

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-334 – [DA/487/2024]
PROPOSAL	Amending DA to the Stage 1 Concept application to provide 15% affordable housing through increasing the overall development to a four-storey residential flat building, infill the north south through site connection and provide for the addition of a part basement level
ADDRESS	11 Jennifer Street, Little Bay
LOT & DP	Lot 11 DP 1237484
APPLICANT	Jennifer St Developments Pty Ltd
OWNER	Auspat International No.2 Pty Ltd
DA LODGEMENT DATE	7 June 2024
APPLICATION TYPE	Concept DA
REGIONALLY SIGNIFICANT CRITERIA	Clause 5(b), Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Private infrastructure and community facilities over \$5m – Affordable housing.
CIV	<p>\$9,392,940 (excluding GST) for Affordable housing component (16 units – per Q22C144 report dated 22/08/2024).</p> <p>(For S7.12 total development cost (\$14,852,586 incl. GST. Total development cost of \$46,115,696 (includes \$31,263,110 development cost in original Concept plan (#38 of original approval).</p>
CLAUSE 4.6 REQUESTS	<p>Height of Building:</p> <ul style="list-style-type: none"> • Clause 18 of the Housing SEPP (Part 2 Division 1 in-fill affordable housing) & • Clause 4.3 of Randwick LEP 2012. <p>Floor space ratio:</p> <ul style="list-style-type: none"> • Clause 16 of the Housing SEPP (part 2 Division 1 infill affordable housing) • Clause 4.4 of Randwick LEP 2012.
KEY SEPP/LEP	Housing SEPP 2021

TOTAL & SUBMISSIONS ISSUES SUBMISSIONS	14 unique submissions: <ul style="list-style-type: none"> • Building Height • Amenity impacts • Traffic, safety and parking • Overshadowing and impact on ESBS and health • View loss • Incompatible with the desired character • Affordable housing • Noise and privacy
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Architectural Plans Amended Concept - 21 August 2024. • Landscape Design Concept Issue E - May 2024. • Survey plan – 22.02.21. • Bulk Earthworks Plan – 27.05.24. • Stormwater Management plan – 27.05.24. • Stormwater management details – 27.05.24. • Amended basement plan for waste Rev C– 13/09/2024. • Amended Affordable housing component Rev F – 08/11/2024. Reports: <ul style="list-style-type: none"> • Design verification statement – 27 May 24. • Statement of environmental effects (28 pages) – 31.05.24 and addendum SEE (8 pages) – 29 August 2024. • Clause 4.6 variation request Height of building – Amended 22.11.24. • Clause 4.6 variation request Floor space ratio – additional 22.11.24 • Geotechnical report – May 2024. • Heritage impact statement – May 2024. • SEPP Design Principles Statement SEPP Housing Chapter 4 (Design of residential apartment development)– 26 May 2024. • Additional Design Principles Built form response to condition 1 – undated. • Crime Risk Assessment – 5 June 2024. • Traffic report – 29 May 2024. • Waste management plan -29/05/2024 & Additional operational waste management plan - 11/09/2024. • Amended CIV - 15.08.24. • Additional Ecologist responses regarding: <ul style="list-style-type: none"> ○ Referral to Commonwealth under ESBS Act – 21.08.2024. ○ Requirement for amended BDAR – overshadowing of ESBS – 21 August 2024.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	NA
RECOMMENDATION	Approval

DRAFT CONDITIONS TO APPLICANT	NO
SCHEDULED MEETING DATE	4 December 2024
PLAN VERSION	21 August 2024 Version No. B
PREPARED BY	Louis Coorey
DATE OF REPORT	25 November 2024

EXECUTIVE SUMMARY

The following report is an assessment of a development application for an amending development application to amend the Concept plan Stage 1 Approval under PPSSEC-144 (DA/698/2020) (building envelopes). The Stage 1 Concept Plan DA granted consent for in-fill residential development containing three buildings within the northern part of the site and retention of and management of Eastern Suburbs Banksia Scrub on the southern half of the site.

The subject site is known as 11 Jennifer Street, Little Bay ('the site') and comprises a corner lot with two (2) road frontages including Crown Road to the north, and Jennifer Street to the west. The site is irregularly shaped area of 11,621sqm. The site is located in an area of transition from the R3 medium density zone of the subject site to the predominantly low-density residential development area to the west. The Prince Henry Site (PHS) located further north comprises a mix of low and medium densities and notably contains 1 to 6 storeys some of which are located in close proximity to each other and ESBS communities.

The proposal seeks alterations and additions to the approved Building envelopes consolidating the two northern buildings and adding a floor level to each building, providing 2 x four storey envelopes.

The application is referred to the Sydney Eastern City Planning Panel ('the Panel') as the development is 'regionally significant development', pursuant to Section 2.19(1) and Clause (5)(b) of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as the proposal is development for affordable housing with a CIV over \$5 million.

A briefing was held with the Panel on 3 October 2024 where key issue of the affordable housing was discussed, including AHC of the GFA, and the exceedance of the height and FSR standards and as well as the potential impacts on the ESBS.

The principal planning controls relevant to the proposal include State Environmental Planning Policy Housing 2021 (Housing SEPP) which incentivises 30% bonus height and FSR under the Housing SEPP on the basis of the development providing 15% of the GFA as affordable housing component (AHC) to be used for affordable housing.

The development exceeds both the 30% maximum height and FSR bonus and the applicant has submitted clause 4.6 exceptions to both standards under the Housing SEPP and LEP. The height clause 4.6 is a clear exceedance of the standard however the main envelope at the permitter has a much less pronounced variation to the bonus height afforded by the Housing SEPP. These elements largely relate to recessive hipped roofs and the most pronounced protrusions relate to roof top structures setback further from the main perimeter of the envelopes.

The FSR Clause 4.6 is also a key matter for the Panel's consideration noting that it has been submitted on a without prejudice basis to address a jurisdictional prerequisite as it is Council's view that the AHC of the GFA is short of the required 15% AHC of GFA because the AHC should only include internal unit space and that corridor lobby space should be excluded. The outcome is the maximum bonus FSR is reduced down to 28.52% (or 0.2139:1) as opposed to the 30% maximum (or 0.225:1) under the Housing SEPP thereby applying a maximum FSR of 0.9639:1 maximum with 28.52% AHC instead of the 0.975:1 with 30% AHC. The Applicant's view is that the proposal complies with the maximum FSR under the SEPP as the corridor space is part of the GFA to which the SEPP refers and therefore their proposed AHC component meets the minimum 30% AHC of GFA and maximum FSR under the Housing SEPP.

Despite these differing opinions, the applicant's clause 4.6 written requests in seeking variations to the height and FSR maximum standards are assessed and it is generally considered that there are sufficient environmental planning grounds to justify the contraventions on the basis that the applicant agrees to provide 2 dwellings as affordable housing in perpetuity, which is well above the minimum 15 years required under the SEPP.

The application was placed on exhibition from 20 June 2024 to 8 July 2024, with fourteen (14) submissions (by way of unique objection) being received. The main issues raised included impacts associated with the increased envelope on streetscape character and locality, traffic and parking, privacy, views and the overshadowing impact on the ESBS south of the site. These issues are considered further in this report.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, in particular Housing SEPP, the proposal can be supported for the following reasons:

- In relation to the preservation of the ESBS within the southern part of the site, this matter was the subject of independent Ecologist review where it was considered that the increased overshadowing would not result in any significant impact on the retention and management of the ESBS as required by the existing conditions of consent.
- In terms of the built form, the assessment of the application including both clause 4.6's consider that the proposed envelopes do not result in any unreasonable adverse impacts within the site and on surrounding area and that the proposed envelopes will be compatible with the desired future character of the locality noting that the site is in an accessible location being within 400m walking distance of a regular bus service connecting the site to town centres and city centre.
- In relation to providing for affordable housing, it is recommended that a condition be included requiring that any future Staged DA provide the proportion as shown in the Rev F plans and that at least 2 units be provided as AH in perpetuity and to be managed by a CHP in accordance with the Housing SEPP.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA/487/2024 is recommended for approval subject to the conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The site has a trapezoidal shape and it is vacant. The site dimensions and total area is provided in the following table:

Boundary	Length	Land area
Western boundary, along Jennifer Street.	110.75m	1.1612 ha or 11,612sqm (Ref RGM Survey, Drawing No. 11118/001, Rev E, dated 22/02/2021)
Northern boundary, along unnamed crown road.	80.0m	
Eastern boundary, along Cullen's Driving Range.	138.19m	
Southern boundary, adjoining Kamay Botany Bay National Park.	110.0m	

The site has a cross fall of approximately 2 metres from the southwest corner to the northeastern corner.

The site contains threatened flora and fauna species, the Eastern Suburbs Banksia Shrub (ESBS) identified as a Critically Endangered Ecological Community (CEEC) in the Sydney Basin Bioregion which is known to accommodate 2 threatened fauna species - Little Bent-winged Bat (*Miniopterus australis*) and Large Bent-winged Bat (*Miniopterus orianae oceanensis*). As shown in figure 2 below, the current concept approval (DA/698/2020) permitted the development of the northern half of the site and retains the flora in the southern half of the site and via condition of consent management of the long-term health of the flora and therefore fauna species.



Figure 1: Aerial image of subject site and neighbouring properties (Ref: Applicants documentation)

The Site is zoned R3 Medium Density Residential under the Randwick Local Environmental Plan 2012 ("RLEP"). The RLEP development standards for height is 9.5m and for FSR 0.75:1 noting that the Housing SEPP permits a bonus uplift for height and density of up to 30% should 15% of the total GFA be provided as affordable housing component.

Site photos



Photo 1: View towards the west showing subject site and two storey dwelling in background.



Photo 2: Subject site undergoing site preparation works.

1.2 The Locality

The sites immediate context is transitional, with low-density, interfaces to the west and north, and undeveloped lands to the east and south. As shown in Figure 2 below, the site is surrounded by a mixture of zones being C1 National Parks and Nature Reserves, C2 Environmental Conservation, RE1 Public Recreation and SP2 Infrastructure zones on three sides and R2 Low Density Residential on western side.

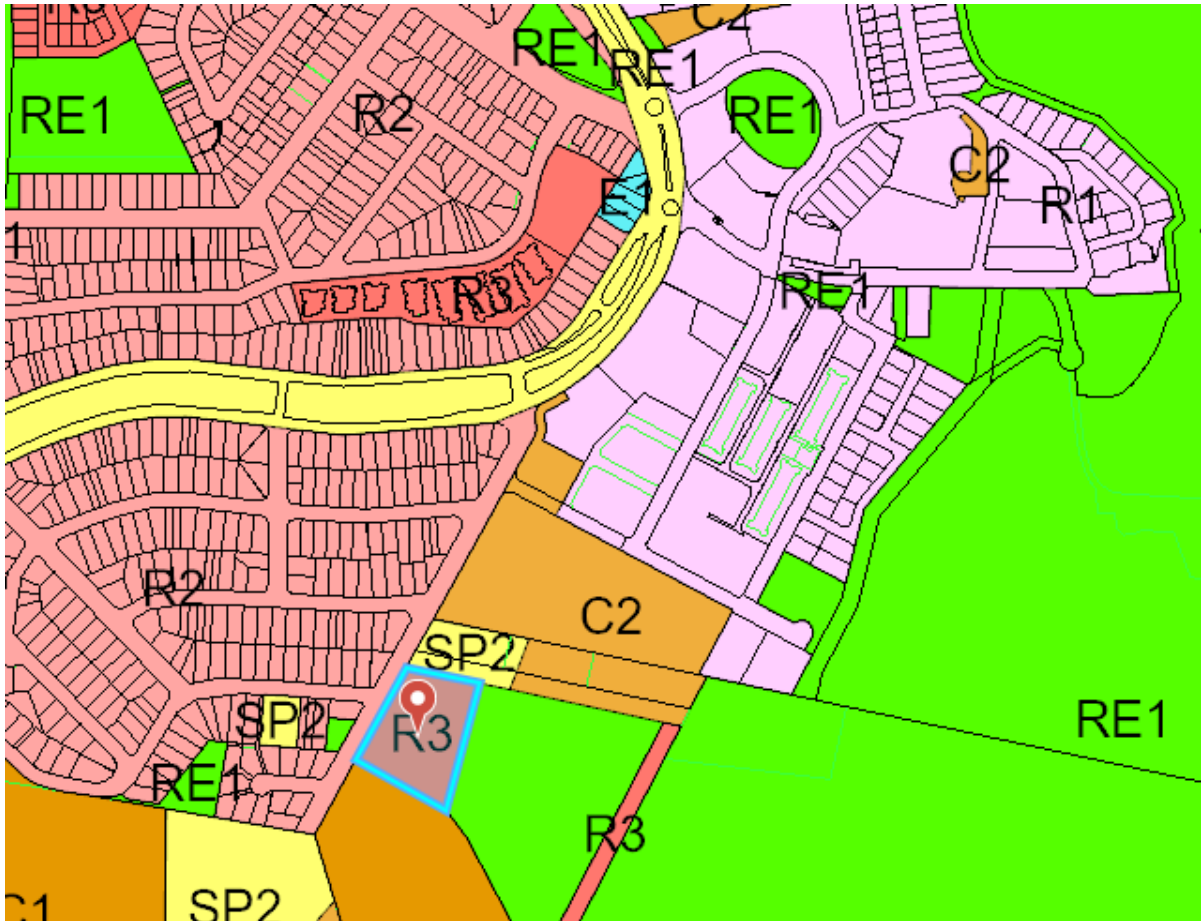


Figure 2: Extract from Council mapping system and neighbouring properties zoning (Ref: Geocortex)

To the west across Jennifer Street is R2 Low density residential zone that accommodates single and two storey dwelling houses.



Photo 3: View towards Dawes Avenue showing general scale of residential dwellings in the low-density zone on the other side of Jennifer Street.

To the north across Crown Access Road is a single storey health facility for Spinal Cord Injuries Australia. To the east is the Cullen's Driving Range. Further east is St Michael's Golf Club. To the south, adjoining the Site to the south is Kamay Botany Bay National Park. The Kamay Botany Bay National Park contains intact endemic flora which joins onto the retained flora within the subject site. The proposal does not seek to alter the retained flora within the subject site however the proposed uplift in height and density results in additional overshadowing.

Built character.

The built character of the surrounding area is a mix of single and two storey dwellings. There are 4 to 6 storey residential flat buildings further to the east and northeast of the Site mainly along Anzac Parade and within the 'Prince Henry Hospital Site' (PHHS) shown in figure 1 above and 3 below.

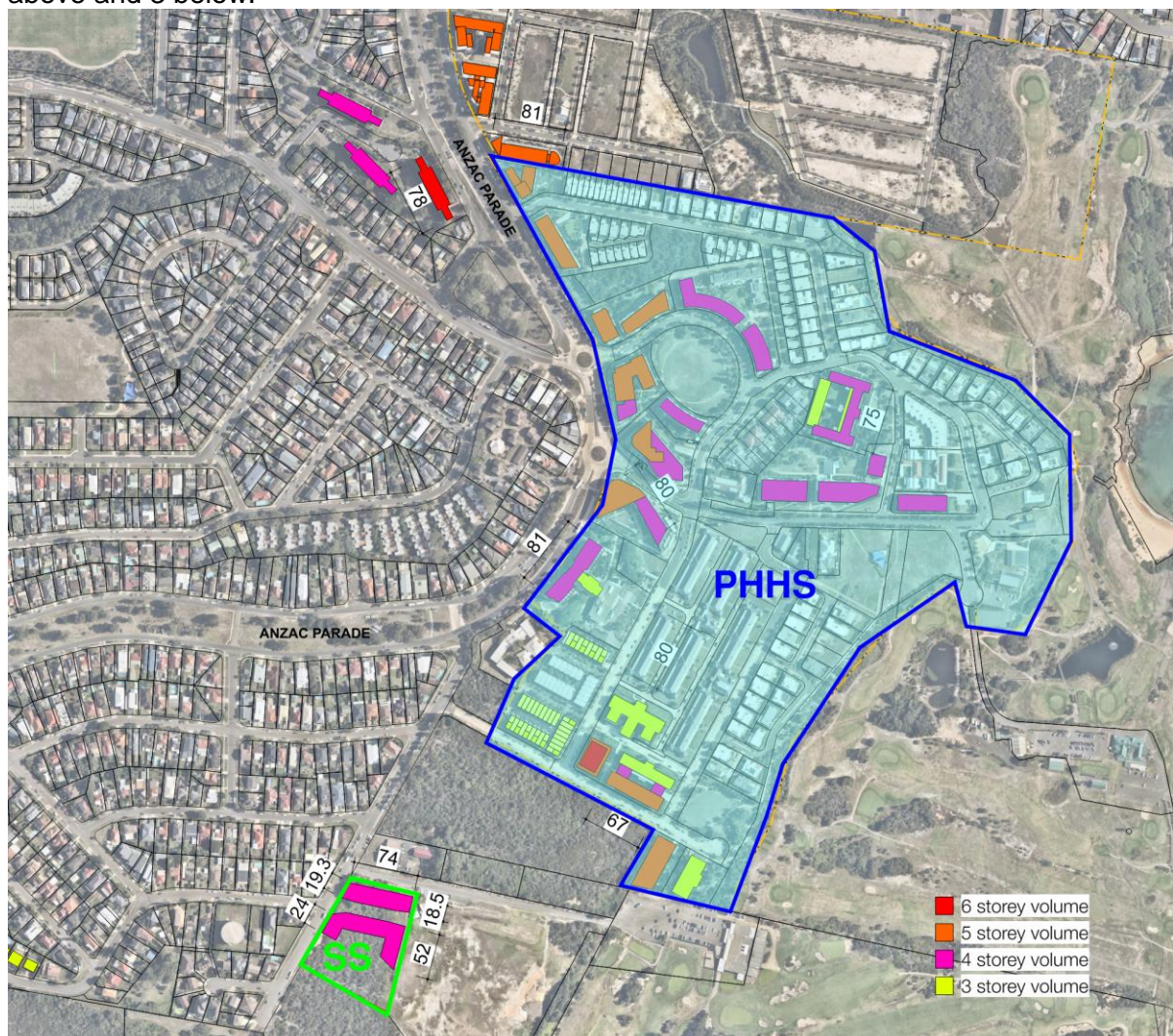


Figure 3: Subject site and Prince Henry Hospital Site (PHHS) contains several multi-level residential and mixed-use buildings between 2 to 6 storeys' in height with notable examples sharing similar locational characteristics shown in figure 1 above. (source: Applicants documentation).

Heritage

The PHHS is listed as a Heritage Conservation Area under Schedule 5 of RLEP 2012 (noted as C6 in the Figure 4 below). The Botany Bay National Park (noted as C5 in Figure 4 below)

is also listed as a Heritage Conservation Area. Several Heritage items are located in the PHHS.



Figure 4 – Heritage Conservation Areas in the vicinity of the site (Ref: Geocortex).

Accessible site

The site is identified as an accessible site being within 400m walking distance of a regular bus service to the major centres of Maroubra Junction, Kingsford, Kensington, UNSW and the City Centre.

2. PROPOSAL

BACKGROUND

Concept DA (PPSSEC-114/DA/698/2020):

The subject DA (PPSSEC-334/DA/487/2024) is an Amending Concept Stage 1 DA that is seeking to amend the approved Concept (Stage 1) DA (DA/698/2020) consent approved by the LEC on 19 October 2022 (*Auspat International No.2 Pty Ltd v Randwick City Council [2022] NSWLEC 1567*). The approved Concept plan (is shown in the image below) contains 3 buildings – 2 x 2/3 storey buildings to the north, a 3/4 storey umbrella building to the south and native bushland to the south.

AMENDING Concept Plan Stage 1 DA (PPSSEC-334-DA/487/2024)

This amending DA seeks approval for an amended components of the concept plan for the site.

This DA if approved will require the carrying over and or amendment of certain conditions already imposed under PPSSEC-114/DA/698/2020. The amended conditions will essentially relate to condition 1 which contains the amended concept plans that dictate the design built-form guidelines (envelopes), and landscape plans. Carried over conditions essentially relate to parts of the development not sought to be amended in this amending DA such as bushland management relating to the retention of the ESBS conservation area and remediation requirements within the entire site.

Specifically, this amending concept plan stage 1 application seeks consent for:

- **Building envelopes – GFA and height**

The subject amending Concept Stage 1 DA seeks the following changes to the envelope to provide for 2 x 4 storey buildings by filling in the gap between the two northern buildings creating one building envelope facing Crown Road to the north and adding a level to each building. Additional GFA to 11,321.7sqm, and height to 16.8m height pursuant to the Housing SEPP which incentivises a 30% bonuses for in-fill development that provides 15% affordable housing component . A clause 4.6 exception to the height standard came with the lodged application.

Figure below show a comparison between the concept approval (top left) and the proposed amendment (top right) as well as a layout plan showing change in No. of storey's from the approved. No appreciable change is proposed to the layout, setbacks, separation of the buildings as approved under the Concept PPSSEC-114 other than the infill between the two northern buildings approved.



Approved Site Plan

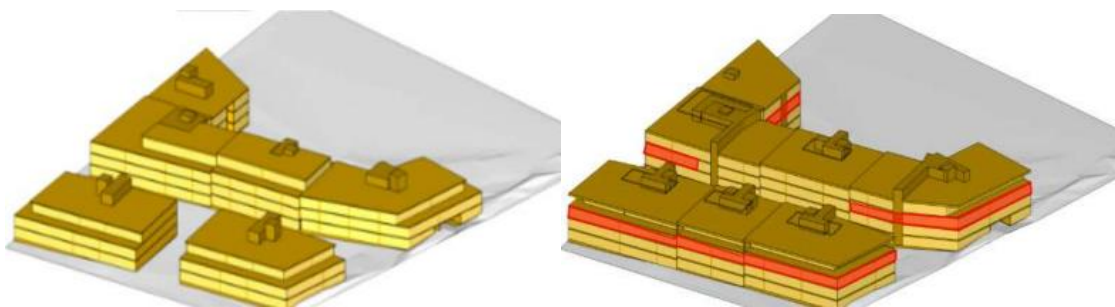


Amended Site Plan



Figure 5: Concept plan identifying additional built form added to approved. No change to building depths or separation between northern and southern building or setbacks to boundary frontages.

Figures below show a comparison between the envelopes of the approved concept plan (on the left) and proposed amendments (on the right) showing the additional levels largely relates to a full storey at third storey and reduced setbacks at the top level.



- **Affordable housing component**

The proposal seeks to provide in the detailed Stage 2 DA a total of 15 units to be dedicated as affordable housing in accordance with the Housing SEPP Chapter 2 requirements. As noted earlier, the applicant calculates the AHC provided as 15.1% of the total GFA however this include corridor & lobby space which Council considers should be excluded. This means that the AHC of the GFA provides only 14.26% which equates to maximum bonus FSR of 28.52% or 0.9639:1. The applicant has submitted a Clause 4.6 exception to the FSR on a without prejudice to meet what Council considers to be a jurisdictional pre-requisite for any application that varies from a development standard in an EPI.

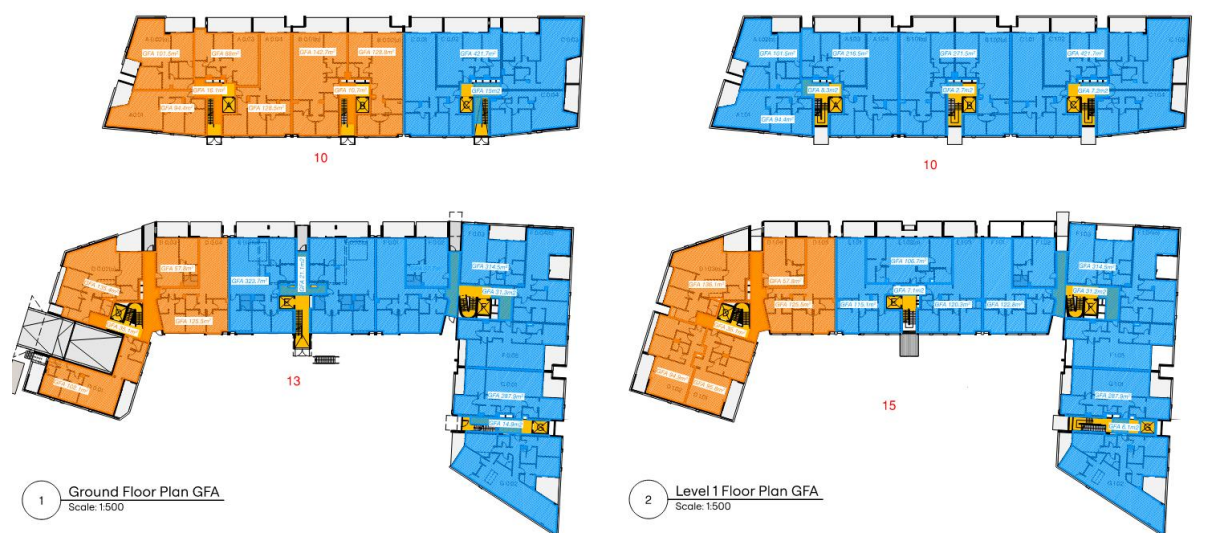


Figure 7: Rev F plan showing Affordable Housing Component (AHC) contain 15 units with counting corridor space providing direct access to the units. Note: AHC in lodged plan contain 15 units and Rev C plans contain 16 units with 15% of all corridor space added to comprise the 15.1% required by the Housing SEPP.

- **Other changes**

Landscape and deep soil area increased in the ground level communal spaces and provision of larger communal open space on the roof of amended envelope.

Other applications

Amending Detailed Stage 2 DA

Further to this amending Concept Plan Stage 1 DA, the proponent has an amending DA to the Detailed Stage 2 DA (PPSSEC-240/DA/580/2022) approved by the LEC on 22 September 2023 (Jennifer Street Developments Pty Ltd v Randwick City Council [2023] NSWLEC 1554). The amending Detailed Stage 2 DA (PPSSEC-335-DA/489/2024) essentially aligns with the changes sought to the concept plan changes to the envelope pursuant to the Housing SEPP bonus FSR and height. In the same vein, Clause 4.6 exceptions have been submitted in the for height and FSR variations. The amending detailed stage 2 requires more detailed consideration of the ADG and other policies.

Table 1: Development Data for Stage 1 Concept DA

Control	Proposal (as amended)	Approved
Site area (11,612sqm)	No change	
GFA	11,321.7sqm	8,131sqm
FSR (0.9639:1)	0.975:1	0.75:1
Affordable Housing Component (AHC) Chapter 2, In-fill development SEPP Housing: 0.9639:1 inclusive of 0.239:1 bonus to 0.75:1 under LEP which is based on the 14.6% of AHC	1.15% variation	No affordable housing provided.

<p>of GFA (1,614sqm) Council interprets the application as providing.</p> <p>The Applicant says they provide 1,720sqm (15.1%) which includes corridor space directly accessing the AHC and therefore meet the 15% (1,698sqm) AHC of GFA under the Housing SEPP and therefore are afforded a maximum bonus of 0.225:1 (30% bonus) and a maximum FSR of 0.975:1.</p>		
Height	<ul style="list-style-type: none"> 16.8m (17m lodged) 	14.85m
<p>Clause 4.6 Requests</p> <p>Height – 12.2m (cl 18 of Housing SEPP) and 9.5m (Cl 4.3 of LEP)</p> <p>FSR – 0.9639:1 (Housing SEPP) 0.75:1 (LEP)</p>	<p>16.8m (36.03% variation to SEPP, 76.8% to LEP and 13.13% to approved)</p> <p>0.975:1:1 (1.15% variation).</p>	<p>Yes (13.13% variation supported)</p> <p>NA.</p>
No of apartments	94 (98 lodged)	83 (Note: Stage 2 approved 75)
Affordable units	15 (Amending detailed Stage 2 DA)	0
Communal open space	3,321.8sqm (28.6%)	2,951.9sqm (25%)
Landscaped area	8,019.5sqm (69%)	7,729sqm (66%)
Deep soil	6,346sqm (larger area at southern end of building outlined by the basement level below. (54%)	6,008.9sqm (51.7%)
Car Parking	Two basement levels (155 car spaces)	One basement level (139 car spaces)
Setbacks	Maintains 3m setbacks at ground level to Jennifer Street and eastern elevation facing the Golf Driving Range and 4m to Crown Road. Increased setbacks for the upper level along both street frontages. Amended Design Principles built form statement provided.	3m at ground level and varying upper levels in Approved Concept plan – DA/698/2020 indicated in condition 1 - Stage 1 Design Principles Built Form.

2.1 Application background

A pre-lodgement meeting was held prior to the lodgement of the Concept Stage 1 and Detailed Stage 2 application on 27 May 2024 where various issues were discussed with the general consensus that the additional bulk and scale was supportable. A summary of the key issues and how they have been addressed by the proposal (in the context of the amending Concept plan Stage 1 DA is outlined in the applicable policies section of this application under Chapter 4 Housing SEPP.

The development application was lodged on **11 June 2024**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
11 June 2024	DA lodged
20 June 2024	Exhibition of the application
10 July 2024	Request for Information from Council to applicant
25 July 2024	Request for information following review of sketch plans submitted
22 August 2024	Amended plans lodged showing increased setbacks for the upper levels along Street frontages, wider insets along the Crown Road northern elevation dated 21 August 2024 accepted by Council under CI 38(1) of the <i>Environmental Planning and Assessment Regulation 2021</i> ('2021 EP&A Regulation') on 22 August 2024.
3 October 2024	Panel briefing
8 November 2024	Applicant requested to provide additional 163sqm of AHC as Council interprets that only the unit areas can be used as AH as referenced in the definition of AHC in the Housing SEPP. This is consistent with Council's application of the AH since at least the SEPP ARH 2009 and current Housing SEPP.
12 November 2024	Request Clause 4.6 for FSR variation due to the 160sqm shortfall in AH provided.
13 November 2024	Applicant submitted amended AHC allocation plan and areas (Rev F) showing AH units and corridor space providing direct access increasing unit space. From lodgement to Rev F plans the AHC has increased from 1534sqm (13.2%) to 1614sqm (14.2%) which based on Council's approach to calculating AHC will result in 84sqm (0.8%) short of the required AHC or 1.6% over the 28.4% bonus FSR under the Housing SEPP.
22 November 2024	Applicant submitted amended Clause 4.6 for height and additional clause 4.6 for FSR.

3. STATUTORY CONSIDERATIONS

- **Environmental Planning and Assessment Act**

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

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

Section 4.17 Imposition of conditions

Section 4.17(1)(b) and 4.17(1)(c) enables conditions to be imposed requiring the modification of the Concept plan Stage 1 DA approved under PPSSEC-144 (DA/698/2020). In this respect, condition is imposed requiring this consent to operate in conjunction with the original consent and requiring that certain conditions are included which reference conditions in the original approved concept plan being amended such as condition 1.

Section 4.22 Concept development applications

Section 4.22 of the Act deals with the considerations under Section 4.15 the likely impacts of the development the subject of a concept development application, need only consider the likely impact of the concept proposals and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications. The relevant matters are further considered below.

Section 4.24 – Status of concept development applications and consents

Section 4.24(2) of the Environmental Planning and Assessment Act 1979 deals with the

status of concept development applications and consents and states that staged DA's cannot be inconsistent with concept plans. The Amending Detailed Stage 2 DA is consistent with the proposed Amending Concept plan Stage 1 DA noting that the Amending Concept plan Stage 1 DA will need a condition requiring the allocation of AHC in accordance with the Housing SEPP.

- **Biodiversity Conservation Act 2016 and Regulations and Commonwealth Environment Protection and Biodiversity Conservation Act 1999**

The purpose of the Act is to maintain a healthy productive and resilient environment for the greatest well-being of the community now and into the future, consistent with the principles of ecologically sustainable development notably:

- a. *to conserve biodiversity at bioregional and State scales, and*
- b. *to maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations, and*
- c. *to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation, and*
- d. *to support biodiversity conservation in the context of a changing climate, and*
- e. *to support collating and sharing data, and monitoring and reporting on the status of biodiversity and the effectiveness of conservation actions, and*
- f. *to assess the extinction risk of species and ecological communities, and identify key threatening processes, through an independent and rigorous scientific process, and*
- g. *to regulate human interactions with wildlife by applying a risk-based approach, and*
- h. *to support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature, and*
- i. *to support and guide prioritised and strategic investment in biodiversity conservation, and*
- j. *to encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity, and*
- k. *to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity, and*
- l. *to establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values, and*
- m. *to establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales, and*
- n. *to support public consultation and participation in biodiversity conservation and decision-making about biodiversity conservation, and*
- o. *to make expert advice and knowledge available to assist the Minister in the administration of this Act.*

The Subject Site contains Eastern Suburbs Banksia Scrub (ESBS), which is listed as an Endangered Ecological Community under the Biodiversity Conservation Act 2016 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. Section 5AA of the EP&A Act requires consideration as to whether a proposed development will have a significant effect on threatened species, populations or ecological communities relating to terrestrial and/or aquatic environments.

Council requested the application to address the following:

- Whether the amendments to the application would require referral to the Commonwealth under the Act 1999,
- Whether due to the additional overshadowing of the ESBS an amended BDAR is required and whether the proposal would result in any significant impact on the ESBS community.

The applicant in response submitted ecologist advice (Keystone) in relation to both matters (attachment to this report) which state:

- The original application was not required to be referred to the Commonwealth, as it the self-assessment identified that it was not considered to impose a significant impact on ESBS.
- The approved Concept plan contained a comprehensive assessment pursuant to the NSW Biodiversity Offset Scheme via a Biodiversity Development Assessment Report (BDAR) which detailed a management plan for the retained ESBS and off-site offset obligations.
- Ecologist advice indicated that the additional overshadowing would result in any significant impact on the ESBS noting that the existing Concept plan consent contained appropriate management conditions.

Council sought independent Ecologist review of the application having particular regard to the additional overshadowing to the ESBS. The independent advice stated that *an increase of the building height will only affect (in terms of overshadowing and reduction of light) a small extended portion of the protected vegetation, for a small increase in time. The extent of light reduction should not significantly affect the viability, structure or health of the Eastern Suburbs Banksia Scrub (ESBS), community and that it should not trigger further assessment (included as attachment to this report).*

Given the independent review and applicants response to certain questions, along with the retention of existing conditions requiring bushland management, it is not considered that further consideration of the Commonwealth legislation or Biodiversity Conservation Act and its Regulations is required for this amending Stage 1 Concept plan DA.

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

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

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Randwick Local Environmental Plan 2012.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration <i>(Brief summary)</i>	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas The proposal does not seek to alter the removal of vegetation approved in the original consent.	Y
	Chapter 6: Bushland in Urban Areas The proposal does not seek to alter the retained bushland area within the site or make any changes to the management plan requirements the subject of condition of consent in the original concept approval.	Y
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 2: Affordable Housing - Infill affordable housing. <ul style="list-style-type: none"> Cl's 16 and 18 of the Housing SEPP permit a maximum 30% bonus FSR and Height for in-fill development providing 15% affordable housing component (AHC) of the GFA. 	N
	Chapter 4. Design of residential apartment development: <ul style="list-style-type: none"> Chapter 4 of the Housing SEPP identifies requirements for residential apartment development. Section 147 requires a Design Verification Statement which has been prepared by Hill Thalys that addresses the Design Principles and an assessment is carried out as it relates to the additional bulk and scale afforded under the Housing SEPP and advice provided by the Design Excellence Advisory Panel (DEAP or Design review panel). 	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5(b) of Schedule 6 as it comprises affordable housing with a cost of development greater than \$5m. 	Y

SEPP (Resilience & Hazards)	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation were considered in the original consent and the scope of works sought under this amending concept plan do not raise any additional matters for consideration. The conditions imposed on the original concept application inclusive of a remediation action plan (39) shall remain in force. In this regard, the proposal will remain satisfactory subject to conditions. 	Y
Local Instruments	<p>Compliance issues identified.</p> <ul style="list-style-type: none"> Clause 4.6 Height of buildings Clause 18 of Housing SEPP and LEP. <p>The applicants Clause 4.6 which provides well founded arguments including sufficient environmental planning ground for supporting the variation.</p> <ul style="list-style-type: none"> Clause 4.6 Floor space ratio Clause 16 of Housing SEPP and LEP. <p>The applicants Clause 4.6 submissions generally provides well founded arguments for the proposed bulk and scale in terms of the desired character pursuant to the Housing SEPP and absence of any unreasonable amenity impacts. In relation to the minimum AHC of the GFA it is recommended that a condition be included requiring any future staged DA be required to provide a minimum 15% AHC of the GFA as per Rev F plan and that it provides 2 units in perpetuity.</p>	<p>Y</p> <p>Y-</p> <p>conditioned</p>
LEP	<ul style="list-style-type: none"> Clause 2.3 – Permissibility and zone objectives Clause 4.3 – Height of buildings – Clause 4.6 submitted. Clause 4.4 – Floor space ratio –Clause 4.6 submitted. 	<p>Y</p> <p>Y</p> <p>Y</p>
DCP	<ul style="list-style-type: none"> Part C2 Medium Density Residential Development 	Y

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The approved concept (under PPSSEC-144/DA/680/2020) was accompanied by a Biodiversity Development Assessment Report and Bushland Management Report referenced in the conditions of consent and subject of additional conditioning.

This application does not alter any of the aspects of the original concept approval for the following:

- The established biodiversity conservation area of 5069.8sqm containing native vegetation – ESBS and the fauna it serves - located across the southern part of the site.
- The 2m buffer zone and fencing that sits between the conservation area and the development site.
- The conditions imposed with regard to bushland management applying to the conservation area or seedbank management applying to the site works to the development part of the site.

Noting the comments made earlier in relation to the Biodiversity Conservation Act, it is considered that the proposed amending concept plan will not result in any significant impact upon the ESBS and the conditions in the original consent will ensure that the objectives of the SEPP area satisfied.

SEPP (Sustainable Buildings) 2022

SEPP (Sustainable Buildings) 2022 does not apply to the Concept Plan. A BASIX certificate has been prepared for the concurrent amending detailed Stage 2 DA (PPSSEC-335/DA/487/2024).

State Environmental Planning Policy (Housing) 2021

Chapter 2 of the Housing SEPP includes the Infill Affordable Housing Provisions.

As noted in the table above, there is a difference of opinion as to what may be included in the AHC or counted to then inform the maximum bonus afforded under the Housing SEPP.

Table 4: Consideration of the Housing SEPP Controls

Control	Requirement	Proposal	Comply
FSR (CI 16(2))	0.9639:1 as only 14.26% (1,614sqm) is provided as AHC of GFA (1,1321.7sqm) which allows for a bonus 28.52% FSR (0.02139:1) added to the LEP maximum of 0.75:1. See discussion further below.	0.975:1 (0.111:1 over the maximum or 1.15% variation). Applicant says they comply as the detailed Stage 2 DA contains 15.1% (1720sqm) AHC of GFA which includes corridor lobby space. Applicant seeks max 30% bonus of 0.225:1 FSR) Council says they provide 14.26% AHC as corridor space should be excluded. The bonus is reduced to 28.52% to 0.75:1) = 0.9639:1 (11,193sqm).	Council: No. The proposed FSR results in a 1.15% variation to the standard. Should the proposal include an additional 83.455sqm of Affordable housing the proposal will be compliant with the maximum FSR bonus under the SEPP. See clause 4.6 assessment under LEP section further below. Note: 4.6 submitted on without prejudice basis.

Height of buildings (CI 18(2))	12.35m (includes 30% bonus of LEP 9.5m (i.e. 2.85m above LEP height standard)	16.8m (4.45m above standard (37.65% variation). Note: 1.95m (13.13%) above the 14.85m approved concept plan.	No, see Clause 4.6 assessment under LEP section further below.
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Clause 16 - Affordable housing component (AHC) of GFA:

The applicant states that they seek the maximum 30% bonus to the FSR providing 1,698sqm including 97sqm of corridor/lobby floor area that provides direct access to the AH units affording a 30% maximum bonus from 0.75:1 to 0.975:1 and seeking a height of 16.8m the subject of a Clause 4.6 to Council's LEP 9.5m maximum and the Housing SEPP maximum of 12.35m.

Council however does not agree with the application that corridor lobby spaces should be included and as such the proposal which provides for 1,614sqm of AHC (14.26% of AHC) is 83.455sqm short of the required AHC (1,698sqm) which will enable a maximum FSR of only 0.9639:1 resulting in 1.15% variation (0.0111:1) to the proposed FSR of 0.975:1.

The applicant has provided additional information (contained in attachment to this report), supporting their methodology noting that several other applications are tailored in this manner and that approval has been granted for developments that have used this methodology for counting AHC for in-fill development.

Council does not accept this method for calculating AHC for the following reasons:

- Precedent is not an acceptable planning assessment methodology.
- The corridor and lobby space cannot be used as affordable housing and therefore do not fit into the definition of AHC.
- Including corridor and lobby space does not give effect to CI 21 which requires the AHC be managed by a Community Housing Provider (CHP). CHP would generally manage the rent of the unit itself rather than communal areas such as corridor space which would largely be managed by the body corporate or owner's corporation. For instance, damage to communal areas such as corridor or lobby space would be covered by the body corporate/owner's corporation rather than a CHP or rental managing agent.

Council has consistently applied this methodology of calculating the AHC as including only unit areas and excluding corridor lobby space. It has taken this approach under the since repealed SEPP ARH 2009 and the current Housing SEPP noting that the definition of AHC component has not changed nor has the requirement that it be managed by a CHP.

In summary, it is Councils view that the proposal does not provide the requisite AHC to obtain the full 30% bonus FSR afforded under cl 16 of the Housing SEPP and therefore results in an FSR that exceeds the maximum standard. As such, an assessment is carried out against the applicants clause 4.6 seeking a variation to the standard.

Clause 20 Design Requirements

Chapter 2 of the Housing SEPP now informs the desired future character of transport-oriented development throughout NSW including Randwick City Council. Clause 20 of the SEPP requires Council to consider whether the design is compatible with the character of the local area or for precincts undergoing transition – the desired future character of the precinct.

It is considered that the area is somewhat under transition noting the age and density of the surrounding recent new and renovated developments, noting that the Prince Henry Site (PHS) was the subject of providing affordable housing component prior to the inception of the Housing SEPP and that existing RFBs in the PHS contain buildings between three (3) and six (6) storeys. The density increases and affordable housing under the Housing SEPP now forms part of the existing and desired future character of development within medium density zones. Therefore, consideration has to be given to the existing character and desired future character of the area.

The proposal presents a development outcome which is consistent with the vision and character of development as envisaged through the Housing SEPP. This is attained by providing the public benefits of affordable housing whilst maintaining reasonable amenity for future occupants and neighbouring dwellings.

The Housing SEPPs influence on the desired future character of the area is important when considering the Clause 4.6 requests and specifically the impacts on other developments within the locality both in terms of impacts and character.

Whilst the proposed development exceeds the maximum height and FSR provision under RLEP 2012 as well as the bonus FSR provisions under the SEP, its height and density is largely acceptable in regard to its impacts and compatibility with the existing and desired character of the locality.

The variation to the building height whilst significant are alleviated by the concept and detailed DA retaining articulation zones and recesses along street frontages by increased setbacks of the upper-level walls from the levels below such that the top level reads as more recessive compared to the levels below. The detailed DA also applies open roof elements to wider façade slots improving its modulation along the northern elevation. The amended scheme also shifts the roof top structure at the more prominent Junction of Crown and Jennifer Street further away from the permitter making it less noticeable from street level.

An assessment has been undertaken of the Applicant's Clause 4.6 variation requests, where it is acknowledged that the envelopes would not result in significant or unreasonable adverse amenity impacts on neighbouring properties with regard to overshadowing, views or privacy and that the variation would satisfy the relevant development standard and zone objectives. The proposal also maintains approved setbacks at street level as well as the east west open corridor maintaining public domain views across the site. The proposed building footprints are also generally maintained, other than the infill consolidating the two northern buildings into one, and the proposal will still comply with the minimum landscape and deep soil controls under both local and state provisions. The overall site coverage also remains compliant with the relevant controls in the DCP for medium density development.

Furthermore, the proposed built form remains a medium density development which is commensurate with the type of development anticipated for the zoning of the site and prescribed as such under the Housing SEPP. It is vital to also note that the proposed development would not be dissimilar in height and scale to the developments within the PHS when considering the subject site has similar characteristics with these sites in terms of proximity to lower density developments and biological flora and fauna communities and as indicated earlier the provision of affordable housing.

In view of the above, it is considered that the proposed development would not be incompatible with the existing or desired future character of the area.

Chapter 4

Chapter 4 schedule 9 prescribes 9 design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified architect was submitted with the application verifying that they designed, or directed the design, of the development. The applicant also submitted a statement prepared with reference to the schedule 9 Design Principles for residential apartment development required under the Housing SEPP 2021.

The application was referred to the Design Review Panel under a Pre-DA which considered and commented on the design principles in Schedule 9 of the SEPP (contained in attachment to this report).

A summary of the DEAP comments as they relate to the concept plan are:

- Key rationale for the proposal to include Affordable housing component (AHC) and eligibility as an accessible site within 400m of a regular bus stops along Anzac Parade.
- Immediate context is transitional with undeveloped lands to the east and south with the southern interface with Kamay National Park being a key feature and significant contribution of this development retaining a large parcel of intact endemic landscaped area.
- The Panel is supportive in principle of the proposed increase in height and density. There is ample precedent for this scale of development in the locality, and the proposed additional yield supports the objectives of State Govt housing affordability policies (refer to point 1 above).
- The Panel offers in-principal support for the height proposed for the amended four storey scheme on urban design and residential amenity grounds, as well as when NCC minimum floor to floor heights are provided and the Housing SEPP 30% bonus are taken into consideration.
- The additional storey will reduce solar access to the central open space and the lower units in the southern building, as well as existing native vegetation to the south.
- Options should be explored to modulate the northern elevation of the building facing Crown Road.

Assessment comments:

Following lodgement of the amending concept plan Stage 1 DA, the applicant was advised that in general the lodged Concept plan was generally consistent with the DEAP advice provided. They were requested to:

- Identify the manner in which the Design principles the subject of condition 1 of the current approved consent (PPSSEC-116) would be altered.
- Provide additional overshadowing diagrams showing the impact on the open space within the central corridor and
- For the Detailed DA incorporate additional measures to articulate the upper level and modulate the northern elevation (Note: these measures are identified below however are shown in detail in the Amended Architectural plans submitted for the Amending Detailed Stage 2 DA (PPSSEC-335/DA/489/2024)).

The applicant in response submitted plans and material as follows:

- Additional statement identifying the way in which the Design principles was sought to be amended noting that they generally related to deleting requirements for setbacks at the upper levels to enable the attainment of the bonus FSR and Height afforded under the Housing SEPP.
- Overshadowing diagrams showing the additional impact to the central communal space between the two buildings. The application is noted as complying with the ADG controls for solar access to communal open spaces and for all units. The applicant also noted that the proposal by virtue of the large, unencumbered roof top communal open space would be more usable, retain more solar access throughout the year than the ground level space, it was more private than the approved area at ground level and would provide for more privacy to the units with ground level courtyards.

The proposal is considered to generally comply with the nine design principles noting the following key points as they relate to the Concept plan and Detailed DA:

Context and neighbourhood character

- The panel acknowledged that the area is in transition and the surrounding area demonstrates an evolving urban environment particularly for medium density development with the nearby area containing similarly scaled development to the proposed amending Concept and Detailed Stage 2 DA's. It was noted that the site coverage was retained as was the approved east-west corridor. It was considered that despite the increased height and density the proposal would provide for appropriate separation from the nearby developments across the road to the west and adjoining sites.

Built form and scale.

- The panel is supportive in principle of the proposed increase in height and density noting ample precedent for this scale in the locality and it supports the State Govt housing affordability policies. The panel notes the non-compliance is relatively minor when considering the NCC minimum floor heights required and bonuses under the Housing SEPP are factored in. The panel noted that the infill to the northern buildings would reduce amenity and solar access to the southern building and vegetation and identified measures that might assist in modulating the built form and scale of the building facing Crown Road.
- The applicant notes that as detailed in their amended concept and detailed DA that solar access is provided in compliance with the ADG, and that the proposal for large unencumbered communal open roof space is more usable than the approved ground level coverage which contains good deep soil depth for vegetation in this area and the communal roof area is now larger and will get more solar access and provides more privacy for ground level units.
- The applicant also notes that in relation to modulation of the northern building that it has made amendments to the scheme such as reducing height of lift overruns, and improved modulation of the building by such methods as moving upper level walls at the corners further back (2.5m to 2.7m) behind the walls below, moved a roof top structure further away from the street perimeter, provided some glass balustrading for roof and widened façade slots now made open to the sky.

Density

- The panel was supportive of the increase.

Sustainability

- The proposal includes a BASIX certificate with the Detailed Stage 2 application.

Landscape

- The applicant has provided more landscaping through the ground level plane.

Amenity

- The panel members were generally supportive of the apartment layouts noting that the detailed scheme includes some lightweight balustrades introduced into the northern facade.
- The proposal is also considered to be generally consistent with the design quality principles and the proposal is consistent with the ADG requirements for car parking, communal open space and the like. Detailed non-compliances such as areas of ground level courtyard spaces are considered under the Detailed DA stage 2 amending DA (DA/489/2024).

Safety

- Safety was not commented on, however the application for the detailed DA includes a Crime Risk Assessment report (5 June 20224) that concludes that it satisfies the Crime Prevention through Environmental Design (CPTED) principles of surveillance, access control, territorial reinforcement and space management.

Housing Diversity and Social Interaction

- The proposal contains affordable housing component inclusive of marketable housing aligning with the strategic approach to providing for additional housing stock incentivised by the Housing SEPP. The proposal also provides for 2 AH units to be managed by a CHP in perpetuity which is above and beyond the minimum 15 years required under the Housing SEPP. The proposal contains less AHC area than that required to obtain the full 30% bonus, which is discussed in Clause 4.6 assessment of variation to the FSR development standard under Housing SEPP.
- The amending concept plan continues to provide a good mix of unit sizes and configurations.

Aesthetics

- The panel was generally supportive of the design approach.

Summary and recommendations:

- The applicant has responded positively to the key matters raised by the DEAP and by Council officers in particular regard to the Amending detailed stage 2 DA by incorporating increased setbacks for the upper level from the street frontages and widening insets along the northern elevation of the building facing Crown Road. The larger setbacks at the upper level are more consistent with the lightweight appearance of medium density development

envisaged under the DCP within the wider RLGA. The widened insets help to break up the long building length along Crown Road.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5(b) of Schedule 6 of the Planning Systems SEPP as the proposal is development for affordable housing with a cost of works in excess of \$5m. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

Randwick Local Environmental Plan 2012

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

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

The proposal is consistent with these aims as:

- The proposal provides housing to the community in a range of apartment sizes including affordable housing should the proposal provide the requisite area required under the Housing SEPP.
- Will have acceptable impacts on the urban and natural environment.
- Increases density and built form around nearby regular bus stop that is an accessible site, that connects to the nearby town centres and city centre further afield.
- Enhances amenity for the residents through well designed apartments.
- Promotes good design as amended by providing a lighter built form elements along the street frontages and wider inserts to the northern elevation.

- It will in conjunction with the detailed DA stage 2 DA promote sustainable use of energy and resources and noting that the site coverage is not changing it promotes the efficient use of land,
- It maintains ecological sustainability noting that consideration has been given to the long-term health and care of the ESBS and hence the fauna that relies on it.
- It promotes social interaction, and good amenity by differentiating between private and communal open space.

Zoning and Permissibility (Part 2)

The site is located within the R3 medium density residential Zone pursuant to Clause 2.2 of the LEP - see figure 2 of this report.

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of residential flat building which is a permissible use with consent in the Land Use Table in Clause 2.3. The proposal also includes affordable housing component which is permissible under the Housing SEPP.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*
- *To protect the amenity of residents.*
- *To encourage housing affordability.*

The development complies with the above objectives. It will be consistent with the desired future character for the area by introducing medium density in-fill development consisting of residential uses including social affordable housing that will meet the needs of the community. The subject site is located within walking distance of bus services, that enable good access to retail and commercial services, including shopping and dining districts within the RLGA and the City Centre.

The massing and scale of the development has been assessed by the DEAP as appropriate in terms of the future built environment. The built form and east west corridor contributes to the character and public domain of the area.

The site is a large site and has sufficient area to accommodate the proposed land use and associated structures and will suitably protect the amenity of residents having regard to overshadowing, privacy, views and visual bulk. Therefore, the site is considered suitable for the proposed development and will satisfy the above objectives.

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below. The proposal does not comply with the development standard/s in Part 4 of the LEP (4.3 and 4.4) and Clauses 16 of the Housing SEPP 2021 and accordingly, Clause 4.6 requests have

been provided with the application for the exceedance of the maximum height of buildings and FSR development standards.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	<ul style="list-style-type: none"> 9.5m metres (LEP) 	16.8m (reduced from 17m) (7.3m/76.8% variation)	No
FSR (CI 4.4(2))	0.9639:1 (11,193m ²)	0.975:1	No
Exceptions to development standards (CI 4.6)	Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.	<p>Clause 4.6 variation statement submitted in support of a variation to height of building development standard contained in Clause 4.3 of the LEP.</p> <p>Clause 4.6 variation statement submitted in support of a variation to floor space ratio development standard contained in Clause 4.4 of the LEP.</p>	See assessments further below
Heritage (CI 5.10)	Consideration of the heritage conservation of the Nearby heritage conservation areas include Botany Bay National Park and Prince Henry hospital Conservation Area.	<p>The site is not mapped as a heritage item or within a heritage conservation area.</p> <p>The site maintains the distance from the National Park and Prince Henry site, and it is not considered that the proposed increase in height will result in any adverse impact on the setting, view or fabric of these Conservation areas. It is noted that within the Prince Henry Site (PHS) that there are several buildings that have similar bulk and scale (between 5- to 6 storeys) are similarly in close proximity to ESBS and closer to heritage items.</p>	Yes
Earthworks	The objective of clause 6.2 of RLEP 2012 is to ensure that earthworks for which development	The proposal seeks to excavate further below the existing approved concept excavation depth.	Yes

	consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land.	The application includes a Geotech report noting that existing conditions in the concept DA would appropriately ensure that the objectives for earthworks are satisfied.	
Design Excellence	The development is to exhibit design excellence. The consent authority must not grant consent to a development that proposes new buildings that are at least 15m in height unless it is satisfied that the proposed development exhibits design excellence.	<p>The Design Excellence Panel is supportive of the amended design subject to the implementation of design recommendations within the future detailed DA for the site.</p> <p>The amending Concept DA retains the key aspects of original approval:</p> <ul style="list-style-type: none"> • Colours and material schedule maintains the muted tones and colours. • Provides as amended greater articulation along the street frontages providing for consistent top-level setbacks to balconies and more pronounced heights such as those associated with roof and roof top structures are designed as hipped roofs and well setback from the site boundaries. • Provides visual relief along the long northern elevation by widened insets. • Maintains approved site coverage ensure no good east west connectivity with the east coast. 	Yes

The proposal is considered to be generally consistent with the LEP aims and objectives noting that the proposal does not comply with the Section 4.3 Height of building and Section 4.4 Floor space ratio development standard in the LEP and Clause 16 of the Housing SEPP.

Accordingly, Section 4.6 requests have been provided with the application for the exceedance of these development standards. See assessments further below.

Clause 4.6 – Exceptions to Development Standards

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

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

Clause 4.6 (3) relevantly states:

- 3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6 requests and assessment

The NSW Department of Planning and Environment (DPE) made amendments to clause 4.6 of the Standard Instrument which commenced on 1 November 2023. The changes aim to simplify clause 4.6 and provide certainty about when and how development standards can be varied.

Clause 4.6 of RLEP 2012 relevantly states:

- 3. Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard*

Pursuant to section 35B(2) of the *Environmental Planning and Assessment Regulation 2021*, a development application for development that proposes to contravene a development standard must be accompanied by a document (also known as a written request) that sets out the grounds on which the applicant seeks to demonstrate the matters of clause 4.6(3).

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

Clause 4.6(3) establishes the preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

1. *The applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

2. *The applicant has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.*

Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision** in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether the applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

Chief Justice Preston at [24] notes that there here are two respects in which the written request needs to be "sufficient".

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

Additionally, in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065, Commissioner Dickson at [78] notes that the avoidance of impacts may constitute sufficient environmental planning grounds "as it promotes "good design and amenity of the built environment", one of the objectives of the EPA Act." However, the lack of impact must be specific to the non-compliance to justify the breach (*WZSydney Pty Ltd* at [78]).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(3) have been satisfied for each contravention of a development standard. The assessment and consideration of the applicant's request is also documented below in accordance with clause 4.6(4) of RLEP 2012.

The following development standards are sought to be varied.

- *Height of building*
- *Floor space ratio*

Exception to the Building Height development standard (Clause 4.3)

The following is an assessment of the applicants written request to vary the height of buildings development standard in the Housing SEPP and the LEP as shown in the table and figures below taken from the applicants Clause 4.6.

The applicant also provides in the table below its interpretation of the maximum height standard which is informed by Department of Planning and legal advice as well as precedents of applications determined and at various stages of assessment. The different interpretations of maximum heights applicable to the site largely relate to the how the AHC is calculated that is whether it includes circulation space such as corridor lobby space or not. Council is of the view that it does not and therefore the bonus and maximum height afforded under the Housing SEPP is 12.2m as opposed to the 12.35m maximum under the Housing SEPP.

Development Standards	Proposed Height	Difference	Variation
12.2m 28.52% Affordable Housing Bonus (Council's Interpretation)	16.8m	4.6m	37.7%
12.35m 30% Affordable Housing Bonus (Our Interpretation)		4.45m	36.03%
9.5m Randwick LEP 2012		7.3m	76.84%
14.85m Approved Height		1.95m	13.13%

Table showing variation to the applicable development standard under the Housing SEPP and LEP including the difference in height between the approved concept plan and the amending Concept stage 1 plan as well as Council's interpretation of AHC component which informs the bonus height and the maximum height under the Housing SEPP.

The illustrated extent of the built form variations to the Housing SEPP and LEP maximums are illustrated in the 3D image and street side elevations to Crown Street to the north and Jennifer Street to the west facing the low-density zone. Although the 3D image below shows the variations to the maximum 12.35m maximum and not the adjusted HOB maximums down to 12.2m that is in line with Council's interpretation of what constitutes the bonus, the elevation images do show the adjusted height as well as the LEP maximum HOB standard of 9.5m. For most intents and purposes the images below are considered an acceptable visual characterisation of the variation being sought to the HOB standard noting the small difference in the interpreted bonus and therefore maximum.

1. Has the applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

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

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

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

The applicant's written justification demonstrates that this objective is satisfied and summarised as follows:

The transformation of the Little Bay area over recent decades noting the redevelopment of the former Prince Henry Hospital Site (PHHS) displaying a scale and character of the local area is diverse with older 1 and 2 storey houses including replacement housing stock such as newer dual occupancies and new buildings within the immediate precinct containing midrise 4-6 storey buildings showing they can successfully relate to 1-2 storey forms in the same street as provided for in the architectural package submitted with the application. and that it would be consistent with the scale and desired future character of the precinct.

The applicant refers to the Court judgement for the original concept plan stage 1 DA stating that it does not change the fundamental aspects of the approved concept plan which included a 4 storey component and 58% percentage height breach noting that it was in judgement stated that the breach is no inconsistent with what is envisaged in an R3 zone, that it complements the existing natural habitat and it is not incompatible with the character of the local area.



Built form footprint and height analysis.



Interface analysis provided by Applicant.

Assessment comments: The applicant's arguments are relatively sound particularly in regard to the size and scale of development within the PHHS in that they certainly contain similarly sized and scale developments in relatively close proximity to smaller developments and that in this context the proposed height breach would not be incompatible with the more recent development of the PHS.

The height breaches particularly to the Housing SEPP standard and to a certain extent the LEP maximum standard are compatible with the desired future character of the locality for the following reasons:

- The height breaches are not considered to detract from the character of the local area on the basis that these breaches are contained within a site that is already envisaged as containing a larger size and scale of development.
- The breaches within the four-storey envelope are accommodated or alleviated appropriately by the separation afforded by the Roads to the west and north and certainly by the large expanse of open spaces containing ESBS retained to the south.
- The amending concept plan maintains articulation zones behind the approved street setbacks which is consistent with the nature of development that exists within the nearby PHS and medium density residential developments.

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

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

The applicant's written justification states that the site is not listed as a heritage conservation area however Heritage Conservations areas are located at Kamay Botany Bay National Park to the south and Prince Henry Hospital Conservation Area to the north. The applicant states that in line with the original judgement handed down for the Concept plan approval that proposed breaches would not result in any significant impact on urban landscape because of the sizable separation and the extensive and expansive depth and height of native vegetation between the site and the Conservation areas would in part screen views of the upper stories and that a view of the urban landscape is not unexpected.

Assessment comments: The applicants' arguments are considered to be relatively sound in relation to the breached height standards noting also that the amending Concept plan has been the subject of review by Council's heritage planner who has not raised any concerns with regard to heritage conservation.

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

The applicant notes that the proposed breaches will not result in adverse impact noting the following:

- No visual impact due to there being no immediate neighbours and the four-storey form will sit comfortably within the generous natural landscape setbacks.
- No privacy due to the sizable 24m separation from the nearest neighbour to the west.
- No overshadowing to the nearest residential properties and additional shadows to the golf driving range to the west has no impact on amenity or use of that space.
- Public views from Reservoir Street eastward towards the horizon will be maintained.

Assessment: This objective is satisfied by noting that the proposed height deviation does not compromise the achievement of this objective as the proposal maintains an adequate relationship with the neighbouring properties and public spaces in regard to solar access, visual and acoustic privacy, visual bulk, and sharing of views.

The proposed additional height does not adversely affect the environmental amenity of neighbouring properties noting the sizable separation from the neighbouring land and nearby low-density zone ensuring no appreciable difference in overshadowing when compared with the original approval and that additional shadowing of ESBS to the south has been identified by independent Ecological review as being minor, the proposed envelopes retain articulation zones with the envelope as well as the east west corridor between the north and south building maintaining public domain views and the height breaches are on a higher plane of sight when viewed from the west ensuring no unreasonable impact on views from the two storey height plane of low density development to the west.

Objectives 15A under Housing SEPP.

- *To facilitate the delivery of new in-fill affordable housing to meet the needs of very low-, low- and moderate-income households.*

The applicant states the variation is to accommodate the 15% affordable housing component for affordable housing (15 units) in a manner consistent with the principles of the Housing SEPP which allows for a bonus height as an incentive. If the height standard is not supported, then it would not achieve compliance with this objective.

Assessment comments: It is agreed that the extent of the variation is largely a result of seeking to provide for affordable housing which puts pressure on the height with the alternative being that height are re-distributed to other parts of the site where it is difficult to ascertain where these might be considering the constraints of retaining the ESBS on site. In light of the proposed height breaches not raising any significant concerns with regard to achieving satisfactory outcomes with the objectives of the standard, and it is considered that the proposal is compatible with the desired character of the locality required by CI 21 of the Housing SEPP, it is considered that this objective is also satisfied.

Concluding comments: On the basis of the above, compliance with the height of buildings development standard is considered unreasonable or unnecessary in the circumstances of the case as the height of the proposed development is responsive to the surrounding locality in terms of desired future character, heritage conservation and amenity impacts.

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

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

The historical approval and provision of affordable housing provide sufficient environmental planning grounds to justify this contravention, as described below:

- The proposal responds appropriately to the site constraints on site and providing additional affordable housing applies generally across accessible areas and reflect the principle that additional height is required above planning controls to incentivize the delivery of affordable housing. The proposed has a height that is generally consistent with the Housing SEPP bonus with the parapet predominately consistent with the bonus height afforded by the SEPP.

- Requiring the distribution of affordable housing within a 2-3 storey envelope would place pressure on retention of the ESBS on site, and potentially impact the public view corridor between the northern and southern building.
- The proposed breach is associated to a large extent by the provision of communal open space within the roof which contains greater levels of amenity for the future occupants without any appreciable adverse impacts.
- The height limit which was set years ago do not reflect the latest BCA practice regarding floor-to-floor height allowances to accommodate even a 3-storey building.

Assessment comments: The applicants sustainable environmental planning grounds are considered sound noting the unique characteristics of the site, its retention of relatively open spaces with little change to site coverage, providing for better amenity within the roof space, providing for affordable housing and the absence of any unreasonable impacts all represent sufficient environmental planning grounds for supporting the height breaches.

3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

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

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

4. Has the concurrence of the Secretary been obtained?

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

Does contravention of the development standard raise any matter of significance for state or regional environmental planning?

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

Is there public benefit from maintaining the development standard?

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

Conclusion

Based on the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the height of buildings development standard.

Exception to the Floor space ratio development standard (Clause 4.4)

The following is an assessment of the applicants written request to vary the Floor space ratio development standard in the Housing SEPP as shown in the table below taken from the applicants Clause 4.6.

The applicant also provides Department of Planning and legal advice as well as precedents of applications determined and at various stages of assessment that have treated circulation space in a variety of ways whether a pro rata of the total circulation space and or common spaces as well as circulation areas specifically required to access the AHCs – that is the same as that sought under the latest amended plans submitted with the application.

Development Standards	Proposed FSR	Difference	Variation
Our Interpretation			
0.975:1 30% Affordable Housing Bonus	0.975:1	0	0
0.75:1 Randwick LEP		0.225:1	N/A. The difference is a result of the 30% bonus.
Councils Interpretation			
0.9639:1 28.52% Affordable Housing Bonus	0.975:1	0.0111:1	1.15%

Table showing variation to the applicable development standard under the Housing SEPP including the applicants interpretation that it does comply with the minimum AHC of the GFA provided.

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

1. Has the applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The applicant's written request seeks to justify the contravention of the Floor space ratio development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the proposed density would be consistent with the objective (15A) of the Housing SEPP, the development objectives (a, b and c) of the standard are still achieved.

- *To facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low- and moderate-income households.*

The applicant states the variation is to accommodate the 15% affordable housing component for affordable housing (15 units) in a manner consistent with the principles of the Housing SEPP which allows for a bonus density as an incentive. If the FSR standard is not supported, then it would not achieve compliance with this objective. The proposal also provides 2 units in perpetuity as affordable housing which is above the minimum requirements for 15 years.

Assessment comments: It is agreed that the extent of the variation is largely related to an interpretation matter that is whether the circulation space should or should not be included in the AHC component of the GFA. To dedication of 2 units to be provided in perpetuity as affordable housing is considered a better outcome than requiring the AHC shortfall which informs the maximum FSR to be provided for 15 years – the minimum under the Housing SEPP.

In light of the proposed density not raising any significant concerns with regard to achieving satisfactory outcomes with the objectives of the standard, and nor the objectives of the zone, it is considered that the proposed density provides for higher level of affordable housing component than if the development were made to comply.

The objectives of the Floor space ratio development standard are set out in Clause 4.4 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

The applicant's written justification demonstrates that this objective is satisfied by noting the following:

- The transformation of the little Bay area over recent decades noting the redevelopment of the former Prince Henry Hospital Site (PHHS) displaying a diverse scale and character of the local area. The diverse area contains older 1 and 2 storey houses including replacement housing stock such as newer dual occupancies and new buildings within the immediate precinct to the north also containing midrise 4-6 storey buildings.
- The applicant says that these midrise developments show they can successfully relate to 1-2 storey forms in the same street as provided for in the architectural package submitted with the application. In this respect, the proposed density for a 4-storey envelope would be consistent with the scale and desired future character of the precinct.
- If circulation spaces were included in the GFA, the proposal would be in compliance.
- The in-fill to the northern building will not be out of place with other development within the Little Bay Precinct.

Assessment comments: The applicant's arguments are relatively sound particularly in regard to the size and scale of development within the PHHS in that they certainly contain similarly sized and scale developments in relatively close proximity to smaller developments and that in this context the proposed density would not be incompatible with the subject site and the surrounding area noting that the subject site is separated from the low-density zone to the west by Jennifer Street.

The proposed density is compatible with the desired future character of the locality for the following reasons:

- The density is not considered to detract from the character of the local area on the basis that the exceedance is minor and contained within a site that is already envisaged as containing a larger size and scale of development than that in the surrounding low-density zone.
- The proposed envelopes are not inconsistent with the envelopes of mid-rise developments in the Little Bay Precinct.
- The proposed density is demonstrated as being appropriately accommodated within the relatively large site and the differentiated envelope is alleviated appropriately by the separation afforded by the Roads to the west and north and certainly by the large expanse of open spaces containing ESBS retained to the south and the central corridor retaining public domain views to the east.

- The amending concept plan maintains articulation zones behind the approved street setbacks which is consistent with the nature of development that exists within the nearby PHHS and medium density residential developments in general.

(b) *To ensure that buildings are well articulated and respond to the environmental and energy needs.*

The applicant notes that the Amending DA preserves the architectural merits and intent of the original concept DA, maintaining articulation zones, vertical façade slots and horizontal offsets and other modulating techniques that contribute to architectural expression.

The proposal responds well to the environmental and energy needs noting that it goes well beyond the minimum BASIX requirements including high than minimum levels of cross ventilation, solar access to units and common open spaces, good depth to façade ratios, layout, insulation, and landscaped micro-climate zones.

Assessment comments: The proposed envelopes are acknowledged as providing good levels of articulation noting earlier it retains articulation zones across the northern elevation of both buildings and roof top communal open space will afford better amenity for the occupants than that provided for within the east west corridor particularly in terms of solar access and privacy. The other matters detailed by the applicant are more appropriately examined under the Amending Detailed Stage 2 DA.

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

The Applicant notes the proposed development is not located in a conservation area, is not near a heritage item and is not heritage listed.

The applicant's written justification states that Heritage Conservations areas are located at Kamay Botany Bay National Park to the south and Prince Henry Hospital Conservation Area to the north. The applicant states that in line with the original judgement handed down for the Concept plan approval that proposed variation would not result in any significant impact on urban landscape because of the sizable separation and the extensive and expansive depth and height of native vegetation between the site and the Conservation areas would in part screen views of the upper stories and that a view of the urban landscape is not unexpected.

Assessment comments: The applicants' arguments are considered to be relatively sound in relation to the exceedance of the FSR standard noting also that the amending Concept plan has been the subject of review by Council's heritage planner who has not raised any concerns with regard to density of the development and impact on heritage conservation.

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

The applicant notes that the proposed density will not result in adverse impact noting the following:

- No visual impact due to there being no immediate neighbours and the four-storey form will sit comfortably within the generous natural landscape setbacks.
- No privacy due to the sizable 24m separation from the nearest neighbour to the west.
- No overshadowing to the nearest residential properties and additional shadows to the golf driving range to the west has no impact on amenity or use of that space.
- Public views from Reservoir Street eastward towards the horizon will be maintained.

Assessment: This objective is satisfied by noting that the proposed density does not compromise the achievement of this objective as the proposal maintains an adequate relationship with the neighbouring properties and public spaces in regard to solar access, visual and acoustic privacy, visual bulk, and sharing of views.

The proposed density does not adversely affect the environmental amenity of neighbouring properties noting the sizable separation from the neighbouring land and nearby low-density zone ensuring no appreciable difference in overshadowing when compared with the original approval and that additional shadowing of ESBS to the south has been identified by independent Ecological review as being minor.

The proposed envelopes retain articulation zones with the envelope as well as the east west corridor between the north and south building maintaining public domain views and the density proposed as a worst-case scenario is at higher plane of sight when viewed from the west which ensures no unreasonable impact on views from the two storey height plane of low density development to the west.

Concluding comments: On the basis of the above, compliance with the floor space ratio development standard is considered unreasonable or unnecessary in the circumstances of the case as the allocation of 2 units in perpetuity represents a sufficient environmental planning ground along with the assessment that the proposed envelopes are responsive to the surrounding locality in terms of desired future character, environmental needs, heritage conservation and amenity impacts.

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

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the FSR development standard by virtue of the fact that of the 15 units provided, 2 units are proposed to be used as affordable housing and managed by a CHP in perpetuity, instead of the minimum 15 years required by the housing SEPP. This outcome will align with several key NSW government initiatives aimed at addressing the ongoing housing shortage and affordability crisis and achieve a better social and economic outcome both immediate as well as in the long term.

They also state that if the FSR variation is not supported then this would result in a poorer outcome with the concept plan as approved and detailed stage 2 DA would not provide for affordable housing component.

Assessment comments: The applicants sufficient environmental planning grounds are considered sound noting the temporal aspects of the Housing SEPP and the long-term benefits of having 2 units which would account for a greater unit area than that which would be afforded if the applicant merely provided 83.455sqm of unit space.

3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

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

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the R3 zone, and as outlined above, the proposed development is also found to

be consistent with the objectives of clause 4.4 Floor Space Ratio objectives as well as the key objective of the Housing SEPP to provide for affordable housing. Therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

Does contravention of the development standard raise any matter of significance for state or regional environmental planning?

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

5. Is there public benefit from maintaining the development standard?

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

Conclusion

Based on the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the FSR development standard.

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

NA.

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

The following Development Control Plan is relevant to this application:

- *Randwick Comprehensive Development Control Plan 2013* ('the DCP')

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

As the proposed development is for the purpose of amending a concept plan to a residential in fill development. The provisions of Part C2 of RDCP are applicable in this instance. The relevant provisions of the DCP are addressed in the Key Issues section of the report and Appendix 3.

Detailed tables are to be provided as attachments.

- *S94A Development Contributions Plan*

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

This Contributions Plan has been considered and included the recommended draft consent conditions pursuant to the additional cost of works (\$14,852,586) of the proposed development.

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

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

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application.

Section 62 (consideration of fire safety) of the 2021 EP&A Regulation are matters relating to the detailed stage 2 DA for which conditions may be imposed should consent be recommended.

These provisions of the 2021 EP&A Regulation have been considered and should consent be provided may be addressed in conditions (where necessary).

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

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

The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant legislation, applicable EPI's and Councils DCP for medium density residential development sections of this report.

The proposed envelopes are generally consistent with the context of the site and noting the proposed envelopes shares similar characteristics with other similarly contextualised medium density developments in the locality such as the PHHS development. The sizable nature of the site albeit with constraints such as the retention ESBS can accommodate the breaches to the height and density sought in terms of bulk and scale, compatibility with the desired future character and absence of any significant amenity impacts.

It has been considered by Ecological technicians that the development would not have any significant detrimental impact on the ESBS ecological flora species communities of national conservation significance and that the Concept Stage 1 approval contains appropriate conditions of consent to suitably manage this community.

The proposal will not result in any significant or unreasonable impact upon the surrounding built environment by achieving a balanced outcome with maintaining site coverage, public view corridors and providing for affordable rental housing for which the Housing SEPP incentivises additional height and density. It is considered that the FSR breach is only supported on the basis that a condition be imposed requiring any future detailed Stage 2 DA

to provide for 15% AHC of the GFA as shown in Rev F plans inclusive of 2 affordable units in perpetuity.

The proposed development will complement the social environment providing for diverse housing community within an envelope that is sustainable on the site noting its sizable dimensions, constraints due to the ESBS, the lack of impact on the locality and the envelope generally considered to not result in any significant impact in the locality.

The proposed development will not have a detrimental economic impact on the locality considering the approved and proposed land use for medium density residential development.

The application has demonstrated that the site is suitable for the development.

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

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

The site is located in close proximity to public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development. The proposal will be compatible with the locality and the proposed envelopes proposed whilst in breach of the development standards are considered to be conducive to provision of affordable housing within the proposed size and scale, the site contains sizable areas of open space in the surrounding area, it is suitably separated from the adjoining low-density zone, it is identified as containing medium density development, it provides for affordable housing and there is a general absence of adverse impacts associated with the proposed concept plan stage 1 envelopes on the surrounding area including the amenity of residents.

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

These submissions are considered in Section 4 of this report.

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

The proposed increased envelopes to provide for affordable housing component to the approved development will be generally compatible with the desired future character of the areas noting the context of the site and size and scale of medium density developments in the vicinity envisages these type of developments including the absence of any significant or unreasonable adverse impacts on the locality or the amenity of residents. The unique characteristics of the site such as the retention and management of the health of the ESBS community dictates to a large extent the distribution of height and density which in this instance result in significant variations to the height of buildings development standard. The proposed height exception is supported for the reasons outlined in the Clause 4.6 assessment. Whilst the proposal seeks to provide for affordable housing it is considered that it should be required to provide the full AHC which excludes the corridor lobby space for the reasons outlined in this report.

The proposed envelopes sought under this amending Concept Plan Stage 1 DA are on balance consistent with the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5. There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	<p>The original application was not required to be referred to the Commonwealth noting that it is a self-assessment process.</p> <p>The applicant provided ecological advice which was the subject of review by an independent Ecologist whereby it was resolved that the proposed additional shadowing of the ESBS is unlikely to be significantly impacted. In this regard, the original concept approval biodiversity development assessment report (BDAR) and applied bushland management conditions imposed in the approved concept plan stage 1 DA will continue to satisfy the relevant objectives.</p>	Y
Sydney Airports Corporation	Height encroaches the 15.24m height plane.	The application was rejected by the Airports. It is noted that the DA contains Sydney Airports approval.	Y
Referral/Consultation Agencies			
Design Excellence Advisory Panel (DEAP)	<p>Chapter 4 CI - Housing SEPP CI 28(2)(a) – SEPP 65</p> <p>Advice of the Council's Design Excellence Advisory Panel</p>	The advice of the DEAP has been considered in the Pre DA documentation and the amending Stage 1 Concept Plan DA has sought to address the key issues raised by the Panel. Referral to the DRP	Y

		was not considered necessary noting that an RFI seeking further refinement of the concept plan was appropriately responded to by the applicant. The details are further discussed in the Housing SEPP Chapter 4 assessment section of this report.	
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4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Y (conditions)
Landscape Officer	Council's Landscape officer reviewed the submitted landscape plans and raises no objection to the amending components noting that the in general it results in a superior outcome by providing increase in quantity and density of planting as well as improvement to the quality of open spaces to be provided for future occupants.	Y (conditions)
Building	Council's building surveyor reviewed the subject application, Standard conditions of consent are recommended.	Y (conditions)
Ecological	An independent Ecologist reviewed the submitted documentation including the overshadowing plans and it was resolved that the proposed additional shadowing of the ESBS is unlikely to result in significant impact.	Y
Waste	Council's Waste department reviewed the detailed stage 2 development application and requested amended basement layout and additional documentation which has been submitted by the applicant. The amending Stage 2 DA is supported subject to conditions.	Y (conditions)
Heritage	Council's Heritage Officer/Consultant reviewed the submitted Heritage Impact Statement ('HIS') prepared for the applicant and concurred with the conclusion of the HIS that there would not be any adverse impacts on heritage values arising from the proposal. It was also recommended that conditions are to be imposed on any consent issued regarding the submitted materials and building elements, and protocol for indigenous archaeological finds.	Yes (conditions)

	<u>Outcome:</u> Satisfactory subject to standard conditions being imposed on any consent granted (refer to Schedule 1).	
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The are no outstanding issues raised by Council technical officers.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Engagement Strategy from 20 June 2024 until 8 July 2024. The notification included emails to the Court and submissions made in relation to the original Concept plan Stage 1 DA and Detailed Stage 2 DA. The amended plans were not required to be renotified as the included lesser impacts.

The Council received a total of 14 unique submissions, comprising 13 unique objections (one not unique). The issues raised in these submissions are considered in **Table 7**.



Table 8: Community Submissions

Issue	No of submissions	Council Comments
<p>ESBS impacts</p> <p>Removing connectivity between northern buildings will impact on ESBS seed banks and their health. What happened to the seedbanks for the already excavated part of the site.</p> <p>Overshadowing plans show the ESBS will be additionally overshadowed including loss of light access which compromises its health.</p> <p>New landscape species contaminating ESBS. The proposal indicates 43.7% of the site is untouched ESBS however only 41% was provided in the original consent. Can there be any guarantee that this can never be altered, and protection of the remnant ESBS must be</p>	7	<p>The loss of ESBS was considered in the original concept plan approval. This application does not alter the original approval having regard to the management of seedbanks within the developed part of the site. This area was always going to be excavated for the basement and the seedbeds within this area were to be relocated to the south of the site within the protected ESBS community.</p> <p>Additional shadowing of the ESBS will occur however this is relatively minor. An independent Ecologist has reviewed the subject application and does not consider that the proposed amending DA will result in any significant impact on the ESBS.</p> <p>The landscaping on site is predominately endemic species suited to the coastal environment. Councils Landscape officer has reviewed the landscape plans and doesn't raise any objections in regard to the species selection. In any event, a bushland management plan will seek to ensure the ongoing health of the ESBS community retained in the southern part of the site.</p>

<p>maintained, as a condition of any approval.</p> <p>The proposal remains a nett loss for the public and loss of ESBS.</p>		<p>Suitable conditions were included in the original consent for the concept plan regarding the area to be retained as ESBS including a 2m buffer zone which is not being changed as part of this concept plan.</p>
<p>Visual privacy impacts</p> <p>The larger development will have a detrimental impact on the neighbouring properties.</p> <p>Loss of privacy from roof terrace</p>	2	<p>The site remains a considerable distance (24m) from the adjoining low-density zone separated by the width of Jennifer Street and the verge which is considered to provide sufficient privacy relationship with the surrounding area noting that the ADG would only require a separation of 9m. it is also noted that the trafficable roof area is setback behind a hipped roof further minimising impact.</p>
<p>Affordable housing</p> <p>Does the status of AH return to standard housing after 10 years.</p> <p>Is the 15% affordable housing legally binding and in perpetuity.</p> <p>The 15% is a very low target for the increase in value the units will have because of the views.</p> <p>The 15% affordable housing requirement could readily be included in the approved DA design of the buildings.</p> <p>Affordable housing is a way to game the system. Why wasn't it included in the original scheme.</p> <p>Support the increased density for AH. Council should explore</p>	6	<p>No, SEPP Housing which replaced the since repealed SEPP ARH requires AH be provided for 15-year minimum period (5 more than the SEPP ARH) following which it does revert to standard housing. However, this application proposes to maintain AH in perpetuity for 2 units moving above and beyond the minimum requirements under the SEPP Housing.</p> <p>The 15% AHC is required by condition of consent which is binding. The applicant has offered 2 units in perpetuity which is above and beyond the minimum required under the Housing SEPP.</p> <p>This is not a relevant matter for consideration as the units will be managed by a CHP according to specific guidelines. They could be however this would obviously reduce or at the very least delay the economic returns for the development of the site.</p> <p>The reforms introduced under the SEPP Housing provide the potential for higher bonus uplift than the previous SEPP ARH 2009.</p>

opportunities to ensure AH are dedicated to Council or CHP in perpetuity.		The applicant is understood to have offered 15 units as AH with 2 provided in perpetuity which are required to be managed by a CHP in accordance with the Housing SEPP.
<p>Traffic congestion, safety and parking demand</p> <p>The streets are narrow and additional yield will result in increased traffic congestion and on street parking demand.</p> <p>Traffic congestion and safety risks due to small narrow entrance to the Golf Club</p> <p>Concerned with the intensification of residential land uses in this locality outside of the approved and existing frameworks including additional residential traffic through port botany and foreshore road should consider increase to requirements on infrastructure, including freight routs of significance.</p> <p>Request traffic safety measures as a result of the increased in population, existing road conditions such as poor sightlines and driver behaviour such as speeding.</p>	7	<p>The proposal is compliant in relation to the parking required for the development. The proposal is accompanied by a Traffic and parking assessment report which indicates that the additional vehicle trips is minimal and will not result in any unacceptable traffic implications in terms of road network capacity.</p> <p>Council's Development Engineer has reviewed the applicant and has not raised any concerns with traffic congestion.</p> <p>The access to the site is from Jennifer Street noting that no vehicle access is provided off Crown Road which leads to the golf course.</p> <p>The applicant submitted a traffic assessment which was reviewed by Council's Development Engineer who did not raise any objections. The site is zoned R3 residential which permits the development of land for medium density residential purposes, and it is considered onerous to require a traffic impact assessment for roads surrounding port botany and foreshore drive noting that the site is located within an accessible area, half of the additional density provided is for affordable housing and the roads in question are located around 2km away.</p> <p>Appropriate conditions have been imposed on the consent requiring measures to meet sightlines for vehicles exiting the driveway. Other measures may be the subject of expression of interest to the Traffic Management Committee.</p>
<p>Loss of public and private views</p> <p>Public views</p>	4	Views have been considered in the assessment of the application. In relation to the views to the west, the site is a significant distance from the coastal

<p>This scheme will ensure permanent interrupted views for surrounding residents and visitor areas, to the east north and west.</p> <p>Private views</p> <p>No. 40 Reservoir Street and 14 Jennifer Street (no submission received).</p>		<p>foreshore and not anticipated as resulting in any adverse impacts. In relation to the properties between the site and the coastal foreshore, such as the driving range, St Michaels Golf Course and other private land it is considered that the proposed height will not result in any significant adverse impact on district views to the west, at least unlikely to contain elements of appreciable high value to those obtained to the ocean and interfacing land from west to east.</p> <p>In respect to these easterly and north easterly views, the proposed footprint is not changing in an area of the site that would have any significant impact on views noting that the central corridor between the northern and southern buildings, identified in the court hearing for DA/580/2022 as a view corridor, is maintained.</p> <p>The proposed infill between the northern buildings is not considered to be in a direct line of views as it sits behind the southern building which is already approved at part 3/4 storeys and the proposed additional height is not considered to have any unreasonable added impacts to oceanic views noting that the view lines from the low-density zone to the west and southwest would largely be limited to a two-storey height which is below the currently approved height.</p> <p>The images below show the impact of the approved concept plan. The proposed additional height and density will predominately impact the view above these elements and not ocean views which sit at the horizon. As such it is not considered that the proposed amending concept application results in any significant loss of views.</p>
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		 <p>View from 14 Jennifer Street in approved Concept plan.</p>  <p>View from 40 Reservoir Street in approved concept plan.</p>
<p>Noise and light nuisance</p> <p>Loss of privacy (noise) from roof top terrace</p> <p>The proposed height may result in development being more susceptible to amenity impacts such as noise and light glare associated with port operations. NSW Ports has historically received</p>	3	<p>The communal roof terrace for residential purposes is not anticipated as resulting in any significant noise disturbance noting the suitable distance away from the neighbour's property and the fact that it is a communal area that would generally be managed by body corporate.</p> <p>Requiring a cumulative acoustic impact assessment of Port Botany operations in relation to the amenity of the rooftop communal open space is unnecessary and onerous. The applicants Clause 4.6 provides sufficient environmental planning grounds for the additional height. It is not anticipated that the Port Botany established operations poses any significant noise or light nuisance impacts that cannot be ameliorated by building code compliance or other physical or behavioural measures.</p> <p>In the unlikely event that noise or light nuisance from the Botany operations was of such nuisance, the communal roof terraces large size with many aspects of</p>

<p>Noise complaints from residents of little bay. Whilst Ports have undertaken their own Noise investigation in 2021 indicating that noise cannot be directly attributed to NSW ports operations, it is imperative that residential developments contain appropriate noise mitigation measures to mitigate acoustic impacts from the operational port environment. It is requested that the applicant undertake an acoustic assessment as part of the Stage 1 Concept Development proposal which includes a cumulative acoustic impact assessment to include operations of Port Botany.</p> <p>The additional basement using pile drivers, diggers, truck movements and jack hammering will disturb undergrown water aquifers possibly creating cracks in the sandstone bedrock, causing vibration and noise for neighbours all around for months on end. Did anyone consult/let Spinal Injuries Unit (across the road) let anyone know about this.</p>		<p>view and amenity could enable occupants to simply choose to use an area where these impacts are less pronounced.</p> <p>In relation to site management, conditions of consent may suitably manage noise and vibration during site preparation, excavation, and construction works. The proposal has been notified to all owners of the surrounding area in accordance with the Community Engagement Strategy. No submission was received from the Spinal unit across the road.</p>
<p>Site management</p> <p>Current site management is inadequate:</p> <ul style="list-style-type: none"> • Verification of soil stockpiling for seed back management. • Dust nuisances requires an on-site wash bay. 	2	<p>Existing conditions of consent sufficiently manage these matters. Any non-compliances will necessitate informing Council Building Services Regulatory Section, the Certifier appointed to the project and or Council Rangers.</p>

<ul style="list-style-type: none"> Noise from cleaning trucks. Cattle grate effectiveness. <p>The site has already been excavated. What happened to the substantial area of ESBS present on the northern part of the site which was allowed to be destroyed noting the current consent gives clear instructions on how the plans and soil were to be carefully removed and preserved for future translocation to areas of the site which had to be rehabilitated. We suggest that the developer has not adhered to the judge's instructions and therefore is in breach of planning laws.</p>		
<p>New DA</p> <p>There should be an entirely new DA, given the huge alterations proposed which aren't simple "amendments".</p> <p>They should have included affordable housing in the original scheme.</p>	3	<p>The amending DA is a mechanism for making changes to a DA where there is the possibility that these amendments or changes do not fall within the scope of a modification under the Act. Multiple DA consents can operate on the same site, noting that the aim is to ensure that conditions on each consent do not conflict with each other.</p>
<p>Architectural merit</p> <p>The proposal is a boxy structure with no relief from the relentlessly cliff like ugly façade filling in the gap between the two northern buildings and is not a good design.</p>	1	<p>Council's design excellence advisory panel (DEAP) reviewed the concept plan and detailed DA – the relevant comments, applicant response to these comments and Council's assessment is contained under Housing SEPP Section of this report.</p> <p>In general, the proposal is generally supported noting that this application relates to the envelope rather than the architectural elements which are further assessed under the Amending Detailed Stage 2 DA.</p>

<p>Overdevelopment</p> <p>A variation has already been approved and the proposal seeks a further variation to the LEP 9.5m maximum standard and DCP control. The inclusion of affordable housing is a way to game the system and extract more profit.</p>	5	<p>The proposed additional envelopes sought are assessed throughout this report. In general, it is considered that the envelopes sought can be suitably accommodated on the subject site.</p>
<p>Height and Density and character</p> <p>It is noted that the original approval is already 5.35m 56% over the 9.5m and the proposal additional height and GFA sought under the Housing SEPP bonus will significantly change (and override and exploit) the approved building design conditions approved in DA/580/2022 so that a previous approved part 3 and part 4 storey building will be two solid block residential units out of visual character with equivalent multi-level unit developments in nearby Jennifer Street, Harvey Street, Brodie Avenue and Curie Street, Little Bay.</p> <p>Breach of density and height is significant and undermines the controls for the site which anticipates a three-storey form, and the proposal is not considered to be compatible with the desirable elements of the character of the surrounding area as required by the Housing SEPP. The site sits alone surrounded by golf course, RE1 land, national Park, C1 to the south and SP2</p>	14	<p>An assessment of the applicant's clause 4.6 written request seeking a variation to the height of buildings standard and FSR by virtue of not providing under both the LEP and the Housing SEPP.</p> <p>This concept plan seeks additional envelope. The detailed design of the development is considered in the amending detailed Stage 2 DA under separated cover. Other development standards, planning controls and design guidance will continue to apply and to help shape appropriate built form outcomes. In general, any development application will need to consider the relevant planning controls under existing instruments (noting that the bonuses delivered as part of the Housing SEPP increases heights and FSR by 30 per cent from the pre-determined limits.</p> <p>In short, it is considered that the height of the proposed envelopes is supportable on the basis that it satisfies the objectives of the standard, the zone and will not result in any significant or unreasonable adverse impacts on the amenity of residents. It is also considered to provide for social housing which is incentivised under the Housing SEPP. The proposed envelopes are similar in envelopes to those in the PHHS.</p> <p>The proposal exceeds the local provisions for density and height however it complies with the density afforded under the Housing SEPP. The height afforded under the Housing SEPP is exceeded and an assessment of the applicants Clause 4.6 written submission is subject of assessment. An assessment is also carried out against the controls in the DCP and</p>

and C2 (environmental conservation) land.		<p>ADG applicable to the medium density residential type of development.</p> <p>The character of the surrounding area is considered in the assessment of the above applicable policy objectives and controls.</p> <p>The proposed envelopes are considered to be compatible with the character of the surrounding area noting the sizable separation that exists between the site and the nearby low-density zone and the existence of other similarly sized and scaled developments with similar site contexts being in close proximity to nearby ecologically sensitive areas.</p>
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5. KEY ISSUES

The following key issue is relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

Affordable Housing Component

The proposal seeks affordable housing subject to the provisions in Part 2 Division 1 of the SEPP for in-fill affordable housing that is within an accessible area to public transportation on Anzac Parade and the dedication of an AHC of GFA which incentivises bonus 30% FSR (0.225:1) in addition to the 0.75:1 under the LEP.

The key issue with the application is that the applicant says that they meet the minimum 15% AHC of GFA providing 15.1% however Council considers that the applicants AHC of GFA includes corridor lobby space and when excluded as it should, then the AHC of GFA is only 14.6% resulting in a lesser bonus FSR afforded under the Housing SEPP and hence the proposed 0.975:1 FSR will exceed the 0.9639:1 FSR development standard inclusive of the 28.52% bonus afforded as the maximum for the 14.6% AHC under the Housing SEPP.

The applicants clause 4.6 for the FSR variation is submitted on a without prejudice basis as

In short, the exception to the FSR breach is generally considered acceptable in terms of the built form characteristics and amenity impacts and the density proposed will fit into the character of the locality.

In relation to the objective to deliver AHC, the applicants clause 4.6 is considered to provide sufficient environmental planning grounds on the basis that it provides 2 affordable units in perpetuity which is well above the minimum 15 years prescribed by the Housing SEPP. In short, it is considered unreasonable and unnecessary to strictly apply the FSR density standard on the basis that its bonus is informed by the provision of AHC which the applicant demonstrates as being provided above and beyond the temporal requirements of the Housing SEPP.

As such a condition is included requiring a future detailed Staged 2 DA to provide 14.6% of AHC and that it provide at least 2 units (with at least one two-bedroom unit) for affordable housing in perpetuity.

Building Envelopes and Local Provisions

A key aspect of the Amending Concept Plan Stage 1 application is that it is seeking 4 storey envelopes for both buildings from the approved part 2/3 and part 3/4 storey envelopes which

exceed the local maximum height provisions under the LEP (9.5m) and DCP (8m wall height) that generally allow for 3-storey envelopes for medium density development. At the outset, the approved concept plan acknowledges the site is capable of accommodating larger envelopes than the local provisions envisage. It is also acknowledged that floor to ceiling height buildability requirements will generally result in an exceedance of the local controls even when the 3-storey envelope is sought.

In relation to this application, the proposed envelopes whilst significantly exceeding the local provisions will not result in any significant or unreasonable adverse amenity impacts on neighbouring land for the following reasons:

- The absence of overshadowing on neighbouring land,
- Sizable separation in excess of those required under the ADG ensures suitable privacy.
- The application retains approved setbacks and the east west corridor link ensuring views are adequately maintained.

In terms of visual bulk, the proposed height and density are considered acceptable in relation to the clause 4.6 height and FSR assessments and Clause 20 of the Housing SEPP requiring compatibility with the character of the local area and the desired character of the precinct (see relevant sections of this report).

It is also important to note that the Design Excellence Advisory Panel, pursuant to CI 145 of the Housing SEPP, supports the uplift in height and density on the site, noting that it is a site that is readily accessible via bus transport to other larger precincts in the locality and the city centre and that the increased envelopes align with the higher order planning principle under the Housing SEPP as it provides for affordable housing that would otherwise not be provided in the current Concept plan approval.

Having regard to the above in the context of key matters for consideration of this amending concept plan, it is considered that adequate consideration has been given to the extent that the ADG and DCP applies, with particular regard to the envelopes, building separation, building setbacks, and floor to ceiling heights. Further detailed assessment of the ADG will be carried out for the amending detailed Stage 2 DA (DA/489/2024).

6. CONCLUSION

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

It is considered that the key issues as outlined in Section 6 has been resolved satisfactorily through the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application DA No DA/487/2024 for Amending DA to the Stage 1 Concept application to provide 15% affordable housing through increasing the overall development to a four-storey residential flat building, infill the north south through site connection and provide for the addition of a part basement level (Height and FSR Variation) at 11 Jennifer Street, Little Bay be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment : Draft Conditions of consent
- Attachment : Architectural Concept Plans
- Attachment : Design Principles Concept Plan
- Attachment : Referrals
- Attachment : Tables of Compliance
- Attachment : Clause 4.6 Requests HOB & FSR
- Attachment : Applicant Legal Advice Bonus Housing SEPP