views from 'Aeolia'. The northern building has no visibility in relation to The Ritz cinema and The Spot heritage conservation area. The current proposal will not impact on views towards 'Aeolia's' gardens from the surrounding area, as the enlarged northern Coogee Bay Road building will not have significantly increased visibility, and the prominence of the historic gardens will be maintained.

Recommendation

The following conditions should be included in any consent:

- The colours, materials and finishes of the external surfaces to the enlarged sections of the Coogee Bay Road building are to be consistent with materials and finishes which were approved for the original building. Details of the proposed colours, materials and textures (ie- a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Director 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 development.

6. External Referral Comments:

6.1 Sydney Airport Corporation Limited

The following comments have been received by the Sydney Airport Corporation Limited:

Sydney Airport received the above application from you.

This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.

The application sought approval for the PROPERTY DEVELOPMENT to a height of 94.5 metres Australian Height Datum (AHD).

In my capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no objection to the erection of this development to a maximum height of 94.5 metres AHD. Should you wish to exceed this height a new application must be submitted.

Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

Sydney Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.

Information required by Sydney Airport prior to any approval is set out in Attachment A. "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).

The height of the prescribed airspace at this location is 120 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones

Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Air services in December 2012 (Sydney Airport 2033 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.

7. Section 96 Assessment:

Section 96(2) of the Environmental Planning and Assessment Act 1979, states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Council is required to determine whether the proposed modifications with particular regards to the additional storeys to the eastern and western wings of the northern building block will constitute “substantially the same as the development which was originally granted for which consent was originally granted”. The “substantially the same” test has been the subject of case law and is relatively settled.

The “substantially the same” test requires Council to undertake a qualitative and quantitative analysis of the consent before the proposed modification and after the modification. *Moto Projects (No. 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* describes the following:

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as current approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative and quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

A qualitative and quantitative assessment of the differences between the original approval and the subject section 96 modifications reveals that the proposal will satisfy the “substantially the same development” test. The proposed development is considered acceptable in complying with the requirements of the Environmental Planning and Assessment Act, 1979 (as amended) and the amendments will remain similar to that of the approved development. The qualitative nature of the proposed development is acceptable for the following reasons:

Firstly, the proposal will remain consistent with the description of the proposed development as it was originally notified and advertised. The original consent was described as a *Concept Plan and Stage 1 DA for seniors housing development comprising independent living units, a residential care facility with 93 beds and 20 x 1 bedroom apartments in 4 building elements ranging from 5 to 8 storeys in height, basement parking for 154 vehicles and associated works*. The most notable physical and material change to the building is the additional storeys to the eastern and western wings of the northern building. The proposed building height of the eastern and western wing will achieve an 8 storey building height and will be in keeping with the range in the number of storeys that are distributed between the various building elements.

Secondly, the proposal does not seek to deviate from the numerical development standards that are prescribed within the Randwick Local Environmental Plan 2012. The site is not subject to any Height of Buildings and Floor Space Ratio development standards and design guidelines are reliant on an approved Stage 1 Concept Plan. The modifications will not contribute to any numerical variation to the development standards to Council's local planning policies. The additional gross floor area of 783sqm will contribute to an additional 3% of the total gross floor area of the building in comparison to the original development.

Thirdly, the upper floor additions to the eastern and western wings of the northern building block will contribute to additional visual bulk and scale fronting the Coogee Bay Road streetscape, however the extent of the increase with respect to the approved height of the existing northern building is not considered to be a significant variation to the building height. The additional storey to the eastern and western wings is an additional 3.2 metres above the approved building height with an RL79.80 and RL83.00, respectively (excluding plant and equipment and lift overruns). The variation is considered minor and constitutes a 12% increase above the approved building height. The increase is not considered to be substantial or significant in that it would comprise of major changes to the building form.

Fourthly, the additional storeys and minor internal increases to the building area will remain contained entirely within the building footprint of the eastern and western wings of the northern building block. The additional upper floor level provides increased setbacks from the eastern and western neighbour and the frontage of Coogee Bay Road which will provide a level of articulation to the built form by stepping the built form towards the site and relieving the visual bulk and scale of the development from the northern, eastern and western edges of the building alignment.

Fifthly, the increase to the number of units from 36 to 42 units will continue to comply with the number of off street parking spaces as prescribed within the RDCP2013. Council's development engineering unit has reviewed the development application and is satisfied that the deletion of 8 Independent Living Units (ILU) as a result of deleting the two storeys from the Central Tower building (as per the original determination) and the reinstatement of an additional 6 units to the northern building will contribute to a similar parking demand as the previously approved development. The development will continue to provide approximately 50 more spaces above the minimum requirements as prescribed by the SEPP (Housing for Senior's or People with a Disability) 2004.

Lastly, the section 96 modifications will not result in a reduction to the site coverage of the site and will maintain the built and unbuilt upon areas of the site similar to that of the original development consent. The modifications will maintain ample areas for landscaped open space and permeable landscaped area to accommodate the growth of natural vegetation and outdoor areas are adequate in size that it will continue to provide a range of activities to the respective residents.

The proposal is considered to be satisfactory in considering the quantitative nature of the Section 96 modifications and the numerical differences in all key aspects. The degree of the proposed modifications is not significant and will largely be considered as "substantially the same development". The modifications will retain stark similarities to the proposed development that was originally approved for in terms of numerical compliance with the relevant development standards, the containment of the additional levels within the existing building footprint, the redistribution of bulk within the development site and similarities to the gross floor areas and the nominal changes to the site coverage complies in terms of a quantitative assessment.

The second part of the test requires a qualitative assessment and consideration of the non-numerical factors of the section 96 modifications. A qualitative comparison between the approved and the modified development relies on the compatibility of the building within the local site context and the associated amenity impacts to neighbouring dwellings within the immediate locality.

The additional storeys to the eastern and western wings of the northern building block are immediately adjacent to the Coogee Bay Road frontage and will be visible from the existing streetscape. The new upper floor level is generally sympathetic with a reduced building footprint to that of the lower floor levels and the separation between the eastern and western wings of the dwelling will ensure the upper floor additions are treated as two distinct building blocks. The treatment and detailing of the external materials and finishes to the upper level addition will contrast the large expanses of masonry external walling at the lower floor levels and will appropriately integrate into the façade composition of the building.

Further, the new upper floor level will not contribute to any appreciable visual bulk and scale impacts to the existing streetscape or result in a development that will be out of character with the local site context. The photomontages that have been submitted as part of the development application illustrate that the new upper floor addition will generally retain a consistent with the height of the tree canopy of the Moreton Bay and Port Jackson Fig Trees with a size of 25m x 25m when viewed from the east. The upper floor level appears to be reasonably sized and scaled in particular when considering the local site context and the Central Tower development which extends beyond the roof line of the neighbouring residential flat buildings when viewed from the west. Finally, when viewed from Coogee Bay the built form will remain compatible in height to the significantly sized buildings which protrude above the tree canopy including the Central Tower building and the buildings at the Prince of Wales Hospital site.

The additional storey is not expected to contribute to any adverse amenity impacts to the neighbouring dwellings. The additional storey will not compromise the visual privacy impacts to the western neighbour, Brigidine College, given the upper floor level is significantly setback from the western boundary and the number of large trees that will be retained on the north-western portion of the site will minimise any significant overlooking into any existing rooms and outdoor play areas to the adjoining students. To the east, the additional storey does not offer any direct sightlines to the habitable room windows or the areas of private open space given the significant changes in levels between the two built forms.

The overshadowing and solar access impacts as a result of the section 96 modifications is also acceptable given the addition will primarily overshadow itself with most of the overshadowing falling on the central portion of the subject site. The direct north/south orientation will affect the neighbours to the east at 43 Coogee Bay Road and 2-4 Daintrey Crescent during the morning periods and to the west at Brigidine College in the afternoon periods. As a rule of thumb, a minimum of three hours of direct solar access between the hours of 8am – 4pm on the 21 June to the useable outdoor open space areas and habitable room windows is acceptable in ensuring a satisfactory level of direct sunlight. The affected neighbours will maintain a minimum three hours of direct solar access and will provide a reasonable level of solar access to the adjoining buildings.

The modifications will also not give rise to any view loss impacts from the neighbouring dwellings. The primary view aspect is from the Brigidine Covenant building to the east of the subject site at no. 7-37 Coogee Bay Road. The additional storey to the east will not contribute to any view loss impacts as assessed from the original development consent given the dense natural vegetation will screen any water views of Coogee Bay or natural landmarks including Wedding Cake Island. Subsequently, the vegetation as existing and the retention of the existing trees located on the north-eastern portion of the site on the western portion of the site and along the western boundary adjoining the subject site.

Council's heritage planning officer has also reviewed the subject section 96 modifications that the new works will not affect the relationship between the 'Aeolia' or the heritage value of the adjoining garden or the 'The Grove' building immediately to the east. The works is deemed to be "substantially the same development" and will have minimal impact to the affected views of the Aeolia Building, will not be visible from the Ritz Cinema or The Spot heritage conservation area given the building is sited on the northern portion of the site and is significantly separated from the heritage areas within the Spot.

The increase in the number of units from 36 units to 42 units will not contribute to any significant traffic and parking impacts. The development currently provides in excess of 50 parking spaces as per the original development consent and subsequently the development will continue to cater for more than the required number car spaces to accommodate the additional demand to the units.

The proposal complies with the qualitative assessment of the "substantially the same test" in that the fundamental characteristics of the building and the essence of the building would remain essentially the same development. The built form and size and scale of the building does not adversely impact the immediately adjoining dwellings and the development adopts a number of design cues to relieve the visual massing of the top most levels to ensure it presents as materially and essentially the same development.

The subject section 96 modifications can be reasonably argued that the development will remain "substantially the same development" in considering a quantitative and qualitative approach to the proposed modifications and Section 96(2) of the Environmental Planning and Assessment Act, 1979 (as amended). The numerical and non-numerical factors are deemed to satisfy the "substantially the same development" test in that the works do not involve substantial modification to that of the approved design scheme.

7. Randwick Local Environmental Plan 2012

The subject site is zoned SP2: Infrastructure in accordance with the Randwick Local Environmental Plan 2012. "Seniors Housing" is a permissible form of development within the SP2: Infrastructure zoning pursuant of the Land Use Tables as prescribed within the RLEP2012.

The objectives of the SP2: Infrastructure Zone

- To provide for infrastructure and related uses.

The subject modifications will remain for the continued use for Seniors Housing and seeks modifications to the development consent including increases to the building envelope to the basement level 02 and level 03 - 05, an additional storey to the eastern and western wings of the northern tower fronting Coogee Bay Road with new 2 x 3 bedroom plus study unit and increase to the number of apartments from 36 units to 42 units and new solar panels to the rooftop to the building.

- To prevent development that is not compatible with or that may detract from the provision of infrastructure

The proposed modifications will be compatible and not be out of character with the existing buildings within the existing streetscape. The apparent visual bulk and scale of the upper floor does not appear excessive in size and scale when viewed from the immediate streetscape and from the public domain and has incorporated appropriate design cues to ensure its visual impact is minimised.

- To facilitate development that will not adversely affect the amenity of nearby and adjoining development.

The increase to the number of storeys will not contribute to any significant amenity impacts to the adjoining buildings. The northern building block will maintain a reasonable level of direct solar access and overshadowing, views, visual privacy and visual bulk and scale from the existing streetscape as discussed within the latter sections of this report.

- To protect and provide for land used for community purposes.

The proposed modifications will remain for the use of 'Seniors Housing' as approved by a previous development consent (DA/489/2013/B).

8. State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The proposal seeks to make alterations and additions to a development defined as 'Seniors Housing' under RLEP 2012. The SEPP is applicable to development of this definition and is addressed as follows.

Clause	Requirement	Proposal	Compliance
Chapter 1 Preliminary			
2	Aims of Policy		
	(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability,	The proposal will increase the supply and diversity of residential accommodation for seniors or people with a disability.	Complies.
	(b) make efficient use of existing infrastructure and services, and	The site already contains a seniors living facility and is in close proximity to existing infrastructure and services.	Complies.
	(c) be of good design.	The proposed development is considered to present satisfactory design merit.	Complies.

Clause	Requirement	Proposal	Compliance
Chapter 3 Development for seniors housing			
Part 1 General			
24	Site compatibility certificates		
	<p>(1) This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing if:</p> <p>(a) the development is proposed to be carried out on any of the following land to which this Policy applies:</p> <p>(ii) land that is within a zone that is identified as "special uses" under another environmental planning instrument (other than land on which development for the purposes of hospitals is permitted)</p>	<p>The site is zoned Infrastructure SP2 RLEP 2012. Development for the purpose of Seniors Housing is permissible with consent. Furthermore, the site is within "land zoned primarily for urban purposes".</p> <p>Therefore, a Site Compatibility Certificate from the Director-General of the Department of Planning is not required in this instance.</p>	Complies.
Part 2 Site-related requirements			
26	Location and access to facilities		
	<p>(1) Residents of the proposed development will have access that complies with subclause (2) to:</p> <p>(a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and</p> <p>(b) community services and recreation facilities, and</p> <p>(c) the practice of a general medical practitioner</p>	<p>The subject site is located within close proximity from the Randwick commercial precinct which contains a range of commercial and retail services.</p> <p>The proposed development also provides communal gardens, activity rooms and dining facilities for the residents.</p> <p>A general medical practitioner is presently employed at the facility and is accessible to occupants.</p>	Complies.
27	Bush fire prone land	The site is not located within bush fire prone land.	N/A
Part 3 Design requirements			
30	Site analysis		
Division 1 general			
	(1) The consent authority is to be satisfied that the applicant has taken into account a site analysis prepared by the applicant	A detailed site analysis has been provided in the Statement of Environmental Effects. The analysis is considered	Complies.

Clause	Requirement	Proposal	Compliance
	in accordance with this clause.	sufficient in the context of the additions proposed and the scale of the existing aged care facility on the site.	
	(2) A site analysis must: (a) contain information about the site and its surrounds as described in subclauses (3) and (4). (b) be accompanied by a written statement: (i) explaining how the design of the proposed development has regard to the site analysis, and (ii) explaining how the design of the proposed development has regard to the design principles set out in Division 2.	The design scheme provides appropriate response to the natural and physical built form constraints occurring to this site and surrounds.	
Division 2 Design principles			
33	Neighbourhood amenity and streetscape The proposed development should:		
	(a) recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area, and	The modifications to the northern building block consist of a substantial setback and sits within a highly dense landscape setting immediately adjacent to the Brigidine Covenant. The subject section 96 modifications involves the construction of an additional storey to the northern building block will generally remain compatible with the surrounding character and will not feature abruptly within the streetscape. The development will not have significant additional environmental impacts upon the surrounding development to that of the approved development.	Complies.
	(c) maintain reasonable neighbourhood amenity and appropriate residential character by: (i) providing building setbacks to reduce bulk and overshadowing, and	Refer to the latter sections of this report for detailed assessment.	Complies.

Clause	Requirement	Proposal	Compliance
	(ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and		
	(d) be designed so that the front building of the development is setback in sympathy with, but not necessarily the same as, the existing building line, and	Refer to the latter sections of this report for detailed assessment.	Complies.
	(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and	No changes to the existing landscape plan as part of the Section 96 modification.	Complies.
34	Visual and acoustic privacy		
	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The additional upper floor levels will not contribute to significant overlooking impacts to the adjoining neighbours including the residential flat developments to the east due to the significant changes in levels and to the west with significant vegetation	Satisfactory
35	Solar access and design for climate		
	The proposed development should: (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar	The amended design scheme provides for additional units along the northern elevation and will maintain a reasonable level of solar access between the periods of 8am – 4pm, 21 June	Complies.

Clause	Requirement	Proposal	Compliance
	heating and lighting by locating the windows of living and dining areas in a northerly direction.		
37	Crime prevention		
	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:		
	(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and	The orientation and configuration of the proposed additions provide adequate casual surveillance of the surrounding public domain, including Coogee Bay Road, as well as the internal courtyard and communal pedestrian pathways throughout the site.	Complies.
38	Accessibility		
	<p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<ul style="list-style-type: none"> The principal entries to the development are clearly identifiable. The footpaths on surrounding streets connect the development to services close by, including Randwick Junction. Public transport services are regular along Coogee Bay Road, St Pauls Street and Belmore Road. Separate access has been provided for pedestrian and vehicular traffic. 	Complies.
39	Waste management		
	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	No changes to the waste management requirements. As per approved development consent.	Complies.
Part 4 Development standards to be complied with			

Clause	Requirement	Proposal	Compliance
Division 1 General			
40	Development standards – minimum sizes and building heights		
	(2) The size of the site must be at least 1,000 square metres.	The land area of the site is 1.252ha	Complies
	(3) The site frontage must be at least 20m wide measured at the building line.	The subject site comprises of three frontages consisting St Pauls Street, Daintrey Crescent and Coogee Bay Road which exceed the minimum requirement of 20 metres.	Complies
	(4) Height in residential zone where residential flat buildings are not permitted	The site is zoned SP2-Infrastructure. This clause is therefore not applicable to the proposal.	N/A
Division 2 Residential care facilities – standards concerning accessibility and useability			
	Refer to the Commonwealth aged care accreditation standards and the Building Code of Australia.	A standard condition as per the original consent has been included to ensure the development demonstrates compliance with the Building Code of Australia.	Complies, subject to condition
Part 7 Development standards that cannot be used as grounds to refuse consent			
Division 2 Residential care facilities			
48	Standards that cannot be used to refuse development consent for residential care facilities A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:		
	(a) building height: if all proposed buildings are 8m or less in height, or	The modification involves an increase to the northern building block by an additional 3.2 metres to a maximum height of 25.9 metres above the ground level (existing) and exceeds the 8 metre requirement. The additional building height is sympathetic to the existing building and is appropriate in the context of the site and its surrounds. No significant environmental impact is expected due to the proposed height.	Complies.

Clause	Requirement	Proposal	Compliance
	(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,	The section 96 modification results a minor increase in the floor area of the proposed development. The size of the allotment is substantial and the departure of the 1:1 floor space ratio is acceptable in that it does not contribute to any adverse visual bulk and scale impacts.	Complies.
	(c) landscaped area: if a minimum of 25m ² of landscaped area per residential care facility bed is provided,	No change to the existing landscaped area requirements.	Complies.
	(d) parking for residents and visitors: if at least the following is provided: (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and (iii) 1 parking space suitable for an ambulance.	Council's Development Engineering Unit has reviewed the increase to the number of units and will continue to comply with the parking provisions with the development being in excess by approximately 50 car spaces.	Complies.

9. Assessment of Key Issues

9.1 Visual Bulk and Scale

The subject section 96 modifications involves an additional storey to the eastern and western wings and reconfiguration of the building envelopes of the northern building. The works include an increase to the building height by an additional 3.2 metres to each tower represents a nominal 12% increase to the approved building height. The proposed modification will contribute to an increase in the perceivable visual bulk and scale of the approved development as seen from the Coogee Bay Road streetscape. However, the modifications are acceptable and the scale and massing of the development will ensure it remains compatible with the streetscape character.

The additions at the top most level have been appropriately designed to ensure it remains sympathetic to the approved development. The top most level is significantly setback from the front property boundary of Coogee Bay Road at approximately 12 metres from the eastern wing and 15 metres from the western wing and the reduced building footprint from the lower floor levels will ensure that the built form will retain the

visual appearance of two distinct tower elements from the street frontage. The scale and the proportions of the new upper floor level is acceptable given the building will remain dwarfed by the central tower development which will remain visible in the background and protrude above the additional storey of the northern building block. This will provide relativity to the human scale of the northern tower and provide appropriate proportions to the built form. The use of the external colours and finishes of the top most level comprise mostly of external glazing which applies a lightweight material that will relieve the visual massing from the upper floor addition and contrast with the masonry finish to the lower levels of the building.

Notwithstanding this, the apparent visual bulk and scale of the new upper floor level is acceptable in particular considering the appearance of the building within the visual catchment of the subject site. When viewed in an easterly aspect from High Cross Park and Coogee Bay Road the new addition will only be partially visible and be mostly screened through the retention of significant trees (Moreton Bay Fig and Port Jackson Fig) located on the north-western portion of the site (refer to images below). When viewed from a westerly aspect along the northern side of Coogee Bay Road the new addition will be significantly separated from the front boundary and the roadway by more than 35 metres and will provide ample building separation to minimise the perceivable visual bulk and scale of the new upper floor level. The addition appears reasonable in size and scale in particular given the scale of the Central building block extends significantly above the main ridge line of the neighbouring buildings provides context to the height of the northern building block. Finally, when viewed from Coogee Bay the built form will remain compatible in height to the significantly sized buildings which protrude above the tree canopy including the Central Tower building and the buildings at the Prince of Wales Hospital site.

In considering the above, the visual bulk and scale of the new addition is acceptable and achieves a suitable urban design solution which will not compromise the appearance of the development along Coogee Bay Road.



Image 1: Photomontage of the proposed development. Easterly aspect from High Cross Park to the subject site.



Image 2: Photomontage of the proposed development. The image comprises of an easterly aspect from the northern side of Coogee Bay Road towards the subject site.



Image 3: Photomontage of the proposed development. The image comprises of a westerly aspect from the northern side of Coogee Bay Road towards the subject site.



Image 4: Photomontage of the proposed development. The image comprises of a westerly aspect from the northern side of Coogee Bay Road towards the subject site.

9.2 Visual Privacy

The upper floor level will provide a reasonable level of visual privacy to the neighbouring dwellings including the Brigidine College to the west and the adjoining residential flat developments to the east. To the west, the existing trees and vegetation adjacent to the western boundary of the site will screen any direct views into the outdoor play spaces and the rooms to the Brigidine Covenant. The view to the west also comprises of a significant separation between the new addition and the outdoor play area/adjoining windows and will not result in any direct overlooking into the adjacent areas.

To the east, the new addition will not overlook into the private open space or the habitable room windows of no. 43 Coogee Bay Road given the significant changes in levels between the new upper floor addition and the private open space to the eastern neighbour by approximately 15 metres. The extent of overlooking is considered to be largely oblique and does not provide any direct sightlines into either the habitable room windows or the private open space of the neighbouring dwelling. The visual privacy to the north is also adequate given the substantial separation and setback between the new upper floor level and the north facing to the balconies and habitable room windows on the opposite side of Coogee Bay Road by approximately 40 metres.

9.3 Solar Access and Overshadowing

Clause 35 of the State Environmental Planning Policy for Housing for Seniors or People with a Disability) 2004 prescribes minimum standards for solar access and design for climate. The controls specify the following:

- (a) Ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and*
- (b) Involve site planning dwelling design and landscaping that reduces energy use and makes best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.*

In order to demonstrate suitable access to solar access and overshadowing it is necessary that the development comply with the minimum requirements for solar access and overshadowing within the Apartment Design Guidelines as per the SEPP 65 requirements. The Apartment Design Guidelines prescribes a that solar access to the

living areas, private open space and communal open space should receive solar access in accordance with Section 4A Solar and Daylight Access. Section 4A Solar and Daylight Access prescribes a minimum of two hours of direct sunlight be provided between the hours of 9am to 3pm on the 21 June to the living rooms and private open spaces of at least 70% of apartments in a building.

9.3.1 7-37 Coogee Bay Road, Randwick

The immediate eastern neighbour consists of the Brigidine Covenant and Brigidine College, Randwick. At 9am, the shadowing cast from the western wing of the northern building will fall on the existing vehicular access handle and to a portion of the outdoor playground area on the eastern portion of the adjoining site. At 10am, the additional storey will fall on an increased area of the outdoor play area and by 11am the eastern neighbour will remain unaffected by the proposed development. The extent of additional overshadowing to the eastern neighbour is acceptable given the upper level addition will not result in any shadowing to the habitable room windows or balconies and second storey level of the Brigidine Covenant. The shadowing to the outdoor play area is also acceptable given it occurs within a relatively brief period of the morning and most of the additional shadows cast is expected to overlap with a number of significantly sized trees, in particular an existing Port Jackson Fig (described as tree no. 33 within the Aborists Report) with a size of 20m x 25m.

9.3.2 Central Tower (Subject Site)

The Central Tower building located in the middle of the site comprises of Independent Living Units and the affected units comprise of a northern aspect fronting Coogee Bay Road. At 9am, the upper floor addition of the eastern wing will shadow the north facing lower level units (Level 04 and 05) of the Central Tower building including the living areas the private open space. The extent of the additional overshadowing will lessen towards noon and fall primarily on the communal walkway between the northern building and the central tower building. The Central Tower will remain unaffected by shadows cast by the upper floor addition by 2pm. The overshadowing impacts to the north-facing units of the Central Tower development is generally acceptable in complying with the solar access and overshadowing requirements as per the Apartment Design Guidelines as per the SEPP 65 requirements. The Apartment Design Guidelines prescribes a minimum of two hours of direct sunlight be provided between the hours of 9am to 3pm on the 21 June to the living rooms and private open spaces of at least 70% of apartments in a building. The north-facing units to the Central Tower will comply with the Apartment Design Guidelines and provide more than the required 2 hours of direct sunlight between the hours of 9am – 3pm on the 21 June. Notwithstanding this, the introduction of additional units to the northern tower will ensure that there are more apartments than that of the approved development which will have direct access to the minimum of 2 hours of direct sunlight.

43 Coogee Bay Road, Randwick

The west facing windows of the existing residential flat building directly to the east will be affected from 1.30pm and by 3pm all existing window openings along the western elevation will be shadowed. The extent of the overshadowing impacts is acceptable given all apartments to the eastern neighbour comprise of a northern orientation and will continue to receive the required three hours of direct solar access into the living areas and private open space areas through a northern aspect.

9.3.3 2-4 Daintrey Crescent, Randwick

At 1.30pm – 3pm, the additional storeys to the eastern and western wings of the building will shadow the north and west facing windows openings to the existing

residential flat building south-east of the subject site. However, the extent of overshadowing is considered to be acceptable given the development will continually receive direct solar access between the hours of 9am – 1.30pm on the 21 June. The overshadowing impact will not fall on any north-facing window openings at no. 2-4 Daintrey Crescent and subsequently, the development will continue to comply with the Apartment Design Guidelines in providing more than the minimum 2 hours of direct solar access during the morning period and between the hours of 9am – 3pm on the 21 June.

9.4 View Loss

The section 96 modifications to include an additional storey to the northern building block will not give rise to any significant view loss impacts from the neighbouring dwellings including distant water views or prominent natural landforms. The subject site currently enjoys distant water views directly to the east to Coogee Bay given the elevated nature of the development above the Council footpath level and its sitting on the high side of Coogee Bay Road. However, it is unlikely that the modifications to the northern tower will interrupt the distant views from the eastern neighbour given at present the distant water views are largely obscured by the existing natural vegetation and significant trees adjacent to the western boundary between the subject site and no. 7-37 Coogee Bay Road. Notwithstanding this, the increase of the building height from RL79.5 to RL84.2 (as measured from the stair and plant room overrun) is unlikely to block any residual views given that any possible views from the Brigidine Covenant at the finished floor level of the first floor balcony and habitable rooms (RL74.84) and the finished floor level of the third floor level (approx. RL77.84) will be screened by the height of the approved development (RL79.5) and stair/lift overrun (RL82.5). It should also be noted that the subject section 96 modifications does not involve contributing to the scale of the building between the central tower and the northern building block and will not reduce any views from the eastern corridor. In considering the above, the additional building height will not further reduce any views from a direct sightline that may otherwise be reduced from the approved development.

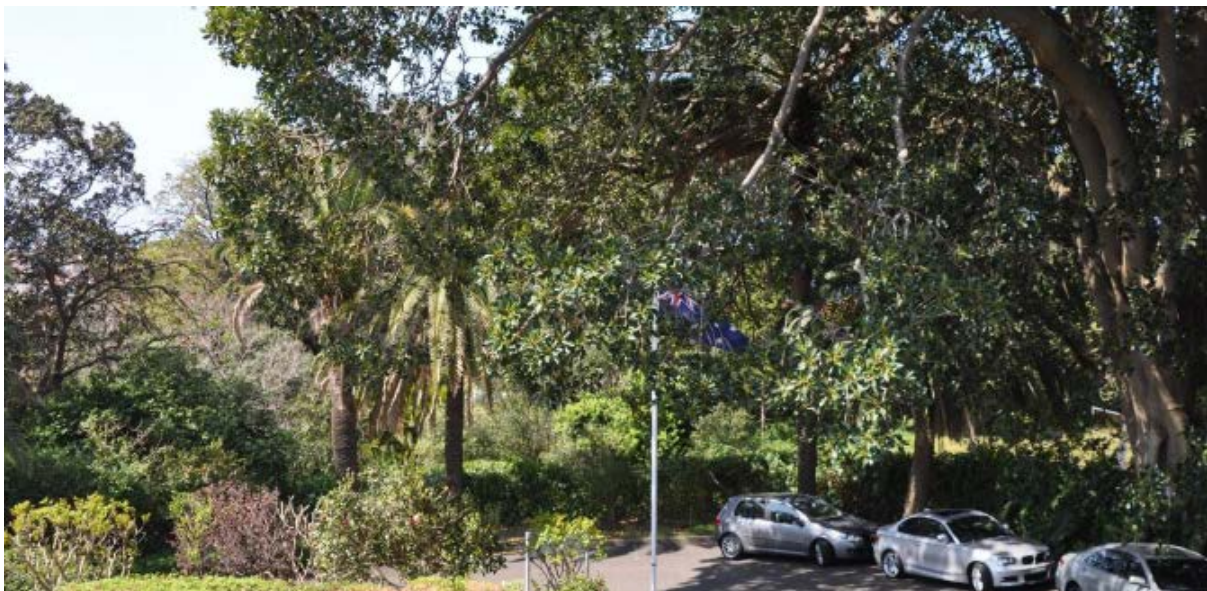


Image from the view analysis report (dated 3 August 2012)
Brigidine Covenant (easterly aspect) from the first floor balcony (RL74.84) towards the subject site.



Image from the view analysis report (dated 3 August 2012)
Brigidine Convent (easterly aspect) from the first floor level (RL74.84) towards the subject site.



Image from the view analysis report (dated 3 August 2012)
Brigidine Convent (easterly aspect) from the second floor level (RL77.84) towards the subject site.

9.5 Parking

Council's Development Engineer has reviewed the development application and provided initial comments to the subject section 96 modifications. No objections have been raised considering the Section 96 modifications seeks to reinstate 6 independent living units to compensate for the loss of 8 independent living units that were deleted as part of the original development consent. Subsequently, the proposed modifications will contribute to a similar parking and traffic demand as that of the originally approved development. Notwithstanding this, the number of parking spaces was over compliant by approximately 50 spaces as part of the original application and will continue to comply with the necessary parking provisions within the SEPP (Housing for Seniors or People with a Disability) 2004.

9.6 Section 79C Assessment:

Section 79C 'Matters for Consideration'	Comments
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Section 79C 'Matters for Consideration'	Comments
Section 79C(1)(a)(i) – Provisions of any environmental planning instrument	The relevant provisions of the RLEP 2012, SEPP 65: Design Quality of Residential Apartment Development and SEPP (Housing for Seniors or People with a Disability) 2004 would be satisfied subject to the imposition of appropriate conditions as recommended.
Section 79C(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.
Section 79C(1)(a)(iii) – Provisions of any development control plan	The relevant provisions of RDCP 2013 would be satisfied subject to the imposition of appropriate conditions as recommended
Section 79C(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	NA
Section 79C(1)(a)(iv) – Provisions of the regulations	The relevant provisions of the Environmental Planning and Assessment Regulation 2000 have been satisfied.
Section 79C(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The subject section 96 modifications will not contribute to any adverse environmental, social and economic impacts to the proposed development.
Section 79C(1)(c) – The suitability of the site for the development	The site is located in close proximity to an established Business centre with convenient access to variety of amenities and public transport services.
Section 79C(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Submissions that were received in response to the public notification and advertising have been addressed in the body of this report.
Section 79C(1)(e) – The public interest	The proposal would not result in any unacceptable environmental, social or economic impacts on the locality, subject to the recommended conditions. The development is therefore considered to be in the public interest.

Relationship to City Plan

Outcome 4: Excellence in urban design and development.

Outcome 4a: Improved design and sustainability across all development.

Financial Impact Statement

There is no direct financial impact for this matter.

Conclusion

The proposed modifications sought under the Section 96 application including the minor amendments to the building envelope and the additional storey to the northern tower is acceptable and does not give rise to adverse amenity impacts to the neighbouring dwellings. The development will continue to maintain a reasonable level of visual privacy, views and solar access to the occupants and the neighbouring dwellings and the modifications to the building envelope will not be out of character with the presentation of the development within the existing streetscape.

The additional storey on the eastern and western wing has been sensitively and sympathetically designed to minimise the visual massing of the development by setting the addition well within the building footprint and the overall design scheme will provide a transition from street level by stepping the built form at the top most level. The additional setbacks from the top most level and the splayed angle of each built form element will distinguish the two tower podiums and reduce the visual massing of this development from the Coogee Bay Road streetscape.

Having regard to the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979, as amended, the proposed modifications are considered to result in a development that remains substantially the same as the development for which the consent was originally granted.

Approval of the modification (subject to conditions) will not result in any significant environmental impacts and will not detract from the integrity of the development nor its relationship with adjoining development.

Recommendation

That the Joint Regional Planning Panel, as the consent authority, grants consent under Section 96 of the Environmental Planning and Assessment Act 1979 as amended to modify Development Consent No. DA/320/2013 by modification of the approved development comprising of alterations to building adjacent to Coogee Bay Road including additional level on eastern and western wings of seventh floor, additional level on eighth floor, alterations to building envelope and reconfiguration of units resulting in an increase from 36 units to 42 units at 57-63 St. Pauls Street, Randwick, in the following manner:

A. Amend Condition No. 1 to read:

Approved Plans & Supporting Documentation

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

Plan Number	Dated	Received	Prepared By
A-DA-00 Rev A	12/06/2012	3 August 2012	PTW Architects
A-DA-01 Rev A	12/06/2012	3 August 2012	
A-DA-02 Rev A	12/06/2012	3 August 2012	
A-DA-03 Rev A	12/06/2012	3 August 2012	
A-DA-04 Rev A	12/06/2012	3 August 2012	
A-DA-05 Rev A	12/06/2012	3 August 2012	
A-DA-06 Rev A	12/06/2012	3 August 2012	
A-DA-07 Rev A	12/06/2012	3 August 2012	
A-DA-08 Rev A	12/06/2012	3 August 2012	
A-DA-09 Rev A	12/06/2012	3 August 2012	
A-DA-10 Rev A	12/06/2012	3 August 2012	

A-DA-11 Rev A	12/06/2012	3 August 2012
A-DA-12 Rev A	12/06/2012	3 August 2012
A-DA-13 Rev A	12/06/2012	3 August 2012
A-DA-14 Rev A	12/06/2012	3 August 2012
A-DA-15 Rev A	12/06/2012	3 August 2012
A-DA-20 Rev A	12/06/2012	3 August 2012
A-DA-21 Rev A	12/06/2012	3 August 2012
A-DA-22 Rev A	12/06/2012	3 August 2012
A-DA-23 Rev A	12/06/2012	3 August 2012
A-DA-30 Rev A	12/06/2012	3 August 2012
A-DA-31 Rev A	12/06/2012	3 August 2012

except as amended by the **Section 96B plans as detailed below**, and **only in so far as they relate to the modifications highlighted on the Section 96 plans and detailed in the Section 96 application**, except as may be amended by the following conditions and as may be shown in red on the attached plans::

Plan Number	Dated	Received	Prepared By
A-CS-02 Rev B	31/07/2015	20 January 2015	PTW Architects
A-CS-03 Rev B	31/07/2015	20 January 2015	
A-CS-04 Rev B	31/07/2015	20 January 2015	
A-CS-06 Rev B	31/07/2015	20 January 2015	
A-CS-07 Rev B	31/07/2015	20 January 2015	
A-CS-08 Rev B	31/07/2015	20 January 2015	
A-CS-09 Rev B	31/07/2015	20 January 2015	
A-CS-10 Rev B	31/07/2015	1 September 2015	
A-CS-20 Rev B	31/07/2015	20 January 2015	
A-CS-30 Rev B	31/07/2015	20 January 2015	
A-CS-31 Rev B	31/07/2015	20 January 2015	
A-CS-40 Rev B	31/07/2015	20 January 2015	

B. Add the following dot points to condition 49:

- This consent does not grant approval to increase the size of the living area to the western-most unit at Basement level 2 to provide a reasonable level of internal amenity to the occupants.
- The level 05 balcony on the western side of the eastern wing of the northern building block shall be reduced up to the western edge of the apartment to improve the amenity of the lower level apartment. Any west facing window openings must have a minimum sill height of 1.6m above floor level, or alternatively, the windows are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height.

C. Add the following dot point to condition 50:

- The colours, materials and finishes of the external surfaces to the additional storey on the eastern and western wings of the northern building block are to be consistent with materials and finishes which were approved for the original building. Details of the proposed colours, materials and textures (ie- a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager of Development Assessment, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

