

27 February 2024

The General Manager
Randwick City Council
30 Frances Street
Randwick NSW 2031

[Att: Mr Gerard Turrisi]

Dear Gerard

DA/80/2023: 138 Maroubra Road, Maroubra

This Addendum to Statement of Environmental Effects has been prepared to accompany amended Architectural Plans and supporting documentation.

This amended package has been prepared involving the following documents:

Document	Author
Architectural Plans	DJRD Architects
SEPP 65 Design Verification Statement	DJRD Architects
Landscape Plans	Place Design Group
View Impact Renderings and Methodology – Private Views	Virtual Ideas
Transport Impact Assessment	JMT Consulting
BASIX and ESD	SLR
Solar Access Report	SLR
Acoustic Report	SLR
BCA Report	Steve Watson & Partners

Table 1: Amended Documents submitted

The key amendments to the scheme are:

- Deletion of Level 8 of the scheme to provide a total of 56 no. units;
- Reduction in street wall height to deliver a 6 storey street wall to align to the main Pacific Square street wall east of the subject site;
- Typical floor re-planning to increase solar amenity to units;
- Amendments to the western façade to respond to requirements of the NSW Police Force; owners of the adjacent site to the immediate west.

1.0 Description of Proposed Development

This application seeks approval for the following development:

- Site preparation works including demolition of the existing commercial building and bulk earthworks;
- Construction and use of a 7 storey mixed-use development including:
 - 2 x retail tenancies on ground floor
 - 1 x commercial tenancy on Level 1
 - 56 apartments including:
 - 24 x 1 bed apartments
 - 13 x 2 bed apartments
 - 19 x 3 bed apartments
 - 3 level basement with driveway access via easement to Piccadilly Place, including:
 - 89 car parking spaces
 - 27 bicycle parking spaces
 - 5 motorbike spaces
- Landscaping to Level 1 and rooftop communal open spaces
- Extension / augmentation of services and utilities as required.
- Lot amalgamation.

Architectural drawings illustrating the proposed development are included at **Appendix A**. A photomontage of the proposed development is shown at **Figure 1**. Further detail is provided in the Architect's Housing SEPP Design Verification Statement included at **Appendix B**.



Figure 1 Photomontage of the proposed development from Maroubra Road looking east
Source: DJRD Architects

1.1 Numerical Overview

The key numeric development information is summarised in **Table 2**.

Table 2 **Key development information**

Component	Proposal	
<i>Site area</i>	1,518.5 sqm	
<i>Maximum Height</i>	31.56 m (top of plant) 27.15m (top of habitable floors)	
	Ground to Level 1	<ul style="list-style-type: none"> 0m to all boundaries
	Level 2 – 6	<ul style="list-style-type: none"> 0m to southern boundary (Maroubra Road frontage) 3.0m (closest point) and 5.6m from glass line of balconies to western boundary 3.0m to the northern (rear) boundary 5.04m (closest part) to the eastern boundary; built to boundary for front part of site fronting Maroubra Road
	Level 7	<ul style="list-style-type: none"> 3.1m to southern boundary (Maroubra Road frontage) 3.0m to western boundary 3.0m to the northern (rear) boundary 5.04m to the eastern boundary; built to boundary for front part of site fronting Maroubra Road
	Level 8 (rooftop)	<ul style="list-style-type: none"> 3.0m to southern boundary (Maroubra Road frontage) 3.0m to western boundary 3.0m to the northern (rear) boundary 5.04m to the eastern boundary; built to boundary for front part of site fronting Maroubra Road
<i>Apartments</i>	56	
<i>Apartment Mix</i>	1 bedroom	24
	2 bedroom	13
	3 bedroom.	19
<i>Car spaces</i>	89	
<i>Parking Allocation</i>	Resident	68 spaces (includes 12 for adaptable apartments)
	Visitor	8 spaces (includes 1 accessible)
	Retail + Commercial	13 spaces (includes 1 accessible)
<i>Communal Open Space</i>	739 sqm 594 sqm (COS with solar)	

1.2 Schedule of Amendments

A full list of the amendments prepared by DJRD Architects is provided in the below table 3.

Table 3 *Table of Amendments*

Number	Rev	Title	Change from Submitted DA to Amended DA	Reason for change
DA0.150	I	Cover Sheet Site Plan	No change	
DA0.151	I	DCP Envelope Analysis	No change	
DA0.152	G	Demolition Plan	No change	
DA0.153	G	Site Analysis Plan	No change	
DA1.101	K	Basement 3 Plan	Car added, north core altered, storage cages added	More efficient use of space. Restore missing cage to achieve ADG requirement
DA1.102	K	Basement 2 Plan	North core altered	Resulting from typical floor replan
DA1.103	K	Basement 1 Plan	North core altered	Resulting from typical floor replan
DA1.104	K	Ground Floor Plan	Cores and egress stair arrangements altered. Doors added to fore stairs	Resulting from typical floor replan. Respond to Council suggestion to improve access to upper levels in the event of lifts being out of action.
DA1.105	K	Level 1 Plan	Cores and egress stair arrangements altered. Commercial zone can now be more flexibly subdivided. Apartments replanned. 102 designated Affordable. 103 now 2 bed	Resulting from typical floor replan Affordable apartment nominated
DA1.106	K	Level 2 Plan	Replan entire floor plate. Cores altered. 202 designated Affordable.	Improve mid winter solar access. Delete one "pop- out" window on east in response to privacy concerns. Affordable apartment nominated
DA1.107	L	Level 3 Plan	As for Level 2 and west facing balconies now have wintergarden louvre screens in lieu of concertina shutters	Innovation in response to Police concerns on privacy and security.
DA1.108	K	Level 4 Plan	As for Level 3	
DA1.109	J	Level 5 Plan	As for Level 3	
DA1.110	J	Level 6 Plan	As for Level 3	
DA1.111	K	Level 7 Plan	Typical floor plate rather than setback east façade. Southern façade setback 3m	Removal of Level 8 allows increase in Level 7 perimeter without additional shadow on Pacific Square. Setback 3m in response to Council suggestion to reduce the street wall height on boundary.
DA1.112	K	Level 8 Plan	Apartments deleted. Communal Open Space significantly increased.	Deleted Benefit from deletion of apartments.
DA1.113	G	Roof Plan	As for Level 8	
DA2.100	J	Section A	Level 8 apartments deleted, and roof plant lowered	
DA2.101	F	Section B	Level 8 apartments deleted.	

Number	Rev	Title	Change from Submitted DA to Amended DA	Reason for change
			Level 7 southern façade setback 3m	
DA2.102	H	Section C	As Section B	
DA2.103	F	Section D	As Section B	
DA2.200	H	North Elevation	Level 8 apartments deleted, and roof plant lowered. Typical floor windows adjusted to suit new floor plan.	
DA2.201	H	East Elevation	As for North.	
DA2.202	H	South Elevation	As for North. Level 7 setback	
DA2.203	H	West Elevation	As for North Wintergarden louvre screens in lieu of concertina shutters Screens at roof level to be integrated with landscape added	Innovation in response to Police concerns on privacy and security.
DA2.302	H	Streetscape Elevations	As above.	
DA8.100	K	Schedules	Updated to suit new layouts	
DA8.200	D	ADG Adaptable Access and Dwellings - Sheet 1	Nominated apartments changed	Apartment plates replanned.
DA8.201	H	ADG Adaptable Access and Dwellings - Sheet 2	Nominated apartments changed	Apartment plates replanned.
DA8.202	D	ADG Adaptable Access and Dwellings - Sheet 3	Sheet now not needed	
DA8.250	I	ADG & Basix Compliance	Sheet updated to suit new apartment layouts	
DA8.270	C	View Impact and Shadow Study Setup	No change	
DA8.300	E	Shadow Diagram Plans Sheet 1	Sheet updated to show reduced shadow	Level 8 apartments deleted.
DA8.301	H	Shadow Diagram Plans Sheet 2	Sheet updated to show reduced shadow	Level 8 apartments deleted.
DA8.302	E	Shadow Diagram Plans Sheet 3	Sheet updated to show reduced shadow	Level 8 apartments deleted.
DA8.303	E	Shadow Diagram Plans Sheet 4	Sheet updated to show reduced shadow	Level 8 apartments deleted.
DA8.304	E	Shadow Diagram Plans Sheet 5	No change as no change in impact.	
DA8.305	F	Shadow Diagrams ADG Envelope	Sheet updated to show reduced shadow on Pacific Square at 2pm	Level 8 apartments deleted.
DA8.306	F	Sun Eye View ADG Compliant Envelope	No change	
DA8.309	H	Sun Eye Views Sheet 1	Sheet updated to show new scheme	
DA8.310	H	Sun Eye Views Sheet 2	Sheet updated to show new scheme	

Number	Rev	Title	Change from Submitted DA to Amended DA	Reason for change
DA8.320	E	Height Plane Analysis	Sheet updated to show new scheme. Breach or 25m height now one storey less.	
DA8.321	E	Pacific Square Shadow Study	Sheet deleted and replaced with DA8.325	
DA8.322	B	165-167 Maroubra Rd Shadow Impact Study	Lowest residential storey of 167 Maroubra now receives 2 hours mid winter light	Reduction in street wall height at Level 7 by recessing façade 3m.
DA8.323	B	165-167 Maroubra Rd Sun Eye View Study Sheet 1	Lower residential storeys of 165 and 167 Maroubra now receives more mid winter light	As above
DA8.324	B	165-167 Maroubra Rd Sun Eye View Study Sheet 2	Lower residential storeys of 165 and 167 Maroubra now receives more mid winter light	As above
DA8.325		Pacific Square Shadow Comparison Study	New sheet to study the mid- winter shadow impact on Pacific Square	Council request to provide more detail on impact
DA8.350	F	Open Space / Deep Soil Strategy	Significantly increased area of Communal Open Space.	Deletion of L8 apartments
DA8.400	F	External Material Schedule	Updated to include wintergarden concept	Innovation in response to Police concerns on privacy and security.
DA9.100	G	3d Views	General update to show new scheme	
DA9.150	F	Perspective Maroubra Road	Sheet deleted from submission to be replaced by CGI	
DA9.151	F	Perspective Piccadilly Place	Sheet deleted from submission to be replaced by CGI	
DA9.200	F	Neighbour View Study Sheet 1	Sheet deleted from submission to be replaced by view study package by Virtual Ideas	
DA9.201	E	Neighbour View Study Sheet 2	As above	
DA9.202	E	Neighbour View Study Sheet 3	As above	
DA9.203	E	Neighbour View Study Sheet 4	As above	
DA9.900	F	Maroubra Police Station - Potential Development Study	Police site concept reduced in height by one storey	To align height of Police site to the subject site.

2.0 Planning Assessment

This section considers the planning issues relevant to the proposed development as amended and provides an assessment of the relevant matters prescribed in section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This assessment is made against the amendments only and addresses items by exception. Therefore, this addendum should be read in conjunction with the Statement of Environment Effects of March 2023.

2.1 Environmental Planning and Assessment Act 1979

The Preliminary Site Investigation prepared by Douglas partners advises that, with respect to the Botany Sands Aquifer, “The groundwater is anticipated at levels above RL 20 m, which is above the proposed lowest basement level”. Pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the proposal is therefore ‘Nominated Integrated Development’ and an Aquifer Interference Approval is required from WaterNSW under s91 of the Water Management Act 2000.

It is noted that Council referred the application to Water NSW and that General Terms of Approval were issued on 1 May 2023.

2.2 Housing SEPP – Design Quality of Residential Apartment Development

The proposed development has been designed to provide all dwellings with a high quality of internal amenity and outlook mindful of its urban context. As outlined in the SEPP65 Statement prepared by DJRD Architects included with this resubmission, the proposal has been designed in accordance with the nine principles of the SEPP.

Whilst the proposal is almost entirely consistent with the Design Criteria, an alternative solution is proposed for a minor number of objectives where strict numerical compliance with the criteria is unable to be achieved due to the constraints of the site.

We refer to *Construction Development Management Services Pty Ltd v City of Sydney [2023] NSWLEC 1620* whereby the courts approved an apartment development which had no apartments that met the solar access design criteria in the ADG – however it was deemed that the design had optimised the broader, non-numeric, objective that the ADG sets for solar access. Thus it was firmly established that the Apartment Design Guide is focused on qualitative objectives, not rigid numeric compliance.

Key points of compliance and methods employed to achieve key objectives is discussed in **Table 4** and a general assessment of the proposal’s consistency with the objectives of the ADG is provided in **Table 5** and the SEPP65 Statement by DJRD Architects included at **Appendix B**.

Table 4 Consistency with the NSW Apartment Design Guide – Key Objectives

Clause	Proposal
3E Deep Soil Zones	<p>The site is located in Maroubra Junction, a strategic centre in the Eastern City District Plan. The site currently provides a basement to the entirety of the site and is constrained between existing dense development to the north and east.</p> <p>In accordance with the DCP control, the lower two floors contain non-residential space and are built to boundary.</p> <p>As an alternative to deep soil, planting has been provided on the proposed structure. The ADG acknowledges that on constrained sites in centres, achievement of deep soil may not be possible, particularly where there is non-residential uses at ground floor level.</p>
3F Visual Privacy	<p>The proposed development achieves the ADG objective for visual privacy through both meeting the design criteria for non-habitable room setbacks and presenting alternate solutions where required.</p> <p>The site has existing residential apartments to both the north and east. The Police Station to the west is considered a future development site and as such separation has been provided in conjunction with an indicative scheme prepared for that site. Privacy has been achieved at each floor and to each boundary.</p>

Clause	Proposal
3J Bicycle and Car Parking	<p>The site is located in close proximity to the major Anzac Parade bus routes that connect to the Sydney CBD. Although the reduced parking rates permissible in the ADG are not applicable to this development (that is, the site is not within 800m of a train station or light rail stop, nor in proximity to land zone B3 or B4), the application proposes a reduced rate to that prescribed in the Randwick DCP.</p> <p>The traffic engineer has carried out analysis and made recommendations that support the reduced parking provision in their report at Appendix E. This is discussed in the Section 4.7 below.</p>

Table 5 Consistency with the NSW Apartment Design Guide

Objectives and Design Criteria		Consistent
Part 3 Siting the Development		
Objective An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		✓
Design Criteria Communal open space has a minimum area equal to 25% of the site		✓ (739sqm, 48.6%)
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)		✓ (594sqm)
3E Deep Soil Zones		
Objective Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.		✓
Design Criteria Deep soil zones are to meet the following minimum requirements:		Alternate Solution
Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m ²	-	7%
650m ² – 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

3F Visual Privacy		
Objective		✓
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.		
Design Criteria		✓
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:		Alternate solution
Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m
3J Bicycle and Car Parking		
Objective		✓
Car Parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas		
Design Criteria		Alternate solution
For development in the following locations: on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.		
Part 4 Designing the Buildings		
4A Solar and Daylight Access		
Objective		✓
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
Design Criteria		✓
Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.		71.4%
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.		✓ 12.5%
4B Natural Ventilation		
Objective		✓
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents		
Design Criteria		✓
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.		64.3%

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	✓
4C Ceiling Height	
Objective Ceiling height achieves sufficient natural ventilation and daylight access	✓
Design Criteria Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	✓
Minimum ceiling height	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use
These minimums do not preclude higher ceilings if desired.	
4D Apartment Size and Layout	
Objective The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	✓
Design Criteria Apartments are required to have the following minimum internal areas:	✓
Apartment Type Minimum internal area	
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.	
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	✓
Objective Environmental performance of the apartment is maximised	✓
Design Criteria Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	✓
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	✓

Objective	✓															
Apartment layouts are designed to accommodate a variety of household activities and needs																
Design Criteria	✓															
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).																
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	✓															
Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	✓															
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	✓															
4E Private Open Space and Balconies																
Objectives	✓															
Apartments provide appropriately sized private open space and balconies to enhance residential amenity																
Design Criteria	✓															
All apartments are required to have primary balconies as follows:																
<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum depth</th></tr><tr><td>Studio apartment</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartment</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartment</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartment</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum depth	Studio apartment	4m ²	-	1 bedroom apartment	8m ²	2m	2 bedroom apartment	10m ²	2m	3+ bedroom apartment	12m ²	2.4m	
Dwelling Type	Minimum Area	Minimum depth														
Studio apartment	4m ²	-														
1 bedroom apartment	8m ²	2m														
2 bedroom apartment	10m ²	2m														
3+ bedroom apartment	12m ²	2.4m														
The minimum balcony depth to be counted as contributing to the balcony area is 1m.																
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	✓															
4F Common Circulation and Spaces																
Objective	✓															
Common circulation spaces achieve good amenity and properly service the number of apartments																
Design Criteria	✓															
The maximum number of apartments off a circulation core on a single level is eight.																
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
4G Storage																
Objective	✓															
Adequate, well designed storage is provided in each apartment																
Design Criteria	✓															
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:																
<table><tr><th>Dwelling Type</th><th>Minimum Area</th></tr><tr><td>Studio apartment</td><td>4m²</td></tr></table>	Dwelling Type	Minimum Area	Studio apartment	4m ²												
Dwelling Type	Minimum Area															
Studio apartment	4m ²															

1 bedroom apartment	6m ²
2 bedroom apartment	8m ²
3+ bedroom apartment	10m ²

At least 50% of the required storage is to be located within the apartment.

2.3 Local Environmental Plan

Table 6 Assessment against Randwick City Council Local Environmental Plan 2012

Clause	Provision / Standard	Proposal	
Clause 2.3 – Zone Objectives and Land Use Table	B2 Local Centre	Shop top housing	The proposed use is permitted with consent in the zone and in accordance with the anticipated use in the Maroubra Junction Centre DCP.
Clause 2.7 – Demolition requires development consent	Demolition must follow consent.		This application seeks consent for the demolition of all existing structures on site pursuant to this clause.
Clause 4.3 – Height of Buildings	25m	31.56m	<p>The maximum permissible height is 25m from existing ground. The proposed maximum height is 31.56 m (top of plant), which is an increase of 6.56m (26%).</p> <p>However, considering the urban nature of the site and the need to provide rooftop access, the roof plant sits higher than the main building bulk, which is 27.15m from existing ground, and increase of only 2.15m (8%) over the Height of Buildings control. Importantly, the breach of height does not deliver additional gross floor area above the LEP control.</p> <p>A request to vary the maximum building height development standard under Clause 4.6, provided in the below. .</p>
Clause 6.2 – Earthworks	Development consent is required for earthworks.		This application seeks development consent for earthworks. A geotechnical report and a preliminary site investigation has been prepared by Douglas Partners and submitted with the original application.
Clause 6.4 – Stormwater management	Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development addresses or meets listed criteria.		A civil design report has been prepared by SCP and submitted with the original application.
Clause 6.11 – Design excellence	Applies to the construction of a new building that will be at least 15 metres in height.		The design of the proposed development is considered to exhibit design excellence, as outlined in Section 4.6 of this SEE. The consent authority can be satisfied that this clause has been addressed, and that the proposed development contributes to the visual and built character values of Maroubra Junction.

2.4 Development Control Plan

The site is subject to the relevant provisions of the Randwick Comprehensive Development Control Plan 2013 (DCP). Specifically, the development is subject to the provisions set out in part D4 Maroubra Junction Centre. A

comprehensive analysis of the proposed development's consistency with the objectives and provisions of the DCP is provided in the Statement of Environmental Effects (Appendix P).

Section 3.42 of the EP&A Act makes it clear that the purpose of DCPs is to provide guidance on (a) giving effect to the aims of any environmental planning instrument that applies to the development and (b) facilitating development that is permissible under any such instrument.

DCPs are not statutes and must be applied flexibly.

In this instance, it has been demonstrated that the site cannot be amalgamated with the adjoining NSW Police Force site – for a number of reasons – not least that NSW Crown Lands has confirmed that the site is subject to an undetermined Aboriginal Land Claim and is also one of the busiest police stations in the Eastern Suburbs.

Section 4.15(3A) of the EP&A Act makes clear that when considering a standard contained within a DCP with which a development application does not comply, a consent authority must *"be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards"*.

The following assessment demonstrates that the proposed development employs a reasonable alternative solution to the relevant DCP provisions that achieves the relevant objectives of the DCP and is appropriate in the circumstances of the subject site and development proposal.

Key items of non-compliance are discussed below:

Table 7 DCP Controls

Control	Compliance Assessment
3.1.3 Maximum Building Envelope	<p>The maximum building envelope taken from DCP s3.1.3:</p> <ul style="list-style-type: none"> • 6 storeys • Two levels retail/commercial; residential above • 0m front setback • Up to 4 storeys/ 15 metres - 12m between habitable rooms and balconies- 9m between habitable rooms and balconies/non-habitable rooms - 6m between non-habitable rooms • 5 to 8 storeys/ 18-27 metres - 18m between habitable rooms and balconies- 13m between habitable rooms and balconies/non-habitable rooms - 9m between non-habitable rooms • COS: 25% of the total site area may be provided on a podium or roof(s).
3.1.4 Building Height	<p>This control refers to the block by block diagrams, which identify 6 storeys for the subject site. The application includes a Clause 4.6 Variation Request that provides a comprehensive assessment of the additional height proposed. The DCP objective for Building Height is considered satisfied, given that:</p> <ul style="list-style-type: none"> • Reasonable daylight and solar access has been retained to adjacent development and to the public domain; and • The development responds to the desired scale and character of Maroubra Road and the Maroubra Junction centre. <p>This is discussed further in the the following analysis.</p>
3.1.6 Building Separation	<p>This control refers to building separation distances between habitable and non-habitable rooms, which increase with building height. The privacy assessment provided in this SEE defers to the separation design criteria prescribed in the ADG, pursuant to SEPP 65. The proposed development achieves the ADG objective for visual privacy through both meeting the design criteria and presenting alternate solutions where required.</p> <p>The site has existing residential apartments to both the north and east. The Police Station to the west is considered a future development site and as such separation has been provided in conjunction with an indicative scheme prepared for that site. Privacy has been achieved as detailed in this analysis of this SEE.</p> <p>The relevant DCP objectives are met, being that visual and acoustic privacy is provided in accordance with the ADG objectives, landscaped communal open space is provided and overshadowing has been minimised.</p>
3.2.6 Block 6	<p>The proposed development comprises 7 storeys with rooftop plant and communal open space (greater than the 6 storeys anticipated in the DCP).</p> <p>Part residential is proposed on Level 1. However, the majority of this floor comprises commercial floor space. Detailed analysis of the Maroubra Junction context, the future desired character of the area and the amenity of both existing adjacent development and future development of the Police Station site a has informed the approach.</p>

Control	Compliance Assessment
	<p>Detailed comparison with the DCP C-shape envelope (anticipated on the subject site following amalgamation with the Police Station site) is provided in the architectural set provided in the amended plan set by DJRD Architects. Importantly:</p> <ul style="list-style-type: none"> • The DCP envelope does not deliver ADG standard solar access; • The DCP delivers increased solar impact to Pacific Square; • Does not deliver solar access to the internal communal open space areas; • Delivers only 28 dwellings to the subject site, as the main dwelling yield is proposed on the adjoining site. <p>In this alternative approach, the proposed development is considered to achieve the objectives of this control in that it reinforces Maroubra Road as the cross street, encourages a mix of uses in the core, provides communal open space away from traffic noise and is a lower in height compared to the existing adjacent development.</p>
3.2 Vehicle Parking Rates	<p>The proposed development does not include provision of parking at the rates specified in the DCP. As detailed in the traffic engineer's report in the submitted amended reports, the reduced rate is response to the conditions specific to the Maroubra Junction centre.</p>

3.0 Clause 4.6 Request to Vary the Height of Buildings Control

Clause 4.6 of the *Randwick Local Environmental Plan 2012* (LEP) enables Randwick City Council to grant consent for development even though the development contravenes the development standard Height of Buildings. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

- that the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. Guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**);
- demonstrates that the proposed variation is in the public interest (**Section 6.0**); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Section 7.0**).

Therefore, the DA may be approved with the variation proposed in accordance with the flexibility allowed under Clause 4.6 of the Randwick LEP 2012.

3.1 Development standard to be varied: Clause 4.3 Height of Buildings

Clause 4.3 states as follows:

(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.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

As illustrated in the extract at **Figure 2** below, the site is mapped with a maximum building height of 25m.

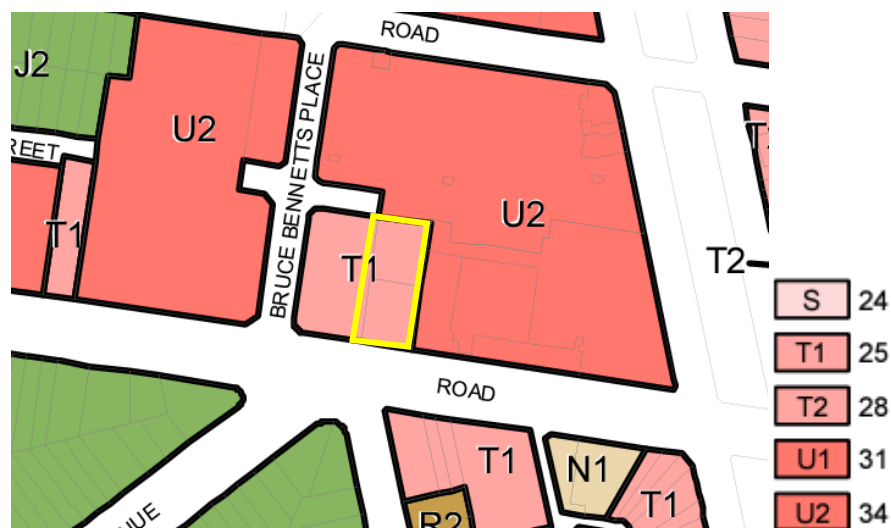


Figure 2 Extract of Height of buildings map (site in yellow)

Source: Randwick LEP 2012 with additions

3.2 Nature of the variation sought

As noted above, the site is mapped with a maximum building height of 25 metres. The proposed development seeks a maximum building height of 31.56 m (top of plant) and 27.15m (top of habitable floors).

The proposed maximum height of 31.56 m (top of plant) is an increase of 6.56m (26%) over the Height of Buildings control.

The proposed maximum height to the top of habitable floors is an increase of 2.15m (8%) over the Height of Buildings control.

The additional height does not deliver additional habitable gross floor area above the LEP control.

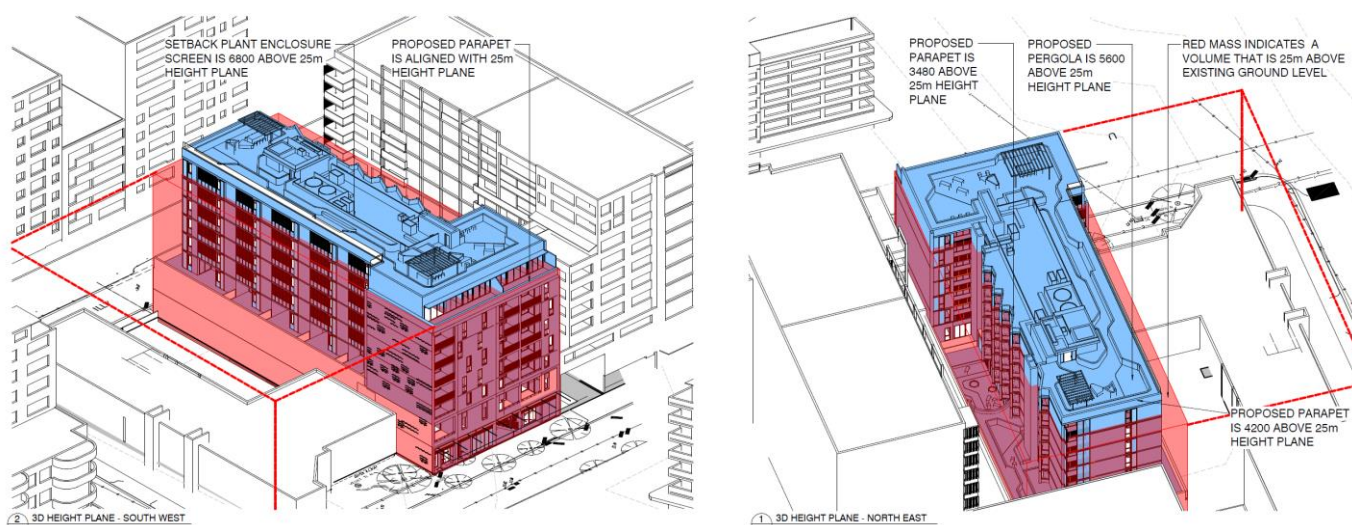


Figure 3 Maximum height above height plane to the plant enclosure

Source: DJRD Architects

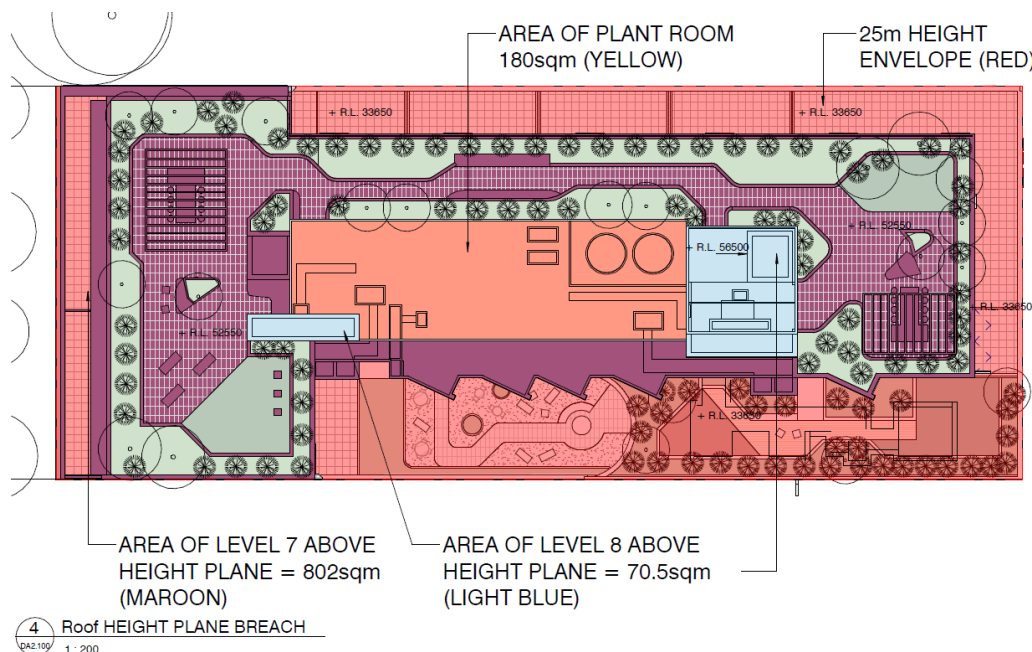


Figure 4 Area of envelope for each exceeding volume
Source: DJRD Architects

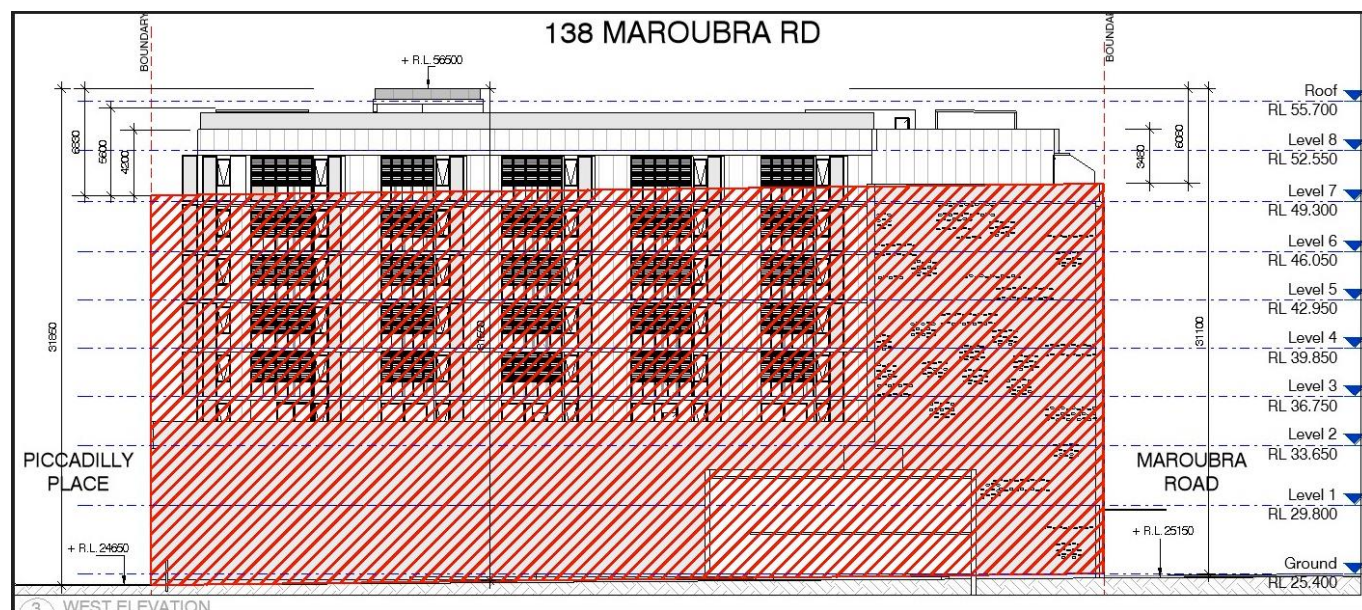


Figure 5 Comparison of 25 metre volume (red hatch) and proposed development volume
Source: DJRD Architects

3.3 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe, Preston CJ* of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While Wehbe related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis may be of assistance in applying Clause 4.6 given that subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see Four2Five at [61] and [62]; Initial Action at [16]).

The five methods outlined in Wehbe were:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Regarding the variation to building height, in this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The objectives of the development standard contained in Clause 4.3 of the Randwick LEP are:

- (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.*

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

The site is located in Maroubra Junction, on the key thoroughfare of Maroubra Road. The desired future character of the area is determined with reference to the following:

- Maroubra Junction is identified as a Strategic Centre in the Greater Sydney Commission's Eastern City District Plan, 2018. This was finalised 6 years following the Randwick LEP and DCP, but two years prior to the Council Local Strategic Planning Statement and supporting Local Housing Strategy.

The plan identifies that, "*Opportunities exist for Maroubra Junction to support growth and transport infrastructure investment in the south east of the District.*". The Plan provides strategic direction to Randwick City Council to provide a diverse mix of uses to strengthen and reinforce the economic role of Maroubra.

The proposed development contributes to the diversity of use in Maroubra Junction, comprising retail, commercial and residential floor space. The additional height allows access to the rooftop for amenity for residents that reinforce the role of Maroubra Junction as an economic centre with housing in easy access to job and services.

- In the Randwick City Local Strategic Planning Statement (prepared in 2020), the precinct is anticipated for additional density. Council's action is to undertake strategic studies (including the Town and Strategic Centres Transition Heights Review and Eastgardens-Maroubra Junction Strategic Centre Review) to integrate land use and transport to reflect Maroubra Junction's economic importance as a Strategic Centre.

The proposed development anticipates the critical need for integrated land uses with a density that is commensurate to the anticipated growth of Maroubra Junction. The proposed building height is lesser than its surrounds, which reflect the building heights on the 2012 LEP.

As noted, the LEP was made in 2012 and the surrounding buildings were already developed and therefore there was little opportunity to increase density in the centre to deliver additional job and housing density.

The subject site however is one of the few undeveloped sites in the centre that has scope to achieve these directives.

- Map 11 of the Randwick Housing Strategy (prepared in 2020) identifies the Maroubra Junction precinct as a key location of 10+ year (long term) housing growth opportunity, from 2026 onwards, to meet the demand of identified population growth in Randwick City.

The Local Housing Strategy (**LHS**) sets the 6-10 year (2021-2026) housing target for Randwick City as 4,300 dwellings. This is (on average) 860 per annum. According to the NSW Department of Planning, Housing and Infrastructure's Urban Development Program – Randwick Council has seen 563 housing completions from FY2020/21 through to 2022/23. This is (on average) 187 new dwellings per annum. There is therefore a compounding deficit of housing delivery in the LGA.

In addition, per **Figure 6** below, few are in the vicinity of the Strategic Centre of Maroubra.

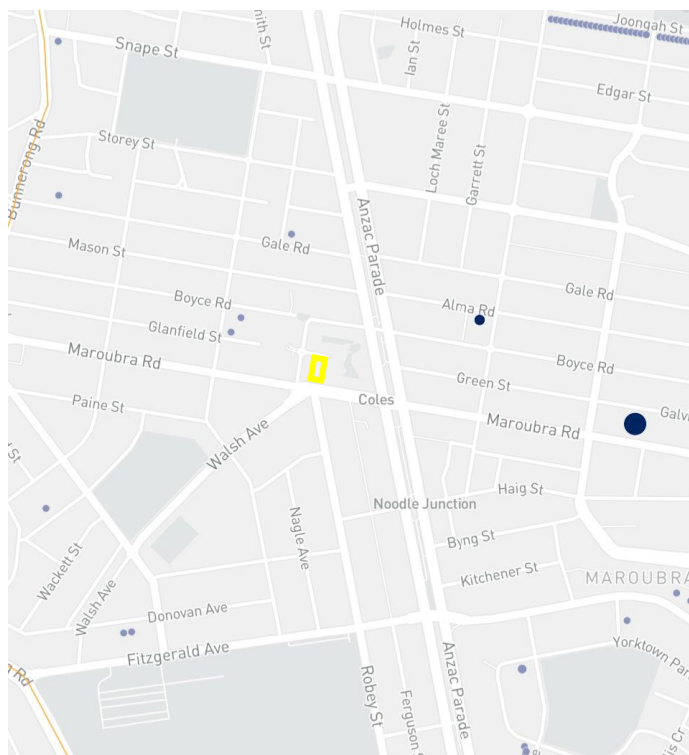


Figure 6 The LEP Height of Building map illustrating adjacent taller permissibility
Source: ePlanning Spatial Viewer

Strategically, the desired future character of the Maroubra Junction in Council's own LHS is for Maroubra Junction to be a location for housing delivery from 2026. Considering the shortfall of housing over the period 2020-2024, it could be deduced that the status quo of the 2012 LEP does not reflect the desired future character for Maroubra Junction as intended in the LHS.

Compatibility with the desired future character can also be characterised by the zoning provisions of the Randwick LEP 2012.

The Randwick LEP makes permissible taller development to the north, east and west of the subject site (refer **Figure 7**) with a clear north/south spine running along Anzac Parade as well as east/west axis north of Maroubra Road.

The lower height applied to the subject site is anomalous in this context. The existing built form adjacent the site is compliant with the taller, adjacent LEP height, and any compliant redevelopment of this site would be inconsistent with its context.

With respect to current and future urban design outcomes, lower development on the subject site is in fact incompatible with the planning context and would result in an incongruous street wall and poor amenity (solar, privacy) for future residents on the subject site particularly if strict adherence to the DCP block planning was to be adhered to.



Figure 7 The LEP Height of Building map illustrating higher building forms north, east and west of the site.
Source: ePlanning Spatial Viewer

Part D4 Maroubra Junction Centre in the Randwick DCP also outlines the desired future character for the precinct “to provide a mix of commercial, retail and residential uses that serve the needs of the local community”.

The site is in the DCPs “Block 6”. The most prominent development in this block is Pacific Square, which bounds both the north and east of the site. Development to the west of the site across Bruce Bennetts Place (Newington Towers) steps in height to be taller than the Pacific Square development.

The street elevation of Maroubra Road represented in **Figure 8** below clearly illustrates that the predominant height of development to the east and west of the site (and north of the site) is greater than the proposed development. The proposed development provides additional setback to the top floor to further reinforce the scale transition. The proposed development is compatible with the desired future character of the locality. As per the objective of the Height of Buildings Control.



Figure 8 Maroubra Road elevation
Source: DJRD Architects

In terms of the LEP Height of Buildings control, it is only to the site's south that the LEP does not permitted additional building height. However, as can be seen from **Figure 9** below, the street elevation of Bruce Bennetts Place shows that the proposed development provides a transitional scale between the Pacific Square development to the north and 165-167 Maroubra Road opposite the site.

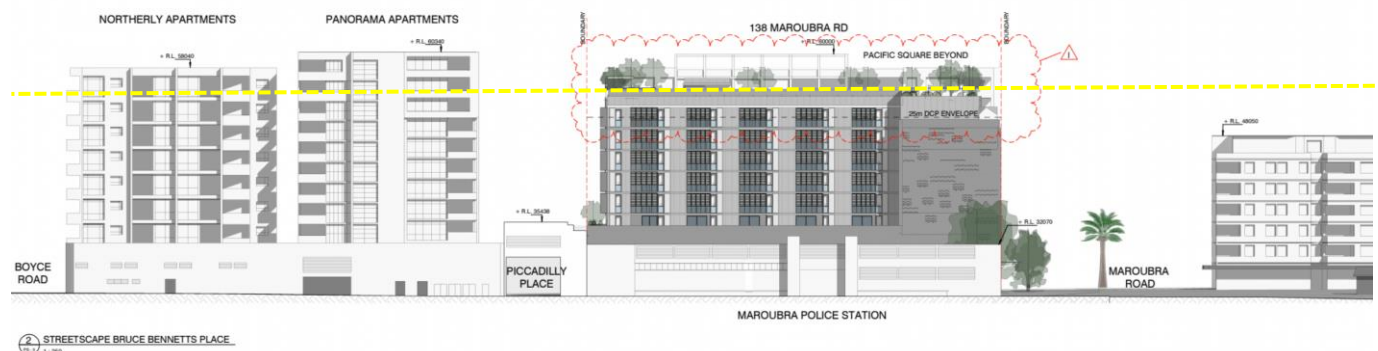


Figure 9 Bruce Bennetts Place elevation

Source: DJRD Architects

The proposed development therefore meets the objectives set out for Block 6 of the Maroubra Junction centre in that:

- It reinforces Maroubra Road as the cross street;
- It provides a mix of retail and commercial uses within the retail core; and
- It provides a transition in scale from the centre along Maroubra Road to the lower scale residential buildings on the periphery.

The proposed development is consistent with the adjacent built form (not anomalous) and provides a transition in scale from the development immediately north and east to the south, addressing the DCP objectives.

Objective (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 site does not contain any Heritage items of either State or local significance. The site is also not in a Heritage Conservation Area (HCA). Heritage Item (I227 in LEP schedule) at No. 2 Robey Street is located around 45m to the south of the site and is not affected by the proposal.

As such the proposal is not inconsistent with this objective.

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

The proposed additional height does not adversely impact on the amenity of adjoining and neighbouring properties. Each matter in this objective is discussed separately below.

Visual bulk

The proposed development presents an improvement to the bulk anticipated in the DCP C-shape volume, in two locations:

- The C-shape volume anticipates two blank wall ends to the “C” immediately adjacent the eastern neighbour – and the windows and balconies contained within Pacific Fair. Conversely, the proposed development presents one ‘end’, which is a continuation of the Maroubra Road street wall. To the rear of the site, the proposed volume is setback from the eastern boundary and provided with façade articulation. Further, communal open space at both Level 2 and Level 8 present a landscaped buffer to the eastern neighbour.
- The C-shape volume anticipates a continuous street wall along Piccadilly Place. The proposed development provides setback to both side boundaries, as well as to Piccadilly Place. In this manner, the extent of facade

facing Piccadilly Place is limited to a “finger” within the site boundaries, offering breaks to the visual mass of the volume as viewed by the northern neighbour.

It is acknowledged that there will be additional mass in the middle part of the site when compared to the ‘C’ shape of the DCP. Notwithstanding, this part of the site complies with the Design Criteria of Objective 3F-1 regarding Visual Privacy as it provides a setback greater than the requisite 4.5m for non-habitable rooms. This is further in accordance with the Design Guidance items of the ADG listed below:

- New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings.
- Direct lines of sight should be avoided for windows and balconies across corners.

The massing of the proposed envelope is compliant with the following envelope controls and development provisions prescribed in the Randwick DCP, demonstrating that the additional height does not effect the visual bulk of the proposal:

3.1.3 Building Envelope	<ul style="list-style-type: none"> • The GFA of the proposed ground and first floors does not exceed 80% of the maximum building envelope. • The GFA of the proposed residential floors does not exceed 70% of the maximum building envelope
3.1.5 Building Depth	<ul style="list-style-type: none"> • The depth of the proposed residential floors (glass line to glass line) does not exceed 18 metres, or 22 metres between perimeter walls
3.1.6 Building Separation	<ul style="list-style-type: none"> • The proposed development achieves the ADG objective for visual privacy either by meeting the design criteria or through alternate solutions where required, as detailed above.
3.1.7 Articulation	<ul style="list-style-type: none"> • The development is articulated on all facades, through the methods prescribed in this control. This includes balconies of varying depths, variations in floor-to-floor height at lower levels, recessed entries, vertical elements, fenestration that responds to use and a clear definition of the base, residential floors and recessed top floor.
4.1.4 Open Space	<ul style="list-style-type: none"> • The development has four landscaped zones. The area of communal open space exceeds the ADG minimum design criteria.

Privacy

The proposed additional height has been designed to avoid loss to neighbouring privacy.

The site has existing residential apartments to both the north and east. The Police Station to the west is considered a future development site and as such separation has been provided in conjunction with an indicative scheme prepared for that site.

Privacy has been achieved as follows:

North (Pacific Square)

- Up to 12m (4 storeys): ADG Design Criteria Compliant: > 6m to centre of Piccadilly Lane
- Up to 25m (5-7 storeys): 6m to centre of Piccadilly Lane. Alternative Solution: A retractable screen is provided to balconies, and a sliding screen to habitable windows on this façade.

For L8 Rooftop: Perimeter planting is provided to the rooftop terrace. The landscape architect has included a detail to illustrate the proposed height and arrangement of the planter to achieve privacy, refer **Appendix X**.

East (Pacific Square)

- Up to 12m (4 storeys): 5.04m to ‘slot windows’. ADG Design Criteria Compliant: Windows to habitable rooms have been oriented to face the northern boundary by means of a pop-out in the façade.
- Up to 25m (5-7 storeys): 5.04m to ‘slot windows’. Alternative Solution Windows to habitable rooms have been oriented to face the northern boundary by means of a pop-out in the façade.
- Over 25m (9+ storeys): Alternative Solution: Perimeter planting is provided to the rooftop terraces. The landscape architect has included a detail to illustrate the proposed height and arrangement of the planter to achieve privacy.

In addition, the proposed scheme has only bedrooms on the east side and pop-out windows control the view to the north to provide enhanced privacy.

West (Police Station – future development site)

- Up to 12m (4 storeys): 3m to boundary Alternative Solution: A screen is provided to balconies and habitable windows on this façade. These screens obscure overlooking and present as solid when fully closed. Further, the indicative scheme produced for the NSW Police Station site achieves ADG privacy design criteria without compromise to its indicative yield, which is comparable to the proposed development.
- Up to 25m (5-7 storeys): 3m to boundary Alternative Solution: A screen is provided to balconies and habitable windows on this façade. These screens obscure overlooking and present as solid when fully closed. Further, the indicative scheme produced for the Police Station site achieves ADG privacy design criteria without compromise to its indicative yield, which is comparable to the proposed development.
- Over 25m (9+ storeys): 3m to boundary Alternative Solution: Perimeter planting is provided to the rooftop terraces. The landscape architect has included a detail to illustrate the proposed height and arrangement of the planter to achieve privacy to the NSW Police station site adjacent.

The proposal has a side boundary setback of 3m. This is considered acceptable as the analysis of the Police Station site on DA9.900 indicates that a tower on that site could setback 9m (totalling 12m) without compromising the development potential of that site. This is shown in **Figure 10** below.

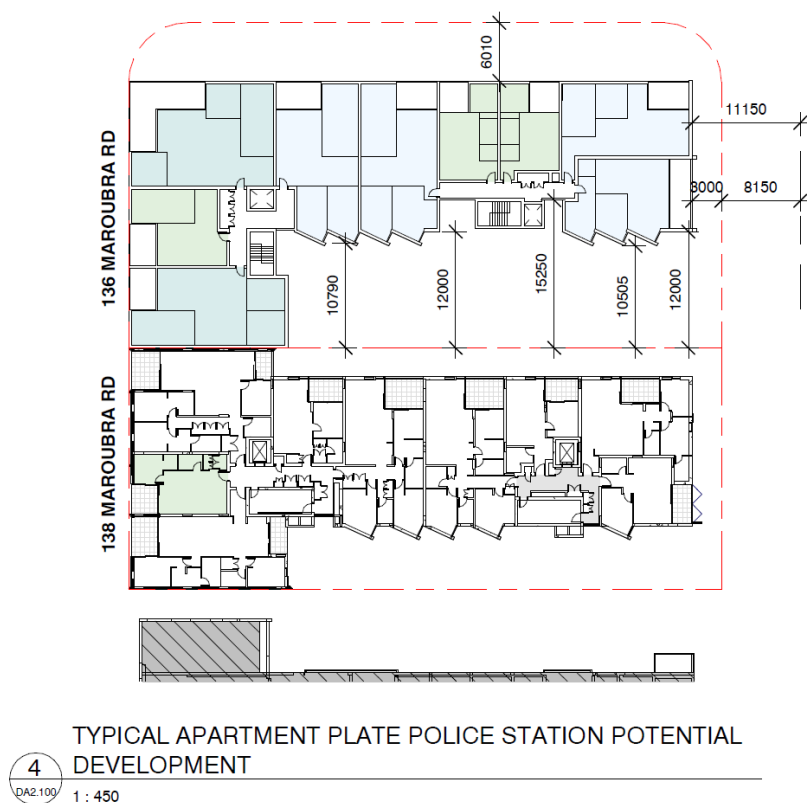


Figure 10 Typical residential floor of indicative Police Station scheme and setbacks
Source: DJRD Architects

Overshadowing

The proposed additional height does not result in adverse additional overshadowing of neighbouring properties and the public domain when considered against the DCP scheme. The architect has provided a detailed comparison against a compliant envelope on the site in the resubmitted drawing set.

The overshadowing assessment and outcomes is provided at **Table 8**.

Table 8 **Overshadowing assessment**

Subject	Assessment
West-facing façade of Pacific Square	The assessment produced excludes consideration of the childcare at Level 2 (above the podium) as there is a fabric shading awning that extends from the building across the terrace (refer Figure 11 Awning to Level 2). We also refer to the Education and Care Services National Regulations which require outdoor spaces to be shaded, however according to the SLR Consulting Solar Access Report indicates that the Childcare space will receive 2 hours of sunlight at a minimum.



Figure 11 **Awning to Level 2 Pacific Square**
Source: DJRD Architects

The west facing apartments of Pacific Square typically have their living room behind the balcony (refer **Figure 12**). The architect’s analysis of Levels 3 to 9 is illustrated at **Figure 13**.



Figure 12 **Typical level of Pacific Square apartments facing the subject site**
Source: Crone Nation Architects (Council records for DA1188/03)

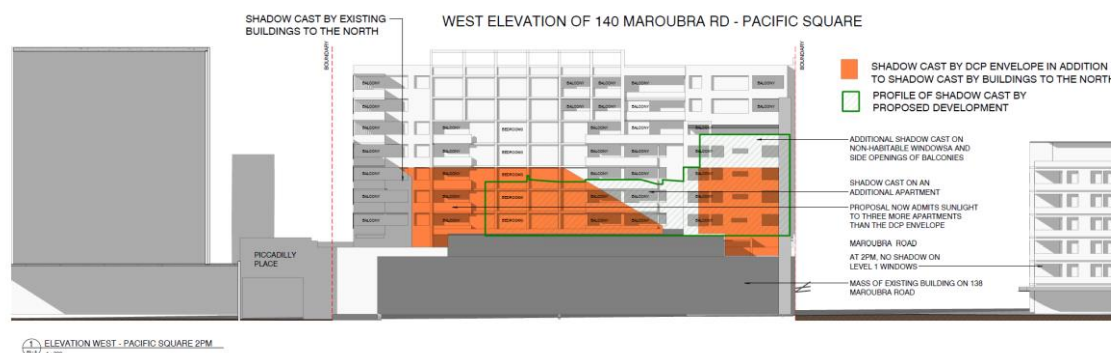


Figure 13 Overshadowing comparison of the west facing façade of Pacific Square (2pm)

Source: DJRD Architects

The façade receives direct sun at midday and begins to become shadowed at 2pm (after a two hour window).

- In existing condition, 4 apartments receive less than 2 hours solar to the balcony/living (being overshadowed by existing development to the north). Shown in grey in the figure above.
- The DCP envelope overshadows an additional 6 apartments. Shown in orange in the figure above.
- The proposed envelope overshadowing extent is illustrated by the green outline in the figure above and overshadows an additional 4 apartments (that is, two less than the DCP compliant envelope).
- It is noted that the balconies shown on the right of the façade (within the green outline) are corner balconies, with both north and west exposure.
- The analysis identifies that 74% of living rooms and balconies on the west façade of 140 Maroubra Road retain 2 hours solar, exceeding the ADG minimum.

In summary, the proposed development overshadows one less apartment when compared to the DCP compliant envelope however solar access per the ADG to Pacific Square is maintained.

The Level 7 rooftop terrace: Pacific Square

The sun eye view diagrams submitted with the amended DA pack demonstrate that the terrace to Pacific Square immediately east of the site received better solar access than what would be ordinarily achieved by a DCP compliant envelope and as per ADG 4A Solar and daylight access, which prescribes a minimum of 2 hours direct solar (minimum of 1sqm of direct sunlight, measured at 1m above floor level).

Maroubra Road – south of the site

The widened footway opposite the site is overshadowed, at least in part, by the existing Pacific Square development for most of the day in mid-winter. Part of the footway is exposed to direct solar from approximately 11am onwards. The proposed development casts additional shadow on the footway from approximately 4pm at mid-Winter. The footway dining area thus remains partially exposed to direct solar from 11am to 4pm, which is considered to be the critical period of solar access (lunch). The loss of solar access from 4pm is considered to be a minor environmental impact and not detrimental to the function of lunchtime dining or overall amenity at mid-winter.

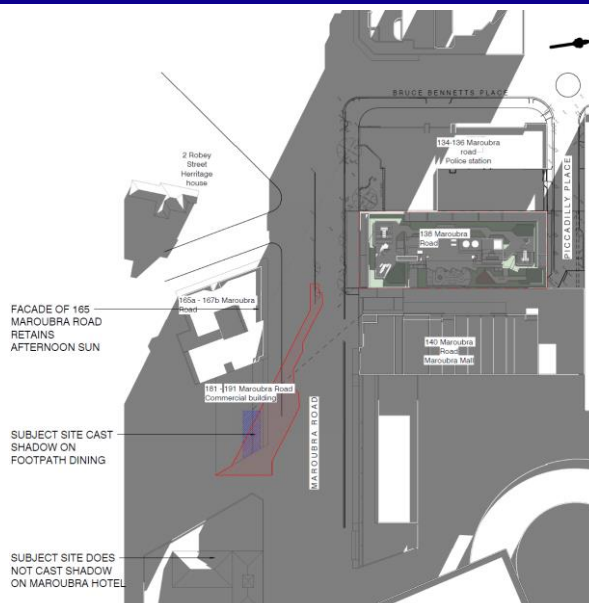


Figure 14 Additional overshadowing of the widened footway at 4pm

Source: DJRD Architects

Heritage property at 2 Robey Street

The 2 Robey Street lot currently receives direct solar from approximately 9.30am mid-winter. The proposed development casts some additional shadow to the front yard only and not to the building or its private open spaces. The additional overshadowing of this property is considered to be minor and does not present adverse impact to the property.

Northern façade 165-167 Maroubra Road

From levels 1 to 6, the northern façade of 165-167 Maroubra Road comprises 11 apartments with living and balcony facing north. DJRD Architects have analysed the extent of overshadowing of this development by the proposed, illustrated below in **Figure 15**.

The analysis has found that all Maroubra Road facing apartments except four apartments at Levels 1 and 2 continue to receive greater than 2 hours direct solar. The period of direct sun (1.5 hours) to these 4 apartments is not further reduced from the existing condition as a result of the proposed development.

Therefore, the additional height proposed does cause adverse impact to the solar amenity of these apartments.

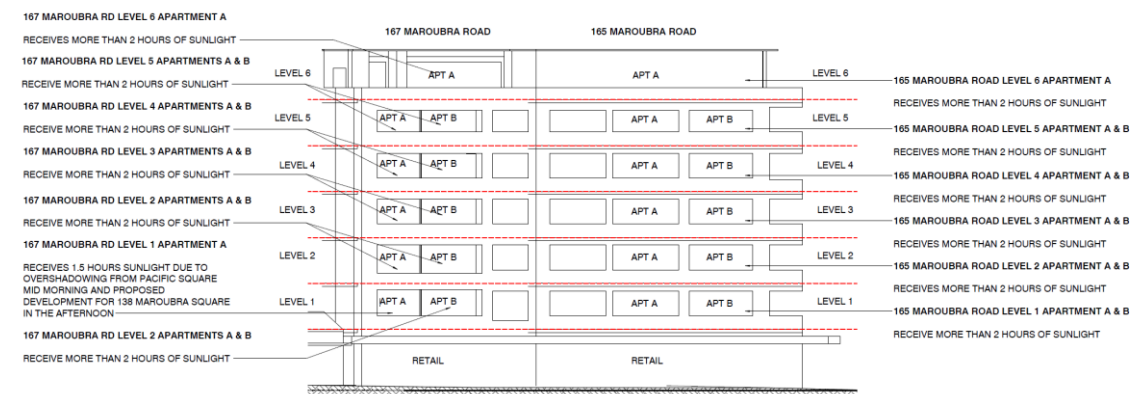


Figure 15 165-167 Maroubra Road – northern façade solar impact

Source: DJRD Architects

Views

To assess loss to viewing experienced by the adjacent existing development, a view sharing analysis has been conducted. The view sharing analysis is informed by the following source material:

- Plans of the Pacific Square development were received from Council's records on 11th July, 2022.
- A survey of the relevant facades of Pacific Square was carried out by Craig and Rhodes attached to the originally submitted SEE. The survey identifies the relative levels for each floor and the size and position of each window and balcony.
- View Impact Renders were produced by Virtual Ideas (located at **Appendix A** and included in this report). Four viewing states have been produced:
 - The current condition.
 - The current condition with LEP / DCP compliant envelope.
 - The current condition with the Lodged Scheme.
 - The current condition with the Revised Scheme (that is, the subject of this analysis).

Viewing from the development to the west of Bruce Bennetts Place is considered to be unaffected by the proposed development, given the proposed height does not exceed the existing Pacific Square development to the east. As such, the existing distant viewing past and above the Pacific Square development will not change.



The analysis considers only the dwellings of Pacific Square against the principles established by the courts in *Tenacity Consulting v Warringah [2004] NSWLEC 140 (Tenacity)*. Tenacity specifies a four step process:

- “26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
- 27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.
- 28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

- 29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing "reasonable".

For the purposes of this Addendum, only those views that are affected are analysed.

13.1 VIEWPOINT 09 - 1 Piccadilly Place (RL58.85m)



Figure 16 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle	Analysis
View to be affected	Medium to high density urban areas in the immediate foreground with distant low density areas further south. . The value assessment of the view is identified as low value.
Where view obtained	Outdoor balcony areas from the western most part of Pacific Square
Extent of impact	The proposed development will obscure only short term views of existing medium density residential development. It is considered low impact.
Reasonableness	There is a minor impact when compared to a DCP compliant envelope however the impact is of minor impact as it obscures only short distant views of existing medium density development.

14.1 VIEWPOINT 10 - 737 Anzac Parade (RL52.49m)

CURRENT CONDITION



CURRENT CONDITION WITH LEP/DCP COMPLIANT ENVELOPE



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (LODGED SCHEME)



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (REVISED SCHEME)



CAMERA POSITION



Figure 17 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle	Analysis
View to be affected	Medium to high density urban areas in the immediate foreground with distant low density areas further south and some distant water views of Port Botany. The value assessment of the view is identified as moderate.
Where view obtained	Outdoor balcony areas from Pacific Square, north of the site on Piccadilly Lane.
Extent of impact	The proposed development will obscure medium/long term views of existing lower density residential development and distant views to the horizon to the south. It is of moderate to severe impact
Reasonableness	A DCP compliant envelope would maintain some glimpses of a long term view – but obscure a large proportion of the immediate short / medium views. The proposed development will obscure longer term views of Port Botany. Considering the urban nature of the site and the impact of a compliant scheme, the impact is of moderate / severe impact.

15.1 VIEWPOINT 11 - 737 Anzac Parade (RL55.47m)

CURRENT CONDITION



CURRENT CONDITION WITH LEP/DCP COMPLIANT ENVELOPE



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (LODGED SCHEME)



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (REVISED SCHEME)



CAMERA POSITION

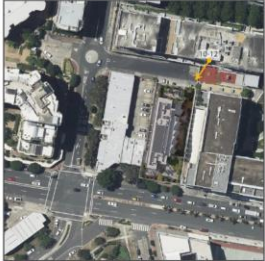


Figure 18 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle		Analysis
View to be affected		Medium to high density urban areas in the immediate foreground with distant low density areas further south and some distant water views of Port Botany. The value assessment of the view is identified as moderate.
Where view obtained		Outdoor balcony areas from Pacific Square, north of the site on Piccadilly Lane.
Extent of impact		The proposed development will obscure medium/long term views of existing lower density residential development and distant views to the horizon to the south. It is of moderate to severe impact
Reasonableness		A DCP compliant envelope would maintain part of a long term view – but obscure a large proportion of the immediate short / medium views. The proposed development will obscure longer term views of Port Botany. Considering the urban nature of the site and the impact of a compliant scheme, the impact is of moderate / severe impact.

16.1 VIEWPOINT 12 - 737 Anzac Parade (RL58.50m)

CURRENT CONDITION



CURRENT CONDITION WITH LEP/DCP COMPLIANT ENVELOPE



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (LODGED SCHEME)



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (REVISED SCHEME)



CAMERA POSITION



Figure 19 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle		Analysis
View to be affected		Medium to high density urban areas in the immediate foreground with distant low density areas further south and some distant water views of Port Botany. The value assessment of the view is identified as moderate.
Where view obtained		Outdoor balcony areas from Pacific Square, north of the site on Piccadilly Lane.
Extent of impact		The proposed development will obscure only short term views of existing medium density residential development. It is considered low impact.
Reasonableness		A DCP compliant envelope would maintain a long term view – but obscure a large proportion of the immediate short / medium views. The proposed development maintains longer term views of Port Botany. The impact is of low moderate impact.

18.1 VIEWPOINT 14 - 737 Anzac Parade (RL49.72m)

CURRENT CONDITION



CURRENT CONDITION WITH LEP/DCP COMPLIANT ENVELOPE



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (LODGED SCHEME)



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (REVISED SCHEME)



CAMERA POSITION

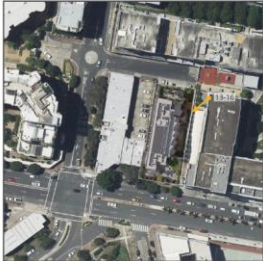


Figure 20 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle	Analysis
View to be affected	Medium to high density urban areas in the immediate foreground with distant low density areas further south. The value assessment of the view is identified as moderate.
Where view obtained	Outdoor balcony areas from Pacific Square, north-east of the site.
Extent of impact	The proposed development will obscure medium/long term views of existing lower density residential development and distant views to the horizon to the south and Port Botany. It is of moderate to severe impact
Reasonableness	A DCP compliant envelope would obscure immediate short / medium / long views. The impact is therefore minor when compared to a permissible and DCP compliant envelope.

19.1 VIEWPOINT 15 - 737 Anzac Parade (RL52.72m)

CURRENT CONDITION



CURRENT CONDITION WITH LEP/DCP COMPLIANT ENVELOPE



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (LODGED SCHEME)



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (REVISED SCHEME)



CAMERA POSITION

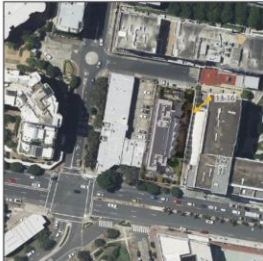


Figure 21 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle	Analysis
View to be affected	Medium to high density urban areas in the immediate foreground with distant low density areas further south. The value assessment of the view is identified as moderate.
Where view obtained	Outdoor balcony areas from Pacific Square, north-east of the site.
Extent of impact	The proposed development will obscure medium/long term views of existing lower density residential development and distant views to the horizon to the south to Port Botany. It is of moderate to severe impact
Reasonableness	A DCP compliant envelope would maintain some glimpses of a long term view to Port Botany – but obscure a large proportion of the immediate short / medium views. The proposed development will obscure longer term views of Port Botany. Considering the urban nature of the site and the impact of a compliant scheme, the impact is of moderate impact.

20.1 VIEWPOINT 16 - 737 Anzac Parade (RL55.81m)

CURRENT CONDITION



CURRENT CONDITION WITH LEP/DCP COMPLIANT ENVELOPE



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (LODGED SCHEME)



CURRENT CONDITION WITH PROPOSED DEVELOPMENT (REVISED SCHEME)



CAMERA POSITION



Figure 22 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle	Analysis
View to be affected	Medium to high density urban areas in the immediate foreground with distant low density areas further south. The value assessment of the view is identified as moderate.
Where view obtained	Outdoor balcony areas from Pacific Square, north-east of the site.
Extent of impact	The proposed development will obscure only short term views of existing medium density residential development however maintain longer term views to Port Botany. It is considered low impact.
Reasonableness	A DCP compliant envelope would maintain a long term view – but obscure a large proportion of the immediate short views. The proposed development maintains longer term views of Port Botany. The impact is of low impact.

23.1 VIEWPOINT 19 - 737 Anzac Parade (RL52.72m)

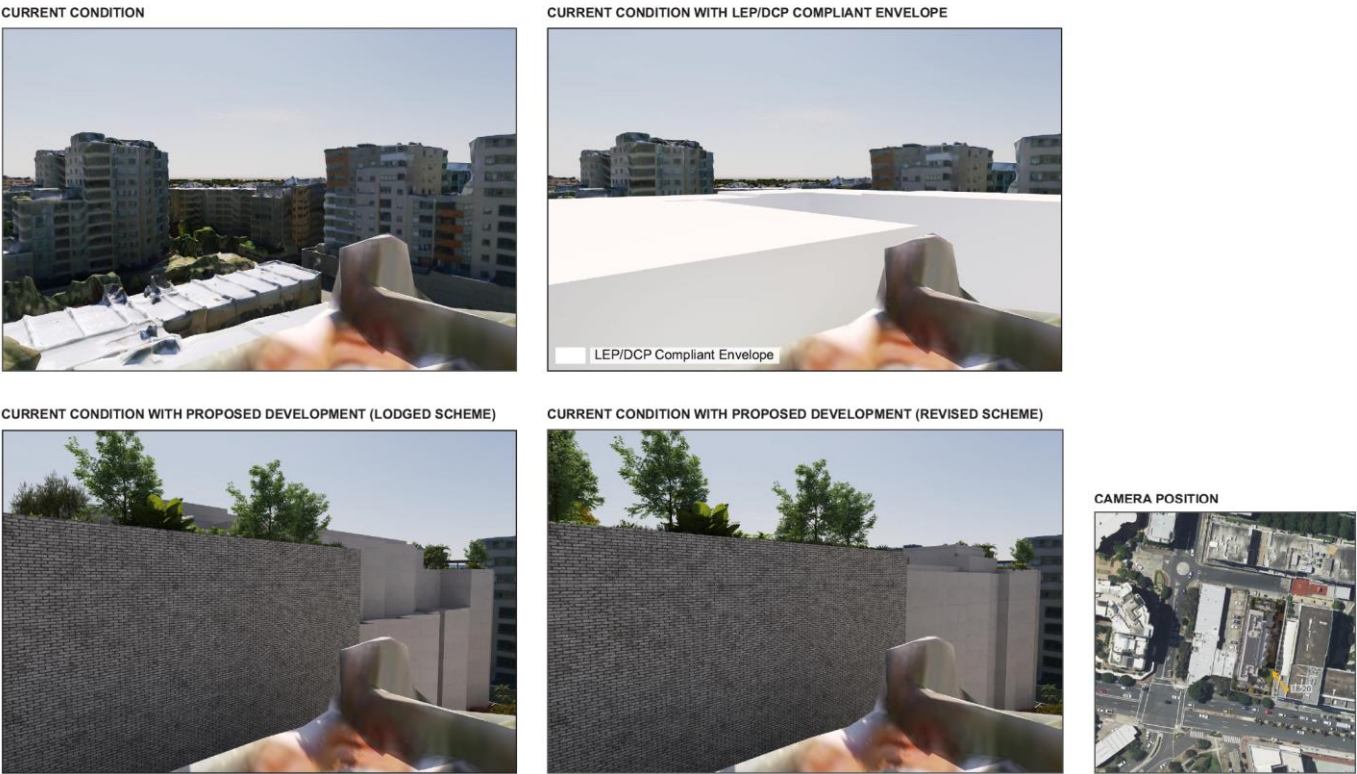


Figure 23 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle	Analysis
View to be affected	Medium to high density urban areas in the immediate foreground with distant low density areas further south. The value assessment of the view is identified as low.
Where view obtained	Outdoor terrace areas from Pacific Square, east of the site.
Extent of impact	The proposed development will obscure views of existing medium density residential development to the north and some minor distant views to the north between buildings. It is of moderate to severe impact
Reasonableness	A DCP compliant envelope would maintain some glimpses of a long term view to the north – but obscure a large proportion of the immediate short / medium views. The proposed development will obscure longer term views however considering the urban nature of the site and the impact of a compliant scheme, the impact is of moderate impact.

24.1 VIEWPOINT 20 - 737 Anzac Parade (RL55.81m)



Figure 24 View from 1 Piccadilly Place RL58.85
Source: Virtual Ideas

Tenacity Principle	Analysis
View to be affected	Medium to high density urban areas in the immediate foreground with distant low density areas further south. The value assessment of the view is identified as low.
Where view obtained	Outdoor terrace areas from Pacific Square, east of the site.
Extent of impact	The proposed development will obscure views of existing medium density residential development to the north however retain some minor distant views to the north between buildings. It is of moderate impact
Reasonableness	A DCP compliant envelope would maintain a long term view to the north – but obscure a large proportion of the immediate short / medium views. The proposed development will maintain some longer term views however considering the urban nature of the site and the impact of a compliant scheme, the impact is of low impact.

It has been identified that those viewing locations most effected will experience some impact, however there are only two view locations that will experience a moderate to severe impact as the distant views of Port Botany will be lost as a result of the additional height.

In most cases, the compliant envelope precludes distant views. Compliant development on the subject site will significantly change the viewing currently experienced and considering the urban nature of the site, the proposed development is not considered to present a significant change to this experience in comparison. Mitigating features of landscaped rooftops at both a high and low level, proposed windows obscured by pop-outs, additional setback to the upper floor and a provision of setback at the north end of the site compared to the DCP envelope demonstrate a considered architectural and volumetric response to viewing loss.

As the site has not been amalgamated with the Police Station, the development outcome across both sites is a significant improvement to the viewing from apartments to the north, as each development is separated with landscape between.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the LEP provision, and the view sharing principles established in the matter of *Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140*.

3.4 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the LEP requires the consent authority to be satisfied that the Applicant's written request has adequately addressed this clause by demonstrating *that there are sufficient environmental planning grounds to justify contravening the development standard*.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height of buildings control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

3.4.1 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase "*environmental planning grounds*" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in Section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 9** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the Height of Buildings development standard.

Table 9 Assessment of proposed development against the Objects of the EP&A Act

Object	Comment
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources</i>	<p>The proposed height variation will promote the economic and social welfare of the community by enabling the highest and best use of the land, which currently contains a two-storey commercial development that no longer meets best practice design, sustainability and DDA standards.</p> <p>Further, the proposed variation facilitates additional housing in line with the strategic growth of Randwick City and Maroubra Junction, that is anticipated to fulfill council's "long term" housing needs (i.e. 5 years +) in their 2020 Local Housing Strategy.</p> <p>Enabling this variation supports high amenity residential design, attracting new residents to the area to support the on-going prosperity of Maroubra and more broadly south-east Sydney.</p> <p>The proposal includes the delivery of two affordable housing units to create housing diversity and provide housing affordability in the LGA.</p>
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	<p>Enabling variation ensures the site is regenerated in accordance with current ESD standards not presented in the existing development on site. The proposed development meets or exceeds BASIX and ADG provisions for comfort and amenity.</p> <p>The additional building height has no unreasonable impact on environmental and social considerations and affords additional housing in the community. Further, the provision of non-residential floor space is unimpeded by the additional height, and contributes to the economic growth of the precinct.</p> <p>The proposal includes the delivery of two affordable housing units to create housing diversity and provide housing affordability in the LGA.</p>
<i>c) to promote the orderly and economic use and development of land</i>	<p>The land is zoned as a local centre, the objectives for which are met in the proposed and permissible mixed-use development. The land is currently occupied by a vacant, aging commercial development comprising 2 floors that do not meet the current standards for workplaces (including DDA and BCA). The development does not exhibit design excellence or best practice sustainability.</p> <p>Strict compliance with the mapped maximum building height would present a lost opportunity to enable a proposal that provides additional housing on the site, demonstrates consistency with its context and does not present unreasonable increase to environmental impact.</p> <p>The proposal with a variation to the mapped maximum building height is a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land.</p>

Object	Comment
	In light of the growth aspirations of Council's Local Housing Strategy (2020), it is considered that the 2012 LEP and DCP do not reflect the desired future character of the Maroubra Strategic Centre.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposal provides affordable housing and thus this objective is applicable. This is a significant social benefit of the proposal above and beyond that which would ordinarily be required of the site under existing LEP and DCP provisions.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The proposed development including the height variation will have no impact on threatened species or ecological communities.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The site does not contain buildings or elements of historic or cultural significance and thus this objective is not applicable. It is demonstrated that the proposal does not overshadow the local heritage item at 2 Robey Street and as such does not compromise the sustainable management of built heritage.
<i>(g) to promote good design and amenity of the built environment,</i>	The proposal has been designed by Sydney-based firm DJRD Architects and was subject to a review from Council's Design Excellence Advisory Panel. The development has been designed as a departure Council's anticipated site amalgamation, and as such presents an alternate built envelope for the subject site. We remind the determining authority of the weight given to DCPs in that they must guide the provisions of an LEP and facilitate development rather than add additional constraints. A refined architectural approach employs design quality consistent with the principles of SEPP65. The proposed variation to the mapped maximum building height standard does not compromise the quality of design nor does it present unreasonable additional impact to the amenity of the built environment, as assessed within this report. The amenity of adjacent development has been considered with reference to a compliant scheme, with impacts generally no greater than that imposed by the compliant scheme.
<i>h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	This proposed variation to the mapped maximum building height does not preclude the development from complying with all relevant BCA codes and will promote the health and safety of occupants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	This object is not relevant to this proposed development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposed development including this Clause 4.6 Variation Request will be publicly notified in accordance with Council's requirements.

3.4.2 Solar Access

As discussed at **Section 3.3**, Objective (c) of the LEP Height of Buildings development standard (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) is achieved notwithstanding non-compliance with the standard.

The detailed diagrammatic analysis provided by the architect demonstrates that the proposed additional height does not result in adverse additional overshadowing of neighbouring properties and the public domain. The study includes comparison with both the envelope prescribed in the DCP (across two lots) and a compliant envelope on the subject lot.

In summary:

- 2 hours of solar access (mid winter) is retained to the western façade of the Pacific Square development to greater than 70% of apartments, and provides a better outcome than what would be delivered under a DCP envelope.
- Solar access received by the north facing apartments in both the 165-167 Maroubra Road and 3 Robey Street developments is not reduced by the proposed development.
- The additional overshadowing of the front setback of the heritage listed property at 2 Robey Street does not present adverse impact to the property nor its private open space.
- The widened footpath on Maroubra Road opposite the site experiences loss of solar access from 4pm. This is considered to be a minor environmental impact and not detrimental to the function of lunchtime period dining.
- The proposed development results in a better solar access outcome than that proposed in the Maroubra Junction DCP Block 8.

3.4.3 Views

As discussed at **Section 3.3**, Objective (c) of the LEP Height of Buildings development standard (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) is achieved notwithstanding non-compliance with the standard.

The detailed view loss diagrams provided by the architect includes comparison with both the envelope prescribed in the DCP (across two lots) and a compliant envelope on the subject lot. A compliant development on the subject site will significantly change the viewing currently experienced. The proposed development is not considered to present a significant change to this experience in comparison that would be considered anything more than moderate to all but one position.

Mitigating features of landscaped rooftops at both a high and low level, proposed windows obscured by pop-outs, additional setback to the upper floor and a provision of setback at the north end of the site compared to the DCP envelope demonstrate a considered architectural and volumetric response to viewing loss.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the LEP provision, and the view sharing principles established in the matter of *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140.

3.4.4 Visual bulk

As discussed at **Section 3.3**, Objective (c) of the LEP Height of Buildings development standard (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) is achieved notwithstanding non-compliance with the standard.

The proposed development presents an improvement to the bulk anticipated in the DCP C-shape volume, in two locations. First, to the rear of the site, the proposed volume is setback from the eastern boundary and provided with façade articulation. Communal open space presents a landscaped buffer to the eastern neighbour. Second, the proposed development provides setback to both side boundaries, as well as to Piccadilly Place. In this manner, the extent of facade facing Piccadilly Place is limited to a “finger” within the site boundaries, offering breaks to the visual mass of the volume as viewed by the northern neighbour.

The façade is highly articulated in both form and detail, mitigating the visual bulk of the proposed development..

3.5 Clause 4.6(4)(a)(ii): The proposed development will be in the public interest

In *Initial Action* it is established that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

Accordingly, it is demonstrated throughout this Clause 4.6 Variation Request that the proposal is in the public interest as it is entirely consistent with the objectives of the development standard and the objectives of the zone.

Importantly, the proposal includes two affordable housing dwellings for a period of 15 years that would not otherwise be required under Council's LEP or DCP.

3.5.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Height of Building development standard, for the reasons discussed in **Section 3.3** of this report.

3.5.2 Consistency with objectives of the zone

The proposal is assessed against the objectives of the B2 – Local Centre zone below.

1. 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.

The proposed development is consistent with this objective as it includes non-residential floor space that will contribute to meeting the needs of residents, workers and visitors in Maroubra. The additional proposed height does not affect the provision of non-residential floor space.

2. To encourage employment opportunities in accessible locations.

As identified above, the non-residential floor space contributes to the provision of employment opportunities in Maroubra Junction. The additional proposed height does not affect the provision of non-residential floor space.

3. To maximise public transport patronage and encourage walking and cycling.

The site is in close proximity to the major bus routes on both Anzac Parade and Maroubra Road. Projected future public transport connectivity through the LGA (including potential future light rail extension) will reinforce the accessibility of the site. The additional height proposed allows for additional dwellings, increasing the number of residents in the highly accessible Strategic Centre. These residents can take advantage of public transport, walking and cycling to meet their everyday need for work, recreation and shopping.

The proposal delivers lower than required parking numbers, thus seeking to maximise public transport patronage.

4. To enable residential development that is well-integrated with, and supports the primary business function of, the zone.

The proposed mixed-use development prioritises non-residential floor space on the lower levels. The residential upper floors facilitate an increase to the population of Maroubra within the Strategic Centre, contributing to the economic vitality of the precinct.

5. To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.

As the subject site has not been amalgamated with the NSW Police Station site as anticipated in Council's DCP, the proposal follows a detailed envelope design process that makes best use of the site in accordance with the LEP and relevant SEPP provisions (particularly the ADG that is given weight through the Housing SEPP). This process included due consideration to the environmental impacts to adjoining existing development, as well as to the future development of the NSW Police Station site and to the public domain. The final envelope that formed the basis of the resolved architectural design minimises adverse impact as outlined in **Section 3.3** of this Clause 4.6 Variation Request. This section identifies how the following has been addressed:

- Overshadowing of existing adjacent development.
- Overshadowing of the public domain.
- Viewing impact to the outlook experienced by adjacent residential.
- Privacy impact to adjacent residential.

- Envelope massing in the context of the adjacent streetscapes; and
- Consideration of the future desired character of Maroubra Junction.

Following assessment of these matters, it is considered that the proposed development with additional height does not impose additional adverse environmental impact when compared to a compliant envelope.

6. To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.

As discussed above, this proposed development with additional height is consistent with this objective. The amenity of adjoining residents within the zone, as well as to the public domain, has been considered and minimised on the proposed.

Where necessary, mitigating features are incorporated into the design, as well as alternate methods to achieve ADG privacy objectives.

A comprehensive analysis of impact is provided at **Section 3.3** of this report.

7. To facilitate a safe public domain.

The proposed development is consistent with this objective. Two retail tenancies at ground floor have direct access to the street, with a glazed frontage. Residential floors above provide passive surveillance of both Maroubra Road and Piccadilly Place.

3.6 Other Matters for Consideration

Under Clause 4.6(5) of the Randwick LEP the Secretary's concurrence is required prior to any variation being granted. Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the DA, therefore the Secretary's concurrence is assumed. Nevertheless, the following section provides a response to those matters set out in Clause 4.6(5) of the Randwick LEP which must be considered by the Secretary.

3.6.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the height of buildings development standard does not raise any matter of significance for State or regional planning. The variation to the maximum building height development standard will not contravene any overarching State or regional objectives or standards or have any effect outside the site's immediate area.

3.6.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the development standard in terms of State and regional planning objectives. Indeed, the delivery of two affordable housing units would not ordinarily be achieved if strict compliance is sought.

As noted in the preceding sections, the additional height proposed does not impose significant additional adverse impact to adjacent development and the public domain when compared to a development with compliant height. Further, the proposed height does not present as uncharacteristic to the prevailing streetscape, and enables the future residents to receive an ADG complaint quantum of solar access (in the context of taller development to the north). If the additional height cannot be delivered, this will be a lost opportunity to enable a proposal that provides additional housing in the Strategic Centre of Maroubra Junction, with no significant impact to neighbouring amenity.

It is not considered that there would be any public benefit resulting from a reduction to the height proposed, particularly where key planning issues such as privacy and overshadowing, have been resolved through architectural design.

3.6.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters that the Secretary (or the consent authority, under delegation) is required to consider before granting concurrence.

4.0 Assessment of Key Issues

4.1 Built Form and Urban Design

The site is contained within 'Block 6' of the Maroubra Junction DCP. The DCP anticipates a lower height for development on the subject site than that proposed, and lower than the immediate neighbours. The lower height is anomalous in Maroubra Junction (part of the Eastgardens – Maroubra Junction strategic centre) and impedes orderly and economic development of the site.

The matters raised in the originally submitted Statement of Environmental Effects remain applicable to the amended scheme.

4.2 Visual bulk

The proposed development presents an improvement to the bulk anticipated in the DCP C-shape volume, as detailed in the Statement of Environmental Effects remain applicable to the amended scheme.

4.3 Overshadowing

The proposed additional height does not result in adverse additional overshadowing of neighbouring properties and the public domain. The architect has provided a detailed comparison against a compliant envelope on the site in the submitted drawings and as detailed at **Section 3.3** of this report.

4.4 Privacy

The proposed additional height has been designed to avoid loss to neighbouring privacy. The ADG objective for visual privacy is achieved through both meeting the design criteria and presenting alternate solutions where required. The site has existing residential apartments to both the north and east.

The NSW Police Station to the west is considered a future development site and as such separation has been provided in conjunction with an indicative scheme prepared for that site.

Section 3.3 of this report analyses the setback provisions and impacts on privacy in detail.

4.5 View Loss

As discussed at **Section 3.3**, detailed view loss diagrams provided by the architect includes comparison with both the envelope prescribed in the DCP (across two lots) and a compliant envelope on the subject lot and that a compliant development on the subject site will significantly change the viewing currently experienced. The proposed development is not considered to present a significant change to this experience in comparison that would be considered anything more than moderate to all but one position.

Mitigating features of landscaped rooftops at both a high and low level, proposed windows obscured by pop-outs, additional setback to the upper floor and a provision of setback at the north end of the site compared to the DCP envelope demonstrate a considered architectural and volumetric response to viewing loss.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the LEP provision, and the view sharing principles established in the matter of *Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140*.

4.6 Design Excellence

As detailed in the Statement of Environmental Effects for the original submission, the amended scheme is considered to achieve design excellence pursuant to the LEP clause 6.11.

The objective of this clause is to “*deliver the highest standard of architectural and urban design*” and, mindful of the significant constraints of the site and the inability to amalgamate with the immediately adjoining site to its west as anticipated in the DCP, the proposal delivers a high standard of design.

The consent authority must consider the following matters, and can be satisfied that each has been addressed to inform and enrich the proposal as discussed in **Table 10** below:

Table 10 Assessment of Design Excellence

Design Excellence Matter	Response
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	A refined architectural approach has been employed by the architect to the façade design and materiality of the proposed development.
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	The quality and amenity of the public domain will be greatly enhanced by the proposed development. The existing two storey commercial development is a tired and dated building that does not meet the potential of the highly desirable Maroubra Junction locality.
(c) how the proposed development responds to the environmental and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on the same site and on neighbouring sites,	The development has been designed to minimise adverse impact to existing neighbouring built form, and to potential future development of the Police Station site. The development in the context of neighbouring built form is discussed throughout this addendum.
(d) whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency,	The development has been designed to include Environmentally Sustainable Development (ESD) principles.
(e) whether the proposed development detrimentally impacts on view corridors and landmarks.	A comprehensive view analysis is provided in the view loss discussion above in the Clause 4.6 Variation Request. The proposed development is not considered to result in adverse viewing impact beyond that which is commensurate to development in the Maroubra Junction town centre.

4.7 Traffic and parking

The parking provision for visitor, retail and commercial vehicles is less than the rate prescribed in the Randwick DCP. This is in accordance with the objectives of the zone to maximise public transport patronage.

An updated Traffic Impact Assessment is provided with this amended scheme.

4.8 Suitability of the site for the development

Having regard to the characteristics of the site and its location, the proposed development as amended is appropriate in that it:

- Maintains the mixed land use pattern of Maroubra Road and the wider Maroubra Junction locality, revitalising an under-utilised site.
- Proposes development that capitalises on the excellent locational attributes of Maroubra Junction, including proximity to services and transport thoroughfares. The development proposes a density that is commensurate to the projected growth in housing supply and public transport connectivity and the site's existing and future desired context. It is not a site that transitions in scale to its north, south, east or west.
- Responds appropriately to the site's frontage to Maroubra Road with an activated street frontage, continuation of the existing street wall established by the Pacific Fair street wall further east and a lowered and set back upper floor with rooftop communal open space.
- Has been designed to respond to, and not restrict or compromise the future independent development of the NSW Police Station site.
- Delivers affordable housing at the site that is not anticipated in any LEP or DCP provisions.

4.9 Public Interest

The proposed development is in the public interest as it will:

- Deliver an appropriate housing and employment-generating floorspace that suits the context of the locality and addresses the need for housing and employment growth in Randwick City. It delivers two affordable housing units as part of the amended development scheme.
- Deliver a development outcome that will be a positive contribution to the ongoing urban renewal of Maroubra Junction that is consistent with the existing and desired future character of the site and its surrounds.

5.0 Conclusion

The proposed development seeks approval for:

- Site preparation works including demolition of the existing commercial building and bulk earthworks;
- Construction and use of a 7 storey mixed-use development including:
 - 2 x retail tenancies on ground floor
 - 1 x commercial tenancy on Level 1
 - 56 apartments
 - 3 level basement with driveway access via easement to Piccadilly Place
- Landscaping to Level 1 and rooftop communal open spaces
- Extension / augmentation of services and utilities as required.
- Lot amalgamation.

The proposal is consistent with the relevant environmental planning instruments applying to the site including the Randwick LEP 2012, Randwick DCP 2013 (including the Maroubra Junction Centre Development Control Plan) and other state policies – except for a minor breach of the LEP Height of Buildings control.

An assessment of the environmental impacts has been provided in accordance with Section 4.15(1) of the EP&A Act and the proposal is considered suitable for the site. The application is recommended for approval given the following reasons:

- The proposed development is consistent with the aims and objectives of the Randwick LEP and DCP as well as the relevant State Environmental Planning Policies. Whilst providing a differing building alignment to that envisaged in the DCP (which cannot be achieved as amalgamation with the adjoining NSW Police Station site cannot be delivered), the proposal has demonstrated that it provides a neutral or better outcome for the site.
- The proposed development provides a mix of well-designed, appropriately sized residential apartments and commercial and retail tenancies that regenerate an under-utilised site and improve the Maroubra Road streetscape and deliver affordable housing that would otherwise not be anticipated in the LEP or DCP.
- The proposed height departure from has been comprehensively assessed. The proposed variation to the maximum building height development standard is considered acceptable in the circumstances of the site and accordance with the flexibility allowed under Clause 4.6 of the Randwick LEP.
- A view sharing scenario is maintained in accordance with the LEP provision, and the view sharing principles established in the matter of *Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140*. Viewing impact has been assessed against a compliant LEP and DCP envelope, which will of its own will significantly change the viewing currently experienced. The proposed development is not considered to present a significant change to this experience in comparison.
- The proposed development is suitable for the site and is in the public interest.

In light of the merits of the proposed development and in absence of any significant environmental impacts we support this application and recommend its approval.

Yours sincerely,



Tom Goode

Director

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