

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-143 – DA/437/2021
PROPOSAL	Demolition of buildings, works to the Coogee Bay Hotel, including refurbishment to provide for 18 hotel rooms, a new 3 storey building to the southern side of the beer garden with 13 new hotel rooms (resulting in a total of 31 hotel rooms), construction of a 5/6 storey shop top housing comprising 58 dwellings, 11 retail premises, internal laneway from Coogee Bay Road, basement parking for 159 spaces, subdivision, landscaping and associated works (Local Heritage Item, variations to FSR and height of buildings of the RLEP 2012, Integrated Development).
ADDRESS	Lot 1 DP 872553 – 212 Arden St Lot A DP 437308 – 227-233 Coogee Bay Rd Lot B DP 437308 – 5-7 Vicar St Lot A DP 337724 – 15A Vicar St
APPLICANT	Cotton Development Management Pty Ltd c/- Urbis
OWNER	Simmattown Ltd
DA LODGEMENT DATE	22 July 2021
APPLICATION TYPE	Integrated Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of SEPP (Planning Systems) 2021 – Development that has an estimated development cost of more than \$30 million.
CIV	\$105,525,059.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Randwick Local Environmental Plan 2012: Clause 4.3 Height of Buildings Clause 4.4 Floor Space Ratio
KEY SEPP/LEP	SEPP (Infrastructure), SEPP (Affordable Rental Housing), SEPP 65 (Design Quality of Residential Apartment Development), Randwick LEP 2012
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Total submissions: 603 Unique submissions: 500 Submissions opposing: 496 Submissions supporting: 4 <ul style="list-style-type: none"> Height, Scale and Density (Loss of “Village Feel”) View Loss

	<ul style="list-style-type: none"> • Solar Access and Overshadowing of the Public Domain & Open Space • Intensity of Traffic and Loss of Pedestrian Safety • Anti-Social Behaviour (Noise and Pollution, Smell and Rubbish) • Impact to Existing Local Business • Heritage impact • Impact to Foreshore • Loss of Trees <p>2 x Resolutions from Randwick City Councillors (addressed separately).</p>
<p>DOCUMENTS SUBMITTED FOR CONSIDERATION</p>	<ul style="list-style-type: none"> • Architectural Plans: <ul style="list-style-type: none"> ○ Demolition Plan – Ground Floor ○ Demolition Plan – Level 1 ○ Demolition Plan – Level 2 ○ Site Plan Proposed ○ Basement Level 01 ○ Ground Floor Plan ○ Level 01 Floor Plan ○ Level 02 Floor Plan ○ Level 03 Floor Plan ○ Level 04 Floor Plan ○ Level 05 Floor Plan ○ Level 06 Roof Plan ○ Elevation – North (Part 1) ○ Elevation – North (Part 2) ○ Elevation – West (Part 1) ○ Elevation – West (Part 2) ○ Elevation – East (Part 1) ○ Elevation – East (Part 2) ○ Elevation – South ○ Elevation – Selinas Laneway N/S ○ Elevation – Selinas Laneway E/W ○ Elevation Internal ○ Materials Palette ○ Section AA (Vicar St) ○ Section BB (Arden St) ○ Section CC ○ Section DD (Pool) ○ Section EE (Pool) ○ Sunset Gates Elevations ○ Landscape design report ○ GFA Diagrams • Traffic Report (ref. II437/4) • Addendum to the traffic report (ref. JH/II437/jh) • Addendum to the traffic report (ref. JH/II437/jh) • Public Laneway Plan of Management • Draft communal spaces plan of management • Coogee Bay Hotel Plan of Management • Arboricultural impact assessment report • Plan of subdivision of Lot 1 in DP 872553, • Lot A in DP 337724 and Lots A & B in DP 437308 (ref. 51849 001DP-STG1) (4 sheets) (the “first subdivision” or “subdivision strategy plan”) • Plan of subdivision of Lot 10 in DP ____ [sic] and easement affecting Lot 11 in DP ____ [sic] • (ref. 51849 001DP-STG2) (4 sheets) (the “second subdivision” or “retail subdivision plan”) • Acoustic Assessment • Addendum Acoustic Assessment

	<ul style="list-style-type: none"> • Detailed Site Investigation (ref. 99670.03) • Geotechnical Investigation (ref. 99670.02) • Groundwater Level Monitoring Addendum to Geotechnical Investigation (ref. 99670.02) • Geotechnical and Environmental Comment Regarding Revised Architectural Drawings (ref. 99670.02) • Heritage Impact Statement (ref. J4006) • BASIX & NatHERS Certificate Class 2 Summary
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Deferred Commencement
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	30 April 2024
PLAN VERSION	11 March 2024
PREPARED BY	GAT & Associates on behalf of Randwick City Council
DATE OF REPORT	16 April 2024

EXECUTIVE SUMMARY

DA/437/2021 is unique in its assessment, in that it has been subject to concurrent Class 1 Appeal proceedings through the Land and Environment Court ('LEC' appeal against the deemed refusal) and simultaneous DA assessment. The development is declared as regionally significant development pursuant to Schedule 6 of State Environmental Planning Policy (Planning Systems 2021) as the cost of works exceeds \$30 million. The application has an estimated cost of \$111,710,018.00. Consequently, the Sydney Eastern City Planning Panel (Panel) is the consent authority for the development application.

The application was originally referred to the Panel for determination on 16 December 2021 with a recommendation for refusal. The Panel determined the application by way of deferral to give the applicant the opportunity to submit amended plans and documentation addressing a range of issues.

The applicant subsequently appealed to the Land and Environment Court (LEC) against the deemed refusal of the application on 12 November 2021. The application has been ongoing since, with the Section 34 Conciliation Conference and matter adjourned on several occasions to allow the applicant to amend the proposal. On 23 March 2023, the LEC granted permission for the applicant to lodge amended plans which saw a reduction in the size and scale of the development. These amended plans were formally notified to the public from 30 March to 1 May 2023.

The appeal remained in the conciliation phase until a directions hearing on 19 December 2023 in which the Section 34 Conciliation Conference was terminated and a hearing date was set for July 2024.

A briefing meeting was held with the Chair of the Panel on 7 March 2024 where the Applicant advised that they no longer wished to proceed to the hearing, and to have the DA determined by the Panel.

An amended package, being the proposal (as amended), was received on the 11th March 2024 via the NSW Planning Portal. These plans are considered to be generally in accordance with the plans formally

lodged to Council on March 2023 and publicly exhibited. The amended proposal, being the subject of this assessment for DA/437/2021, generally seeks consent for:

- Demolition of the following existing buildings and structures on site:
 - Six storey hotel accommodation building ‘Coogee Bay Boutique Accommodation’
 - Residential flat buildings at 15 and 5-7 Vicar Street
 - Retail tenancies along Coogee Bay Road (north-west portion of site – but excluding the upper level façade of buildings on 212 Arden Street)
 - Portion of the current hotel and pub known as Selina’s nightclub, as well as some existing hotel facilities and back of house spaces.
- Retention of the existing local heritage listed Coogee Bay Hotel including the majority of the Coogee Bay Road façade and Arden Street façade including the beer garden. The roofline of the heritage hotel is retained as are the above ground level façade elements along Coogee Bay Road to the west of the pub on the lot known as 212 Arden Street, Coogee.
- Internal refurbishment works are proposed to expand hotel accommodation, including 31 new or upgraded hotel rooms and reconfiguration of internal hotel areas to accommodate a refreshed food and beverage and function offer, gaming room, bottle shop and bar areas
- Upgrade of the beer garden area and construction of dining pavilions in this space.
- A new three storey southern hotel wing south of the beer garden and north of the driveway access will incorporate ground floor food and beverage and two levels of hotel accommodation (including 15 new hotel rooms overall).
- Provision of ground level commercial uses including 11 new retail food and beverage tenancies (cafes/restaurants) fronting a ground floor eat street precinct and Coogee Bay Road. Use and fitout consents for these tenancies will be subject to separate approvals.
- provision of a new maximum five-storey shop top housing building above the ground floor retail tenancies incorporating 58 apartments including a mix of 7 x 1-bed, 25 x 2-bed, 24 x 3-bed and 2 x 4-bed apartments.
- Excavation for and construction of two levels of basement (one partial at ground level) accessed off Arden Street, including a total of 159 parking spaces comprising:
 - 91 residential spaces including 15 visitor spaces and 14 adaptable spaces
 - 67 hotel / retail spaces including 2 accessible spaces
 - 8 motorcycle parking spaces, car wash bay, end of trip facilities, loading and servicing provisions, waste storage and collection areas, lift access and provisions for plant and services equipment.
- Site landscaping works including the creation of a new through-site link (public laneway) which runs from Coogee Bay Road to Arden Street, wrapping through the hotel area north of the basement driveway access. New landscape areas also include deep soil landscape planting to the south of the shop top housing adjacent to Vicar Street, a planted driveway awning adjacent 230 Arden Street, Level 1 communal gardens and pool for the site residents. Planting along the Arden Street frontage of the beer garden will also be upgraded. Eight trees are proposed for removal.
- Subdivision of the site into two lots – one for the hotel / pub and one for the retail and residential accommodation.

The site is located on the corner of Arden Street, Coogee Bay Road and Vicar Street, Coogee, and consists of 212 Arden St (Lot 1 DP 872553) , 227-233 Coogee Bay Rd (Lot A DP 437308), 5-7 Vicar St (Lot B DP 437308) and 15A Vicar St (Lot A DP 337724). It is directly opposite the public foreshore area of Coogee Beach. The site has an overall area of 8,501m², with a frontage to Arden Street of approximately 80 metres; a frontage to Coogee Bay Road of approximately 100 metres; and a frontage

to Vicar Street of approximately 88 metres. There is considerable cross fall from the south-west corner on Vicar Street to the north-east corner at Coogee Bay Road/Arden Street intersection of 7.79 metres.

The site is within a business zone (B2 Local Centre [*Zone E1 following from the Employment Zone Reform in effect from April 26, 2023*]) that extends north-south along Arden St and to the west along Coogee Bay Rd. This business zone comprises a mix of commercial and residential (shop top housing) development. Located to the west and south-west of the site is residential zoned land (R3 Medium Density). According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definitions of *commercial premises, pub, hotel or motel accommodation, and shop top housing* which are permissible uses with consent in the Land Use Table in Clause 2.3.

The application is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), requiring approval under the Water Management Act 2000, due to the proposed excavation being likely to affect the regional water table. WaterNSW have granted their General Terms of Approval (GTA), which have been included in the recommended conditions of consent. A referral to Ausgrid pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') and Sydney Airport Corporation pursuant to Clause 6.8 of the LEP 2012 were sent and responses returned with no objections. NSW Police were also consulted with recommended conditions of consent being provided, and included in **ATTACHMENT A**.

The principal planning controls relevant to the proposal include *State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)*, the *Randwick Local Environmental Plan 2012* and the *Randwick Comprehensive Development Control Plan 2013*. The proposal is consistent with various provisions of the planning controls including:

- Design quality principles of SEPP 65 (now integrated with SEPP (Housing) 2021) including all 9 Design Principles and the provisions of the Apartment Design Guide (ADG);
- The proposed development being permissible within the land use zone (RLEP12);
- General compliance with the controls under the RCDCP13;
- The loss of affordable rental housing under *State Environmental Planning Policy (Affordable Rental Housing) 2009* (now SEPP (Housing) 2021), identifying the loss of affordable rental housing and the requirement for contributions to be paid.

Following the deferral of the December 2021 determination, and an extensive conciliation process through the LEC up until March 2024, the following key issues have been resolved through amendments to the proposal, or recommended conditions of consent (**ATTACHMENT A**):

- Urban design and building massing (including variations to the maximum building height and floor space ratio standards);
- Heritage fabric, curtilage, setting and context;
- Landscaping and tree retention;
- Achieving the objectives of the Apartment Design Guide (ADG) and SEPP 65
- Refinement of the use, design and extent of the public thoroughfare (Eat Street / Selina's Laneway)
- View Loss/Impact;
- Overshadowing;
- Parking compliance; and
- Provision of Plans of Management to assist in public safety and general operations of the Coogee Bay Hotel.

However, the proposal is inconsistent with the following:

- Achieving suitable acoustic amenity outcomes.

To address acoustic amenity concerns, the recommendation for the determination of the application is a **deferred commencement** to allow the applicant to undertake a thorough acoustic assessment, as well as the provisions of acoustic modelling data to generate an acoustic master plan (including plan of management) to ensure that acoustic privacy and amenity to surrounding (existing and proposed) residential receivers is minimised. In accordance with the *24 Hour Economy Legislation (Vibrancy Reforms) Amendment Act 2023 (Vibrancy Reforms Act)*, the master plan will not seek to affect the way the licensed premises (the Coogee Bay Hotel) operates but rather assist in ensuring appropriate acoustic treatment and mitigation of noise to residences are provided through a plan of management.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

- Section 4.6 of the Transport and Infrastructure SEPP for consideration of whether the land is contaminated (subject to recommended conditions of consent);
- Section 2.48(2) of the Transport and Infrastructure SEPP in relation to electricity distribution pole (subject to recommended conditions of consent);
- Clause 28(2)(a) of SEPP 65 in relation to advice of any design review panel have been satisfied; and
- Referral to WaterNSW (DPIE), as required under s90(2) of the Water Management Act 2000 - WaterNSW has granted concurrence and General Terms of Approval (GTA).

Throughout the duration of the assessment, the application has been publicly notified twice:

1. 29 July – September 2021
2. 30 March – 1 May 2023

A total of 492 unique individual submissions have been received over both notification periods. There are two petitions, counting as 1 unique submission each, bringing the total to 494. An additional 6 unique submissions were received outside of the public notification period, bringing the final total to **500 unique submissions**.

The history of the application, inclusive of the Class 1 Appeal (LEC) background, is summarised below:

- Development Application DA/437/2021 was lodged on 22 July 2021;
- The application has been in ongoing discussion in the LEC since lodgement of the Class 1 Appeal (deemed refusal) in November 2021, with the Section 34 Conciliation Conference and the matter adjourned on several occasions to allow the applicant to amend the proposal. On 23 March 2023, the LEC granted permission for the applicant to lodge amended plans with Council. These plans were formally notified to the public from 30 March 2023 through to 1 May 2023. The amended proposal resulted in a reduced size and scale of the development and was generally consistent with the matters raised to be addressed in the first RFI letter issued by Council (December 2021).
- The Panel granted Council delegation to enter into a Section 34 Agreement subject to the resolution of matters for the applicant to address within the second RFI (June 2023);
- The amended plans were assessed and referred for comment to the relevant departments. Draft Conditions of Consent were prepared for the LEC between September to November 2023. Several planning matters required additional detail or clarification, resulting in drafted

conditions of consent seeking this information. Amendments in response to drafted conditions were prepared on a 'without prejudice' basis.

- The appeal remained in the conciliation phase until a directions hearing on 19 December 2023 in which the Section 34 Conciliation Conference was terminated (the termination was initiated by the Applicant) and the matter listed for a further directions hearing on 19 January 2024 to set a date for the hearing. At the directions hearing on 19 January 2024, the proceedings were fixed for a three-day hearing on 24-26 July 2024 before Senior Commissioner Dixon;
- A briefing meeting was held with the Chair of the Panel on 7 March 2024 where the Applicant presented the 'without prejudice' plans presented to Council's experts in November 2023 as part of the Section 34 Conciliation Conference. These plans are considered to be generally in accordance with the plans formally lodged to Council on March 2023 and publicly exhibited. The Applicant advised the Panel that they no longer wished to proceed to the hearing set for July 2024 and would accept the draft conditions prepared by Council as part of the Section 34/LEC proceedings.
- The outcome of the March 7th meeting was confirmation from Council and the Panel that the only outstanding matter relates to acoustic noise management, which may affect residential amenity.
- The Panel requested that the Applicant upload the amended DA package to the Planning Portal in the week commencing 11 March 2024. The amended DA package was uploaded to the Planning Portal on 11 March 2024, and are the materials subject to this development assessment report.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, the proposal can be supported subject to the recommended conditions of consent.

The remaining issue of acoustic amenity is of a technical nature which can be resolved through a deferred commencement condition to satisfy the information required to support the acoustic amenity outcomes of the development. These technical issues, along with the other critical issues, are still considered in this report in terms of the acceptability of the proposal as currently presented.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA 437/2021 is recommended for **deferred commencement** subject to the recommended conditions contained in **Attachment A** of this report. A **deferred commencement** will enable the applicant to undertake a thorough acoustic assessment, as well as the provisions of acoustic modelling data to generate an acoustic master plan (including plan of management) to ensure that acoustic privacy and amenity to surrounding (existing and proposed) residential receivers is minimised.

1. THE SITE AND LOCALITY

1.1 The Site and Locality

The site is located on the corner of Arden Street, Coogee Bay Road and Vicar Street, Coogee, and consists of the following properties:

- **212 Arden Street (Lot 1 DP 872553)** – comprising the three-storey Coogee Bay Hotel on the corner of Arden Street & Coogee Bay Road, 2 x two-storey interwar buildings with ground floor retail including the entrance to the hotel's sports bar and gaming room, and a six-storey heritage-listed hotel fronting Vicar Street;

- **227-233 Coogee Bay Rd (Lot A DP 437308)** – comprising 2 x two-storey Federation shop front buildings and 1 x three-storey Inter War building;
- **5-7 Vicar Street (Lot B DP 437308)** – comprising a two-storey Inter War residential flat building; and
- **15A Vicar Street (Lot A DP 337724)** – comprising a three-storey Inter War residential flat building.

The site is located at the eastern end of Coogee Bay Rd and is directly opposite the public foreshore area of Coogee Beach. The site has an overall area of 8,501m², with a frontage to Arden St of approximately 80 metres; a frontage to Coogee Bay Rd of approximately 100 metres; and a frontage to Vicar St of approximately 88 metres. The site currently has vehicular access from both Arden St and Vicar St, along the southern boundary.

There is considerable cross fall from the south-west corner of Vicar St to the north-east corner at Coogee Bay Rd/Arden St intersection of 7.79 metres.

The Coogee Bay Hotel is a local heritage item identified under the RLEP 2012.



Figure: 1 Site Location Map (Source: www.mecone.com.au/mosaic)

1.2 The Locality

The site is within a business zone (B2 Local Centre [Zone E1 following from the Employment Zone Reform in effect from April 26, 2023]) that extends north-south along Arden Street and to the west along Coogee Bay Road. This business zone comprises a mix of commercial and residential (shop top

housing) development. Located to the west and south-west of the site is residential zoned land (R3 Medium Density).

The land uses along Arden Street include the ten-storey Crowne Plaza development at the corner of Carr Street. Development then steps down in scale to the north along Arden Street, with two to five storey hotel and flat building developments. This height comes down to three-storeys at the Coogee Bay Hotel and four storeys further north at Alfreda Street.

Vicar Street comprises a mix of commercial and shop top housing development, single dwellings, and older residential flat buildings, as well as the six-storey Coogee Bay Boutique Hotel. At the north-western corner of Vicar Street is a three-storey mixed use building which has the Coogee Post Office at ground floor level.

The site has good access to public transport in the form of bus services which operate along Coogee Bay Road and Arden Street. The commercial centre of Coogee provides for a wide range of services including restaurants/cafes, retail stores, local supermarkets and health services.



The site along Arden St (eastern elevation) showing driveway access.



The site along Arden St (eastern elevation) looking towards the north-west.



The Coogee Bay Hotel (on left) at the corner of Arden St and Coogee Bay Rd.



The northern elevation of the block along Coogee Bay Rd, between Arden St and Vicar St.



The corner of Coogee Bay Rd and Vicar St (site is on left).



The western elevation of the site along Vicar St.



The Boutique Hotel along Arden St.



The southern end of the site along Vicar St, showing the second driveway access.

Figure 2: Photos of the site and surrounds (Source: GAT & Associates)

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposed development (**as amended March 2024**) generally seeks consent for:

- Demolition of the following existing buildings and structures on site:
 - Six storey hotel accommodation building ‘Coogee Bay Boutique Accommodation’
 - Residential flat buildings at 15 and 5-7 Vicar Street
 - Retail tenancies along Coogee Bay Road (north-west portion of site – but excluding the upper level façade of buildings on 212 Arden Street)
 - Portion of the current hotel and pub known as Selina’s nightclub, as well as some existing hotel facilities and back of house spaces.
- Subdivision of the site into two lots:
 - One for the hotel, plus two (2) commercial tenancies.
 - One for the carpark, nine (9) commercial and residential accommodation.
- Retention of the existing local heritage listed Coogee Bay Hotel including the majority of the Coogee Bay Road façade and beer garden (including Arden street entry and colonnade detail). The roofline of the heritage hotel is retained, as are the above ground level façade elements of existing buildings along Coogee Bay Road to the west of the pub on the lot known as 212 Arden Street, Coogee.



Figure 3: Heritage façade retained.

- Construction of lightweight dining pavilions within existing beer garden.
- 31 hotel rooms:
 - Internal refurbishment works are proposed to expand hotel accommodation, including upgrading the existing 16 hotel rooms and the reconfiguration of existing internal hotel areas to accommodate a new food and drink premises, gaming room, bottle shop and bar areas, plus 2 new hotel rooms to the existing hotel at level 01.
 - A new three storey southern hotel wing south of the beer garden and north of the driveway access will incorporate ground floor food and drink premises, and two levels of hotel accommodation (including 13 hotel rooms).
- Provision of ground level commercial uses including 11 new retail food and beverage tenancies (cafes/restaurants) fronting a ground floor eat street precinct and Coogee Bay Road. Use and fit out consents for these tenancies will be subject to separate approvals.
 - The “hotel lot” consists of 2 commercial tenancies

- The “residential/mixed use lot” consists of 9 commercial tenancies.
- Provision of a new maximum five-storey shop top housing building above the ground floor retail tenancies incorporating 58 apartments including a mix of 7 x 1-bed, 25 x 2-bed, 24 x 3-bed and 2 x 4-bed apartments.
- Excavation for and construction of two levels of basement (one partial at ground level) accessed off Arden Street, including a total of 158 parking spaces comprising:
 - 91 residential spaces including 15 visitor spaces and 14 adaptable spaces
 - 67 hotel / retail spaces including 2 accessible spaces
 - 8 motorcycle parking spaces, 16 bicycle spaces, car wash bay, end of trip facilities, loading and servicing provisions, waste storage and collection areas, lift access and provisions for plant and services equipment.
- Site landscaping works including the creation of a new through-site link (public laneway) which runs from Coogee Bay Road to Arden Street, wrapping through the hotel area north of the basement driveway access. New landscape areas also include deep soil landscape planting to the south of the shop top housing adjacent to 17 Vicar Street, a planted driveway awning adjacent to 230 Arden Street, Level 1 communal gardens, and pool for the site residents. Planting along the Arden Street frontage of the beer garden will also be upgraded. Eight (8) trees are proposed for removal.

Development data is provided in Table 1, below. Refer to the current version of the plans upon which the report is based (refer to list on Page 2 of this assessment report).

3Ds photomontages are provided in Table 2, below. All 3D images are sourced from the architectural plans prepared by Fender Katsalidis.

Table 1: Development Data

Control	Proposal
Site area	8,501m ²
Subdivision Lot Sizes	Proposed 2 lots with subdivision line running horizontally across the site to separate hotel from residential/retail. <ul style="list-style-type: none"> • <u>Hotel Lot</u> 3,616m² • <u>Mixed Use Lot:</u> 4,885m²
GFA (FSR)	<u>Site Total</u> Maximum: 12,751.50m ² (1.50:1) Proposed: 13,482m ² (1.59:1) Total variation of 730.5m ² (5.8%) <u>Hotel Lot FSR</u> Maximum: 5,424m ² (1.50:1) Proposed: 4,306m² (1.19:1)

	<u>Shop-Top/Mixed Use Lot FSR</u> Maximum: 7,327.5m ² (1.50:1) Proposed: 9,176m ² (1.88:1) Variation: 1,848.5m ² (25.23%)
Clause 4.6 Requests	Yes: <ul style="list-style-type: none"> Building Height (Clause 4.3) Floor Space Ratio (Clause 4.4)
No. of apartments	58 Residential Apartments 31 Hotel Rooms 11 Commercial Tenancies
Max Height	Maximum: 12m Proposed Maximum: 21.35m Variation: 9.35m (78% variation)
Landscaped area	1670m ² of landscaped area (inclusive of on-structure) 158m ² of deep soil.
Car Parking spaces	Residential: 91 + 1 car wash bay Commercial + Hotel: 67 Motorcycles: 8 Bicycles: 36
Setbacks	ADG Separation does not strictly comply: <ul style="list-style-type: none"> Design solutions applicable to building separation under Apartment Design Guide (ADG) provided as part of the proposal (<i>as amended</i>); Proposal (<i>as amended</i>) has increased landscaped setbacks from the south (adjacent 17 Vicar and 230 Arden Street)

Table 2: Concept Renders (Photomontages)

Photomontages
 <p>3D render perspective of the shop-top component of the development; looking south-east from the corner of Coogee Bay Road and Vicar Street.</p>



3D render perspective of the Coogee Bay Hotel; looking south-west from the corner of Coogee Bay Road and Arden Street.



3D render perspective of the Coogee Bay Road Hotel; looking west from the Coogee Bay foreshore (near Rainbow Walk).



3D render perspective of the proposed "Selina's Laneway" (also referred to as "eat street"). Looking north-east from the southern side of the site.



3D render perspective of the proposed shop-top housing as viewed from within Vicar Street; looking north-east.

2.2 Background to DA Submission (DA437/2021)

The development application was lodged on **22 July 2021**. A chronology of the development application since lodgement is outlined below including the Sydney Eastern City Planning Panel's ('Panel's') involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the DA

Date	Event
22 July 2021	DA lodged.
29 July 2021	Exhibition of the application.
26 July 2021	DA referred to external agencies.
2 September 2021	Panel briefing (kick-off meeting).
20 September 2021	DA referred to the Design Excellence Advisory Panel.
21 October 2021	Panel briefing.
12 November 2021	Commencement of Class 1 proceedings in the Land and Environment Court of NSW.
23 November 2021	A report was prepared for the 23 November 2021 Council meeting, to notify Council that DA/437/2021 would be determined by the SECPP on 16 December 2021.
8 December 2021	A site inspection undertaken with the Panel, Council, and the applicant in attendance.
16 December 2021	Panel Determination Date, with recommendation for refusal. Determination was deferred to allow the applicant to submit amended plans and documentation.
22 December 2021	Formal Request for Information (RFI) letter issued by Council to the Applicant, including matters raised by the Panel.
17 February 2022	Panel briefing.
17 March 2022	Deferred Panel determination date. Did not proceed due to no amended plans or documents received.
May 2022	Applicant confirmed pursuit of the Class 1 proceedings in the Land and Environment Court of NSW ("LEC").
13 October 2022	Panel briefing.
May 2022 to March 2023	Section 34 Conciliation. Notice of Motion to Rely on Amended Plans and Supporting Documents.
23 March 2023	Council receipt of amended DA documents.
30 March to 1 May 2023	Exhibition of the amended application.

14 June 2023	Panel Briefing – Delegation granted by the Panel to enter a Section 34 Agreement with the Applicant.
20 June 2023	Request for Additional Information emailed to Applicant to address outstanding matters raised with the Panel.
1 September 2023	Without Prejudice Meeting with the Applicant
7 March 2024	Panel Briefing – Acoustic Matters & Conditions of Consent
11 March 2024	Re-submission of the package for DA assessment (in accordance with LEC and S34 amendments).
26 March 2024	A report was prepared for the 26 March 2024 Council meeting, to notify Council of the issues in relation to the proposal and determine whether it wishes to make a submission to the Panel before the determination meeting on 30 April 2024.

The history of the application, inclusive of the Class 1 Appeal (LEC) background, is summarised below:

- Development Application DA/437/2021 was lodged on 22 July 2021;
- The DA was placed on public exhibition and referrals were undertaken commencing July 2021;
- Briefing meetings were held with the Panel in September and October 2021;
- On 12 November 2021, the applicant commenced Class 1 proceedings in the Land and Environment Court of NSW against the deemed refusal of the DA;
- On 16 December 2021, the matter was reported to a determination meeting with a recommendation for refusal. The Panel deferred the matter to allow the applicant to submit amended plans and documentation.
- The application has been in ongoing discussion in the LEC since lodgement of the Class 1 Appeal (deemed refusal) in November 2021, with the Section 34 Conciliation Conference and the matter adjourned on several occasions to allow the applicant to amend the proposal. On 23 March 2023, the LEC granted permission for the applicant to lodge amended plans with Council. These plans were formally notified to the public from 30 March 2023 through to 1 May 2023. The amended proposal resulted in a reduced size and scale of the development and was generally consistent with the matters raised to be addressed in the first RFI (December 2021).
- The Panel granted Council delegation to enter into a Section 34 Agreement subject to the resolution of matters for the applicant to address within the second RFI (June 2023);
- The amended plans were assessed and referred for comment to the relevant departments. Draft Conditions of Consent were prepared for the LEC between September to November 2023. Several planning matters required additional detail or clarification, resulting in drafted conditions of consent seeking this information. Amendments in response to drafted conditions were prepared on a 'without prejudice' basis.
- The appeal remained in the conciliation phase until a directions hearing on 19 December 2023 in which the Section 34 Conciliation Conference was terminated (the termination was initiated by the Applicant) and the matter listed for a further directions hearing on 19 January 2024 to set a date for the hearing. At the directions hearing on 19 January 2024, the proceedings were fixed for a three-day hearing on 24-26 July 2024;
- A briefing meeting was held with the Chair of the Panel on 7 March 2024 where the Applicant presented the 'without prejudice' plans presented to Council's experts in November 2023 as part of the Section 34 Conciliation Conference. These plans are considered to be generally in

accordance with the plans formally lodged to Council on March 2023 and publicly exhibited. The Applicant advised the Panel that they no longer wished to proceed to the hearing set for July 2024 and would accept the draft conditions prepared by Council as part of the Section 34/LEC proceedings.

- The outcome of the 7 March 2024 meeting was confirmation from Council's experts and the Panel that the only outstanding matter relate to acoustic noise management, which may affect residential amenity.
- The Panel requested that the Applicant upload the amended DA package to the Planning Portal in the week commencing 11 March 2024. The amended DA package was uploaded to the Planning Portal on 11 March 2024, and are the materials subject to this development assessment report.

- **Reports to the Randwick City Council Ordinary Council Meetings**

A report was prepared for the Ordinary Council meeting held on 23 November 2021 to notify Council of the issues in relation to the proposal and to advise that the DA would be determined by the Sydney Eastern City Planning Panel on 16 December 2021. The Resolution of this Council Meeting was that Council:

"a) notes the issues outlined in this report;
b) notes the detailed assessment report including the recommendation will be published on the Sydney Eastern City Planning Panel's website on 2 December 2021;
c) notes that the subject application in relation to DA/437/2021 for 212 Arden St (Lot 1 DP 872553), 227-233 Coogee Bay Rd (Lot A DP 437308), 5-7 Vicar St (Lot B DP 437308), and 15A Vicar St (Lot A DP 337724) Coogee, will be determined by the Sydney Eastern City Planning Panel on 16 December 2021;
d) the elected Councillors of Randwick City Council state their opposition to DA/437/2021; and
e) the elected Councillors forward the Randwick City Council assessment report (CP90/21) to the Sydney Eastern City Planning Panel, with a copy of this resolution, and submit to the Panel that DA/437/2021 should be refused."

A second report was prepared for the Ordinary Council meeting held on 26 March 2024 to provide a further update to Council, notifying them of the issues in relation to the proposal and to determine whether it wishes to make a submission to the Sydney Eastern City Planning Panel before the determination meeting on 30 April 2024. The Resolution of this meeting was that Council:

"a) make a submission to the Sydney Eastern City Planning Panel in relation to the Coogee Bay Hotel DA/437/2021;
b) include a reduction of one floor from each of the north-western and south-western corners of the Mixed-Use lot and a commensurate reduction in parking spaces;
c) include a further set-back from Arden Street of the southern hotel wing to reduce overshadowing and prevent the removal of the Washington Palms;
d) include a plan to rehouse current onsite residents in local affordable accommodation; and
e) include provision for some of the one-bedroom units to be affordable housing."

Reference is to be made to Section 4.4 of this Report for a detailed response to the Council Resolution of 26 March 2024.

2.3 Site History

There have been numerous development applications and modification applications submitted to Council for the site. Those of most relevance to the current proposal are:

- DA405/88 approved in 1989 for demolition of existing hotel and construction of a new 329 room hotel (part 5, part 6 storeys) with three levels of basement:
 - Permissible FSR was 3:1 but approved FSR unknown;
 - Permissible height was 15m, but approved height was 18.6m;
 - Council records show that the consent lapsed without commencement.
- 1994 DA approved for demolition of a drive-in bottle shop and two dwellings on Vicar St, and construction of a new drive-in bottle shop, three-storey car park for 73 spaces, and three-storey hotel with 24 rooms.
- In November 1995, the maximum FSR applying to the site was amended from 3:1 to 1.5:1.
- DA599/95 approved in 1996 for a boutique hotel (four levels of hotel rooms over three levels of parking), an entertainment/convention centre and other additions to the site including new hotel rooms:
 - Approved FSR of 1.84:1
 - Approved height 19m
 - The consent was acted upon however the conference centre in the middle of the site was not constructed.
- December 2009 – A Concept Plan was submitted to Department of Planning for a 7 level residential building, 3 levels of hotel over 2 levels of retail (including supermarket), and a 4 level function and conference facility. The heritage building (Coogee Bay Hotel) was to be retained and refurbished. (*Major Project Reference MP10_0004-Coogee Bay Hotel*). This concept plan was revoked and not considered under Part 3A. The project did not proceed.

2.4 Request for Information for DA/437/2021

December 2021

A Request for Information was issued to the applicant on 22 December 2021 in response to key concerns raised by the Sydney Eastern City Planning Panel, including the following matters which were requested to be responded to by 3 February 2022 to accommodate a sufficient timeframe for assessment prior to the deferred determination date of 17 March 2022:

- Revised plans to address height and FSR (with amended Clause 4.6 variations);
- View analysis from numerous properties that raised view loss as a concern in their written submissions, as well as views affected from the public domain;
- Additional consideration of the potential loss of affordable housing under the SEPP (Affordable Rental Housing) 2009;
- Additional consideration of the requirements under SEPP 55 [*now SEPP (Resilience and Hazards) 2021*];
- An economic impact assessment assessing the potential impact on existing businesses;
- Updated Acoustic Report to assess the impact of the basement carpark, acoustic walls and hours of the “eat street/Selina’s Lane”;
- Arboricultural assessment for the potential for the transplanting of the *Washingtonia* spp. Palm Trees;

- Additional assessment of traffic generation; and
- Additional perspectives (3D illustrations) from Arden Street and Coogee Bay Road;

Additional planning matters were raised by Council, including:

- Height, bulk and scale in response to the desired future character;
- Preservation of the Coogee Bay Hotel façade, and to consider the retention of additional inter war building façade elements along Coogee Bay Road (to the west of the Hotel);
- Inconsistency with the nine (9) design quality principles of SEPP 65 and the ADG, particularly solar access, natural cross ventilation, deep soil, communal open spaces and separation (for visual and acoustic privacy);
- The need for Plans of Management for:
 - Parking Areas/Loading Dock
 - Eat Street/Selina's Lane
 - The Coogee Bay Hotel
- Demonstrate compliance with the required parking rates; and
- Acoustic walls/requirements are to be shown on the plans.

Summary of Response to December 2021 Requested Information & Amendments

Amendments to the December 2021 RFI were not provided within the timeframe required for the deferred determination date with the Panel on 17 March 2022. The Panel determination did not proceed. The amendments received on 23 March 2023 listed below are in response, in part to the RFI issued by Council, and the extensive discussions covered by the Class 1 Appeal (LEC) process:

- Reduced the maximum building height from 23.33m (94% variation) to 21.35m (78% variation);
- Reduced the overall proposed gross floor area from 15,209m² (19.27% variation) to 13,488m² (5.8% variation);
- Reduced extent of excavation from three basement levels to one basement level;
- Deleted the sub-ground supermarket;
- Addition of residential units accessed from and fronting Vicar Street;
- Improved retention of the fabric of the Coogee Bay Hotel (Local Heritage Item) including roof form and curtilage;
- Clarification of floor spaces dedicated to function rooms and offices;
- Addition of a three (3) storey hotel wing to the south of the Beer Garden for a total of 33 hotel rooms;
- Addition of two covered outdoor dining structures within the Beer Garden;
- Increased the southern boundary landscaped setbacks;
- Deleted vehicle access from Vicar Street. All vehicle access is from Arden Street.
- Improved retention of Coogee Bay Road heritage façade and reuse/adaption into parts of the residential use and hotel use (internal refurbishment);
- Improved pedestrian egress from Arden Street;
- Re-massing of the built form to account for improved view retention:
 - Reduction of the Level 04 footprint to allow a break in the built form, and view sharing through the centre core of the development;
 - Reduction of Level 05 footprint, with height and floorplate generally in alignment with the existing Boutique Hotel;
 - Reconfiguration of the level 01 communal open space;
 - Modified external colours and materials.

Following receipt of the March 2023 amended DA documentation, the application was placed on public notification between 30 March 2023 and 1 May 2023. An assessment of the amended package was undertaken, followed by a Panel briefing on 14 June 2023. The outcome of the briefing was for the applicant to address outstanding matters, as outlined below.

June 2023

An additional (second) request for information was provided to the Applicant, seeking further information, amendments and clarifications on outstanding matters as a result of both the LEC proceedings, and DA assessment. The Panel Chair gave delegation to Council to enter into a Section 34 Agreement subject to the matters raised in the request below:

- Detailed section drawings through the swimming pool and residential communal open space including all relative levels (RLs), privacy measures and demonstration suitable head-heights to the levels below as a result of the structure were to be provided;
- Dimensioned floor plans to ensure ADG compliance;
- Deletion of pergola structures fronting Coogee Bay Road to address Design Excellence comments;
- Detailing of the ground floor awnings and sunset gates to address Heritage comments;
- Improvements to wayfinding and travel-paths for persons entering and exiting the parking levels;
- The Plan of Management for the Coogee Bay Hotel to be updated to include staff numbers; parking arrangements; operational detail on the new lobby drop-off adjacent to the driveway; hours of operation; maximum capacity for each area; landscape maintenance detail; implementation of the acoustic report; complaint management; consideration of Police NSW comments;
- A Loading Dock Management Plan to address the dedication of parking; management of vehicle and truck conflict; identify paths of travel and separation of waste and loading/unloading services; management and method of separating residential and visitor parking (i.e. how to stop residents & visitors using the hotel and commercial parking spaces); time management of trucks to avoid conflict between users of the driveway;
- In addition to the Loading Dock Management Plan, the minimum number of parking spaces was to be demonstrated in accordance with the RDCP13;
- The width of the driveway to be amended to accommodate a sight-safety splay and appropriate swept paths (turning circles);
- Amend the Traffic Report submitted with the application to address traffic management and warning measures; the operation of the Hotel “drop-off” bay; the adequacy of one car space (how to avoid queueing within the driveway); operation of boom gates and intercoms; how to ensure that people are not entering the carpark if it is full; provide swept paths to demonstrate all vehicles that enter the parking levels can enter and exit in a forward direction (cars and trucks);
- The Arden Street elevation is to be updated to retain the existing boundary wall, fence, colonnade and entrance. The pillared colonnade, masonry wall topped by an open iron fence, and the gated, arched entrance bordering Arden Street and adjoining the existing Beer Garden to maintain the heritage significance of the property;
- Ausgrid is to be contacted to provide confirmation of whether or not the existing *Washingtonia robusta* (eleven trees) can be retained, given required clearances and that the substation needs to be removed;
- Landscape plans to be updated to reflect trees that will be retained, removed or transplanted;

- Landscaping and planter boxes around the residential communal open to illustrate species conducive to providing visual privacy; and
- The service hatch and southern pathway (adjacent to 17 Vicar Street) are to be amended to be at least 2.0m with landscaping.

Summary of Response to June 2023 Requested Information & Amendments

Amended materials addressing the above request were received on a Without Prejudice (i.e. Section 34 / LEC proceedings) basis on 12 September 2023, with a collated set of amended architectural plans provided on 1 November 2023.

An assessment of the proposal (as amended) found that town planning and urban design; heritage; landscaping and; traffic and parking matters were resolved, subject to drafted conditions of consent.

Draft conditions were prepared as part of the Section 34 (LEC proceedings). These drafted conditions of consent have been refined and form the foundation of recommended conditions of consent that accompany this assessment report for determination by the Panel on 30 April 2024.

As the above-mentioned amendments were only on a without prejudice basis, they were later formally submitted to Randwick Council on 11 March 2024 for determination by the Panel.

Note: *At the time of preparing this report, the Section 34 has been terminated, however, the proceedings are ongoing, with the LEC hearing date set over the 24th, 25th and 26th of July 2024.*

December 2023 – March 2024 (Legislation Reform and Impact on Assessment)

The 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023 came into force on 1 December 2023, amending the terms of acoustic regulation for licensed premises under the Liquor Act 2007. This means that noise-related conditions of development consent and 'offensive noise pollution' laws will no longer apply when such matters are regulated by the Liquor Act 2007. This reform, however, does not mean Council can no longer assess acoustic impacts; it simply means that the consent authority cannot impose conditions relating to the emanation of noise from licenced premises. The licensed premises is the Coogee Bay Hotel.

However, the noise criteria issued by Liquor and Gaming (L&G) NSW have not changed, and therefore the Coogee Bay Hotel will be subject to the standard L&G NSW noise criteria, which are particularly stringent after midnight. As such Council's assessment and required information to ascertain the noise issues associated with this development is based directly on those criteria.

This has affected the development in the following ways:

- Given the number of uses of the site with the Hotel and the Eat St, an Acoustic Master Plan of Management for the entire Hotel and Eat Street site would allow proper planning and determination of the cumulative impacts of the Hotel's commercial activities and the Eat St venues on residents living within the Hotel site and nearby.
- The applicant's acoustic report states only that the noise will comply everywhere and provides no objective data showing that compliance at facades and internal rooms. As such the assessment concludes that with this level of information, there is a high risk of non-compliance with the L&G criteria.
- There are no statements of noise level from each patron area, which would enable assessment of the risks for loss of amenity.

- The applicant's consultant claims to have undertaken acoustic modelling using the software CadnaA but has not submitted any of the results or the model and modelling parameters to Council for assessment.

A briefing with the Panel was held on 7 March 2024, with Council and the Applicant in attendance, to discuss how the legislation affected the assessment of the development. The Applicant's acoustic modelling was requested, however, this has not been provided to Council.

Consequently, recommended conditions of consent, by way of a **deferred commencement**, have been included to address acoustic amenity. The purpose of the Masterplan is to set the parameters for all development of the site in terms of the building compliance and operation noise (excluding those matters which are regulated by the *Liquor Act 2007*). Once approved, the Masterplan will form part of the consent.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is Integrated Development (s4.46), requiring concurrence from **WaterNSW**, which is considered further in this report.

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application (*refer to note below*):

- Water Management Act 2000;
- State Environmental Planning Policy (State and Regional Development) 2011;
Now: SEPP (Planning Systems) 2021
- State Environmental Planning Policy (Infrastructure) 2007;
Now: SEPP (Transport and Infrastructure) 2021
- State Environmental Planning Policy No. 55 – Remediation of Land;
Now: SEPP (Resilience and Hazards) 2021
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Building;
Now: SEPP (Housing) 2021
- State Environmental Planning Policy (Affordable Rental Housing) 2009;
Now: SEPP (Housing) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
Now: SEPP (Sustainable Buildings) 2022
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
Now: SEPP (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Coastal Management) 2018; and
Now: SEPP (Resilience and Hazards) 2021
- Randwick Local Environmental Plan 2012.

Note: The application was lodged **prior to** the transferred provisions into the updated State Environmental Planning Policies (SEPPs). SEPP 65 and SEPP (BASIX) have also been repealed since the lodgement of the application. Documentation relating to this application, including excerpts and conclusions within this assessment report, may refer to the previous SEPP.

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable Environmental Planning Instruments
(Preconditions in **bold**)

EPI	Matters for Consideration (Brief summary)	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas No compliance issues identified subject to the imposition of conditions on any consent granted.	Y
BASIX SEPP / Sustainable Buildings SEPP	No compliance issues identified subject to the imposition of conditions on any consent granted.	Y

State Environmental Planning Policy (Housing) 2021	Part 3: Retention of Affordable Housing It has been identified that there will be a loss of affordable rental housing. The loss of affordable rental housing is subject to condition(s) of consent requiring the payment of contributions and arrangements for those that may be displaced (refer to conditions 5 and 6).	Y
SEPP 65	Clause 30(2) - Design Quality Principles - The proposal (as amended) is consistent with the design quality principles and the proposal is consistent with the design objectives of the Apartment Design Guide. ADG Design compliance provided as ATTACHMENT B to this report.	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development In this case the proposal is a regionally significant development as it has a development cost over \$30 million.	Y
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management Section 2.11(1) - Development on land within the coastal use area - The proposed development area contains land (on the eastern portion of the site) that is defined as a 'coastal use area' under the SEPP. Chapter 4: Remediation of Land Section 4.6 - Contamination and remediation have been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> Section 2.121(4) - Traffic-generating development Written notice was provided to TfNSW, who raised no issue with the application under Clause 2.122. The proposal is considered to comply with the provisions of SEPP, subject to recommended conditions of consent.	Y
Proposed Instruments	Nil.	N/A
RLEP 2012	Clause 4.3 – Height of Buildings Clause 4.4 – Floor Space Ratio In consideration of the applicant's written submissions, it is unreasonable or unnecessary to require strict compliance with the height of buildings development standard under Clause 4.3(2) and the floor space ratio development standard under Clause 4.4(2) of the RLEP 2012, in that the development achieves the objectives of the standards, and there are sufficient environmental planning grounds to justify contravening the standards.	Y
RCDCP 2013	The proposal is consistent with the main controls of RCDCP.	Y
Water Management Act 2000	The application was referred to WaterNSW (DPIE), as required under s90(2) of the Water Management Act 2000. WaterNSW has granted concurrence and General Terms of Approval (GTA).	Y

Consideration of the **key points** for each relevant SEPP is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- *Chapter 2: Vegetation in Non-Rural Areas* aims to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable as the site is within Randwick City Council and the B2 Local Centre zone (*E1 following from the Employment Zone Reform*).
- The applicant has submitted an Arboricultural Impact Assessment and Landscape Design Report with concept plans. Removal and retention of the following trees has been identified:
 - Retain and protect **street trees**: “1, 2, 2A, 4, 5 and 6”
 - *Washingtonia robusta* and *Araucaria columnaris*
 - Removal and replacement of **street trees**: “3 and 7” with same species
 - *Washingtonia robusta* and *Araucaria columnaris*
 - Removal of trees from the **development site**: “8, 8A, 9, 9A, 10, 11, 12, 13, 14, 14A, 15, 15A & 15B”
 - *Washingtonia robusta*, *Phoenix canariensis* and *Hibiscus rosasinensis*
 - Retain and protect trees on the **development site**: “16, 17, 18, 19 and 20”
 - *Phoenix canariensis* and *Dyopsis lutescens*
- The potential for transplanting and relocation of the *Washingtonia robusta* from around the Arden Street vehicle crossing requires further investigation, as was previously requested by the Sydney Eastern Regional Planning Panel, and as has been raised in a large number of public submissions.
- A condition on any consent granted is recommended (Condition 7) to allow further investigation and confirmation of whether retention of these palm trees is possible. The concept plans, particularly “*Level 1 – Southern Courtyard & Vicar Street*” can be refined to incorporate the *Washingtonia robusta* in the instance they are found to be retained or transplanted.
- The retention of the *Phoenix canariensis* in the beer garden of the Coogee Bay Hotel is strongly supported due to the sense of place and character they provide, and their ability to be incorporated as site features.



Figure 4: Arden Street trees to be removed or retained (subject to conditions requiring further investigation)

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

- The 'BASIX SEPP', now SEPP (Sustainable Buildings) 2022 applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.
- The application is accompanied by BASIX Certificate No. 1204790M_04 prepared by EMF Griffiths dated 17 October 2023 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP.
- The application is accompanied by NatHERS Certificate No. 0008469290 prepared by Jamie Bonnefin, Certified Energy, dated 18th October 2023 certifying the NCC energy requirements of the Class 2 development (the residential apartments) under the Nationwide House Energy Rating Scheme "NatHERS".
- The proposal is consistent with the SEPP subject to the conditions of consent recommended for the granting of any consent.

State Environmental Planning Policy (Affordable Rental Housing) 2009

- Part 3 of the SEPP relates to the retention of existing affordable rental housing and applies to the proposed development as it includes the demolition of existing apartment buildings at 5-7 and 15A Vicar Street which have not been strata subdivided nor are not under the care, control and management of a social housing provider.
- It has been identified that there will be a loss of affordable rental housing, and consequently a contribution is payable under **Part 3, Section 51**. The contribution forms a recommended condition of consent.
- The recommended conditions of consent will also ensure adequate arrangements will be made for the residents who are likely to be displaced.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

- Refer to **ATTACHMENT B**, which provides for a copy of the DEAP comments and an assessment of the proposal (as amended) under SEPP 65, the nine (9) principles of design, and a table of compliance under the key considerations of the Apartment Design Guide (ADG).
- With the original DA scheme, Council's Design Excellence Advisory Panel (DEAP) provided comments in relation to the nine (9) design quality principles.
- The DA, as amended in March 2023, has not returned to the DEAP for further comment, being subject to Class 1 proceedings under the LEC. As of the commencement of the LEC proceedings, the DA continued to be assessed by Council's appointed Urban Design Expert to ensure a suitable urban design outcome.
- The development application (as amended in March 2023 and March 2024) has been subject to review and discussions between the applicant and Council's urban design team for the

duration of the LEC proceedings and DA assessment for the Panel. This has resulted in a built form and design that has addressed the comments provided by the DEAP, as well as Council's Urban Design expert (refer **ATTACHMENT B**).

State Environmental Planning Policy (Planning Systems) 2021 (controls carried over from State Environmental Planning Policy (State and Regional Development) 2011)

Part 4: Regionally Significant Development

The proposal is *regionally significant development* as it satisfies the criteria in Schedule 7 of the SEPP as the proposal is development for development that has an estimated cost of more than \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021 (controls carried over from State Environmental Planning Policy (Coastal Management) 2018)

Chapter 2: Coastal Management

The proposed development area contains land (on the eastern portion of the site) that is defined as a 'coastal use area' under the SEPP (Figure 5).



Figure 5: Coastal Management SEPP Mapping

The relevant matters for consideration and response were addressed in the submitted Statement of Environmental Effects, with further assessment as follows:

- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

The development relies on vehicular access solely from Arden Street (being the eastern road within the coastal use area). Conditions of consent are included to ensure that there is safe egress for both vehicles and pedestrians using Arden Street. Accessible pedestrian entry has

been incorporated into the design with ramps from both the Arden Street and Coogee Bay Road thoroughfare entries to the “eat street/Selina’s Laneway”.

Signalled public pedestrian crossings are immediately located on the corner of Arden Street and Coogee Bay Road for access to the foreshore and beach.

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores

The extent of work occurring within the *coastal use area* (being refurbishment works and an extension to the Hotel and ancillary uses for food and drink premises) will not adversely impact overshadowing, wind funnelling or the loss of views. An assessment of the relevant standards pertaining to overshadowing and loss of views are provided throughout this assessment report and its attachments.

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

The extent of work occurring within the *coastal use area* (being refurbishment works and an extension to the Hotel and ancillary uses for food and drink premises) will not adversely impact the scenic qualities of the coast, including coastal headlands. All works within the coastal use area are of a bulk, scale and size that is consistent with surrounding development and uses of the site. The site is predominately cleared/hardstand and located within a mixed-use zone.

(iv) Aboriginal cultural heritage, practices and places,

A referral was made to *La Perouse Local Aboriginal Land Council (LPLALC)*; however, no response was received. The site is predominately cleared/hardstand and located within a mixed use zone.

(v) cultural and built environment heritage

The proposed has been assessed by an expert heritage consultant as part of the court proceedings. The proposal, as amended, is not considered to result in any adverse impact on the cultural and built environmental heritage, subject to recommended conditions of consent to be applied to any granting of consent.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (‘the Resilience and Hazards SEPP’) have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation (‘PSI’) has been prepared for the site. A Detailed Site Investigation (‘DSI’) was requested during the assessment of the application.

The Detailed Site Contamination Investigation was prepared and submitted with the amended development application. The report outlines the following recommendations:

- *Hazardous building material assessments to be conducted for any buildings to be demolished. Where hazardous materials are identified the materials should be carefully removed by a suitably qualified contractor, and inspected by a qualified consultant to confirm removal of the materials prior to demolition;*
- *Data gap investigation. The investigation should comprise at least 10 test locations (ideally utilising test pits rather than boreholes) targeting previously inaccessible areas / building footprints to be demolished in order to meet minimum recommended sampling densities and to assess any potential impacts resulting from demolition on surficial soils.*
- *Waste classification to assist in determining disposal requirements for any excavated materials which require removal from the site during site formation.*

Consequently, the *Detailed Site Investigation Report* identifies that further investigation of the site is required following the demolition of the existing buildings. It is acknowledged that the site is heavily built upon currently, and opportunities to carry out a thorough investigation require demolition of existing improvements. A recommended condition of consent will ensure the data gaps are investigated. Should the land require remedial works to meet the relevant Health Based Investigation Level, then a *Remediation Action Plan* (RAP) is required to be submitted to and approved by Council before commencing remediation works. The RAP is also required to be reviewed and be acceptable to the accredited site auditor (Condition 79).

State Environmental Planning Policy (Transport and Infrastructure) 2021

Written notice was provided to TfNSW, who raised no issue with the application under Clause 2.122 of the SEPP. The proposal is considered to comply with the provisions of SEPP, subject to recommended conditions of consent to ensure traffic and pedestrian safety measures are implemented throughout the development.

Water Management Act 2000

The application was referred to WaterNSW (DPIE), as required under s90(2) of the Water Management Act 2000. WaterNSW requested additional information relating to a hydro-geological assessment, which was provided to the applicant to address on 7 February 2022.

The proposal involves the construction of one (1) basement level, requiring excavation, which is likely to affect the regional water table. As determined within the *“Geotechnical and Environmental Comment Regarding Revised Architectural Drawings Proposed Coogee Bay Hotel Redevelopment”* (prepared by Douglas Partners, dated 5 October 2022):

“The basement numbers have been reduced to one level from three levels. This change has raised the lowest basement level of the development from RL -0.6 m AHD to RL 5.5 m AHD.”

Additionally, a three-month groundwater monitoring programme between 9 May 2022 and 16 August 2022 was carried out by Douglas Partners (*Memorandum, dated 13 September 2022*), offering the following conclusion:

“Review of the data-logger results during this reporting period suggests that the rainfall in the monitoring period resulted in the groundwater level rising about 0.6 m towards the east of the site (BH101) and 0.9 m towards the west of the site (BH102). The likely lower permeability of the sandstone layers within the screening depth of BH102 (6 m to 12 m) may have resulted in slower water discharge following rainfall, when compared to the sand layers within the screening depth of BH101 (3 m to 15 m).”

The information was re-referred to WaterNSW, who granted concurrence and General Terms of Approval (GTA), which form part of the recommended conditions of consent.

Randwick Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the ***Randwick Local Environmental Plan 2012*** ('the LEP'). The aims of the LEP include:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to foster a liveable city that is accessible, safe and healthy with quality public spaces, connections to open space and attractive neighbourhoods and centres,*
- (b) to support a diverse local economy and business and employment opportunities for the community,*
- (c) to support efficient use of land, vibrant centres, integration of land use and transport, and an appropriate mix of uses,*
- (d) to achieve a high standard of design in the private and public domain that enhances the quality of life of the community,*
- (e) to promote sustainable transport, public transport use, walking and cycling,*
- (f) to facilitate sustainable population and housing growth,*
- (g) to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick,*
- (h) to promote the importance of ecological sustainability and resilience in the planning and development process,*
- (i) to protect, enhance and promote the environmental qualities of Randwick,*
- (j) to ensure the conservation of the environmental heritage, aesthetic and coastal character of Randwick,*
- (k) to acknowledge and recognise the connection of Aboriginal people to the area and to protect, promote and facilitate the Aboriginal culture and heritage of Randwick,*
- (l) to promote an equitable and inclusive social environment,*
- (m) to promote opportunities for social, cultural and community activities.*

The proposal (as amended) is consistent with these aims, as the proposal:

- Offers spaces that promote cultural activities and the arts (e.g. function centre; public space);
- Is accessible and offers connections to other public spaces (e.g. Selina's Laneway / 'the eat street');
- Supports employment and business opportunities for the community;
- Integrates an appropriate mix of uses while retaining the heritage setting of the Coogee Bay Hotel;
- Is of a high design standard that enhances quality of life;
- Is within a 'walkable' area and near public transport;
- Offers new adaptable housing and, subject to conditions of any consent, will ensure persons benefitting from affordable housing will not be displaced;
- Protects the environmental qualities of Randwick;

The proposal (as amended) is considered to be consistent with these zone objectives for the following reasons:

- Providing a range of commercial, entertainment and community uses that serve the needs of people who live in, work in and visit the local area (e.g. provision of commercial spaces; additional parking; function centre).
- Contributing to employment opportunities in an accessible location that is in an area that enables walking and cycling; (e.g. provision of commercial tenancies; additional parking; function centre).
- Providing residential accommodation that is well-integrated with and supports the primary business function of the zone (e.g. provision of commercial spaces; additional parking; function centre).
- Is a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community (e.g. Selina's Laneway / 'the eat street').
- Minimises the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zone (e.g. as amended, the proposal facilitates view sharing and additional landscaped separation from existing developments).
- Promotes a safe public domain (e.g. through implementation of Plans of Management).

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below. The proposal does not comply with the development standards in Part 4 of RLEP 2012, being Clauses 4.3 and 4.4 and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum height and FSR development standards.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (Cl 4.3(2))	12 metres	<u>Existing Hotel:</u> 15.52m <u>Existing Variation:</u> 3.52m (29%) <u>Proposed Hotel Addition:</u> 11.98m Compliance achieved for Hotel component. <u>Existing Boutique Hotel:</u> 19m <u>Existing Cnr Vicar St x CBR:</u> 14.5m <u>Existing Max. Variation:</u> 5.0m <u>Proposed Mixed Use:</u> 21.35m Variation: 9.35m (78%)	No. Subject to Cl 4.6.
FSR (Cl 4.4(2))	1.5:1 (12,751.5m ²)	<u>Hotel Lot FSR</u> Maximum: 5,424m ² (1.50:1) Proposed: 4,306m ² (1.19:1) Compliant by 1,106m ²	Yes. Positive covenant on the creation of additional GFA imposed within conditions.

		<p><u>Shop-Top/Mixed Use Lot FSR</u> Maximum: 7,327.5m² (1.50:1) Proposed: 9,176m² (1.88:1) Variation: 1,848.5m² (25.23%)</p> <p><u>Total Lot</u> 13,488m² (1.59:1)</p> <ul style="list-style-type: none"> Reduction of 1,721m² from original DA Total variation of 730.5m² (5.8%) 	<p>No. Subject to CI 4.6.</p> <p>No. Subject to CI 4.6.</p>
Heritage (CI 5.10)	The Coogee Bay Hotel is listed as a local heritage item (I48).	HIS provided with the DA.	<p>Yes.</p> <p>Conditions imposed on colours and materials schedule.</p>
Acid sulphate soils (CI 6.1)	Class 5 (and within 500m of Class 4 and is below 5m AHD)	<p>Addressed in the Geotechnical Assessment (PSI + DSI) prepared by Douglas Partners (May 2022).</p> <p>Further investigation required, as the site is essentially fully built-upon.</p>	<p>Yes.</p> <p>Condition required to ensure suitability of the site (during demolition, but prior to construction).</p>
Flood planning (CI 5.21)	1 in 100 yr (1% AEP)	Addressed in the Civil Report prepared by Enstruct Group Pty Ltd (February 2023).	Yes.
Stormwater Management (CI 6.4)	Onsite stormwater detention is not required.	Suitable conditions can be imposed should the application be approved.	<p>Yes.</p> <p>Subject to conditions of consent.</p>
Foreshore Scenic Protection Area (CI 6.7)	Development is to be located and designed to minimise its visual impact on public areas of the coastline, including views to and from the coast, foreshore reserves, open space, and public areas, and contribute to the scenic quality of the coastal foreshore.	<p>The development retains the setting of the Coogee Bay Hotel (subject to additional conditions of consent).</p> <p>The mixed use component has a bulk and form that is positioned where existing non-compliances are located (as a result of previous development).</p> <p>Further discussion of views and visual impact is provided within this assessment report.</p>	<p>Yes.</p> <p>Conditions imposed on colours and materials schedule.</p>

Airspace Operations (Cl 6.8)	The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be constructed.	Referral to the Sydney Airport Corporation was made and no objection was raised to the development to a maximum height of 47.7m above existing ground level (noting that the max height proposed is 21.35m above existing ground level).	Yes.
Design Excellence (Cl 6.11)	Development consent must not be granted to development to which this clause applies unless the consent authority is satisfied that the proposed development exhibits design excellence.	The amended DA scheme has not been referred to the DEAP a second time, as the application was subject to Class 1 LEC proceedings. The proposal has been amended in accordance with comments provided by Council's Urban Design Team.	Yes.

The proposal is considered to be generally consistent with the LEP.

Clause 4.6 Request to Vary Clause 4.3 Height of Buildings Standard

Pursuant to Clause 4.3 of RLEP 2012, a maximum height of 12m applies to the subject site. The proposal seeks a maximum overall building height of 21.35m (78% variation). The following section and massing diagrams show the height exceedance indicated by the superimposed red line(s).

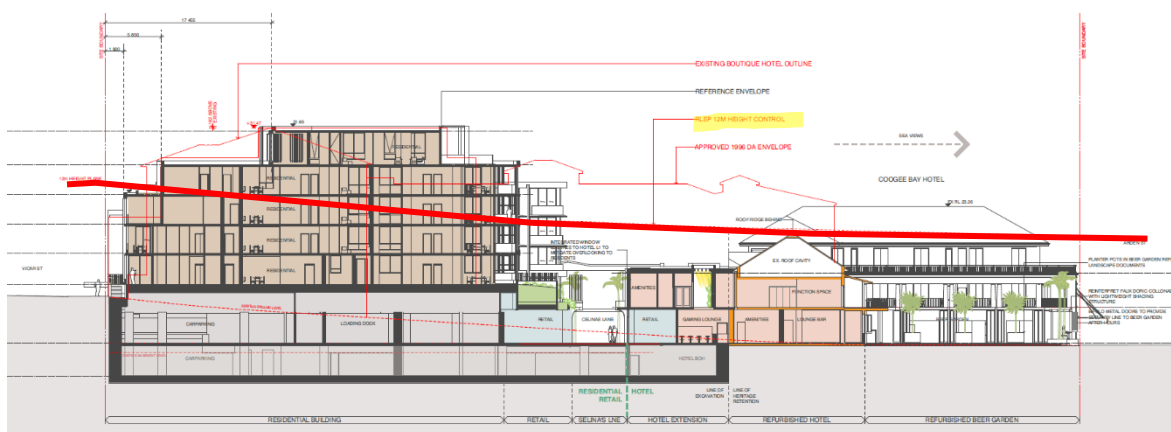


Figure 7: Excerpt of Section AA (Drawing No. DA250 prepared by Fender Katsalidis)

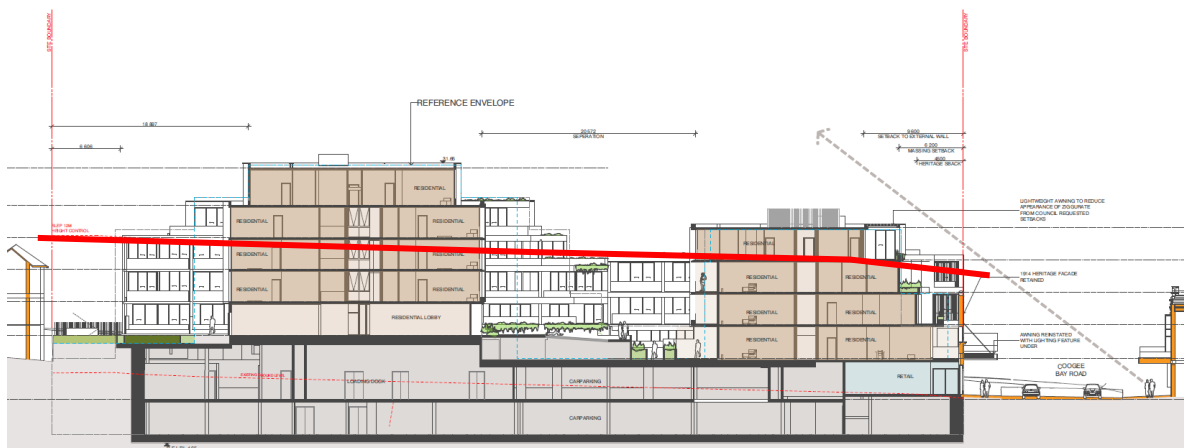


Figure 8: Excerpt of Section BB (Drawing No. DA251 prepared by Fender Katsalidis)

The exceedance of the 12m height control is also demonstrated in the 3D massing diagrams provided below (Figure 9), which show the parts of the existing building envelope; massing of the previously approved development (DA599/95); and the extent of the new shop top housing building, which is above the 12m height plane (Figure 10).

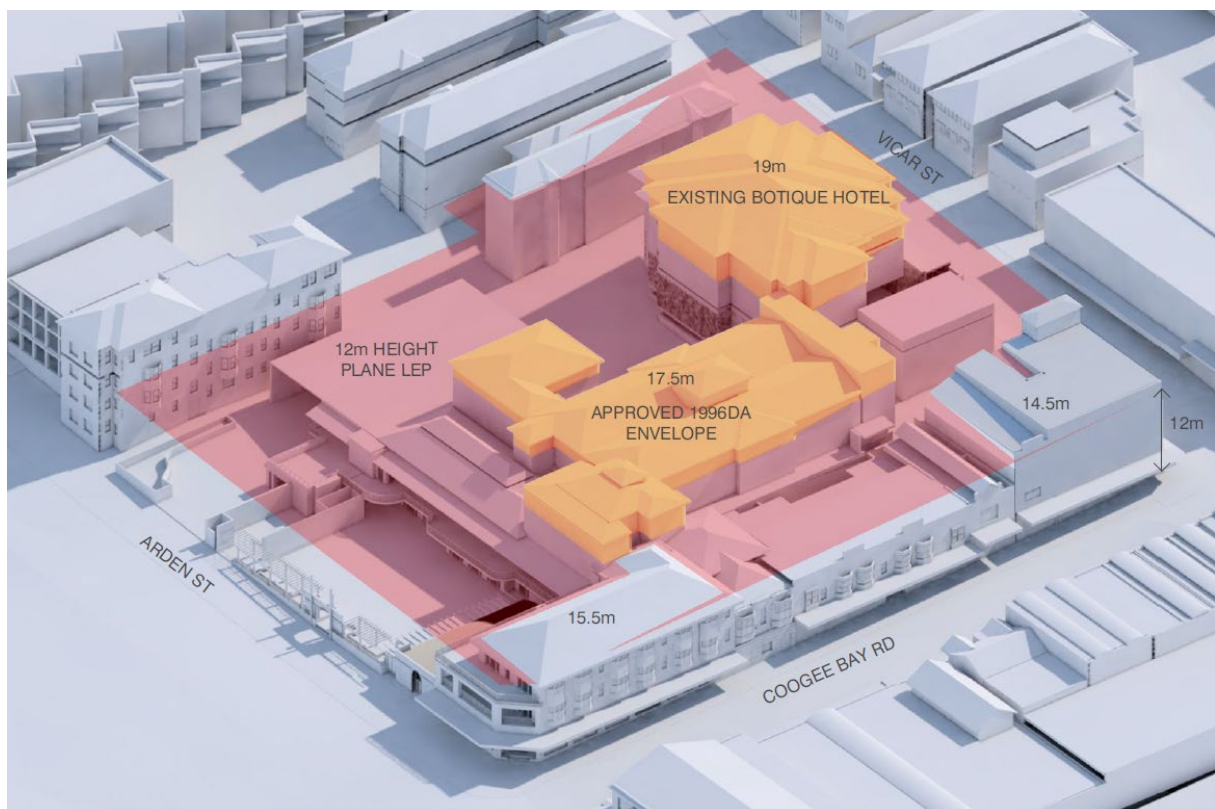


Figure 9: 3D Massing – 12m Height Overlay (Source: Drawing No. DA417 by Fender Katsalidis)

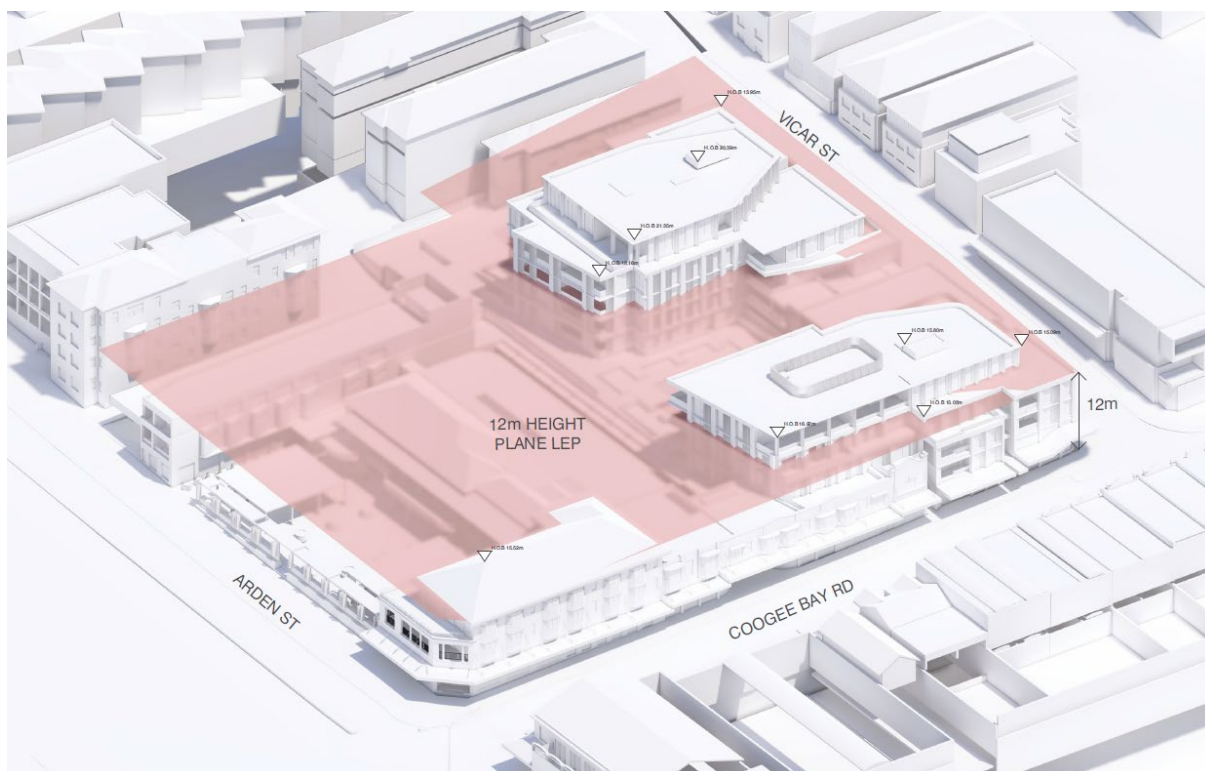


Figure 10: 3D Massing – 12m Height Overlay (Source: Drawing No. DA418 by Fender Katsalidis)

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard, subject to two preconditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request to building height.

1. What Clause is sought to be varied?

Clause 4.3(2) of the Randwick Local Environmental Plan 2012 (RLEP 2012) states that *the building height for a building on any land is not to exceed the building height shown for the land on the Building Height Map* which indicates 12.0m. The proposed development has a maximum height of 21.35m, exceeding the development standard by 9.35m or 78%.

2. Clause 4.6 Objectives

The following objectives are contained in Clause 4.6 of the Randwick Local Environmental Plan 2012:

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

In consideration of the applicant's written submission, Council is satisfied that it is appropriate to invoke the provisions of Clause 4.6 to vary the height of buildings development standard allowing flexibility in the application of the height of building given the circumstances of the development proposal.

The **applicant inter alia** provided the following justification in response to the above clauses and objectives of the height of buildings standard:

4.3 Height of Buildings

(1) The objectives of this clause are as follows—

- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
- (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

(i) Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

"The objectives of the standard are achieved notwithstanding non-compliance with the standard (the first method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43])...

- *Built form has been modulated to step up away from the heritage listed façade with a three storey street wall (ground floor retail with residential above) scale along Coogee Bay Road commensurate with heritage items and contributory buildings in the locality. The street wall has been designed to reflect the 10.5m DCP wall height, and to align with the scale of development to the west of Vicar Street, and along the northern frontage of Coogee Bay Road opposite the subject site.*
- *The majority of the façade to Coogee Bay Road is retained, so to ensure continuous presentation of the façade's rhythm and scale to the public domain, including the bay window forms which characterise this façade.*
- *The upper level massing is heavily recessed and much smaller than the lower building levels. The fourth floor is set back approximately 6.2 metres with the fifth storey element set back 9.5 metres. Such design characteristics avoid adverse amenity impacts to neighbouring properties in terms of sunlight, privacy, and views.*

- *Balconies and apartment layouts are orientated in an east-west layout where possible and oriented to provide casual surveillance to the public domain and minimise privacy impacts on surrounding development.*
- *Overshadowing on neighbouring properties is generally caused by the compliant portions of the building envelope.*
- *While there are non-compliances with the height control, the overall massing has been developed to ensure the proposed development does not detrimentally impact on any view corridors, as illustrated in the Addendum View Sharing Assessment prepared by Urbis*
- *Building massing associated with the residential component in the western portion of the site has been sensitively located to reflect existing built form massing and ensure adequate visual separation is provided between the heritage listed pub and contemporary elements on site.*
- *The design of the proposed development has considered the heritage value of the Coogee Bay Hotel, a local heritage item (item I48), and also the general heritage characteristics of the locality.*
- *A new wing is proposed on the southern portion of the site fronting Arden Street which reflects the height, scale and form of the original hotel building to the north of the beer garden. The proposed massing visually anchors the site's south east corner and creates a marker to enter the site through the eat street precinct.*
- *Proposed upper residential levels are heavily recessed beyond the 10.5metre street wall to both Coogee Bay Road and Vicar Street. Such design characteristics avoid adverse amenity impacts to neighbouring properties in terms of sunlight, privacy, and views.*
- *The existing heritage listed Coogee Bay Hotel building results in a noncompliance with the height control. No change is proposed to the existing roof form of the pub building. As such, the existing non-compliance is compatible with the scale and character of the area and maintains the heritage significance of the site despite the height non-compliance.*
- *The non-compliant height provides a built form which allows adequate visual separation between the historic and new forms within the site which ensures the original buildings can be appreciated within the surrounding context. The contemporary design of the development will also deliver a simple backdrop to the heritage buildings, which will retain their prominence within the site.*
- *The proposal preserves the visual quality of the Coogee Bay Hotel as an important landmark by retaining the original heritage pub building (despite its existing height contravention). A six metre publicly accessible laneway separates the taller mixed use component which will sit comfortably at the west of the site replacing the current boutique hotel building and other low quality buildings along Vicar Street.*
- *The residential element of the proposal generally maintains the existing two storey street wall along the Coogee Bay Road before stepping up to three storeys at the corner of Vicar Street to create a distinct street corner. The heritage facades of the original pub and Coogee Bay Road are maintained with buildings not considered to have heritage significance towards Vicar Street replaced with contemporary development. The contemporary building has been designed to retain a similar verticality to maintain the streetscape character.*
- *The recess to the upper levels reduces the massing of the building and ensures the proposal does not overwhelm the pedestrian scale of the street. A change in materiality and colour from solid masonry stone and brick clad to zinc sheet*

defines the upper levels as a light weight structure, independent in massing and design from the lower levels.

- *The residential dwellings above the 12m height plane will look over the top of the immediately adjacent dwellings to the west and will cause no greater privacy impact than that generated by the existing boutique hotel building presently on the site.*
- *The massing of the building was also informed by detailed view impact analysis and has been prepared following discussions between the applicant and the Council's urban design experts. Overall, the proposed massing represents a collective response to urban design and view issues which seeks to retain access to the most highly valued parts of existing views for the closest and potentially most affected residents.*
- *Given the wide visual catchment investigated as part of the design development for the site, and the resultant assessment of the view impact anticipated to be generated by the proposed building form, the overall visual impacts on neighbouring properties are considered negligible and are acceptable having regard to the level of analysis undertaken to inform the proposed built form. Overall, the view corridor:*
 - *Successfully promotes reasonable view sharing outcomes, as it allows for the retention of south-easterly views to the majority of Wedding Cake Island from close residential dwellings.*
 - *Promotes access to views of open ocean and sea-sky horizon in easterly and north-easterly views.*
- *...objectives of the development standard would be undermined if compliance was required.*

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

The proposed height non-compliance permits a redistribution of the building mass anticipated by the planning controls away from the Coogee Bay Hotel. This:

- *allows for outdoor dining to be retained as well as the expansion of retail and tourism uses on site; and*
- *maintains a significant portion of heritage fabric along Coogee Bay Road with adequate separation between heritage elements and the four and five storey residential wings towards the west of the site.*

The redistribution of building mass maintains the understanding of this heritage item and the contribution that the site makes to Coogee Bay. The design approach respects the heritage components of the site and acknowledges the sense of identity Coogee Bay Hotel presents to the community, present and past. A design approach that sought to deliver the gross floor area anticipated for the site within in a height compliant envelope would be suboptimal — and would undermine achievement of this objective.”

(ii) Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The **applicant** *inter alia* provided the following environmental planning grounds to justify the height breach:

- *The boutique hotel is less compatible with the desired future character of the locality than the proposed replacement building form. Vicar Street is currently populated by a loose arrangement of unrelated built form with inactive openings. This is a long frontage and merits a new, active and diverse set of buildings along it. The new built form maintains a 10.5 metre street wall with the fourth floor set back approximately 6.2 metres and the fifth storey element set back 9.5 metres.*
- *The south wing height non-compliance is situated in generally the same location of the existing non-height compliant boutique hotel.*
- *The new south wing has a similar scale and massing to the existing boutique hotel;*
- *The finish and appearance of the new building fits in well with the streetscape and will have a positive visual impact (relative to the existing non-compliant built form);*
- *The new building is of a more contemporary (and superior) design and is better adapted to modern needs;*
- *The south wing component of the building will not dominate the streetscape or skyline; and*
- *The overall development provides for new modern hotel space on site.*
- *it is still desirable to redistribute the building mass provided for the controls above the height plane on the western part of the site, so as to retain the outdoor dining area, create the open air through-site link and ensure an appropriate visual separation between the Coogee Bay Hotel and the new built form on the site.*
- *The redistribution of building mass maintains the understanding of this heritage item and the contribution that the site makes to Coogee Bay. The design approach respects the heritage components of the site and acknowledges the sense of identity Coogee Bay Hotel presents to the community.*
- *The non-compliant height for the north wing is exclusively a direct result of a re-massing of the building form to:*
- *Provide adequate visual separation between the heritage buildings and new development within the site;*
- *Retain the outdoor dining area for the Coogee Bay Hotel; and*
- *Make the through-site link (Selina's Laneway) possible.*

Assessment of Clause 4.6 to vary Clause 4.3 (Height of Buildings)

In consideration of the applicant's written submission, Council is satisfied that it is unreasonable or unnecessary to require strict compliance with the height of buildings development standard under Clause 4.3(2) of the RLEP 2012, in that the development achieves the objectives of the standards, and there are sufficient environmental planning grounds to justify contravening the height of building standard.

The **principal environmental reasons** for considering that the development standard is unreasonable or unnecessary in the circumstances of the case are:

- Coogee Bay Hotel is a heritage item of local significance. Consequently, the bulk of the proposed development is appropriately positioned to be physically and visually separate from the heritage-listed building, without derogating from the development potential of the site.

- The façade and streetscape presentation of the development is compatible with the desired future character of the locality by:
 - Aligning with the desired 3-storey alignment character stipulated by the DCP control requiring a 10.5m external wall height along the immediate street frontages of both Vicar Street and Coogee Bay Road.
 - The characteristic heritage façade along Coogee Bay Road has been retained, incorporated and adapted into the overall built form (i.e. the development does not simply apply facadism) within the revised DA scheme, thus maintaining the fine grain heritage character of Coogee Bay Road – shown in ‘red’, Figure 11:



Figure 11: Elevation of heritage façade retention (prepared by Fender Katsalidis)

- The facades present as three-storeys, which is consistent with the existing character of Coogee Bay Road and Vicar Street; the existing Coogee Bay Boutique Hotel is five (5) storeys, though partially articulated with setbacks from Vicar Street. All other existing buildings on the development site are two-and-three storeys.
- The extent of the non-compliance with the building height standard for new development is largely localised within the envelope of the existing building non-compliances:
 - Figures 7 and 12 (within this report) illustrate that the southern-most wing of the development is compatible with the existing ridge height of the Boutique Hotel and extends to the rear (east) from the existing Boutique Hotel envelope. The proposed form is also consistent with the existing four-and-five storey presentation of the Boutique Hotel to Vicar Street.
 - The existing Boutique Hotel has a building height of 19.0m to the ridge. The site has a notable decline in slope from west to east, thus amplifying the perceived extent of the non-compliance with the eastern addition beyond the existing envelope, notwithstanding that the roof level of RL31.65 is consistent as the topography declines toward the foreshore.
 - Further, Figures 9 and 10 show that there is an existing non-compliance with building height on the corner of Coogee Bay Road and Vicar Street. The proposal (as amended) has positioned the northern-most wing to be setback from the street-front boundaries, to maintain the three-storey character immediately within the streetscape, with additional recessive design elements assisting in minimising the perception of bulk and scale from the public domain. Additional discussions between the Applicant and Council’s Urban Design Expert have informed how the massing has been massaged to provide an appropriate level of internal amenity, with the Applicant also undertaking an additional assessment into the potential for view loss resulting

from the proposed massing. View Loss is discussed within **ATTACHMENT C**, accompanying this report.

- The exceedance in building height is a result of re-massing gross floor area across the two proposed lots. Floor area is dedicated to the western (shop-top/mixed use) lot, where the eastern lot proposed for the Coogee Bay Hotel has not been developed to its full planning potential to retain and visually separate the heritage item. Subject to recommended conditions of consent on any approval, a positive covenant will restrict additional floor area on the “hotel lot” (Condition 4).

The Applicant references *Citrus Pty Ltd v Inner West Council [2019] NSWLEC 1558 ('Citrus')*, in that the replacement of an existing non-compliant and out-dated bulk is a sufficient environmental planning ground to justify a contravention where it will achieve a positive contribution to visual amenity by virtue of quality. Similarly, *Citrus* outlines that the context of being within a natural low point minimises its contribution to the skyline. The proposal development (as amended) is generally consistent with the existing non-compliances on the site.

The objectives of the RLEP12 are met by the proposal (as amended) by being:

- Well-integrated with the primary business function of the zone;
- Of a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community without dominating the existing urban character; and
- Retaining the heritage significance of the Coogee Bay Hotel.

The resulting re-massing of height to the western component of the development is an appropriate contextual response for the development given the overall development site area, and constraints for development proximate to the heritage Hotel.

Further, the written request adequately establishes that the development does not dominate the streetscape when considered in its context, with the site being within the lower/basin of Coogee; and in consideration that the proposed form establishes a three-storey street front facade, which is consistent with the desired future character of the area.

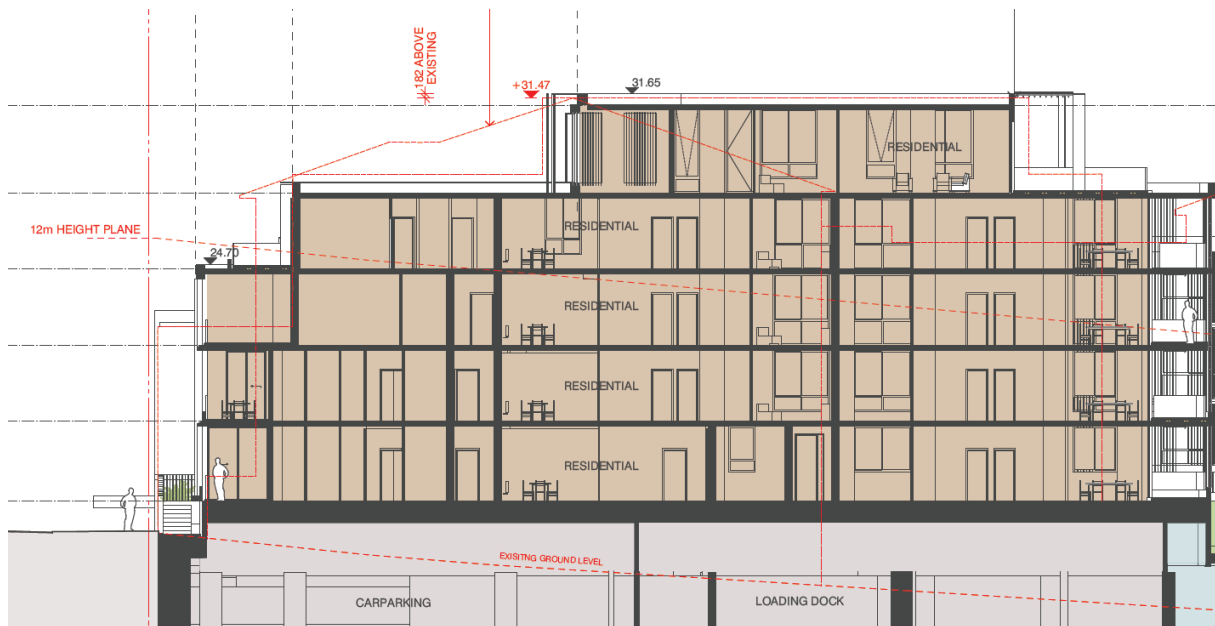


Figure 12: Excerpt from Section AA with outline of existing Boutique Hotel and 12.0m building height line (prepared by Fender Katsalidis)

Council is also satisfied that in accordance with sub-clause (4) (ii) of Clause 4.6, the proposal will be in the public interest because it is consistent with the following objectives of the B2 Local Centre zone [Zone E1 following from the Employment Zone Reform in effect from April 26, 2023], as demonstrated throughout this report, in which the site is located:-

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To enable residential development that is well-integrated with, and supports the primary business function of, the zone.
- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.
- To facilitate a safe public domain.

In accordance with sub-clause (4) of Clause 4.6 of the RLEP 2013, and in view of the above assessment, Council is satisfied that the applicant's written request to vary the height of building development standard adequately addresses the matters required to be demonstrated under sub-clause (3) and that the written submission is well-founded.

Sub-clause (4)(b) states that development consent must not be granted unless the concurrence of the Secretary of the Department of Planning and Environment (DPE) has been obtained. Council has been advised that it can assume the concurrence of the Secretary of the DPE. Under Sub-clause (5) the Secretary is required to consider the following when deciding to grant concurrence:-

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

- (b) the public benefit of maintaining the development standard, and*
(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Council is satisfied that the contravention of the height of building development standard in this case will not raise any matter of significance for state or regional environmental planning and that the public benefit of the height of building development standard will be maintained:

- The development is consistent with the objectives of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity, through the delivery of a genuine mixed-use development that will support significant new employment in the Coogee Bay local centre. The proposal will also greatly improve the public domain interface at the heart of the local centre, and in doing so will facilitate a more vibrant village atmosphere to revitalise the local economy (e.g. the public benefit of Selina's Laneway/Eat Street).
- The proposed development achieves the objectives of the development standard prescribed in clause 4.3 of the RLEP and achieves the objectives of the B2 Local Centre zone [*Zone E1 following from the Employment Zone Reform in effect from April 26, 2023*], in that:
 - The unique circumstances at the site, being the historic landmark hotel and significant size of the site along the main street, centrally within the local centre, and at the low point of the valley, warrant the provision of increased building height where additional massing would otherwise be unfavourable to the heritage-setting of the Coogee Bay Hotel.
 - The additional building height will not result in detrimental environmental impacts in terms of built form, overshadowing, privacy, views or heritage impacts. The holistic redevelopment of the site results in an improved relationship between built form on the site and the setting of the heritage item.
 - Solar access to the surrounding public domain and neighbouring residential properties will be maintained. The proposed street wall height responds to the scale, form and materiality of the desired future character. Whilst the proposal will result in some view loss to neighbouring properties, it also benefits others.

On balance this is considered to be acceptable given the significant public benefits and urban design improvements that would be delivered by the development.

View Loss as a result of the proposed building height is discussed within **ATTACHMENT C**, accompanying this report.

Clause 4.6 Request to Vary Clause 4.4 Floor Space Ratio

Pursuant to Clause 4.4 of RLEP 2012, a maximum FSR of 1.5:1 is applicable to the subject site. The proposal seeks an overall FSR of 1.59:1. The proposed subdivision into two lots increases the extent of non-compliance to the shop-top/mixed use lot.

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard, subject to two preconditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request to building height.

1. What Clause is sought to be varied?

Clause 4.4(2) of the Randwick Local Environmental Plan 2012 (RLEP 2012) states that *the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map*, which indicates 1.5:1.

Total Lot

13,488m² (1.59:1)
(Reduction of 1,721m² from original DA)
Total variation of 736.5m² (5.8%)

Hotel Lot FSR

Maximum: 5,424m² (1.50:1)
Proposed: 4,306m² (1.19:1)
Compliant by 1,106m²

Shop-Top/Mixed Use Lot FSR

Maximum: 7,327.5m² (1.50:1)
Proposed: 9,176m² (1.88:1)
Variation: 1,848.5m² (25.23%)

2. Clause 4.6 Objectives

The following objectives are contained in Clause 4.6 of the Randwick Local Environmental Plan 2012:

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

In consideration of the applicant's written submission, Council is satisfied that it is appropriate to invoke the provisions of Clause 4.6 to vary the floor space ratio development standard allowing flexibility in the application of floor area, given the circumstances of the development proposal.

The **applicant inter alia** provided the following justification in response to the above clauses and objectives of the floor space ratio standard:

4.4 Floor Space Ratio

(1) The objectives of this clause are as follows—

- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- (b) to ensure that buildings are well articulated and respond to environmental and energy needs,*
- (c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
- (d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views*

(i) Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

"The objectives of the standard are achieved notwithstanding non-compliance with the standard (the first method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43])...

The proposal's physical impacts on surrounding development are acceptable on the following grounds:

- *Built form has been modulated to step up away from the heritage listed façade with a three storey street wall (ground floor retail with residential above) scale along Coogee Bay Road commensurate with heritage items and contributory buildings in the locality. The street wall has been designed to reflect the 10.5m DCP wall height, and to align with the scale of development to the west of Vicar Street, and along the northern frontage of Coogee Bay Road opposite the subject site.*
- *The majority of the façade to Coogee Bay Road is retained, so to ensure continuous presentation of the façade's rhythm and scale to the public domain, including the bay window forms which characterise this façade.*
- *The upper level massing is heavily recessed and much smaller than the lower building levels. The fourth floor is set back 6.2 metres with the fifth storey element set back 9.5 metres. Such design characteristics avoid adverse amenity impacts to neighbouring properties in terms of sunlight, privacy, and views.*

- *Balconies and apartment layouts are orientated in an east-west layout where possible and oriented to provide casual surveillance to the public domain and minimise privacy impacts on surrounding development.*
- *Overshadowing on neighbouring properties is generally caused by the building envelope which complies with the height of buildings standard and reflects setback controls in the ADG and Randwick DCP.*
- *While there are non-compliances with the FSR control, the overall massing has been developed to ensure the proposed development does not detrimentally impact on any view corridors, as illustrated in the Addendum View Sharing Assessment prepared by Urbis*
- *Due to the size of the site and the provision of public benefit incorporating a publicly accessible laneway and eat street, and the proposal's relationship to the heritage hotel, massing is distributed to the edge of the site rather than through the centre. The design remains compatible with the characteristic building form of the locality including increased ground floor activation.*
- *Building massing associated with the residential component in the western portion of the site has been sensitively located to reflect existing built form massing and ensure adequate visual separation is provided between the heritage listed pub and contemporary elements on site.*
- *A new wing is proposed on the southern portion of the site fronting Arden Street which reflects the height, scale and form of the original hotel building to the north of the beer garden. The proposed massing visually anchors the site's south east corner and creates a marker to enter the site through the eat street precinct.*
- *The development provides well-articulated street frontages, comprising a combination of building indentations and modulation to assist with breaking up building form. Heritage façades along Coogee Bay Road are retained and replicated in form to maintain the fine grain character of built form within the Coogee Local Centre. This is especially achieved along Coogee Bay Road towards Vicar Street with the use of brick materials to frame the rhythm of tenancy widths along this street frontage. Further, the characteristic bay windows to Coogee Bay Road are retained at this northern façade.*
- *To retain the desired streetscape character, the new development provides a three storey street wall along the street frontages. This reflects the 10.5 metre DCP control for the site and delivers a coherent built edge to the street. The upper levels above the height limit are set back from the predominant street wall with an additional setback above the fourth storey, reducing the scale and visual bulk of the development. The increased upper setback also ensures the proposed development avoids adverse amenity impacts to neighbouring properties in terms of sunlight, privacy, and views.*
- *The residential components of the proposed development along the Coogee Bay Road street wall provide vertical recessed elements between dwellings with balconies inset into the façade. These design elements provide deep vertical expression which reflects the fine-grained pattern and rhythm of the streetscape with contemporary design. Above the street wall, changes to materiality and balcony form are proposed to reduce the potential 'ziggurat' built form and reduce the overall building bulk and scale.*
- *Overall, the proposed FSR on the site is compatible with that of surrounding development both along Coogee Bay Road and Vicar Street including the Crowne Plaza and residential developments along Vicar Street. There is precedent for development along Coogee Bay Road and within the Coogee*

local centre exceeding the 1.5:1 FSR control as illustrated in FSR analysis prepared by Fender Katsalidis

- *The built form strategy for the site has been thoroughly planned to ensure it provides a holistic approach to the redevelopment. The proposal draws on elements that respond to the scale and proportionality of the existing streetscapes that surround the site, including prevalent street wall height at the boundary, but also utilises the size of the site to reflect a taller character away from the street frontages where this does not detract from the streetscape character.*
- *The overall design has responded to materiality, form and rhythm of development in the locality and provides a well-articulated built form to 'break up' the massing and deliver visual interest.*
- *Proposed sustainability strategies include:*
 - *The proposed dwellings have been oriented to provide a good level of solar access in mid-winter, providing passive heating and improving daylight penetration in the winter months.*
 - *Living areas are located outboard to the east and west and typically inboard to the north.*
 - *Robust material selection has been specifically chosen to reduce the need for ongoing maintenance requirements.*
 - *Building fabric is to be specified with industry standard insulation values to reduce heat transfer and reliance on artificial heating and cooling and provide an appropriate level of thermal comfort.*
 - *All windows are intended to be double glazed.*
 - *Ceiling fans are to be incorporated as per BASIX requirements*
 - *High efficiency appliances will be specified to reduce on-going water and power consumption.*
 - *80% of all proposed gardens are to include Indigenous or low water use species to reduce water consumption.*
 - *PV Systems are to be provided as per BASIX requirements.*
- *Continuity of the northern façade character is ensured through retention of the Coogee Bay Road frontage including bay window elements. Adaptive re-use of the front rooms at Level 1 ensures that the heritage character of the site is maintained to the public domain despite these elements not being specifically heritage listed.*
- *The overall built form allows adequate visual separation between the historic and new forms within the site which allows the original buildings to be appreciated within the surrounding context. The contemporary design of the development will also deliver a simple backdrop to the heritage buildings, which will retain their prominence within the site.*
- *Given the heritage buildings within the site will be retained and remain dominant in views from the foreshore, the proposal will not alter the existing visual relationship with the James Robertson Fountain and sandstone wall. In addition, the proposed four and five storey elements within the development sit at a lower topography and is physically removed from the other heritage items in the vicinity of the site. The massing of the development is compatible with the mixed character and setting of these heritage items, which include buildings of various scales and ages.*
- *The proposal has been designed, positioned and orientated to ensure the additional FSR does not adversely impact on the amenity of adjoining and neighbouring properties (visual bulk, privacy, view sharing, overshadowing).*

*The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])...*

- *The proposed FSR non-compliance permits a redistribution of the building mass anticipated by the planning controls away from the Coogee Bay Hotel. This:*
 - *allows for outdoor dining to be retained as well as the expansion of retail and tourism uses on site; and*
 - *maintains a significant portion of heritage fabric along Coogee Bay Road with adequate separation between heritage elements and the four and five storey residential wings towards the west of the site.*
- *The redistribution of building mass maintains the understanding of this heritage item and the contribution that the site makes to Coogee Bay. The design approach respects the heritage components of the site and acknowledges the sense of identity Coogee Bay Hotel presents to the community, present and past.*
- *A design approach that sought to deliver the gross floor area anticipated for the site within in a height compliant envelope would be suboptimal — and would undermine this objective.*
- *It would likely involve a reduction in the size of the outdoor dining area and/or a reduction (or removal) of the proposed separation between the new building form to the west and the existing Coogee Bay Hotel.*
- *The proposal will deliver significant public benefits, including the reinvigoration of the iconic pub in a manner that more closely caters to the lifestyle and demands of the local community, significant improvements to the public domain interface of the local centre and delivery of a publicly accessible and vibrant ‘eat street’ precinct.*

(ii) Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The **applicant** *inter alia* provided the following environmental planning grounds to justify exceeding the floor space ratio standard:

- *If the floor space ratio standard was to be applied to the overall site, the variation solely relates to the additional 736.5sqm (being the 6 per cent variation).*
- *However, applying the decision in *Lam and Marrickville Development No 3* we need to consider the western portion and the eastern portion lot separately. On this basis the proposed contravention relates to the western portion lot only (at 25 per cent variation). This contravention should be seen in the context that the eastern portion lot is to be 20.6 per cent below the maximum floor space ratio.*
- *There are two distinct aspects as to why there are sufficient environmental planning grounds to justify the contravention of the floor space ratio standard.*

- Firstly, the contravention is, in part, justified by a sympathetic redistribution for planned gross floor area from the eastern portion lot to the western portion lot.
- Secondly, the contravention is, in part, justified by the proposed demolition and replacement of the height non-compliant boutique hotel (the replacement being termed the 'south wing' in the Request).
- In relation to the first aspect of the justification, the planned building mass is being shifted from the eastern portion lot to the western portion lot to:
 - Achieve the planned level of intensity for the overall site (noting that the 736.5sqm overall site exceedance is separately justified below);
 - Provide for the retention of the Coogee Bay Hotel;
 - Avoid any proposal to add substantial structures to the existing form of the Coogee Bay Hotel; and
 - Ensure an appropriate setting for the Coogee Bay Hotel (including the retention of the outdoor dining area).
- The redistribution of building mass maintains the understanding of this heritage item and the contribution that the site makes to Coogee Bay. The design approach respects the heritage components of the site and acknowledges the sense of identity Coogee Bay Hotel presents to the community, present and past.
- A proposal that complied with the floor space ratio controls for each of the two proposed new lots to be created would not allow this sympathetic re-massing of planned gross floor area to occur. If the planned gross floor area for the site were to be achieved (which is desirable given the site's proximity to transport and services) it would necessitate far more intrusive works in and around the Coogee Bay Hotel heritage building.
- Where there is an existing building that is proposed to be replaced and that existing building protrudes above the height plane, a variation to height and floor space ratio standards may be justified to facilitate that replacement. This is particularly the case when the proposed replacement building represents a better outcome than the existing building.
- The proposed FSR (1.58:1) is less than the FSR previously approved for the site (1.84:1) under development consent DA599/95. That consent has been activated through the construction of the boutique hotel and could therefore be completed. The current proposal provides far superior public benefits including greater visual separation and appreciation of the heritage buildings within the site, improved pedestrian connections through the site, including the delivery of the eat street precinct and associated retail tenancies. The range of land uses are also considered to be more complementary to the local centre compared to the previous approval and will directly benefit the local and broader community.

Assessment of Clause 4.6 to vary Clause 4.4 (Floor Space Ratio)

In consideration of the applicant's written submission, Council is satisfied that it is unreasonable or unnecessary to require strict compliance with the floor space ratio development standard under Clause 4.4(2) of the RLEP 2012, in that the development achieves the objectives of the standard, and there are sufficient environmental planning grounds to justify contravening the standard.

The **principal environmental reasons** for considering that the development standard is unreasonable or unnecessary in the circumstances of the case are:

- The overall variation to the standard, in the context of the total development site area of 8,501m², is 5.8%.
- Upon the subdivision of the site, splitting the heritage Hotel (eastern lot) and the shop-top/mixed use (western lot) into separate lots:
 - FSR on the eastern lot complies with the standard.
 - FSR to the western lot does not comply, with a 25.35% variation.
- Massing of the additional FSR to the western lot is contextually appropriate, given the eastern (Hotel) lot will not accommodate any additional gross floor area in excess from what is proposed.
- A Positive Covenant on the title of the eastern lot will be imposed (imposed by condition of consent on any approval) to restrict development resulting in additional gross floor area, with the western lot to accommodate the planned massing that would otherwise be accommodated, if not for the heritage context and contribution of the Coogee Bay Hotel.
- A development that achieved the gross floor area to the lot containing the Coogee Bay Hotel would be contrary to the objectives of the standard, in that development would not be compatible with the scale and character of the contributory heritage building.
- The development and design surrounding the Coogee Bay Hotel has been subject to discussions between the Applicant and Council's Heritage and Urban Design experts throughout the DA assessment and LEC proceedings, with concepts adjusted to ensure a development that is compatible with the heritage item, consequently resulting in the transfer of built form from the eastern lot to the western residential lot.
- During discussions surrounding the re-massing of the built form, environmental impacts have been considered and assessed. As outlined throughout this report, **ATTACHMENT C** and **ATTACHMENT D**, the impacts are found to be reasonable for the circumstance of the case.

Council is also satisfied that in accordance with sub-clause (4) (ii) of Clause 4.6, the proposal will be in the public interest because it is consistent with the following objectives of the B2 Local Centre zone [*Zone E1 following from the Employment Zone Reform in effect from April 26, 2023*], as demonstrated throughout this report, in which the site is located:-

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To enable residential development that is well-integrated with, and supports the primary business function of, the zone.*
- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*

- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.*

In accordance with sub-clause (4) of Clause 4.6 of the RLEP 2013, and in view of the above assessment, Council is satisfied that the applicant's written request to vary the floor space ratio development standard adequately addresses the matters required to be demonstrated under sub-clause (3) and that the written submission is well-founded.

Sub-clause (4)(b) states that development consent must not be granted unless the concurrence of the Secretary of the Department of Planning and Environment (DPE) has been obtained. Council has been advised that it can assume the concurrence of the Secretary of the DPE. Under Sub-clause (5) the Secretary is required to consider the following when deciding to grant concurrence:-

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Council is satisfied that the contravention of the floor space ratio development standard in this case will not raise any matter of significance for state or regional environmental planning and that the public benefit of the floor space ratio development standard will be maintained:

- The development is consistent with the objectives of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity, through the delivery of a genuine mixed use development that will support significant new employment in the Coogee Bay local centre. The proposal will also greatly improve the public domain interface at the heart of the local centre, and in doing so will facilitate a more vibrant village atmosphere to revitalise the local economy.
- The proposed development achieves the objectives of the development standard prescribed in clause 4.4 of the RLEP and achieves the objectives of the B2 Local Centre zone [*Zone E1 following from the Employment Zone Reform in effect from April 26, 2023*].
- The unique circumstances at the site, being the historic landmark hotel and significant size of the site along the main street, centrally within the local centre, and at the low point of the valley, warrant the provision of additional gross floor area to the western side of the development site.
- The additional floor space ratio will not result in detrimental environmental impacts in terms of built form, overshadowing, privacy, view or heritage impacts. The holistic redevelopment of the site results in an improved relationship between built form on the site and the setting of the heritage item. View Loss is assessed within **ATTACHMENT C**.
- Solar access to the surrounding public domain and neighbouring residential properties will largely be maintained. The proposed street wall height responds to the scale, form and materiality of the desired future character. Whilst the proposal will result in some

view loss to neighbouring properties, it also benefits others. On balance, this is considered to be acceptable given the significant public benefits and urban design improvements that would be delivered by the development.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no relevant draft or proposed instruments relevant to the application.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- ***Randwick Comprehensive Development Control Plan 2013 ('RCDCP')***

The proposal is considered to be consistent with the main controls of RCDCP as discussed below:

Part B2 – Heritage: The amended Heritage Impact Statement has addressed the heritage significance of all buildings currently on the site.

The report concludes:

- *The proposed works to the site have a manageable impact on what significant fabric remains of the Coogee Bay Hotel buildings. All principal elevations are retained and intrusive and unsympathetic contemporary additions will be removed and an internal pedestrian laneway lined with commercial tenancies and residential above. This will enable the retained heritage buildings to be read three-dimensionally and better appreciated for the historic significance.*
- *The revised proposal as taken into consideration expert advice throughout the Court mediation process to substantially reduce the bulk, form and scale of the scheme and increase the retention of heritage significant fabric.*
- *The proposed subdivision of the Coogee Bay Hotel from the remainder of the site will have an acceptable impact on the heritage item as the proposed subdivision is set behind the hotel and will not affect the principal view corridors to the item from Arden Street and Coogee Bay Road and will enable the continued use of the site as the Coogee Bay Hotel which is paramount and intrinsic to its heritage significance.*

Council's Heritage Expert reviewed the amended development application and provided comments to the applicant as part of the 20 June 2023 request for information to ensure the proposal achieves an appropriate urban design and heritage response. The development (as amended) has incorporated these comments, resulting in the retention of existing fencing and colonnade detailing to the Coogee Bay Hotel beer garden and Arden Street entry.

Part B3 Ecologically Sustainable Development: The design of the development does not maximise or achieve the minimum number of units which are required to achieve natural cross ventilation and sunlight, which would benefit the amenity of the residents and also reduce reliance on technology and operating costs. Comments from Council's Urban Design Team were provided to the applicant, resulting in the incorporation of "plenums" to provide additional units with natural air.

The amended DA achieves some deep soil, which is an improvement to the existing circumstance of the development site, despite not achieving strict compliance, as the existing site is predominately hardstand and built-upon.

Part B4 Landscaping and Biodiversity: The development overall achieves approximately 1670m² of landscaped area, and 158m² of deep soil. As noted above, it is an overall improvement to the existing site circumstance and is suitable for the context and zoning of the site. A Landscape Design Report accompanies the amended DA (with the landscape design concepts in Section 5 of the Landscape Design Report). A general planting palette for each level is provided, which will form part of the approved Landscape documentation to ensure appropriate planting on the site.

Further investigation of the palm trees to be retained has been incorporated into a recommended condition of consent to ascertain whether existing trees (various palm trees) within Arden Street can be retained.

Part B5 Preservation of Trees and Vegetation: The proposal will remove mature palm trees around the proposed Arden Street vehicle entry. As above, further investigation of the palm trees to be retained has been incorporated into the recommended conditions of consent.

Part B7 Transport, Traffic, Parking and Access: The Traffic Report submitted with the DA lacks detail in regard to compliance with Council's parking requirements. Council's Traffic Engineering Team have provided a list of recommended conditions of consent that will need to be satisfied. The conditions will ensure the adequate provision of parking, with Plans of Management required to ensure minimal conflict between users of the parking and basement spaces.

Note: One of the comments provided to the applicant was to introduce a sight safety splay adjacent to the new driveway and southern hotel wing. While this was reflected on the amended floor plans, it has not been shown on elevations, and therefore a condition to amend the plans is in place to ensure the architectural plans are updated to reflect this requirement (Condition 3).

Part B10 Foreshore scenic protection area: The proposal has appropriately considered its visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. A detailed view assessment accompanied the amended DA, including specific sites to Council's request. This is further detailed below in **ATTACHMENT C**.

The heritage item (Coogee Bay Hotel) remains the principal form viewed from the foreshore, with the western massing ensuring view sharing is achieved from surrounding residents.

Part C2 Medium Density Residential: The controls of Part C2 have been referred to for the shop-top housing apartments. The sections of Part C2 which are relevant to the proposal include:

- *2.2 Landscaped open space and deep soil area* – The DCP requires 50% of the site to be landscaped. The development overall achieves approximately 1670m² of landscaped area, and 158m² of deep soil. As noted above, it is an overall improvement to the existing site circumstance and is suitable for the context and zoning of the site.
- *2.3 Private and communal open space* – The communal open space at level 1 will be overshadowed by the development due to the "U"-shape, with the building semi-enclosing around the outdoor space. This has resulted in overshadowing in mid-winter and some privacy impacts.

Despite not achieving the ADG or DCP communal open space requirements, the development is immediately adjacent to the Coogee Beach foreshore, which is a large publicly accessible space capable of accommodating the recreational needs of future residents.

One of the matters to be addressed in the 20 June 2023 request for information was to provide detailed drawings and information on the feasibility of the swimming pool in its location, as well as detail on the privacy measures around the communal open space. Section and elevational architectural plans were provided to the satisfaction of Council and Urban Design Team.

- *3 Building envelope* – The proposed building bulk, scale and massing were found to be acceptable following from receipt of formal amendments made to the 20 June 2023 request for information.
- *4 Building design* – The proposed building design is considered acceptable, as has been assessed and discussed throughout this report.
- *5 Amenity* – Where the amended DA is deficient in providing suitable amenity for residents, visitors and the wider public (including the Hotel and commercial components of the development), conditions of consent have been imposed. This includes conditions relating to traffic safety; measures for visual and acoustic privacy; and plans of management. Views have been assessed in **ATTACHMENT C**.
- *6 Car parking* – As above, the Traffic Report submitted with the DA lacks detail in regard to compliance with Council's parking requirements. Council's Traffic Engineering Team has provided a list of recommended conditions of consent that will need to be satisfied.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- ***S7.11 Development Contributions Plan (Randwick Section 94A Development Contributions Plan 2015)***

This Contributions Plan has been considered and included in the recommended draft conditions of consent.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- Demolition – the provisions of AS 2601;

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts relating to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The proposed development will not result in any significant adverse environmental impacts to the natural environment as detailed in this report. It is considered that the submitted proposal, as amended, provides for an appropriate response to the site context, ensuring that the significance of the Coogee Bay Hotel (being an item of heritage significance) is retained and conserved.

It should be noted that the 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023 came into force on 12 December 2023, amending the terms of acoustic assessment for licensed premises under the Liquor Act 2007 (The Coogee Bay Hotel is a licensed premises). From mid-2024, the Vibrancy Reforms will designate Liquor & Gaming NSW as the lead regulator of entertainment sound-related complaints for all licensed premises. The amendments will mean that entertainment sound emanating from licensed premises is solely managed through the *Liquor Act 2007* and noise-related conditions of development consent and 'offensive noise pollution' laws will no longer apply when such matters are regulated by the *Liquor Act 2007*. Accordingly, when this part of the new legislation commences, a condition of a development consent that regulates noise generated from licensed premises will cease to have effect but only to the extent the condition relates to noise arising from how the business of the licensed premises is conducted or the behaviour of persons after they leave the licensed premises.

The number of patrons noted in the proposed Plan of Management is 3,468. When this number is combined with the 768 patrons in the Eat Street venues, the Coogee Bay Hotel site could hold 4,168 people. The most recent statement of current patron numbers for the Hotel is 3,250, which was in 2004. An Acoustic Master Plan of Management for the entire Hotel and Eat Street would allow proper planning to determine the impacts on residents living nearby and within the site.

The acoustic report submitted with the application states that noise emissions from the refurbished ground floor areas of the Hotel are expected to be essentially the same as existing noise emissions. However, there is no discussion or information from the applicant about the extent to which noise from the ground floor areas currently complies with nearby receivers to confirm this statement. There is a lack of quantitative information provided to enable a comprehensive assessment of the acoustic impact of the proposal. Consequently, recommended conditions of consent, in the form of a deferred commencement, are imposed to ensure acoustic amenity is achieved internally to the site.

The consideration of impacts on the natural and built environments includes the following:

- *Context and setting* – The proposal is considered to be generally consistent with the context of the site, in that the proposed building massing(s) are appropriate given the local heritage significance of the Coogee Bay Hotel. To ensure no further massing on the "hotel lot" a positive covenant (recommended condition of consent) on the future Title will ensure no further development may occur (i.e. no additional gross floor area). The site topographically

sits within a basin, at the lowest part of the locality. View loss has been comprehensively addressed within **ATTACHMENT C**. It is concluded that, on balance, the view loss experienced as a result of the development is acceptable as some views have been improved toward the headlands; whereas others may lose minor or partial views to the Coogee Bay waters, Wedding Cake Island or distant horizon waters.

- *Access and traffic* – The proposed development has been amended in accordance with comments and design changes requested by Council’s Traffic Engineering Team, with additional conditions of consent placed to ensure the management of safety within the loading area and car park through the preparation of a Plan of Management. An additional condition requiring plans to be amended is in place to ensure that the safety splay (which has been reflected on the ground floor plan) is updated to show the correct built form (splay and windows) on the elevations.
- *Public Domain* – The proposed development has been amended in accordance with comments and design changes requested by Council’s Urban Design Team. The building massing has been appropriately modified to ensure view sharing, as well as a three-storey presentation to Coogee Bay Road. Upper storeys have been setback to reduce their visual prominence from street level.
- *Utilities* – The site has access to all essential services. A condition is recommended seeking further investigation with Ausgrid as to whether trees within the Arden Street streetscape (and in the Beer Garden/Adjacent to existing driveway) can be retained as a result of relocating power services and the substation.
- *Heritage* – The site consists of the Coogee Bay Hotel, which is an item of local heritage significance. There will be minimal impact on the heritage item as the proposal seeks to retain the majority of the Coogee Bay Road façade and Arden Street façade including the beer garden. Further, the roofline of the heritage hotel is retained as are the above ground level façade elements along Coogee Bay Road. The proposed works to the site have a manageable impact on the remaining significant fabric of the Coogee Bay Hotel buildings. All principal elevations are retained and intrusive and unsympathetic contemporary additions will be removed. The massing of built form has been oriented to the western part of the development (mixed use/shop-top) to minimise the impact of development on what will be the “hotel lot”, and thus retain the character and setting of the Hotel.
- *Flora and fauna impacts* – Tree replacement and removal is satisfactory subject to recommended conditions of consent.
- *Noise and vibration* – construction and operational impacts are mitigated with detailed recommended conditions of consent, including additional geotechnical investigations, dilapidation reports, method of excavation and engineering reports during the course of works.
- *Natural hazards* – Stormwater management plans do not form part of the approval. Recommended conditions of consent are in place to ensure detailed stormwater drainage and flood management documentation is prepared prior to the issue of a construction certificate.
- *Safety, security and crime prevention* – The principles of Crime Prevention Through Environmental Design is achieved by the proposed wayfinding signage; entry control (to car park and the residential component of the development); landscaping treatment; installation

of non-obtrusive lighting; incorporation of Plans of Management for the management of communal spaces; the Coogee Bay Hotel and (as recommended by conditions of consent) the Parking/Loading Dock area.

- *Social impact* – The health and safety of the community, sense of place, community facilities, interactions between the new development and the community have been incorporated into the operational Plans of Management that form part of the recommended conditions of consent. Additional recommended conditions for “alcohol free zone” signage assist in reducing anti-social behaviours.
- *Economic impact* – The proposal (as amended) encourages pedestrian thoroughfare via the “Selina’s Laneway / Eat Street”. The thoroughfare consists of eleven (11) commercial tenancies that are employment-generating. The amended application was also accompanied by an economic impact statement, concluding that the development would offer a range of retail facilities to current and future residents; encourage price competition; and creation of additional employment, as some 1,230 jobs are likely to be created both directly and indirectly from the proposed development, including opportunities for youth employment in the retail tenancies.
- *Site design and internal design* – The site design and internal design is a result of extensive discussions between the applicant and council during both the LEC proceedings and DA (as amended) assessment. The massing and envelope of development on the site balances view sharing/view loss with overshadowing and heritage context. The density of development is situated to the western side of the development site, with the visual bulk from the public domain contained at three-storeys to integrate with the character of the area, and compatible with the heritage setting of the Coogee Bay Hotel and Coogee Bay Road façade. Thus the development aligns with *Principle 2 Built Form and Scale*, and *Principle 3 Density* of SEPP 65 in being appropriate development within the public domain, character of the streetscape and view sharing.
- *Construction* – The potential impacts from construction have been adequately mitigated within the recommended conditions of consent (waste management; stormwater and flood management; essential services; general terms of approval issued by WaterNSW; and standard conditions included as part of the issue of a construction certificate).
- *Cumulative impacts* – As outlined throughout this assessment report and above, the proposal (as amended) is generally consistent with the applicable planning controls, and it has been demonstrated that variations to the floor space ratio and building height standards result in a reasonable impact on the balance of view sharing, view loss, overshadowing and heritage context and otherwise meeting the objectives of the applicable standards and controls.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.3 Section 4.15(1)(c) - Suitability of the site

- The proposal is consistent with the objectives of the B2 (E1) Local Centre Zone and permits the proposed land uses.
- It has been demonstrated that the proposal meets the objectives of the height of building and floor space ratio controls. The proposed building massing has been articulated and positioned to promote view sharing, solar access and privacy.

- In addition to the recommended conditions of consent, technical reports have been provided and demonstrate the site is capable of being developed in the manner proposed without resulting in unacceptable and adverse impacts on the surroundings.
- The site attributes are conducive to the development, particularly considering that the development potential is inhibited by the existing heritage-listed Coogee Bay Hotel. This has appropriately resulted in a design and urban planning solution that places gross floor area and building massing to the western portion of the site. The development is considered to be an appropriate and high quality design. The proposal (as amended) has been subject to Class 1 LEC proceedings and has included discussions between the Applicant and Council's Urban Design Team.
- The additional setbacks and separation from adjoining eastern buildings have resulted in greater solar access to both 230 Arden Street and 17 Vicar Street.

3.4 Section 4.15(1)(d) - Public Submissions

The proposal was notified in accordance with Randwick Council's Notification Policy.

These submissions are considered in Section 4 of this report.

3.5 Section 4.15(1)(e) - Public interest

The proposed development (as amended) is in the public interest for the following reasons:

- The proposal incorporates a through-link ("Selina's Laneway" / Eat Street) that is open to the public (with closing hours for public safety in accordance with the communal area Plan of Management and recommended conditions of consent for lighting, access and security).
- The proposal (as amended) is of high-quality design and will positively contribute to the streetscape and reinvigorate the Coogee local centre. The building massing and materiality responds to the streetscape character and scale of Coogee Bay Road.
- The building provides a three-storey street front façade to Coogee Bay Road and Vicar Street and then sets back the upper levels, in a form that will not detract from the amenity of neighbouring residential dwellings or character of the locality.
- The potential social impacts of the development are mitigated through the implementation of Plans of Management and recommended conditions of consent that reinforce security and safety within the premises.
- The potential impact of built form has been found acceptable on the balance of view sharing, overshadowing, privacy and the context of building massing being placed within the western portion of the site, separate to the heritage item of local significance (Coogee Bay Hotel).
- The development has demonstrated consistency with the objectives of applicable planning controls.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 6.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW	CI 104 –SEPP (Infrastructure) 2007: Development that is deemed to be traffic generating development in Schedule 3.	No objections subject to conditions.	Y
Referral/Consultation Agencies			
Ausgrid	CI 45 – Infrastructure SEPP Development near electrical infrastructure or distribution network	No objections subject to conditions.	Y
Sydney Airport Corporation	CI 6.8 of RLEP 2012, s186 of the Airports Act 1996 and Regulation 8 of the Airports (Protection of Airspace) Regulations 1996	No objections subject to conditions.	Y
NSW Police Crime Prevention	As per Police Protocol (LDOC002718)	No objections subject to conditions. See extract of comments below.	Y
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Excellence Advisory Panel ('DEAP')	The advice of the DEAP has been considered in the proposal and is further discussed in the SEPP 65 assessment (Section 6.1.1.4 of this report).	Y
La Perouse Land Council	S5.10(8) RLEP 2012 – development in an Aboriginal place of heritage significance	No comments received.	Y

NSW Police

Detailed comments have been received from NSW Police – Eastern Beaches Police Area Command, where they advised that:

“Police do not have objections to this Development Application should the final approval be appropriately conditioned. Should the Randwick City Council determine to issue the approval for the development, Police would seek for the following conditions to be included in the Notice of Consent. These conditions are sought to ensure that the development is managed in a way to ensure the quiet good order and nature of the neighbourhood, seek to mitigate risks to residents, staff, patrons and members of the public from harm that may be associated with this development.”

The conditions prepared by NSW Police are included in the recommended conditions for consent, including:

- Restriction on short-term leasing unless per Part 6 of *the State Environmental Planning Policy (Housing) 2021*;

- Provision of low-level security lighting;
- Time-limited parking;
- Installation of surveillance cameras;
- Crime scene preservation;
- Restrictions on declared organisations and; access to the Hotel after 12am.

These recommended conditions will ensure long-term public safety.

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 7**.

It is acknowledged that the referral comments outlined below were in response to the original 2021 development application, prior to any amendments and prior to the Class 1 Appeal through the Land and Environment Court.

Table 7: Consideration of Council Referrals

Officer	Comments
Engineering	<p>The development is not in an area requiring onsite stormwater detention (OSD). As part of a formal pre-lodgement application (PL/42/2019) the applicant was advised that onsite stormwater detention is not specifically required for the subject development site however Council restricts discharge to the kerb and gutter and underground drainage system to 25 litres per second for the critical 1 in 20 year (5%AEP) storm event for each connection point. Compliance with this requirement may require the applicant to provide some onsite stormwater detention.</p> <p>There may be a need for the applicant's hydraulic engineer to undertake additional investigation to ensure compliance with the above requirement. Drainage plans are not approved as part of any development consent, and it is likely that suitable conditions of consent could be imposed.</p> <p>The entire ground floor is commercial / retail. The applicant claims to have assessed the critical 1 in 100-year (1%AEP) flood levels for the development and the new floor levels appear satisfactory. Detailed flood planning conditions would be imposed with any development consent for this application.</p> <p>Application is supported subject to imposition of recommended conditions of consent.</p>
Traffic	<p>The parking submission is lacking in detail on some elements of the proposal and the following issues have been identified:</p> <ul style="list-style-type: none"> • The Traffic Report for the development states that parking for the retail / commercial component will be compliant with rates set in Part B7 of Council's Comprehensive DCP 2013, however, further detail on the parking provision for the actual supermarket is required. • The Traffic Report does not detail how the 18 spaces for the hotel/pub have been found to be adequate. • The Traffic Report should have considered other methods for assessing the adequacy of the parking provision (such as RTA/RMS Guide to Traffic generating Developments and / or surveys of similar supermarket

	<p>developments). A detailed onsite parking management plan should have accompanied the application showing strategies for maximising the take up of all spaces within the proposed carpark levels.</p> <p>Application is supported subject to imposition of recommended conditions of consent.</p>
Landscape	<ul style="list-style-type: none"> Proposed removal of mature [Cotton] Palms around the Arden St vehicle entry will be noticeable, and will result in a loss of amenity, as replacement with 'like-for-like' will not be possible due to reduced area; Retention of the [Canary Island Date] Palms in the beer garden is strongly supported due to the sense of place/character they provide, and their ability to be incorporated as site features, seating, night-time up-lighting etc; Additional details of exactly what is to be planted where are needed, particularly for the upper floors, where it will all be on podium, including Planting Plans and Plant Schedules; Maintenance/management regime for all common area planting and balconies etc; Landscaped area deficiency (no deep soil) <p>Application is supported subject to imposition of recommended conditions of consent.</p>
Health	<p>Additional information is required, including:</p> <ul style="list-style-type: none"> A Detailed Site Contamination Investigation to determine if a Remediation Action Plan is required. A remediation strategy and remedial action plan for asbestos contamination. Amendment of the acoustic report to address areas of concern identified in the referral comments. Further details on the on-going management for new commercial and residential uses, as well as the public space. A Plan of Management for the Eat Street outlets and amphitheatre. <p>Application is supported subject to imposition of recommended conditions of consent.</p>
Heritage	<p>Additional information is required, summarized as follows:</p> <ul style="list-style-type: none"> The Heritage Impact Statement (HIS) prepared by Weir Phillips Heritage & Planning significantly relies on the findings and Statement of significance contained in the <i>Conservation Study of the Coogee Bay Hotel</i> by Orwell and Peter Phillips Architects, 1989. This Study is more than 30 years old and, was prepared "on the instructions of Horizon Architects Pty. Ltd, acting on behalf of Terry Page Hotels Pty Ltd". The HIS has failed to provide an updated and more relevant Statement of Significance that addresses the heritage item currently in relation to the proposed development. Failure to prepare a Statement of Significance is reflected in several other issues as detailed below. The proposed demolition of the inter war building attached to the western side of the Hotel building fronting Coogee Bay Road potentially devalues the heritage values of the site considerably. The HIS should

	<p>comprehensively address the heritage significance of this two-storey brick Inter War building.</p> <ul style="list-style-type: none"> • The impact of the proposed residential shop top housing on the context and setting of the heritage hotel looking west along Coogee Bay Road from the corner of Coogee Bay Road and Arden Street has not been assessed. The assessment should address the height of the proposed residential tower component (which appears higher than that presented in the Pre-DA proposal); its visual bulk and scale given the exceedance in FSR; and its articulation (comprising a jagged/saw tooth design to maximise private views to Coogee Bay). Regarding the setting, the HIS should address in detail, both as a backdrop to the heritage hotel and as a streetscape element, the proposed departure (of the residential shop top component) from the current fine-grain pattern on Coogee Bay Road where traditionally buildings have upper levels parallel to the street. • The DA includes Drawing No. DA201 and various montages showing the heritage hotel in relation to the new western residential shop top housing component when viewed from Coogee Beach/foreshore. The HIS should provide a thorough analysis of the visual bulk and scale impacts of the western residential shop top housing component on the heritage hotel and its immediate streetscape setting when viewed from critical vantage points on the beach and foreshore. • In addressing Council's Pre-DA comments, the HIS, a number of times, prefaces its response with the following comment: <i>"There are no works proposed the heritage buildings on the site"</i> (sic) (p118). Similarly, <i>"The is no work proposed to the Beer Garden, it is retained as existing"</i> (sic) (p120). However, the Statement of Environmental Effects (p.26) states that <i>"the proposed alterations to the hotel include a new entry located off the pedestrian through-site link and Coogee Bay Road"</i> and <i>"an additional 10 new hotel rooms will be included to the internal area of the western extent of level 1 to enhance the hotel offering"</i>. In addition to reiterating the broad statement that <i>"the Coogee Bay Hotel has a dynamic history of alteration and change"</i>, the HIS should also clarify and discuss in detail how and to what extent these alterations to the hotel relate to the conservation policies contained in the <i>Conservation Study of the Coogee Bay Hotel</i> by Orwell and Peter Phillips Architects, 1989. <p>Application is supported following the receipt of amendments that were in accordance with the two (2) requests for information.</p>
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As stated, the referral comments outlined above were in response to the original 2021 development application, prior to any amendments and prior to the Class 1 Appeal through the Land and Environment Court. Most matters raised above have been addressed within the proposal development (as amended) following discussions between the Applicant and Council's appointed experts (Planning, Urban Design, Traffic, Heritage, Landscape and Environmental Health) throughout the Class 1 Appeal and LEC conciliation process. Where the development has not resolved specific matters, recommended conditions of consent have been provided to be imposed in any consent to ensure these matters are resolved.

The outstanding issues raised by Council officers and experts are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Randwick Community Participation Plan and Randwick Comprehensive Development Control Plan 2013.

The notification included the following:

- A published notification on Council’s website;
- A sign placed on the site; and
- Notification letters sent to adjoining and adjacent properties.

Throughout the assessment, the application has been publicly notified two (2) times. A total of 492 unique individual submissions have been received over both notification periods. The two petitions, counting as 1 unique submission each, brings the total to 494.

An additional 6 unique submissions were received outside of the public notification period, including 1 from the Office of the Dr Marjorie O’Neill MP on behalf of a resident who has previously made submissions, and another from a resident following the Council meeting held on 26 March 2024 who has previously made submissions. This is a total of **500 unique submissions**. See Table 8, below:

Table 8: Summary of Submissions

	Total Submissions	Unique Submissions	Of the Unique Submissions - No. of Unique Objections	Of the Unique Submissions – No. of Unique Supporting
29 July – 11 September 2021	437 (inc. 2 petitions)	356 (inc. 2 petitions)	352 (inc. 2 petitions)	4
30 March 2023 – 1 May 2023	148	138	138	0
Additional Submissions	18	6	6	0
Total Submissions	603	500	496	4

Note: A “unique submission” means a submission that is in substance unique, distinctive or unlike any other submission. It does not mean a petition or a submission that is substantially the same text. The same issue may be raised in unique submissions, and one individual/household can potentially submit more than one unique submission. In the assessment of this application, any submission that was substantially the same text, or submission from an individual that consisted of essentially the same text, or duplicated from another submission, has not been included as a “unique submission”.

There have been two (2) petitions received opposing the proposal. Each petition is considered as one (1) unique submission in the assessment below.

- A letter from Dr Marjorie O’Neill MP advising her office has received over 1,000 signatures on a petition titled “Save Coogee Village from Overdevelopment”; and

- A petition organised by the Coogee Bay Precinct with 4,028 names opposing the development, increasing to at least 9,336 during the assessment of the application and at the time of writing this report.
- The DA was initially placed on public notification from **29 July 2021** for 30 days, resulting in 286 unique submissions. As a result of a number of residents requesting an extension, Council extended the notification period until 11 September 2021. A total of 356 individual submissions were received in response to the application, which consisted of 352 submissions opposing the proposal and 4 submissions supporting the proposal – inclusive of the petitions.
- The amended documentation lodged for the DA in **March 2023** was placed on public notification between 30 March 2023 and 1 May 2023. A total of 148 additional submissions were received, with 138 new unique submissions addressing concerns on the proposed amendments (ten (10) submissions received were duplicates).
- The amended documentation lodged for the DA in **March 2024** was not placed on public notification, as the modifications made to the proposal were minor (i.e. supporting detail to assist in the assessment of the application, rather than built-form changes). This is in accordance with Section 3.5.1 of the RDCDP13. In the lead-up to the Council Ordinary Meeting on 26 March 2024, 17 additional submissions opposing the development were received, with six (6) new unique submissions opposing the development.

The issues raised in these submissions are considered in **Table 9**.

Table 9: Community Submissions

Issue	Number of Submissions	Comment
View Loss and View Retention	103	<ul style="list-style-type: none"> • A revised View Sharing Report was prepared in response to the first RFI, and an assessment of the key properties that identified concern with potential view loss in their submission (dated March 2023). • 27 dwellings were inspected, and 18 modelled using photomontages. • An assessment against the planning principles of <i>Tenacity</i> are provided within ATTACHMENT C.
Building Height and Scale of Development	360	<ul style="list-style-type: none"> • The proposal (as amended) remains non-compliant with the maximum height of buildings standard (12.0m) and FSR standard (1.5:1). • Retention and adaptation of the heritage façade and components of the existing buildings (i.e. not just facadism), in conjunction with

		<p>setbacks of the proposed building form, assists in removing the perception of bulk from the public domain (particularly Coogee Bay Road).</p> <ul style="list-style-type: none"> • In combination with the additional work carried out within the View Sharing Report and amendments made to the overall scheme, there is merit in positioning the proposed bulk to the west, and to visually separate the additional scale away from the Coogee Bay Hotel (item of local heritage significance). • The non-compliant height and overall bulk are located in the areas of the existing Boutique Hotel and along Vicar Street, which already exceed the current LEP height standard. • An assessment of the relevant standards for building height and floor space ratio, and reasons why the variation is acceptable for the circumstance of the case, is in Section 3 of this report.
Appearance and Impact to the Village Feel (Streetscape)	360	<ul style="list-style-type: none"> • Façades have been refined in the proposal (as amended). The presentation to Coogee Bay Road predominately reads as two-and-three storeys through the retention of the Hotel façade and the attached western façades along Coogee Bay Road; and three storeys fronting Vicar Street, with greater activation and articulation to the presentation of the ground floor levels. • Upper levels that exceed the building height standard are located where there is an existing non-compliance (e.g. Boutique Hotel and Vicar Street corner – See Figure 9 and 10) and are otherwise well setback to minimise the perception of bulk and scale from a human scale, and to minimise environmental impact.
Solar Access and Overshadowing	92	<ul style="list-style-type: none"> • Revised solar access and shadow diagrams have been provided.

		<ul style="list-style-type: none"> • Shadows as a result of the development do not fall upon the Coogee Bay Foreshore – in the afternoon the development site is self-shadowing, given that the bulk of development is to the west of the site (Vicar Street side). • An assessment of solar amenity and overshadowing impacts is provided in ATTACHMENT D. <p>To summarise:</p> <ul style="list-style-type: none"> • Given the site's context and location within Coogee and in conjunction with the developable land area of 8,501m², the development lends itself to high-density development. Thus, it is accepted that at higher densities, sunlight is harder to protect and the claim to retain it is not as strong. • 230 Arden Street is immediately south of the development site, thus the contextual relationship between the two sites will inevitably result in some overshadowing. <ul style="list-style-type: none"> ▪ The eastern lot, with the Coogee Bay Hotel, is constrained by development due to the heritage significance of the Hotel. The massing has been subject to discussions with Council's Urban Design Team and Heritage Experts. ▪ The new hotel wing complies with the maximum height of building standards. ▪ The hotel lot complies with the FSR standard. ▪ The new hotel wing is appropriately setback from the southern boundary (8.0m); the driveway entry is single storey in scale and is setback 900mm from the boundary. • 17 Vicar Street is immediately south of the development site:
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		<ul style="list-style-type: none"> ▪ There is an improvement to solar access (and thus residential amenity) as a result of increased building separation (i.e. 15A Vicar St is being demolished).
Traffic Generation and Safety	216	<ul style="list-style-type: none"> • Submissions raised that the traffic counts did not occur during peak summer months. The provision of parking, loading facilities, traffic management and safety will be subject to the satisfaction of Council, with recommended conditions of consent on any approval requiring Council to be satisfied; including Plans of Management and Traffic-related conditions. • The development overall is an improvement to the number of off-street parking spaces that existing development provides. Currently, off-street parking consists of ten (10) parking spaces within the footprint of the Boutique Hotel, and the 'drive-thru' driveway of the "Coogee Bay Barrel".
Anti-Social Behaviour / Noise Generation	65	<ul style="list-style-type: none"> • The operations of the site will be subject to approved Plans of Management, with recommended conditions of consent ensuring that anti-social behaviour and noise generation is minimised. • Police NSW provided a detailed referral and response letter, identifying that the area is well known for alcohol related violence. Conditions were provided that have been implemented into the recommended conditions of consent, with comments that are to be integrated into the plan(s) of management.
Impact to Existing Businesses	81	<ul style="list-style-type: none"> • An Economic Impact Assessment has been provided (dated September 2022), that concludes a substantial net benefit to the community would result from the development:

		<ul style="list-style-type: none"> ▪ Significant improvement to the range of retail facilities available to residents. ▪ Improvements in choice and allow for price competition. ▪ Creation of additional employment – expected 1,230 jobs created directly and indirectly.
Heritage	80	<ul style="list-style-type: none"> • Improvements to the overall scheme have been accommodated by retaining the Hotel, and components of the western buildings, including façade along Coogee Bay Road, and Arden Street entry including original beer garden elements. • A couple of submissions questioned the heritage status of the building on the corner of Vicar Street and Coogee Bay Road. The heritage amendments (Randwick Comprehensive Planning Proposal & Randwick LEP 2022 Review) do not include the site known as “227-233 Coogee Bay Road”. • Recommended conditions of consent have been included for further investigation to be carried out to ascertain if the Arden Street palm trees can be retained or transplanted within the site.
Loss of Trees	31	<ul style="list-style-type: none"> • Trees to the south-east of the site are proposed for removal. There has been significant community concern relating to the removal of the <i>Washingtonia robusta</i> (Fan Palms), with both RFIs requesting further investigation into the retention of the palm trees and as to whether they could be transplanted elsewhere on site. • The Arboricultural Impact Assessment (dated 27th September 2022) identifies that additional input from service providers would be required to ascertain the retention of the trees. Recommended conditions have been prepared to this effect, in addition to conditions requiring

		amendments to the landscape design package.
Loss of Affordable Rental Housing	27	<ul style="list-style-type: none"> It has been identified that there will be a loss of affordable rental housing. The loss of affordable rental housing is subject to recommended condition(s) of consent requiring the payment of contributions and to provide assistance (including financial and relocation assistance) to those living in affordable rental housing to find new accommodations.
Disruption as a Result of Construction	10	<ul style="list-style-type: none"> Dilapidation Reports and management of noise, sediment and erosion control, and site management during construction are subject to standard recommended conditions of consent. TfNSW require work permits and ROLs ("Road Occupancy License) for any construction works, hoardings or vehicles that are required to be external to the site boundaries; or that disrupt the classified road network. These requirements are included in the recommended conditions of consent.
Misleading Plans/Illustrations/Concept Art	2	<ul style="list-style-type: none"> 3D concepts and illustrations are not key documents approved as part of the determination. Though some 3Ds (such as massing diagrams) assist in the overall assessment and understanding of the proposed built form, environmental impacts have been assessed based on floor plans, sections, elevations and the architectural scaled details provided on the architectural plans, and specialist reports.
Waste Generation	4	<ul style="list-style-type: none"> Operational and construction waste is subject to recommended conditions of consent.
Foreshore Scenic Protection and Coastal Management	23	<ul style="list-style-type: none"> Refer to Section 3 for the assessment against SEPP (Resilience and Hazards) 2021.
<i>Overshadowing/Sun Access</i>		

<p><i>Scenic Quality and Visual Impact</i></p>		<ul style="list-style-type: none"> • SEPP 65 (Design Quality of Residential Apartment Development) and the Apartment Design Guide (ADG) requires living rooms and apartments of at least 70% of apartments in a building to receive a minimum of 2.0 hours direct sunlight between 9am and 3pm for Sydney Metropolitan Areas. An assessment of the relevant standards relating to overshadowing is provided in ATTACHMENTS B AND D. The application provides solar access and shadow diagrams for 9am-3pm in alignment with the ADG. • Submissions raise that the non-compliance with building height results in overshadowing to the foreshore and beach, however the massing that exceeds the building height standard, as illustrated on the shadow diagrams, does not extend beyond the existing Coogee Bay Hotel in the afternoon (3pm). Further, the orientation of the site (i.e. northern frontage to Coogee Bay Road) ultimately results in mostly southern overshadowing to 17 Vicar Street and 230 Arden Street (addressed in ATTACHMENT D). • Visual Impacts and Scenic Quality (private, and from the public domain) are considered acceptable, as addressed in ATTACHMENTS C and D of this report.
<p>Objectives of the Randwick LEP12</p> <p><i>(a) to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline and</i></p> <p><i>(b) to protect and improve the visually prominent areas adjoining the coastal foreshore</i></p> <p><i>(c) to protect and improve significant public views to and from the coast</i></p>	<p>3</p>	<ul style="list-style-type: none"> • As above, the provided shadow diagrams are in accordance with the requirements of SEPP 65, and the ADG. • The visual impact from foreshore areas is considered acceptable, as outlined in ATTACHMENT C of this report. The Coogee Bay Hotel (being of local heritage significance) remains the primary focal point when viewed between the row of Norfolk Pines along

<p><i>(d) to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.</i></p>		<p>Arden Street (when viewed from the principal public domain areas of Dolphins Point, Goldstein's Reserve and Rainbow Walkway/Coogee Beach.</p> <ul style="list-style-type: none"> • The proposed southern hotel wing is comparable in height, form, scale and materiality, without visually removing the significance of the original Hotel building, nor the row of Norfolk Pine trees. • As outlined throughout this report and the attachments, it is considered that the visual impact is acceptable for the context of the development.
<p>Consistency with the Local Character Area and Local Strategic Planning Statement</p> <p>The development site is located within the North Coast Local Character Area, outlining the following:</p> <ul style="list-style-type: none"> • <i>Ensure view corridors to the coast are maintained from public spaces</i> • <i>Improve active transport opportunities, including access to the nearby Randwick Health and Education Precinct</i> • <i>Ensure the form, scale and density of new infill development is consistent with the local character</i> • <i>Ensure design excellence through the introduction of detailed controls for the Coogee Beach town centre</i> • <i>Maintain the area's sensitive scenic and environmental attributes</i> • <i>Promote native tree planting in public parks and reserves and on local streets</i> • <i>Continue to ensure that the high value coastal areas of the LCA are safe, clean and accessible to the community</i> • <i>Build on the strong native flora character of the LCA and protect and enhance native plant communities for future generations</i> • <i>Maintain the village feel at Coogee and Clovelly beaches</i> 	<p>N/A</p>	<ul style="list-style-type: none"> • Submissions outline that the development is inconsistent with the foreshore character and scenic protection objectives (submissions relating to the foreshore and views are discussed above in this table) and the "village feel" strategic direction of the (draft) Local Strategic Planning Statement (LSPS) exhibited in 2019. • It is considered that the development, as discussed throughout this report, is consistent with these principles, as: <ul style="list-style-type: none"> ▪ The development has ensured view sharing by articulating and separating the proposed western massing (i.e. break through the centre of the built form); ▪ The development is sited proximate to public recreational spaces and transport routes; ▪ The form and scale reads as three-storeys from the immediate public domain (Coogee Bay Road and Vicar Street). Given the size of the development site and preference to separate the bulk of development from the Coogee Bay Hotel (item of local heritage significance), and

		<p>positioning of massing where there is an existing exceedance to the building height standard, the form, scale and density is acceptable on merit.</p> <ul style="list-style-type: none"> ▪ The development has been subject to Class 1 proceedings that have facilitated discussions between the Applicant and Council's Heritage and Urban Design Experts to ensure design excellence and a positive design response. ▪ Scenic Protection is addressed within this table, and in ATTACHMENT C of this report. ▪ The development is an improvement to the deep soil and landscape setting of the site and facilitates new native tree plantings. ▪ Subject to conditions of consent (particularly for Plans of Management), the development will contribute to the safety, cleanliness and accessibility of the community. ▪ Integration of the three-storey façade to Coogee Bay Road and Vicar Street retains the 'village feel', with the massing of the residential units setback and articulated behind the public domain to minimise the visual impacts from the public domain.
<p>Comments raised within the Government Architect's Expert Review (2010)</p>	<p>N/A</p> <p>(generally duplicated submissions & the petitions)</p>	<ul style="list-style-type: none"> • The Government Architects' 2010 review related to a conceptual development for a 7 level residential building, 3 levels of hotel over 2 levels of retail (including supermarket), and a 4 level function and conference facility. This concept plan was revoked and not considered under Part 3A. The project did not proceed. • Notwithstanding different development controls at the time of the concept, the document

		holds no weight for the current application , with the relevant controls and objectives addressed within this report.
Support		Comment
Additional restaurants and hospitality businesses	4	<ul style="list-style-type: none"> An Economic Impact Assessment has been provided (dated September 2022), that concludes a substantial net benefit to the community would result from the development: <ul style="list-style-type: none"> Significant improvement to the range of retail facilities available to residents. Improvements in choice and allow for price competition. Creation of additional employment – expected 1,230 jobs created directly and indirectly.
Upgrades are positive (Rejuvenation of the area) & “Eat Street/Selina’s Lane” are a good idea.	2	<ul style="list-style-type: none"> As per the comment above.

4.4 Resolution of Ordinary Council Meeting on the 26th March 2024

Randwick Councillors met on Tuesday 26 March 2024 for the March Council Meeting, where the Agenda included the redevelopment of Coogee Bay Hotel under DA/437/2021. Provided below is the Resolution of Council (in **bold**), followed with an assessment response under each point.

a) make a submission to the Sydney Eastern City Planning Panel in relation to the Coogee Bay Hotel DA/437/2021;

The submission has been received and the points raised are addressed below.

b) include a reduction of one floor from each of the north-western and south-western corners of the Mixed-Use lot and a commensurate reduction in parking spaces;

The removal of one floor from these corners is the equivalent of four (4) penthouse apartments (GFA of 906m²) and 6 parking spaces based on the number of bedrooms to these apartments, plus one visitor space (7 parking spaces total).

The assessment of the proposed development (as amended) has found that:

- The proposed massing is in alignment with comments provided to the applicant throughout the DA assessment and LEC proceedings to refine the design to only exceed the height of buildings where the existing Boutique Hotel (i.e. the south-western corner) and Vicar and Coogee Bay Road corner (i.e. north-western corner) building non-compliances are located.
- The View Analysis (as amended) and assessment of the view loss impacts, with due consideration of the massing of existing height and FSR non-

compliances, has identified that the impact is reasonable from the key affected properties – assessment of views provided in **ATTACHMENT C**.

- A Positive Covenant on the title of the eastern lot will be imposed (imposed by recommended condition of consent) to restrict development resulting in additional gross floor area, with the western lot to accommodate the planned massing that would otherwise be accommodated, if not for the heritage context and contribution of the Coogee Bay Hotel.
- The height of the south-western corner does not exceed the roof height (ridge level) of the existing Boutique Hotel and is therefore commensurate with the existing height of buildings in this part of the site.
- The height of the north-western corner exceeds the existing Vicar Street and Coogee Bay Road building height by approximately 500mm at Level 4, which is setback 6.24m from the Coogee Bay Road boundary. However, the visual bulk is less pronounced than the existing building given that the additional storeys have been setback from the street frontage with limited visibility of built form greater than 12.0m from the public domain.

Thus in this instance, the additional bulk in these locations, in conjunction with the footprint being in locations where there is an existing building height non-compliance, is considered a reasonable and suitable built design.

c) include a further set-back from Arden Street of the southern hotel wing to reduce overshadowing and prevent the removal of the Washington Palms;

The urban design outcome for the new southern hotel wing (and any development on the “hotel lot”) has been subject to considerable discussions throughout the simultaneous DA assessment and LEC proceedings. Council’s Urban Design and Heritage teams resolved to retain the exposure (‘openness’) of the outdoor Beer Garden and the proposed separation of the new hotel wing from the heritage item.

The location of the new hotel wing has been assessed as supportable for the following reasons:

- The setback of the new hotel wing is comparable to existing structures on the site. The existing southern side of the pub (to be partly demolished) is approximately setback 10.0m from the southern boundary. The existing drive-through bottle shop (“Coogee Bay Barrel”) has a roof that extends to the southern boundary. The new hotel wing is setback 8.0m and the new driveway has been setback 1.0m from the boundary, providing a landscape strip to soften the visual impact of the proposed built form.
- The “hotel lot” is subject to a recommended condition of consent to place a Positive Covenant on the Title that will restrict any further additional GFA to that approved by this development. This appropriately limits any further massing on the site.
- The overshadowing impact as a result of the proposed built form is reasonable (Refer **ATTACHMENT D**).
 - 230 Arden Street is immediately south of the development site, thus the contextual relationship between the two sites will inevitably result in some overshadowing.
 - The ground floor units of 230 Arden Street with north-facing windows are most affected by the development on June 21

- (additional overshadowing occurs between 9am through to 3pm).
- There is an increase to the solar access received into the rear open space at 1pm.
- The eastern lot, with the Coogee Bay Hotel, is constrained by development due to the heritage significance of the Hotel. The massing has been subject to discussions with Council's Urban Design Team and Heritage Experts.
- The new hotel wing complies with the maximum height of building standards.
- The hotel lot complies with the FSR standard.
- The new hotel wing is appropriately setback from the southern boundary (8.0m)
- The proposed hotel wing offers an amenity compromise, in that it acts as an acoustic barrier from the primary hotel (pub) and function room uses.
- The proposed overshadowing is considered acceptable in this instance given the heritage context, significant setback, and land zoning. The overall development site area (8,501m²), and preference to retain the Coogee Bay Hotel with separate proposed additions, lends itself to a higher density of development around the perimeter of the development site - thus, it is accepted that at this higher density, sunlight to southern development will be harder to protect.

Lastly, there is no specific numerical standard applicable to setbacks for the mixed-use development within the B2 Local Centre zone under the RLEP12 nor RCDP13. Generally, the setbacks are an improvement to the existing circumstance and offer greater landscape amenity, such as through the landscaped driveway roof.

Community concern with respect to tree/palm removal from the Arden Street frontage is acknowledged. Discussions with Council's Landscape Officer provided the following comments (paraphrased) during the assessment of the DA and LEC proceedings:

- The palms within raised planter boxes will be difficult to retain or transplant, as they would be destabilised from the required demolition. The Landscape Officer was satisfied that retention of these palms may not be feasible.
- Similarly, the removal of electrical services (owned by Ausgrid) including the substation and underground cabling require further investigation as to whether, and how, the trees can be transplanted and relocated within the site.

A suite of recommended conditions of consent (**ATTACHMENT A**) seek further investigation of tree retention and refinement of the proposed landscaping of the site in the instance the palms can be retained and transplanted (extracted below):

"The applicant must contact Ausgrid to ascertain whether the Washingtonia robusta (identified as Tree 8A, Tree 8, Tree 10, Tree 11, Tree 12, Tree 13, Tree 14, Tree 14A, Tree 15, Tree 15A, Tree 15B in the Arboricultural Impact Assessment Report prepared by Jacksons Nature Works dated 27 September 2022) can be reasonably transplanted within the site in light of the proximity of the relevant trees to Ausgrid assets and

potential for transplantation to impact those assets. If Ausgrid does not provide a substantive or complete response to the developer's enquiry, the applicant is to obtain a report from a building services and/or electrical engineer.

Documentary evidence from Ausgrid (and a building services and/or electrical engineer in the circumstances described above) and a minimum AQF level 5 arborist is to be submitted to the Council demonstrating whether the relevant trees can be retained by way of transplanting, or whether they must be removed entirely.

If the documentary evidence confirms to the satisfaction of the Council that the relevant trees must be removed (and not transplanted) due to their proximity to the Ausgrid assets, the relevant trees may be removed in accordance with the Arboricultural Impact Assessment Report prepared by Jacksons Nature Works dated 27 September 2022.

If the documentary evidence confirms to the satisfaction of the Council that the relevant trees can be retained by way of transplanting despite their proximity to the Ausgrid assets, the developer is to submit a tree relocation plan to the satisfaction of the Council demonstrating the locations for transplantation of the relevant trees. The relevant trees must then be transplanted and successfully established in the locations shown on the approved tree relocation plan."

And:

"Approval is granted for removal of the following vegetation from within this development site, subject to full implementation of the adopted Landscape Plans, including the Palm Replacement Strategy shown on Sheet 6.13 by Oculus:

- a. The group of various palms along the southern site boundary, adjacent the existing 'through-site driveway' and Beer Garden, comprising from west to east, 8A, 8, 9, 9A, 10, 11, 12, 13, 14, 14A, 15, 15A, 15B & 18 as identified in the Arborist Report.*

NOTE: *Council must firstly provide written confirmation that Condition [above] has been satisfied before the approvals listed above can physically take place."*

Tree retention has therefore been resolved by implementing recommended conditions of consent.

- d) include a plan to rehouse current onsite residents in local affordable accommodation; and**

Recommended conditions of consent (**ATTACHMENT A**) are in accordance with the provisions of SEPP (Housing) 2021, in that contributions for the loss of affordable rental housing will need to be paid by the applicant. Funds collected by Council are transferred to the Department of Communities and Justice to fund affordable rental projects. Further, a supplementary recommended condition of consent has been included to assist in the relocation of persons displaced as a result of affordable housing being demolished:

Extract of recommended condition on any consent:

"Each current residential tenant as of the date of determination of this development consent shall be:

- a. *Provided with a minimum of 3 months' Notice to Vacate;*
- b. *Assisted to find alternative comparable accommodation. This shall include genuine efforts in making enquiries with local real estate agents and/or relevant community housing providers; and*
- c. *Provided with a one-off payment of \$2,500.00 for each two bedroom unit and \$3,000.00 for each 3 bedroom unit, to assist with relocation expenses.*

The applicant shall inform the tenants of the units of this condition, and documentary evidence shall be submitted to Council showing that the tenants have been notified and that the one-off contribution payment to each tenant has been paid, prior to the issue of the first Construction Certificate.

Note: This condition has been imposed in consideration of the matters set out in Section 47 of the State Environmental Planning Policy (Housing) 2021."

e) include provision for some of the one-bedroom units to be affordable housing.

There is no enforceable requirement under any environmental planning instrument that a development must provide affordable housing. The only exception is if a residential development is carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation, pursuant to State Environmental Planning Policy (Housing) 2021. This development is not being carried out on behalf of AHO or LHC.

Recommended conditions of consent (**ATTACHMENT A**) are in accordance with the provisions of SEPP (Housing) 2021, in that contributions for the loss of affordable rental housing will need to be paid by the applicant to fund future affordable rental housing projects (funds are transferred to the Department of Communities and Justice). Further, a supplementary recommended condition of consent has been included to assist in the relocation of persons displaced as a result of affordable housing being demolished.

5. KEY ISSUES

In addition to the concerns raised by public submissions addressed above, the following **key issues** are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Height, Floor Space Ratio (FSR), Urban Design and Bulk and Scale

The key issue of urban design and bulk and scale generally relate to the variations sought to the height of building and FSR standards. The extensive Class 1 Appeal and Conciliation process resulted in refinements to the presentation of the proposed development with respect to height, storeys and urban presentation, and these have been formally submitted to Council in March 2024. As identified within this report and its attachments, urban design matters (including heritage) have been resolved through refinement of the proposal, including:

- Retention of heritage fabric, particularly extending retention to additional buildings within Coogee Bay Road; and retention of the Arden Street/Beer Garden entry and colonnade detailing.
- Deletion of pergola structures that added to visual bulk seen within Coogee Bay Road.

- Additional setbacks to storeys above the three-storey streetscape presentation along Coogee Bay Road and Vicar Street to minimise visual bulk.
- Massing subject to where existing building height variations occur, and the provision of a break in the built form to support view sharing and retention.

Height and FSR are discussed further below.

Height

Pursuant to Clause 4.3 of RLEP 2012, a maximum height of 12m is applicable to the subject site. The proposal seeks a maximum overall building height of 21.35m (78% variation). The site has existing building height variations, with the existing Boutique Hotel currently at a building height of 19m (7.0m variation), and corner of Vicar Street and Coogee Bay Road buildings at a building height of 14.5m (2.5m variation). The Coogee Bay Hotel also currently exceeds the current height standard being 15.5m, however, no change to the envelope of the hotel is proposed.

- The height of the south-western corner does not exceed the roof height (ridge level) of the existing Boutique Hotel and is therefore commensurate with the existing height of buildings in this part of the site.
- The height of the north-western corner exceeds the existing Vicar Street and Coogee Bay Road building height by approximately 500mm, however, the visual bulk is less pronounced than the existing building given that the additional storeys have been setback from the street frontage with limited visibility of built form greater than 12.0m from the public domain.

The proposed massing is in alignment with comments provided to the applicant throughout the DA assessment and LEC proceedings to refine the design to only exceed the height of buildings where the existing Boutique Hotel and Vicar and Coogee Bay Road corner building non-compliances are located.

The massing of the building footprints for the proposal (as amended) achieves a reduction in overshadowing. Overall, the Coogee Bay Road façade has been refined to read as three-storeys with the pergola structures deleted to address Design Excellence. The presentation of the proposal to the public streetscape provides a better design outcome by integrating into the three-storey massing along Coogee Bay Road.

The View Analysis and assessment of the view loss impacts, with due consideration of the massing of existing height non-compliances, has identified that the impact is reasonable from the key affected properties – assessment of views provided in **ATTACHMENT C**.

FSR

Pursuant to Clause 4.4 of the RLEP 2012, a maximum FSR of 1.5:1 is applicable to the subject site.

- Proposed FSR (DA lodged): 15,209m² (1.79:1 or 19.27% variation)
- Proposed FSR (as amended March 2023): 13,488m² (1.59:1 or 5.8% variation)
- Proposed FSR (as amended March 2024): 13,456m² (1.58:1 or 5.5% variation)

The overall variation to the standard, in the context of the total development site area of 8,501m², is 5.5%. Upon the subdivision of the site, splitting the heritage Hotel (eastern lot) and the shop-top/mixed use (western lot) into separate lots:

- FSR on the eastern lot complies with the standard.
- FSR to the western lot does not comply, with a 25.35% variation.

A recommended condition of consent is in place to restrict additional development to the Hotel (eastern) lot through a Positive Covenant on Title. This will ensure that no further massing will occur as a result of future development (*i.e. prevents double-dipping as a result of the proposed subdivision of the eastern Hotel lot, with the 'western' residential/mixed-use lot accommodating the bulk of the development across the entire development site*).

Resolution: The issue of building height and FSR has been resolved through a detailed assessment and consideration of the submitted Clause 4.6 requests (as amended) to vary the building height and FSR standards. This is well-detailed in **Section 3** of this report, which finds the variations acceptable for the circumstance of the case, and sufficient environmental grounds to support the variations.

Additionally:

- On balance, given the size of the site; the retention/restoration and siting of the Heritage Listed Building (Coogee Bay Hotel); and that the variation is 5.8%, the variation to FSR is reasonable.
 - The supermarket has been deleted from the proposed development.
- Desired future character outcomes have been achieved through the refinement of the three-storey presentation; additional setbacks to the upper levels, and appropriate placement of built form and massing.
- Massaging the built form to refine the building massing through height and floor area has reduced the extent of the impact caused by additional overshadowing;
 - Visual impacts have been appropriately addressed by modifying the proposed massing to provide a view corridor between two parts of the site that have an existing building height non-compliance and the three-storey presentation to Coogee Bay Road.

5.2 Parking and Access

No Plan of Management (or a similar traffic control plan) has been provided to outline how vehicle access to/from Arden Street are managed, nor the dedication of parking spaces to each use/tenancy, including dedicated visitors parking or the use of loading/unloading and waste services.

Resolution: An amended traffic impact statement was prepared and reviewed by Council's traffic expert. Recommended conditions of consent are imposed to address outstanding matters including restrictions on the use of the loading dock and parking spaces; ensuring the minimum parking requirements are met in terms of design and provision (including accessible) and; design certification.

The recommended conditions of consent include the preparation of a Plan of Management to ensure operational safety and use of the parking and loading areas. The Plan of Management is to be approved by Council's Manager Development Assessment prior to the issue of any construction certificate.

5.3 View Loss

A key consideration for this development application is the extent of view loss as a result of the proposed variations to the height of building (12.0m, pursuant to Clause 4.3 of the Randwick LEP12) and floor space ratio (1.5:1, pursuant to Clause 4.4 of the Randwick LEP) sought by the development.

The general planning principles pertaining to views have been established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* ('Tenacity'). A detailed Visual Impact Assessment Report (dated

March 2023) accompanied the amended DA and has taken into consideration a number of properties that were identified from public submissions and included in the December 2021 RFI letter to Council's request.

A detailed assessment of view loss is provided in **ATTACHMENT C**.

Resolution: The issue has been resolved through a detailed assessment and consideration of the potential for view loss, view retention and view sharing. The view impact resulting from the proposed built form is considered acceptable on the following grounds:

- The tree line (Norfolk Island pines / *Araucaria heterophylla*) will not be affected by the development, with none of these trees along Arden Street to be removed.
- The Coogee Bay Hotel, being an item of local heritage significance, remains the primary viewpoint from the principal public domain locations identified above. The Hotel remains visible between the Norfolk Island pine trees. The Vicar Street massing to the west of the development site replaces the Boutique Hotel hipped roof, extending further to the east (without detracting from the hipped roof and form of the Coogee Bay Hotel). Further, the break in the massing to accommodate view sharing through the centre of the development contributes to the roofline pattern visible from the public domain.
- The extent of the proposed massing above the 12.0m building height standard is compatible with the wider valley setting and foreshore character, particularly when the broader view incorporates the Crowne Plaza and 6-storey to 8-storey developments further to the south along Beach, Arden and Carr Streets; and the existing protrusion of the Boutique Hotel roof line.
- The proposed massing that will be viewed from along Coogee Bay Road is consistent with the existing three-storey character. The upper levels that exceed the building height standard are acceptable on the grounds that the bulk viewed is visually recessive by utilising compatible colours and materials (Subject to recommended conditions of consent) that will integrate into the wider view catchment from the public domain.

5.4 Solar Access and Overshadowing

A key consideration for this development application is the resulting overshadowing of neighbouring residences (230 Arden Street and 17 Vicar Street) and solar access to the public domain given its proximity to the Coogee Bay Foreshore.

A detailed assessment of solar access and overshadowing is provided in **ATTACHMENT D**.

Resolution: The issue has been resolved through a detailed assessment and consideration of the impacts on neighbouring residential neighbours (17 Vicar Street and 230 Arden Street). There is no significant additional overshadowing falling upon the beach or foreshore, given the bulk of the development is to the west of the site. The impact resulting from the proposed built form and overall development is considered acceptable on the following grounds:

- **230 Arden Street** is immediately south of the development site, thus the contextual relationship between the two sites will inevitably result in some overshadowing.
 - The eastern lot, with the Coogee Bay Hotel, is constrained by development due to the heritage significance of the Hotel. The massing has been subject to discussions with Council's Urban Design Team and Heritage Experts.

- The new hotel wing complies with the maximum height of building standards.
- The hotel lot complies with the FSR standard.
- The new hotel wing is appropriately setback from the southern boundary (8.0m); the driveway entry is single storey in scale and is setback 900mm from the boundary.
- **17 Vicar Street** is immediately south of the development site:
 - There is an improvement to solar access (and thus residential amenity) as a result of increased building separation (i.e. 15A Vicar Street is being demolished).
 - The ground floor southern fire egress has been refined with a minimum 5.0m setback with landscaping to improve the relationship between the site and 17 Vicar Street

5.5 Noise/Acoustic Assessment

The 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023 came into force on December 1st 2023, amending the terms of acoustic regulation for licensed premises under the Liquor Act 2007. The Coogee Bay Hotel is a licensed premises. This means that noise-related conditions of development consent and 'offensive noise pollution' laws will no longer apply when such matters are regulated by the Liquor Act 2007. This reform however does not mean Council can no longer assess acoustic impacts, simply that the consent authority cannot impose conditions relating to the emanation of noise from licenced premises.

However, the noise criteria issued by Liquor and Gaming (L&G) NSW have not changed, and therefore the Coogee Bay Hotel will be subject to the standard L&G NSW noise criteria, which are particularly stringent after midnight.

The potential for noise to impact on adjoining properties, and future residents of the development, is an important consideration given the nature of existing and proposed operations and the proximity to sensitive land uses. The application was accompanied by an Acoustic Assessment prepared by Renco Tonin (September 2023); however Council's Environmental Health team have identified the following shortfalls in the data and modelling:

- *The number of patrons proposed in the applicant's proposed Plan of Management is 3,468. When this number is combined with the 768 patrons in the Eat St venues, the Coogee Bay Hotel (CBH) site could hold 4,168 people.*
- *The most recent statement of current patron numbers for the Hotel is 3,250 , which was in 2004 and appears to represent a de-facto current patron number.*
- *In this situation, noise emissions from the site will consist primarily of music and patron conversation and the level of these noise types is generally proportional to the number of people on that site.*
- *As such, the proposed change in patron numbers from 3,250 to 4,168 represents and intensification of the use of the site. That intensification has not been properly addressed by the applicant's acoustic consultant.*
- *The applicant has not demonstrated using acoustic modelling or calculations that the levels of noise inside apartments with windows open (for natural ventilation) from the Hotel will comply with i) the post-midnight noise criterion issued by the L&G NSW and ii) the internal levels will comply with AS2107.*
- *The environment in which the proposed residents within the development will live is likely to comprise noise from patron conversations, music and occasional shouting. If suitable measures*

are not provided to attenuate these types of noise, there is strong potential for the noise to become subjectively hostile for residents.

- Internal noise goals for entertainment noise need to be nominated for residential premises and hotel rooms.*
- The target sound levels inside apartments proposed by the applicant's acoustic engineer are too high to ensure satisfactory acoustic amenity for guests and residents when the external noise is from the Hotel.*
- Given the number of uses of the site with the Hotel and the Eat St, an Acoustic Master Plan of Management for the entire Hotel and Eat Street site would allow proper planning and determination of the cumulative impacts of the Hotel's commercial activities and the Eat St venues on residents living within the Hotel site and nearby.*
- Objective data for expected sound levels inside venues is not provided.*
- This is particularly relevant for the Function room as this room could potentially hold a loud rock band, and noise emissions could seriously impact the hotel and residential rooms.*
- The applicant has however, provided objective data for the Pre-Function room, but the assumed sound levels are far below the demands of patrons and management with contemporary music and a younger demographic.*
- The applicant's acoustic report states only that the noise will comply everywhere and provides no objective data showing that compliance at facades and internal rooms. As such we conclude that with this level of information, there is a high risk of non-compliance with the L&G criteria.*
- There are no statements of noise level from each patron area, which would enable assessment of the risks for loss of amenity.*
- The applicant's consultant claims to have undertaken acoustic modelling using the software CadnaA, but has not submitted any of the results or the model and modelling parameters to Council for assessment*
- The applicant's acoustic report states that a small increase of 2 dB above the current noise is predicted at one residential location. However, there is no statement of what the current level is or how it was assessed. The applicant's expert could not state how many patrons were present at the time the noise level in the beer garden was measured, but simply stated that it was "a busy Saturday".*
- The acoustic report states that noise emissions from the refurbished ground floor areas of the Hotel are expected to be essentially the same as existing noise emissions. However there is no discussion about the extent to which noise from the ground floor areas currently complies at nearby receivers to confirm this statement.*

In summary, there is a significant lack of quantitative information that is required to make a comprehensive assessment of the proposals with respect to acoustic amenity.

Further, the applicant has not provided their modelling/data for Council to assess.

Resolution: The issue can be resolved through recommended conditions of consent as outlined in **ATTACHMENT A**. This includes the recommended Deferred Commencement Condition requiring a Masterplan Noise Assessment to effectively mitigate and manage noise associated with the development and to ensure an appropriate level of amenity for residents.

Condition 127 is also recommended requiring a comprehensive Plan of Management to be submitted prior to the issue of an Occupation Certificate which includes compliance with the approved Coogee Bay Hotel Masterplan Noise Assessment.

Condition 145 then requires a suitably qualified and experience acoustic consultant to be engaged to assess, monitor and report on the noise from the development and compliance with the Noise Masterplan and relevant noise criteria within six months of the issuing of the Occupation Certificate.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and in the recommended draft conditions at **ATTACHMENT A**.

7. RECOMMENDATION

That the Development Application DA/437/2021 for Demolition of buildings, works to the Coogee Bay Hotel, including refurbishment to provide for 18 hotel rooms, a new 3 storey building to the southern side of the beer garden with an additional 13 hotel rooms (resulting in a total of 31 hotel rooms), construction of a 5/6 storey shop top housing comprising 58 dwellings, 11 retail premises, internal pedestrian laneway from Coogee Bay Road, basement parking for 159 spaces, subdivision, landscaping and associated works (Local Heritage Item, variations to FSR and height of buildings of the RLEP 2012, Integrated Development) at 212 Arden Street, Coogee (legally described as Lot 1 in DP 872553), 227-233 Coogee Bay Road, Coogee (legally described as Lot A in DP 437308), 5-7 Vicar Street Coogee (legally described as Lot B in DP 437308), 15A Vicar Street Coogee (legally described as Lot A in DP 337724) **be APPROVED by way of a DEFERRED COMMENCEMENT CONSENT** pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* **subject to** the draft recommended conditions of consent attached to this report at **ATTACHMENT A**.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Detailed SEPP 65/ADG Assessment
- Attachment C: Detailed View Loss/Impact Assessment
- Attachment D: Detailed Solar Access/Overshadowing Assessment
- Attachment E: Architectural Plans
- Attachment F: Clause 4.6 Request – Height of Buildings
- Attachment G: Clause 4.6 Request – Floor Space Ratio
- Attachment H: View Sharing Assessment (March 2023)