

Appendix B – Clause 4.6 Assessments for height of buildings and FSR

1.1. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned B2 under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is not consistent with the specific objectives of the zone. See **Section 3 and Section 7** of this report.

The following development standards in the RLEP 2012 apply to the proposal:

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	1.5:1	1.79:1	No
Cl 4.3: Building height (max)	12.0m	23.33m	No
Cl 4.1: Lot Size (min)	N/A	5387m ² (Commercial/Shop-Top) & 3113m ² (Pub and Hotel)	Yes

1.1.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards are discussed in section 7 below.

2. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standard/s contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	1.5:1	1.79:1	2,457.5m ²	19.3% over the site prior to any subdivision;
	1.5:1	2.24:1	6,723m ²	49.8% for the subdivided commercial/ shop-top “residential” lot)
Cl 4.3: Building height (max)	12.0m	23.33m	11.33m	94%

Clause 4.6 of RLEP 2012: Exception to a Development Standard 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.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will 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, and*
- (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ summarised the matters in Clause 4.6 (4) that must be addressed before consent can be granted to a development that contravenes a development standard.

1. *The applicant's written request has adequately 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's written request has adequately 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 adequately 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.
3. *The proposed development will 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.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [27] notes that the matter in cl 4.6(4)(a)(ii), with which the consent authority must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

4. *The concurrence of the Secretary has been obtained.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
- (b) the public benefit of maintaining the development standard

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

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(4) have been satisfied for each contravention of a development standard.

2.1. Exception to the Floor Space Ratio (FSR) development standard (Cl 4.4)

The applicant's written justification for the departure from the FSR 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 FSR development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

The objectives of the FSR 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 that:

- The proposed FSR on the site is not incompatible with that of surrounding development both along Coogee Bay Road and Vicar Street including the Crowne Plaza and residential developments along Vicar Street. There is precedent for development along Coogee Bay Road and within the Coogee local centre exceeding the 1.5:1 FSR control.
- Due to the size of the site and the provision of public benefit incorporating a publicly accessible laneway and eat street, and the proposal's relationship to the heritage hotel, massing is distributed to the edge of the site rather than through

the centre and designed in a way that is compatible with the characteristic building form of the locality including increased ground floor activation.

- The taller built form has been located towards the Vicar Street boundary where the existing built form already exceeds the 12m height limit. This is purposeful, in order to minimise view loss across the centre of the site from surrounding properties to the south.
- The development has been planned in a 'U-shape' around the perimeter of the site and has been set back a minimum of 11m from the heritage buildings to be retained. This allows for greater separation and visual relief for the heritage buildings and ensures the taller element is read as a backdrop that does not detract from the appearance or prominence of the heritage item. The massing of the development at the edge of the site also maximises internal amenity in terms of solar access, outlook to the central communal open space and opportunities for views towards the foreshore.
- To retain the existing streetscape character, the new development involves a four-storey street wall along the street frontages. This reflects the scale of the heritage item within the site and delivers a coherent built edge to the street. The upper levels are set back from the predominant street wall, reducing the scale and visual bulk of the development.
- The residential component to Coogee Bay Road adopts an angled "saw-tooth" façade treatment through the use of splayed balconies. This reduces the building bulk and scale, and the deep vertical expression contributes to the fine-grained pattern and rhythm of the streetscape.
- Having regard to the above, the proposal is consistent and compatible with the desired future character, scale and density of development within the locality, despite the FSR non-compliance.

Planner's Comments

The above arguments are not considered well founded as the proposed FSR (together with the excessive height) would result in an excessively bulky built form which is not consistent with the desired future character of the area. The scale of development proposed is inconsistent with the predominant character of the area, which is up to a four storey scale. While there is a larger built form element existing along Vicar St where the 12m height is exceeded, this building takes up only a portion of the overall site area and does allow for some view sharing through the site.

The predominant scale of development along Coogee Bay Rd is two and three storeys. The Crowne Plaza Hotel located on the corner of Arden Street and Carr Street is a dominant built form which is not characteristic of the area and is not an example which Council seeks to replicate.

The proposed subdivision of the site into two (2) lots exacerbates the extent of non-compliance on the proposed residential western lot (on the Coogee Bay Rd and Vicar St corner), where the shop top housing component is located. The built form on the proposed 'residential' lot will have a FSR of 2.248:1, far exceeding the 1.5:1 maximum. The bulk of the built form is proposed to be located on this portion of the site, which completely overwhelms the Coogee Bay Rd and Vicar St streetscapes and visually dominates the eastern end of Coogee Bay Rd. The five to six storey presentation is inconsistent with the desired future character expressed by the 12m height control.

The heritage submission from the applicant does not adequately address the setting of the development as a backdrop to the heritage hotel or its visual bulk and scale given the exceedance in FSR. The angled balconies to Coogee Bay Rd are not supported from a heritage assessment.

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

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

- The overall design has responded to materiality, form and rhythm of development in the locality and provides a well-articulated built form to 'break up' the massing and deliver visual interest... the high-quality façade treatments include the following features:
 - Splayed balconies along Coogee Bay Road that reflect the fine grain nature of shopfronts.
 - Contrasting building materials and finishes that incorporate sandstone and other natural elements in the design to reflect the coastline.
 - Cohesive street wall height, with recessive upper levels that utilise setbacks and lightweight finishes to reduce the massing.
 - On-structure planting within setbacks to soften the appearance of the development.
 - Large areas of fenestration at ground level to maximise opportunities for active and vibrant street frontages.

Planner's Comments

The BASIX/NatHERS certificate (submitted by the applicant) shows that the development meets the minimal relevant water and energy saving targets. The DEAP in 2019 and 2021 also offered several comments, including:

- *"All bathrooms on external walls should have operable external windows to reduce the need for artificial ventilation.*
- *The method of window operation and their fire treatment on each elevation should be indicated on the drawings.*
- *Awning windows provide poor ventilation options. Louvres should be considered.*
- *Sun-shading and or weather protection should be provided to suit orientation.*
- *Consideration should be given to a solar hot water system.*
- *Ceiling fans for bedrooms and living areas are shown on the plans and no air conditioning is shown. The Panel supports this approach.*
- *Photovoltaics should be included on the roof to mitigate energy usage. A solar photovoltaic system could power common areas with any excess energy feeding into the grid. The array also shades the roof.*
- *Some of the natural ventilation claims indicated on the plans are suspect (solid walls, narrow corridors, etc.). Natural ventilation solutions should be clearly documented, and in accord with the architectural solutions.*
- *Window types and operation to accommodate different weather conditions, and allow occupants a variety of ventilation options whilst maintaining security.*
- *Roof slabs should be provided with foam insulation covered with pebble ballast to create effective thermal comfort to the top floor apartments if no solar array is used.*
- *Outdoor clothes drying areas should be shown.*
- *Rainwater should be harvested, stored, treated and re-used, for WC's, laundries and garden irrigation.*
- *A clothes drying area should be provided.*

Residential lobbies lack direct access to stairs. Easy and attractive access to stairs should be provided to form all lobbies. Lobbies and stairs would preferably daylit and naturally ventilated.

The proposal achieves the minimum required performance. However, given the scale of the development and its significant location, more ambitious sustainability measures should be incorporated, especially as regards water. At a minimum, this full-block development should harvest, store, treat and reuse all its rainwater, in gardens, toilets and laundries. The extensive multi-level basement allows ample space in which to incorporate this system.”

It is therefore considered that the argument does not adequately address the objective of the standard and is not well-founded.

(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's written justification demonstrates that this objective is satisfied by noting that:

- As outlined in the Heritage Impact Statement that accompanies the DA, the six storey development is set behind the principle [sic] heritage buildings and primary view corridors to the site. The new development incorporates a substantial setback (minimum 11m) from the heritage-listed hotel and pub. This will allow visual separation between the historic and new forms within the site and allow the original buildings to be appreciated within the surrounding context. The contemporary design of the development will also deliver a simple backdrop to the heritage buildings, which will retain their prominence within the site.
- Given the heritage buildings within the site will be retained and remain dominant in views from the foreshore, the proposal will not alter the existing visual relationship with the James Robertson Fountain and sandstone wall. In addition, the proposed six storey development within the site sits at a lower topography and is physically removed from the other heritage items in the vicinity of the site. The massing of the development is compatible with the mixed character and setting of these heritage items, which include buildings of various scales and ages.

Planner's Comments

The heritage submission from the applicant does not adequately address the setting of the development as a backdrop to the heritage hotel or its visual bulk and scale given the exceedance in FSR. Demolition of the Inter-War building (attached to the western side of the Hotel) devalues the heritage significance of the site. The heritage significance of the site is a constraint on the site, and should not be considered an environmental ground to exceed the FSR control or objectives.

“The majority of the site is listed as a Heritage Item. The proposed demolition of the inter war building attached to the western side of the Hotel building fronting Coogee Bay Road potentially devalues the heritage values of the site considerably and, therefore, should be afforded fit and proper assessment. The HIS should comprehensively address the heritage significance of this two-storey brick Inter War building. This building was not proposed for demolition in the PreDA proposal but under the current DA is proposed to be demolished to provide for a landscaped roof on the first floor (which acts as a setback to the new residential tower component to the west) and a lounge area for the existing hotel on the ground floor. The HIS makes some limited reference to this building concluding that this building, and another adjoining two storey Inter-War building to the west, “are of less significance than the buildings addressing Arden Street and Coogee Beach and are not part of the established view corridors to the site” (p.116) However, a thorough assessment should be undertaken using the methods and criteria specified in “Assessing Heritage Significance” a NSW Heritage Manual update prepared by the NSW Heritage Office. In particular, it should address the issue as to why the historical association of this building to the original owners of

the Coogee Bay Hotel and to the development of the Coogee town centre (which in itself is a record and reflection of what the HIS constantly describes as the Hotel's "dynamic history of alteration and change") does not warrant its retention as a listed Heritage Item.

The impact of the proposed residential shop top housing on the context and setting of the heritage hotel looking west along Coogee Bay Road from the corner of Coogee Bay Road and Arden Street has not been assessed. The assessment should address the height of the proposed residential tower component (which appears higher than that presented in the PreDA proposal); its visual bulk and scale given the exceedance in FSR; and its articulation (comprising a jagged/saw tooth design to maximise private views to Coogee Bay). In regard to the setting, the HIS should address in detail, both as a backdrop to the heritage hotel and as a streetscape element, the proposed departure (of the residential shop top component) from the current fine-grain pattern on Coogee Bay Road where traditionally buildings have upper levels parallel to the street."

- (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's written justification demonstrates that this objective is satisfied by noting that:

- The design responds to the location of the existing taller built form elements to ensure that building bulk and view impacts are minimised to surrounding residential properties and public domain.
- Retaining the original building and adopting a bulk and scale for the mixed use component that will sit comfortably at the west of the site. The proposed development is well-articulated and being of high architectural merit, will not detract from the appearance of the heritage item.
- The recess to the upper levels reduces the massing of the building and ensures the proposal does not overwhelm the pedestrian scale of the street. The change in materials and finishes to the top level give the appearance of a lightweight 'cap' to the building and the 'step' in the building to the south provides an appropriate transition to the residential building at 17 Vicar Street.
- The setback areas of the stepped form incorporate private balconies, landscaped roofs and perimeter edge planting add depth and contrast to the massing of the building to ameliorate visual bulk. In addition, vertical indents are provided along the western façade to modulate and further breakdown the building's interface with Vicar Street.
- The proposed shop top housing is setback a minimum of 7.26m from the residential building at 17 Vicar Street, with the set back at the uppermost level increasing to 9m. This provides adequate building separation in accordance with the requirements of the Apartment Design Guide (ADG). The main living areas and balconies of the southern wing of the development have been oriented east or west and therefore away from 17 Vicar Street.
- Privacy issues to surrounding dwellings have therefore successfully been mitigated through building design and the FSR non-compliance will not detrimentally impact the visual privacy of neighbouring properties.
- The proposed FSR variation will not adversely impact on neighbouring properties by way of overshadowing.
- On balance however, views from surrounding properties will be relatively unaffected with the proposed development replacing existing taller elements in the site. The proposal will also result in a beneficial view sharing outcome for some dwellings.

Planner's Comments

The justification to exceed the FSR control is not well-founded, as it relies on a response that can be achieved with compliance (i.e. ensuring residential amenity through privacy provisions; solar access; retention of views; retaining the heritage item; incorporating appropriate external finishes; incorporating appropriate landscaping and compliance with the ADG) and offers no environmental planning grounds as to why compliance cannot be achieved.

In conclusion, the applicant's written request has not adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.

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 as follows:

- The development is consistent with the objects of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity. This is achieved through the delivery a genuine mixed use development that will support significant new employment in the Coogee Bay local centre. The proposal will also greatly improve the public domain interface at the heart of the local centre, and in doing so will facilitate a more vibrant village atmosphere to revitalise the local economy.
- The proposed development achieves the objectives of the development standard prescribed in clause 4.4 of the RLEP 2012. The proposal seeks to reinvigorate the operation of the Coogee Bay Hotel site and adjacent foreshore by creating a new space for the community with a modern, family friendly focus. It will also provide an opportunity to redevelop the remainder of the sitewith an intensity and mix of uses that is complementary to the character of this established town centre. The additional FSR being sought for the residential component will increase the opportunity for these objectives to be met.
- The proposed development remains consistent with the character of the B2 Local Centre, where there is precedent for building form and massing to exceed the development standards for FSR.
- The proposed FSR (1.79:1) is less than the FSR previously approved for the site (1.84:1) under development consent DA599/95. That consent has been activated through the construction of the boutique hotel and could therefore be completed. The current proposal provides far superior public benefits including greater visual separation and appreciation of the heritage buildings within the site, improved pedestrian connections through the site, including the delivery of the eat street precinct and provision of a new supermarket. The range of land uses are also considered to be more complementary to the local centre compared to the previous approval and will directly benefit the local and broader community.
- There are unique circumstances at the site which warrant the provision of increased height and massing, including:
 - The presence of a historic landmark within the site, which must be protected and afforded adequate building separation to minimise impacts and allow an appreciation of this prominent and iconic asset.
 - The significant size of the site, which is positioned along the main street, centrally within the local centre and at a low point of the valley.
- The design and built form strategy has been thoroughly planned and is capable of achieving design excellence. A range of options and criteria have been considered

including the voluntary undertaking of an invited design competition, which involved leading Australian architectural practices submitting expressions of interest at the early phases of the project and developing concept designs. The current development has undergone a vigorous design integrity process since the competition was undertaken, including meetings with the Joint Randwick / Waverley Design Review Panel and a formal pre-lodgement meeting with Council's planning staff.

- The additional GFA will not result in detrimental environmental impacts having regard to the following:
 - The holistic approach to the redevelopment of the site results in an improved relationship between built form on the site and the setting of the heritage item.
 - The proposed development maintains solar access to the surrounding public domain and neighbouring residential properties.
 - The proposed street wall height preserves the integrity of the streetscapes, and has been designed to respond sensitively to the scale, form and materiality of the desired future character. The proposed development retains the street corners and addresses the various street frontages and new throughsite link with visually interesting facades.
 - The placement of built form in the areas of existing taller elements within the site results in limited view sharing impacts. Whilst the proposal will result in some view loss to neighbouring properties, it also benefits others. On balance this is considered to be acceptable given the significant public benefits and urban design improvements that would be delivered by the development.

Assessing officer's comment: In conclusion, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, rather it promotes the benefits of exceeding the standard. The environmental aspects of the proposed development that are resulting in the additional gross floor area (and thus FSR) have not been adequately detailed and it is considered the proposed bulk and scale resulting from the extent of non-compliance with the FSR standard for the development is not justified on environmental planning grounds.

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?

The proposed development is inconsistent with the objectives of the standard as the size and scale of development is not compatible with the desired future character of the locality; the building articulation does not respond to the site context; the development is not compatible with the scale and character of heritage items on the site and within the locality; and the development adversely impacts on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The proposed development is inconsistent with the relevant objectives of the B2 zoning as the residential development is not well-integrated with the primary business function of the zone; the development does not result in a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community; the proposal does not demonstrate that the impact of development has been minimised or that the amenity of residents in the zone and adjoining residential zone will be protected; and the proposal does not demonstrate that a safe public domain will be achieved.

The proposal is not considered in the public interest.

Assessment against objectives of the B2 zone

The objectives of B2 Local Centre zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.

- To maximise public transport patronage and encourage walking and cycling.
- To enable residential development that is well-integrated with, and supports the primary business function of, the zone.
- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.
- To facilitate a safe public domain.

It is not considered that the development is consistent with the objectives of the EP&A Act or the objectives of the B2 Local Centre zone. There are insufficient environmental planning grounds to warrant the proposed non-compliance with FSR given the adverse impacts as a result (as outlined above).

The proposal seeks to vary the maximum FSR control applying to the site, being 1.5:1. The extent of variation across the site is 2,458.5m², or 19.3%.

The proposed subdivision of the site into two (2) lots exacerbates the extent of non-compliance on the proposed western lot (Coogee Bay Rd and Vicar St corner), where the shop top housing component is located.

The built form on the proposed 'residential' lot will have a FSR of 2.248:1, resulting in a variation of 49.8%. The bulk of the built form is proposed to be located on this portion of the site, which completely overwhelms the Coogee Bay Rd and Vicar St streetscapes and visually dominates the eastern end of Coogee Bay Rd.

The "unique circumstances at the site" as referred to by the applicant, being the Coogee Bay Hotel and size of the site along Coogee Bay Rd within the local centre and at the low point of the valley, do not warrant the provision of increased FSR. These are considered to be constraints more than circumstances which justify the exceedance of the FSR control.

The FSR breach will result in detrimental environmental impacts to neighbouring properties and the broader area, through the loss of views and solar access. The overall bulk and scale of the development is inappropriate for the site in relation to the site constraints and the site context.

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 floor space ratio standard will not allow for the orderly use of the site and there is no public benefit in varying the development standard to the extent sought in this instance.

2.2. Exception to the Maximum Height of Buildings development standard (CI 4.3)

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

5. 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 height of buildings development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

The objectives of the height of buildings 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 to this objective is as follows:

The Coogee local centre is an established, mixed-use area influenced by Coogee Beach, the iconic heritage item within the site and Inter-War shop top housing along Coogee Bay Road. The diverse architectural styles and building heights evident in the area define the desired future character of the area within which the site sits.

The built form strategy for the site has been thoroughly planned to ensure it provides a holistic approach to the redevelopment. The proposal draws on elements that contribute to the existing streetscapes that surround the site, including the prevalent street wall height at the boundary, but also utilises the size of the site to reflect a taller character away from the street frontages.

The proposal involves the construction of a six storey shop top housing development at the western half of the site, with frontages to Coogee Bay Road and Vicar Street. The taller built form has been located towards the Vicar Street boundary where the existing built form already exceeds the 12m height limit. This is purposeful, in order to minimise view loss across the centre of the site from surrounding properties to the south.

The development has been planned in a 'U-shape' around the perimeter of the site and has been set back a minimum of 11m from the heritage buildings to be retained. This allows for greater separation and visual relief for the heritage buildings and ensures the taller element is read as a backdrop that does not detract from the appearance or prominence of the heritage item.

To retain the existing streetscape character, the new development involves a four-storey street wall along the street frontages. This reflects the scale of the heritage item within the site together with the 12m height limit, and delivers a coherent built edge to the street. The upper levels above the height limit are set back from the predominant street wall, reducing the scale and visual bulk of the development.

The residential component to Coogee Bay Road adopts an angled "saw-tooth" façade treatment through the use of splayed balconies. This reduces the building bulk and scale, and the deep vertical expression contributes to the fine-grained pattern and rhythm of the streetscape.

Having regard to the above, the proposal is consistent and compatible with the desired future character, scale and density of development within the locality, despite the height non-compliance.

(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's written justification is as follows:

The proposed development has considered the heritage value of the Coogee Bay Hotel, a local heritage item (item I48), and also the general heritage characteristics of the locality. The site is not within a heritage conservation area, however there are a number of built heritage items within the vicinity of the site including:

- 'James Robertson Fountain' located across Arden Street to the east (local item I47),*
- 'Sandstone wall' along the length of Coogee Beach to the east (local item I57),*
- 'Residential Flat Building' at 101 Brook Street (local item I64) located approximately 100m to the north-west,*
- 'Federation House' at 113 Brook Street (local item I67) located approximately 80m to the west,*
- 'St Nicolas Rectory' at 123-123A Brook Street (local item I68) located approximately 70m to the south-west, and*
- 'St Nicolas Anglican Church' at 125 Brook Street (local item I69) located approximately 90m to the south-west.*

As outlined in the Heritage Impact Statement that accompanies the DA, the six storey development is set behind the principle heritage buildings and primary view corridors to the site. The new development incorporates a substantial setback (minimum 11m) from the heritage-listed hotel and pub. This will allow visual separation between the historic and new forms within the site and allow the original buildings to be appreciated within the surrounding context. The contemporary design of the development will also deliver a simple backdrop to the heritage buildings, which will retain their prominence within the site.

Given the heritage buildings within the site will be retained and remain dominant in views from the foreshore, the proposal will not alter the existing visual relationship with the James Robertson Fountain and sandstone wall. In addition, the proposed six storey development within the site sits at a lower topography and is physically removed from the other heritage items in the vicinity of the site. The scale and massing of the development is compatible with the mixed character and setting of these heritage items, which include buildings of various heights and ages.

(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's written justification is as follows:

The proposal has been designed, positioned and orientated to ensure the additional height does not adversely impact on the amenity of adjoining and neighbouring properties as outlined in the following subsections.

Visual Bulk

The design responds to the location of the existing taller built form elements –at the south western corner, north western corner, and along Coogee Bay Road - to ensure that building bulk and view impacts are minimised to surrounding residential properties and public domain.

The proposal preserves the visual quality of the Coogee Bay Hotel as an important landmark by retaining the original building and adopting a bulk and scale for the mixed use component that will sit comfortably at the west of the site. The proposed development is well-articulated and being of high architectural merit, will not detract from the appearance of the heritage item.

The proposal maintains the existing three to four storey street wall that exists along the adjacent portion of Coogee Bay Road and the corner of Vicar Street. The upper levels above the height control are then stepped, with a 3m setback at level 4 and a further 2.5m setback at level 5. The recess to the upper levels reduces the massing of the building and ensures the proposal does not overwhelm the pedestrian scale of the street. The change in materials and finishes to the top level give the appearance of a lightweight 'cap' to the building and the 'step' in the building to the south provides an appropriate transition to the residential building at 17 Vicar Street.

The setback areas of the stepped form incorporate private balconies, landscaped roofs and perimeter edge planting add depth and contrast to the massing of the building to ameliorate visual bulk. In addition, vertical indents are provided along the western façade to modulate and further breakdown the building's interface with Vicar Street.

Privacy

The proposed shop top housing is setback a minimum of 7.26m from the residential building at 17 Vicar Street, with the set back at the uppermost level increasing to 9m. This provides adequate building separation in accordance with the requirements of the Apartment Design Guide (ADG). The main living areas and balconies of the southern wing of the development have been oriented east or west and therefore away from 17 Vicar Street.

The proposal is separated across Vicar Street from residential dwellings on the western side of the street. The residential dwellings above the 12m height limit will look over the top of the immediately adjacent dwellings to the west and will cause no greater privacy impact than that generated by the existing boutique hotel building presently on the site.

Privacy issues to surrounding dwellings have therefore successfully been mitigated through building design and the height non-compliance will not detrimentally impact the visual privacy of neighbouring properties.

View Sharing

A View Sharing Analysis accompanies the DA and concluded that potential available views across the site have features that would be considered scenic or valuable including the land-water interface of Coogee Bay, Dolphin Point headland and the natural landform of Wedding Cake Island. The site sits in a low central bowl surrounded by sloping topography. The visual catchment is therefore constrained and views to scenic and valuable features from the public domain, including Arden Street, Goldstein Reserve and Coogee Bay would remain unaffected by the proposed development.

Analysis of the visual context and likely views further determined that there were 16 neighbouring dwellings potentially affected by view loss, all which have views north to east across the site.

CGIs show that views directly adjacent to the west and south of the proposal, including 16, 17 and 23-25 Vicar Street, would remain relatively unaffected with current built form being replaced by other built form, and upper parts of the proposal predominantly blocking views to other development and sky. Based on the analysis, the proposal will result in a beneficial view sharing outcome for dwellings at 16 and 23-25 Vicar Street.

Immediate neighbours located in Vicar Street will be exposed to views of the new contemporary built form, however the analysis confirmed that these dwellings do not have access to scenic or highly valued views over and above existing built form on the site. In particular, a minor amount of view loss would occur in relation to 12 Vicar Street where built form proposed will occupy part of the existing through-site link. Notwithstanding this, there is expected to be an improved spatial relationship and net benefit to this view.

East facing dwellings located mid-slope on Brook Street were those found to be potentially most affected by view loss. Based on one photomontage from unit 4 at 119 Brook Street and CGI views from more elevated dwellings at 124 and 128 Brook Street, it was determined that these dwellings have views access to the north-east. These views are likely to include parts

of the Dolphin Point landform and a short section of land-water interface (exposed rock platform), which would be considered as scenic and highly valued in Tenacity terms.

It is acknowledged that there will be some level of view loss across the site experienced from the nearby residential buildings at 119 and 128 Brook Street. On balance however, views from surrounding properties will be relatively unaffected with the proposed development replacing existing taller elements in the site. The proposal will also result in a beneficial view sharing outcome for some dwellings. The proposal replaces existing buildings, unsightly service areas and car parking with an attractive and well-designed building which has a coherent form and scale. In this regard, the proposal will significantly improve the visual qualities of the site and offer a high level of visual interest when viewed from the surrounding area.

As outlined in the Heritage Impact Statement prepared by Weir Phillips, no significant view corridors to or from nearby heritage items will be impacted by the development and proposed height variation.

Overshadowing

Shadow diagrams for the proposed development have been prepared Fender Katsalidis. These diagrams demonstrate the following:

- During the morning period, the additional shadows will largely fall over Vicar Street to the west and south-west between 9am to 9.30am. There will be some limited overshadowing to the front setbacks of the residential properties on the western side of Vicar Street, however this is limited to before 9.30am and ensures that there is no material overshadowing to those properties on the western side of Vicar Street at midwinter. Refer to drawing ref DA426 Shadow Diagram – Impact on Vicar Street Proposed within Appendix D of the SEE.*
- From 11am onwards, overshadowing will generally be confined to within the boundaries of the site.*
- Around 12 noon, there will some additional shadows to the private open space of 17 Vicar Street to the south. Solar access will still be available during the morning period and therefore the proposal will not adversely impact on the function or enjoyment of this space.*
- Between 1pm and 3pm, the additional shadows will fall across the car parking associated with 19 and 21 Vicar Street. The proposal will not adversely impact on the future redevelopment potential of these properties given these are largely unencumbered by shadows during the morning period (9am-12pm).*
- The proposed development will not cast additional shadows over the north facing windows of the residential building at 230 Arden Street at any time on 21 June.*

Having regard to the above, the proposed height variation will not adversely impact on neighbouring properties by way of overshadowing.

Assessing officer's comment: The above arguments are not considered well founded as the proposed height breach would result in an excessively high and bulky built form which is not consistent with the desired future character of the area. The scale of development proposed is inconsistent with the predominant character of the area, which is up to a four storey scale. While there is a larger built form element existing on the site along Vicar St where the 12m height is exceeded, this building takes up only a portion of the overall site area and does allow for some view sharing through the site. This portion of the site that exceeds the 12m is not the desired future character of the area.

The overall mass which is proposed is out of scale with the fine grain architecture and character of Coogee. The submitted HIS does not properly consider the visual bulk and scale of the shop top housing component to the heritage item.

6. 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 as follows:

- *The development is consistent with the objects of the Environmental Planning and Assessment Act 1979 by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity. This is achieved through the delivery a genuine mixed use development that will support significant new employment in the Coogee Bay local centre. The proposal will also greatly improve the public domain interface at the heart of the local centre, and in doing so will facilitate a more vibrant village atmosphere to revitalise the local economy.*
- *The proposed development achieves the objectives of the development standard prescribed in clause 4.3 of the RLEP, as described in **Section 6.2** above and achieves the objectives of the B2 Local Centre zone as described within **Section 6.5** below. The proposal seeks to reinvigorate the operation of the Coogee Bay Hotel site and adjacent foreshore by creating a new space for the community with a modern, family friendly focus. It will also provide an opportunity to redevelop the remainder of the site with an intensity and mix of uses that is complementary to the character of this established town centre. The additional building height being sought for the residential component will increase the opportunity for these objectives to be met.*
- *There are unique circumstances at the site which warrant the provision of increased building height, including:*
 - *The presence of a historic landmark within the site, which must be protected and afforded adequate building separation to minimise impacts and allow an appreciation of this prominent and iconic asset.*
 - *The significant size of the site, which is positioned along the main street, centrally within the local centre and at a low point of the valley.*
- *The design and built form strategy has been thoroughly planned and is capable of achieving design excellence. A range of options and criteria have been considered including the voluntary undertaking of an invited design competition, which involved leading Australian architectural practices submitting expressions of interest at the early phases of the project and developing concept designs. The current development has undergone a vigorous design integrity process since the competition was undertaken, including meetings with the Joint Randwick /Waverley Design Review Panel and a formal pre-lodgement meeting with Council's planning staff.*
- *The additional building height will not result in detrimental environmental impacts in terms of built form, overshadowing, privacy, view or heritage impacts as:*
 - *The holistic approach to the redevelopment of the site results in an improved relationship between built form on the site and the setting of the heritage item.*
 - *The proposed development maintains solar access to the surrounding public domain and neighbouring residential properties.*
 - *The proposed street wall height preserves the integrity of the streetscapes, and has been designed to respond sensitively to the scale, form and materiality of the desired future character. The proposed development retains the street corners and addresses the various street frontages and new through-site link with visually interesting facades.*
 - *The placement of built form in the areas of existing taller elements within the site results in limited view sharing impacts. Whilst the proposal will result in some view loss to neighbouring properties, it also benefits others. On balance this is considered to be acceptable given the significant public benefits and urban design improvements that would be delivered by the development.*

Assessing officer's comment: In conclusion, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

It is not considered that the development is consistent with the objectives of the EP&A Act or the objectives of the B2 Local Centre zone.

The proposal seeks to vary the maximum 12m height limit applying to the site. The extent of variation is 10.28m measured to the top of parapet (being a height of 22.28m) and 11.33m measured to the top of plant (being a height of 23.33m) along the Coogee Bay Rd (northern) elevation.

The 12m height limit applies not only to the subject site, but to the broader area extending west along Coogee Bay Rd and south along Arden St. The site is located at the lower end of Coogee Bay Rd and many properties which are set at a higher level achieve view lines across the site towards Coogee Bay.

The predominant scale of development along Coogee Bay Rd is two and three storeys. The Crowne Plaza Hotel located on the corner of Arden Street and Carr Street is a dominant built form which is not characteristic of the area and is not an example which Council seeks to replicate.

The height breach will result in detrimental environmental impacts to neighbouring properties and the broader area, through the loss of views and solar access. The street wall height and setback of upper levels do not respond to the fine grain architecture found along Coogee Bay Rd.

7. 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?

The proposed development is inconsistent with the objectives of the standard as the size and scale of development is not compatible with the desired future character of the locality; the development is not compatible with the scale and character of heritage items on the site and within the locality; and the development adversely impacts on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The proposed development is inconsistent with the relevant objectives of the B2 zoning as the residential development is not well-integrated with the primary business function of the zone; the development does not result in a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community; the proposal does not demonstrate that the impact of development has been minimised or that the amenity of residents in the zone and adjoining residential zone will be protected; and the proposal does not demonstrate that a safe public domain will be achieved.

The proposal is not considered in the public interest.

8. 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 raise matters of significance for state or regional environmental planning, as detailed within the report.

Is there public benefit from maintaining the development standard?

Variation of the maximum floor space ratio standard will not allow for the orderly use of the site and there is no public benefit in varying the development standard to the extent sought in this instance

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have not been satisfied and that development consent should not be granted for development that contravenes the FSR and building height development standards.

Responsible officer: GAT & Associates

File Reference: DA/437/2021

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