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## Bayside Planning Panel

**25/07/2017**

Item No	<b>5.3</b>
Application Type	Development Application
Application Number	DA-2016/189
Lodgement Date	21 October 2016
Property	<b>12-14 Herford Street, Botany</b>
Owner	H Chalich
Applicant	Pinnacle Plus
Proposal	Torrens title subdivision of the land into five (5) lots, and the construction of two (2) semi-detached dwellings (Lots 1 & 2) and three (3) single dwellings (Lots 3,4 & 5) and a secondary dwelling at the rear of Lot 5.
No. of Submissions	None
Cost of Development	\$1,738,678
Report by	Emma Bell – Development Assessment Planner

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## Officer Recommendation

- 1 That the Bayside Planning Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest because it is consistent with the objectives of the floor space ratio standard and the objectives for the R2 Low Density Residential zone.
  - 2 That the development application DA-2016/189 for the Torrens title subdivision of the land into five (5) lots, and the construction of two (2) semi-detached dwellings (Lots 1 & 2) and three (3) single dwellings (Lots 3,4 & 5) and a secondary dwelling at the rear of Lot 5 at 12-14 Herford Street, Botany be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
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## Attachments

- 1 Planning Assessment Report
- 2 Statement of Environmental Effects
- 3 LEC Judgement on previous proposal
- 4 Architectural Plans

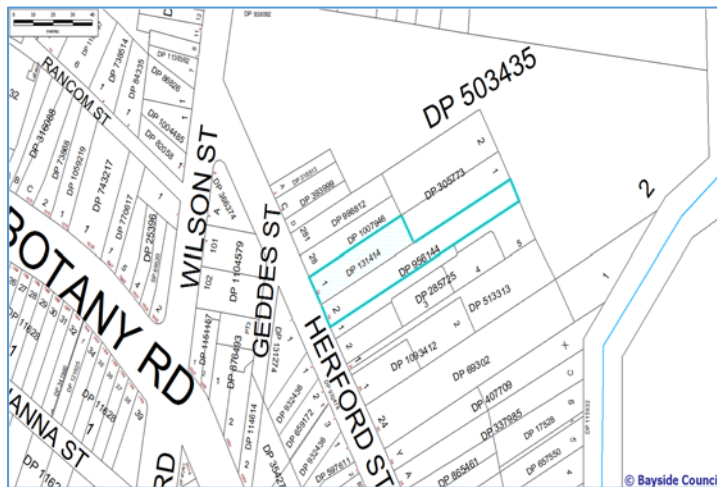


Fig 1 – Location Plan

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	2016/189
<b>Date of Receipt:</b>	21 October 2016
<b>Property:</b>	12-14 Herford Street, Botany NSW 2019
<b>Owner:</b>	H Chalich
<b>Applicant:</b>	Pinnacle Plus
<b>Proposal:</b>	Torrens title subdivision of the land into five (5) lots, and the construction of two (2) semi-detached dwellings (Lots 1 & 2) and three (3) single dwellings (Lots 3,4 & 5) and a secondary dwelling at the rear of Lot 5.
<b>Value:</b>	\$1,738,678.00
<b>No. of submissions:</b>	Two submissions
<b>Author:</b>	Emma Bell, Contract Development Assessment Planner
<b>Date of Report:</b>	26 May 2017

### Key Issues

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Bayside Council received Development Application No. 16/189 on 21 October 2016 initially seeking consent for Torrens title subdivision of land into 5 allotments and construction of 2 semi-detached dwellings, 3 single houses (Dwelling 5 with a detached outbuilding) and with 2 car parking spaces for each residence at 12-14 Herford Street, Botany.

The application was placed on public exhibition for a 14 day period from 16 November until 30 November 2016. Two (2) submissions were received in response. One of the two submissions stated that it represents other landowners (names were provided however no signatures are present on the submission).

A preliminary assessment of the application was undertaken where it was discovered that the proposed outbuilding at the rear of Lot 5, containing a separate bedroom, separate living/kitchen area and separate bathroom facilities along with an outdoor deck area, should have been described as a secondary dwelling, not as an outbuilding.

In this regard, the application was re-notified as 'Torrens title subdivision of the land into five (5) lots, and the construction of two (2) semi-detached dwellings (Lots 1 & 2) and three (3) single dwellings (Lots 3,4 & 5) and a secondary dwelling at the rear of Lot 5' for an additional 14 day period from 19 January 2017 until 7 February 2017. One (1) submission was received in response, the author of the submission having also submitted in the initial round of notification.

On 27 June 2017, a revised subdivision plan was submitted to Council which provides a frontage to Herford Street for each new lot proposed.

Key issues in the assessment of the proposal relate to varying the floor space ratio (FSR) control for the dwellings proposed on Lot 1 & 2, setback controls and minimum lot area for battle-axe subdivision. The proposal exhibits compliance with the BBLEP 2013 height standard and the key controls of the BBDCP 2013 being landscaped area, site coverage, privacy impacts (subject to conditions of consent), overshadowing and car parking. The applicant has submitted a Clause 4.6 submission for the proposed variation to the FSR control for Lot 1, and the variation is supported for reasons outlined in this report.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to conditions of consent.

## Recommendation

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As per attached cover page.

## Background

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### History

On 14 December 2014, Development Application No. 14/272 was lodged with Council seeking consent for the construction of 8 dwellings, landscaping and subdivision. During the assessment of the application, the proposal was amended and reduced to 6 dwellings.

On 18 September 2015, a Class 1 appeal against Council's deemed refusal was lodged with the Land and Environment Court.

On 5 May 2016, the appeal was dismissed.

The Development Application now before Council includes a number of revisions made by the applicant as a result of the issues that were raised during the court proceedings.

A summary of these changes is provided below:

- Reduction in the number of dwellings on the overall site from 6 to 5;  
(Note: a secondary dwelling is proposed to the rear of Lot 5)
- Reduction in lots from 6 lots to 5 lots (deletion of rear lot);
- Modifications to the driveway to increase landscaping to reduce the 'gun barrel' effect;
- Reconfigure the housing typologies from four semi-detached dwellings and two detached dwellings to two semi-detached dwellings and three detached dwellings;
- Reduction in the overall GFA of the site from 914.8m<sup>2</sup> to 872.4m<sup>2</sup>, achieving an FSR of 0.49:1, across the site;
- Reduce the bulk and scale of dwelling 3 and 4 to be part 1, part 2 storey dwellings;
- Increase the lot sizes from an average of 290m<sup>2</sup> to an average of 349m<sup>2</sup>;
- Reduction from 4 to 3 lots which utilise the proposed right of way; and,



- Reduction in the length of the proposed right of way.

## Site Description

The sites are legally known as No. 12 Herford Street has a site area of 676sq.m and a frontage of 13.105m to Herford Street. The site is rectangular in shape and is relatively level. The site contains an existing single storey weatherboard dwelling with a detached fibro garage and metal shed at the rear of the site. The site is devoid of any significant vegetation.

No. 14 Herford Street has a site area of 1729sq.m and a frontage width of 9.82m to Herford Street. The site is a very narrow long rectangular shaped allotment and has a fall of approximately 3.6m from the rear (east) to the Herford Street frontage (west). The site currently contains an existing single storey weatherboard dwelling situated toward the front of the site, and three metal detached sheds behind the dwelling. The rear 50% of the site contains no buildings and the site is devoid of any significant vegetation with exception to a small tree located within the nature-strip.

Surrounding development is mixed in nature and consists of both single storey and two storey detached dwellings, further to the south of Herford Street is industrial development along Stephen Road, further to the north of Herford Street is the Banksmeadow Pre-School, and Banksmeadow Public School, and further north is multi-dwelling development including residential flat buildings along Wilson Street.



Figure 1. Locality map



**Figure 2.** Aerial of subject site



**Figure 3.** Subject sites, No. 12 & No. 14 Herford Street, Botany



**Figure 4.** No. 14 Herford Street, Botany and adjoining property No. 16 Herford Street access driveway.



**Figure 5.** Rear of No. 12 Herford Street, Botany



**Figure 6.** Rear of No. 14 Herford Street, Botany



**Figure 7.** Streetscape of Herford Street looking south.





**Figure 8.** Streetscape of Herford Street looking north.

## Proposal

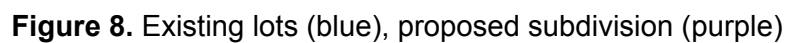
The development application, in its amended form seeks consent for the Torrens title subdivision of the land into five (5) lots, and the construction of two (2) semi-detached dwellings (Lots 1 & 2) and three (3) single dwellings (Lots 3,4 & 5) and a secondary dwelling at the rear of Lot 5 at 12-14 Herford Street, Botany. The specifics of the proposal are as follows:

### Torrens title subdivision of the sites being:

- No. 12 Herford Street – 676sq.m; and,
  - No. 14 Herford Street – 1053sq.m
- Total site area: 1729sq.m

Into five (5) lots as follows:

Lot No.	Area (sq.m)	Frontage width to Herford Street (m)
1	227	9.08m
2	227	8.97m
3	302	1.65m
4	370	1.65m
5	621	1.65m



Lot No.	Building Type	Ground Floor inclusions	First Floor inclusions
1	1 x Semi-detached dwelling	<ul style="list-style-type: none"> <li>• Single integrated garage;</li> <li>• Additional parking space in driveway</li> <li>• Study;</li> <li>• Entry hallway</li> <li>• Internal laundry</li> <li>• Living room</li> <li>• Dining room</li> <li>• Kitchen</li> <li>• Covered outdoor deck</li> </ul> <p>GFA: 67.2sq.m</p>	<ul style="list-style-type: none"> <li>• Stairway access from ground floor;</li> <li>• Void area overlooking front entrance;</li> <li>• Foyer area and storage cupboard;</li> <li>• Bedroom 1 with accessible rear facing deck;</li> <li>• Bathroom;</li> <li>• Bedroom 2,</li> <li>• Master bedroom with ensuite and open wardrobe;</li> <li>• Front balcony accessed from master bedroom</li> </ul> <p>GFA: 71.2sq.m <b>Total GFA: 138.4sq.m</b></p>
2	1 x Semi-detached dwelling	<ul style="list-style-type: none"> <li>• Single integrated garage;</li> <li>• Additional parking space in driveway</li> <li>• Study;</li> <li>• Entry hallway</li> <li>• Internal laundry</li> <li>• Living room</li> </ul>	<ul style="list-style-type: none"> <li>• Stairway access from ground floor;</li> <li>• Void area overlooking front entrance;</li> <li>• Foyer area and storage cupboard;</li> <li>• Bedroom 1 with accessible rear facing deck;</li> <li>• Bathroom;</li> <li>• Bedroom 2,</li> </ul>

Lot No.	Building Type	Ground Floor inclusions	First Floor inclusions
		<ul style="list-style-type: none"> <li>Dining room</li> <li>Kitchen</li> <li>Covered outdoor deck</li> </ul> <p>GFA: 67.2sq.m</p>	<ul style="list-style-type: none"> <li>Master bedroom with ensuite and open wardrobe;</li> <li>Front balcony accessed from master bedroom</li> </ul> <p>GFA: 71.2sq.m <b>Total GFA: 138.4sq.m</b></p>
3	1 x Detached dwelling	<ul style="list-style-type: none"> <li>Double integrated garage;</li> <li>Entry hallway;</li> <li>Guest bedroom;</li> <li>Laundry/bathroom;</li> <li>Living room;</li> <li>Kitchen</li> <li>Dining room;</li> <li>Covered outdoor deck</li> </ul> <p>GFA: 85.3sq.m</p>	<ul style="list-style-type: none"> <li>Stairway access from ground floor;</li> <li>Void area over front entrance;</li> <li>Bedroom 1;</li> <li>Bedroom 2 ;</li> <li>Separate bathroom and toilet;</li> <li>Master bedroom with walk in robe, ensuite;</li> <li>Rear facing deck accessed from Master bedroom</li> </ul> <p>GFA: 80sq.m <b>Total GFA: 165.3sq.m</b></p>
4	1 x Detached dwelling	<ul style="list-style-type: none"> <li>Double integrated garage;</li> <li>Entry hallway;</li> <li>Guest bedroom;</li> <li>Laundry/bathroom;</li> <li>Living room;</li> <li>Kitchen</li> <li>Dining room;</li> <li>Covered outdoor deck</li> </ul> <p>GFA: 85.3sq.m</p>	<ul style="list-style-type: none"> <li>Stairway access from ground floor;</li> <li>Void area over front entrance;</li> <li>Bedroom 1;</li> <li>Bedroom 2 ;</li> <li>Separate bathroom and toilet;</li> <li>Master bedroom with walk in robe, ensuite;</li> <li>Rear facing deck accessed from Master bedroom</li> </ul> <p>GFA: 80sq.m <b>Total GFA: 165.3sq.m</b></p>
5	1 x Detached dwelling  & 1 x Secondary dwelling	<ul style="list-style-type: none"> <li>Detached double carport at front of site;</li> <li>Covered walkway to dwelling entrance;</li> </ul> <p>Dwelling containing;</p> <ul style="list-style-type: none"> <li>Rumpus room;</li> <li>Entry hallway;</li> <li>Internal bathroom;</li> <li>Kitchen with walk in pantry;</li> <li>Dining room with external deck area;</li> <li>Lounge room with external covered deck area</li> </ul> <p>GFA: 116.9sq.m</p> <p>Secondary dwelling containing:</p> <ul style="list-style-type: none"> <li>Bedroom;</li> <li>Bathroom;</li> <li>Lounge room;</li> <li>Kitchen</li> <li>Attached outdoor deck</li> </ul>	<ul style="list-style-type: none"> <li>Stairway access from ground floor;</li> <li>Bedroom 1;</li> <li>Bedroom 2;</li> <li>Bedroom 3;</li> <li>Bathroom;</li> <li>Storage cupboard;</li> <li>Living area;</li> <li>Study area;</li> <li>Master bedroom with open wardrobe and separate ensuite;</li> <li>Attached balcony accessed by living area (<b>deleted by Condition</b>)</li> </ul> <p>GFA: 135.9sq.m <b>Total GFA: 252.8sq.m</b></p>

Lot No.	Building Type	Ground Floor inclusions	First Floor inclusions
		GFA: 40.2sq.m	Total GFA including Secondary Dwelling: 293sqm

## Architectural Plans



Figure 9. Site Plan showing proposed dwelling layout on each lot.

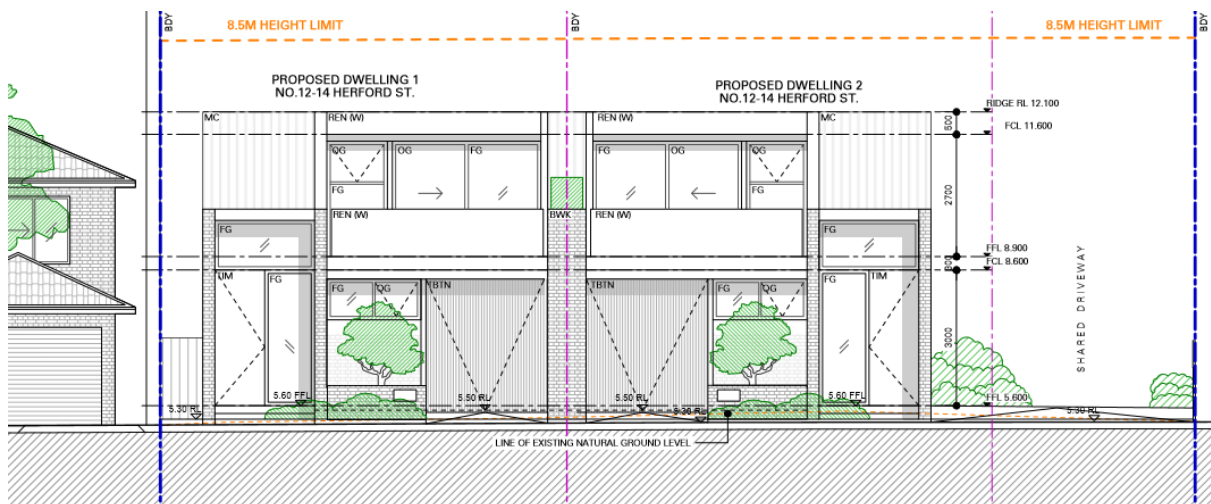
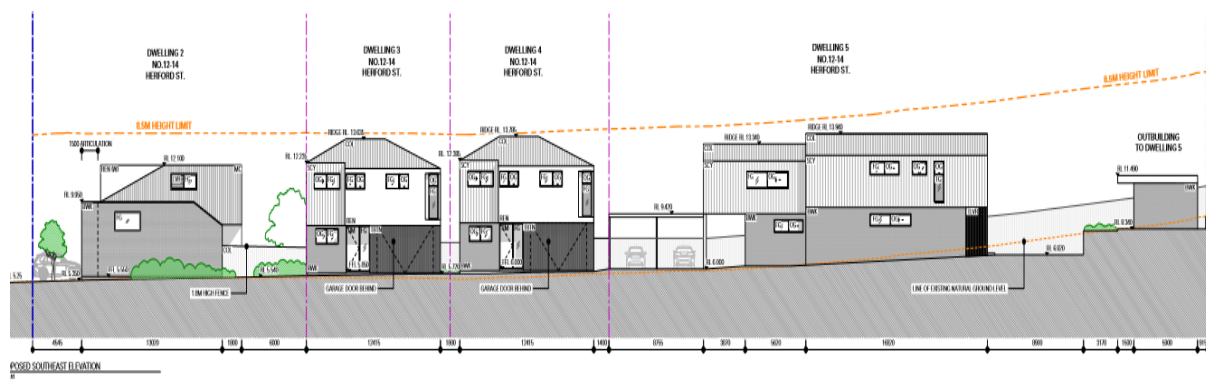
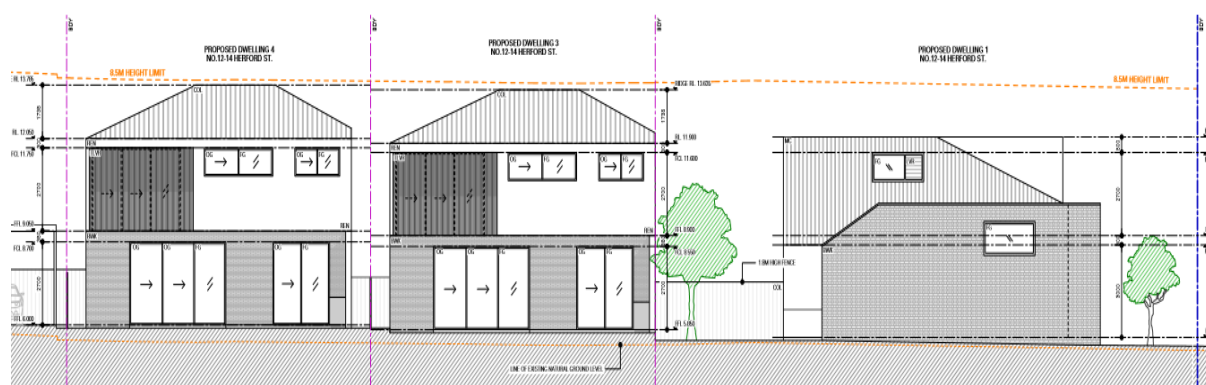


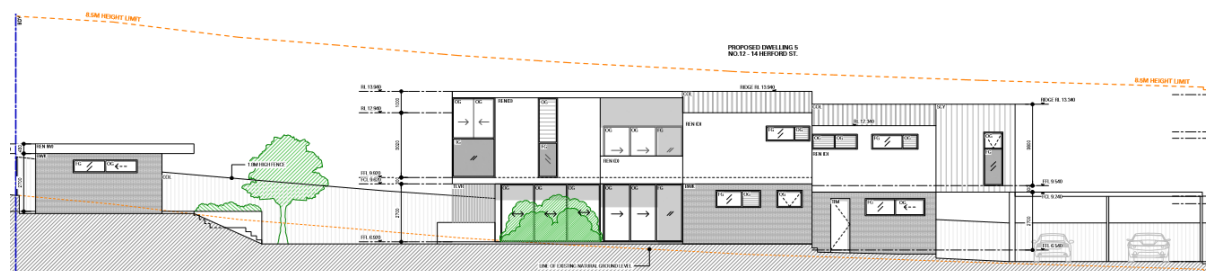
Figure 10. Herford Street elevation of new dwellings on Lot 1 & Lot 2



**Figure 11.** Internal elevation of proposal looking north from the right of way.



**Figure 12.** Northern elevation of proposal looking from the sports grounds of Banksmeadow Public School.



**Figure 13.** (Continued from Figure 11) Northern elevation of proposal (Lot 5) as viewed from Banksmeadow Public School.

## Referrals

The development application was referred to Council's Development Engineer, Flooding Engineer and Landscape Architect, for comments. Appropriate conditions have been imposed on the development consent to address the relevant issues raised relating to stormwater disposal, flooding (finished floor levels), and landscaping requirements.



## Statutory Considerations

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An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### **S.79C(1) - Matters for Consideration – General**

#### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The development application was accompanied by a BASIX Certificate for each new dwelling on each new proposed lot, including a BASIX certificate for the proposed secondary dwelling.

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan 2013. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

1. The site appears to have been continuously used for residential purposes;
2. The adjoining and adjacent properties are currently used for residential purposes;
3. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

#### **State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)**

The provision of Division 2 of the ARHSEPP applies to the proposed development as a secondary dwelling is to be constructed at the rear of proposed Lot 5. An assessment of the secondary dwelling has therefore been undertaken in accordance with the provision of the SEPP as demonstrated in the following table:

Applicable clause	Extract from Affordable Housing SEPP	Proposed development	Complies
Clause 19 – definition	<i>Secondary dwelling</i> means a self-contained dwelling that:		

Applicable clause	Extract from Affordable Housing SEPP	Proposed development	Complies
	<p>(a) Is established in conjunction with another dwelling (the <i>principal dwelling</i>), and</p> <p>(b) Is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and</p> <p>(c) Is located within, or is attached to, or is separate from, the principal dwelling.</p>	<p>The proposed secondary dwelling is to be constructed at the rear of Lot 5, behind the proposed principal dwelling which is to be located at the front of the lot.</p> <p>The proposed secondary dwelling is to be on the same lot of land as the principal dwelling and is an individual lot by way of Torrens title subdivision approved under this application.</p> <p>Is a detached (separate) building, located behind the principal dwelling on the same individual lot of land.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Clause 20 – Land to which Division applies	<p>This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if development for the purposes of a dwelling house is permissible on the land:</p> <p>(a) Zone R2 Low Density Residential</p>	<p>The site is zoned R2 Low Density Residential in the BBLEP 2013.</p> <p>Dwelling houses are permissible.</p>	Yes
Clause 22 – Development may be carried out with consent	(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	There will be only the principal dwelling and the secondary dwelling on the land.	Yes
	(3)(a) & (b) the total floor area of the principal dwelling and the secondary dwelling is 60 square metres, or if a greater	<p>Site Area of Lot 5 – 621sq.m</p> <p>The total floor area of the principal dwelling is 252.8m<sup>2</sup></p>	Yes

Applicable clause	Extract from Affordable Housing SEPP	Proposed development	Complies
	<p>floor area is permitted in respect of a secondary dwelling under another planning instrument, that greater floor area.</p>	<p>and proposed secondary dwelling is 40.2m<sup>2</sup> is equivalent to 293m<sup>2</sup> or 0.47:1 which does not exceed the permissible floor area.</p> <p>As the subject site has a maximum allowable FSR of 0.55:1 under BBLEP 2013. The proposed works equal 0.55:1 FSR and thus complies.</p> <p>Clause 5.4 of the BBLEP 2013 allows 60sqm or 20% of the floor area of the principal dwelling, whichever is the greater. Therefore the floor area of 40.2m<sup>2</sup> proposed for the secondary dwelling is permissible.</p>	<p>Yes</p> <p>Yes</p>
	(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds;	-	-
	<p>(a) Site Area</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres</p>	The secondary dwelling is detached from the principal dwelling. The site area is 533m <sup>2</sup> .	Yes
	<p>(b) Parking</p> <p>No additional car parking space required for secondary dwellings under the SEPP.</p>	No additional parking is proposed for the secondary dwelling.	N/A
Clause 23 – Complying Development	Applies to secondary dwellings seeking approval under Complying Development	Complying development is not proposed.	N/A
Clause 24 - Subdivision	A consent authority must not consent to a development application that would result in any subdivision of a lot on	Subdivision of the lot in which the principal dwelling and the	N/A

Applicable clause	Extract from Affordable Housing SEPP	Proposed development	Complies
	which development for the purposes of a secondary dwelling has been carried out under this Division	secondary dwelling are located, being Lot 5, is not proposed.	

### Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned R2 – Low Density Residential under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed development is permitted with Council's consent under the Botany Bay Local Environmental Plan 2013. Secondary dwellings are prohibited under the Plan, however are permitted by the Affordable Rental Housing SEPP 2009.
Does the proposed use/works meet the objectives of the zone?	Yes	<p>The proposed development is consistent with the objectives of the R2 zone which are:</p> <ul style="list-style-type: none"> <li><i>To provide for the housing needs of the community within a medium density residential environment;</i></li> <li><i>To provide a variety of housing types within a medium density residential environment;</i></li> <li><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents;</i></li> <li><i>To encourage development that promotes walking and cycling.</i></li> </ul>
<p>What is the height of the building?</p> <p>Does the height of the building comply with the maximum building height?</p>	Yes	<p>A maximum height of 8.5m applies to the subject site.</p> <p>The development complies with the maximum building height of 8.5m from the Natural Ground Level (NGL) for each new dwelling as follows:</p> <p>Dwelling 1 (Lot 1): 7.88m  Dwelling 2 (Lot 2): 7.88m  Dwelling 3 (Lot 3): 8.09m  Dwelling 4 (Lot 4): 7.88m  Dwelling 5 (Lot 5): 7.34m</p>

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment																																														
		Secondary dwelling (Lot 5): 3.14m																																														
What is the proposed Floor Space Ratio?  Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?  Is the site within land marked “Area 3” on the Floor Space Ratio Map?  If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	-  Yes/No – Clause 4.6 Submission received. See Note 1.	The subject site is located in Area 3. As such Clause 4.4A applies to the development. The permitted maximum FSR for each lot is: <table><tr><th>Lot No.</th><th>Site Area</th><th>Max FSR</th></tr><tr><td>1</td><td>227sq.m</td><td>0.50:1</td></tr><tr><td>2</td><td>227sq.m</td><td>0.50:1</td></tr><tr><td>3</td><td>302sq.m</td><td>0.70:1</td></tr><tr><td>4</td><td>370sq.m</td><td>0.61:1</td></tr><tr><td>5</td><td>621sq.m</td><td>0.55:1</td></tr></table> <table><tr><th>Dwlg. No</th><th>GFA Sq.m</th><th>FSR</th><th>Complies</th></tr><tr><td>1</td><td>138.4</td><td>0.60:1</td><td>No</td></tr><tr><td>2</td><td>138.4</td><td>0.60:1</td><td>No</td></tr><tr><td>3</td><td>165.3</td><td>0.55:1</td><td>Yes</td></tr><tr><td>4</td><td>165.3</td><td>0.45:1</td><td>Yes</td></tr><tr><td>5</td><td>252.8</td><td>0.41:1</td><td>Yes</td></tr><tr><td>Inc.Sec. DwL Lot 5</td><td>40.2</td><td>0.47:1</td><td>Yes</td></tr></table> As demonstrated in the above table all proposed new dwellings are compliant with the maximum permitted FSR with exception to Dwelling No. 1 & 2 (lots 1 & 2) in which the applicant has submitted a Clause 4.6 for Council’s consideration under Note 1 below.	Lot No.	Site Area	Max FSR	1	227sq.m	0.50:1	2	227sq.m	0.50:1	3	302sq.m	0.70:1	4	370sq.m	0.61:1	5	621sq.m	0.55:1	Dwlg. No	GFA Sq.m	FSR	Complies	1	138.4	0.60:1	No	2	138.4	0.60:1	No	3	165.3	0.55:1	Yes	4	165.3	0.45:1	Yes	5	252.8	0.41:1	Yes	Inc.Sec. DwL Lot 5	40.2	0.47:1	Yes
Lot No.	Site Area	Max FSR																																														
1	227sq.m	0.50:1																																														
2	227sq.m	0.50:1																																														
3	302sq.m	0.70:1																																														
4	370sq.m	0.61:1																																														
5	621sq.m	0.55:1																																														
Dwlg. No	GFA Sq.m	FSR	Complies																																													
1	138.4	0.60:1	No																																													
2	138.4	0.60:1	No																																													
3	165.3	0.55:1	Yes																																													
4	165.3	0.45:1	Yes																																													
5	252.8	0.41:1	Yes																																													
Inc.Sec. DwL Lot 5	40.2	0.47:1	Yes																																													
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.																																														
The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–																																																
• 6.1 – Acid Sulfate Soils	Yes	The subject site is classified as Class 4. The likely disruption or effect on the soil conditions, in addition to possible site contamination has been appropriately considered and is found to be acceptable in this instance. As there is no significant excavation, namely no works 2m below the NGL, an Acid Sulfate Soil Management Plan is not warranted.																																														
• 6.2 – Earthworks		Excavation works proposed are minimal and are for foundation and footings for the new dwellings and associated structures.																																														
• 6.3 – Stormwater Management	Yes	Council’s Development Engineer has reviewed the proposed stormwater management plans																																														

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		and has provided conditions of consent in this regard.
<ul style="list-style-type: none"> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>	Yes	The provisions of AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF contour. The proposal is permissible subject to a condition requiring compliance with the requirements of AS2021-2000. Relevant conditions have been imposed in the consent relating to aircraft noise intrusion.

#### Note 1 –Clause 4.6 Variation to the maximum Floor Space Ratio

As discussed in the above table, the proposed development is generally compliant with Clause 4.4 – Floor Space Ratio, with exception to the proposed semi-detached dwelling on Lot 1. The FSR standard is 0.5:1 for residential development within Area 3 and defined as *other development for the purpose of residential accommodation* (i.e. semi-detached dwelling) and the proposed semi-detached dwellings on Lot 1 & 2 have an FSR of 0.6:1.

The development proposes the following:

**Table 2:** FSR exceedance

Lot	Site Area	Proposed FSR	Proposed GFA	Exceedance
Lot 1	227sqm	0.6:1	138.4sqm	24.9sq.m (11%)
Lot 2	227sq.m	0.6:1	138.4sq.m	24.9sq.m (11%)

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request seeking to justify the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*), the Land and Environment Court set out the following 5 different ways in which an objection to a development standard may be well founded:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (Four2Five), the Court established that the construction of Clause 4.6 is such that it is not sufficient for the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards, as required by Clause 4.6(3)(b), or for the consent authority to be satisfied that the proposed development is consistent with 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, as required by Clause 4.6(4)(a)(ii). The Court outlines, that Clause 4.6 requires that in addition to the requirements listed above, the applicant must also establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as is required by Clause 4.6(3)(a). This may involve reference to reasons 2-5 outlined within *Wehbe*.

The requirements of 4.6(3)(a), 4.6(3)(b), and 4.6(4)(a)(ii) have been addressed by the applicant below.

*Is the development standard unreasonable or unnecessary in the circumstances of the case?*

The applicant has submitted the following:

*I submit that compliance with the standard is unreasonable or unnecessary in the circumstances of the case because the proposal complies with the objectives of the standard and the zone.*

*The proposed development will be in the public interest because it is consistent with the objectives for development within the zone in which the development is proposed to be carried out – clause 4.6(4)(a)(i).*

*The development standard is unreasonable and unnecessary as a potentially compliant form of development (in the form of detached dwellings) could have a greater bulk and scale.*

*Reference is also made to another development proposal in the same Council jurisdiction for 4 x 2 semi-detached dwellings (8 in total) at 1390 Botany Rd, Botany. Council agreed to consent orders for these 8 dwellings, notwithstanding that the FSR on 7 of the 8 allotments breached the 0.5:1 FSR standard. The FSRs for each of the lots ranged from a minimum of 0.56:1 (0.06:1 over the control) to 0.71:1. The overall FSR across this site was 0.58:1.*

*It is clear from a comparison between the subject and the abovementioned development that the subject development is significantly more compliant, in regard to overall FSR, the number of lots which are compliant and the degree of compliance.*

*A significant point to note is that if a dwelling house was proposed on Lot 1, a greater FSR would be allowed which would subsequently result in a greater bulk and scale than proposed.*

*Lots 1 & 2 have the following areas: site area= 227m<sup>2</sup> – an FSR of 0.8:1 would be permitted whilst only 0.6:1 is proposed.*

*The justification above and those provided in the following assessment against the criteria under Clause 4.6 demonstrate that the development standard for FSR is unreasonable and unnecessary in the circumstances.*

*Furthermore, given that the proposal achieves a desirable and compatible streetscape outcome and has no adverse environmental impacts, it is considered to demonstrate that the standard is unreasonable and unnecessary in the circumstances.*

*The lack of amenity impacts to surrounding properties further confirms that the standard is unreasonable and unnecessary in these circumstances. The proposal maintains solar access, privacy and outlook whilst there are no significant views affected by the proposed density.*

*In addition to consistency with the objectives of the standard and the zone, there are circumstances particular to the site that support that compliance with the development standard is unreasonable or unnecessary.*

*It is thereby considered that the circumstances are particular to the subject site which confirms the reasonable nature of the variation in this instance. Therefore, there would be no public benefit in maintaining the development standard in this instance.*

*The variation also allows for a better planning outcome internally whilst also allowing for the semi-detached dwellings to be consistent when viewed from Herford Street and the surrounding properties.*

*In this regard, it is considered that the proposed streetscape presentation and the overall built form results in a better planning outcome than if dwelling 1 had a reduced FSR to dwelling 2.*

It should also be noted that development consent has recently been granted to semi-detached dwelling houses in the Bayside LGA with commensurate FSRs to that which is being proposed in the Proposal. For example, a recently approved semi-detached dwelling house development at 16 William Street, Botany, attained an FSR of 0.59:1. Thus, there is precedent that previous variations to clause 4.4A (3)(d) have been permitted.

*Are there sufficient environmental planning grounds to justify contravening the development standard?*

The applicant has submitted the following:

*The additional FSR is not responsible for any greater environmental impacts than a proposal with a compliant FSR. In this regard, the proposal is appropriately sited on the subject site to retain privacy, solar access, outlook, and adequate spatial separation to surrounding properties.*



*The proposed semi-detached dwelling is also contained within a building envelope that outperforms a number of Council's building envelope controls, including height, setbacks, site coverage, private open space and landscaping.*

*The objective of the above planning provisions is to control development density on sites by ensuring that are of an appropriate size and scale for the allotment of which they are located, as well as ensuring that the built form does not unreasonable impact upon the amenity of the neighbouring properties.*

*Given that the semi-detached dwellings on proposed lot 1 & 2 outperforms a number of the key numerical controls, it is considered that the built form and associated density is suitable for the subject site and within the surrounding context.*

*Notwithstanding the FSR non-compliance, the proposed semi-detached dwellings on lot 1 & 2 outperforms the predominant LEP and DCP controls which are considered to inform the building envelope and density on the subject site. Given the high degree of compliance and lack of external amenity impacts associated with the proposed semi-detached dwelling, it is considered that there is no sound planning justification for retaining the development standard, in this instance.*

*It is also reiterated that a greater bulk and scale would be permitted on proposed lot 1 & 2, if these dwelling were designed in the form of detached dwellings. It is therefore considered that the proposed development represents a desirable outcome and is considered to demonstrate that there are sufficient planning grounds to justify contravening the development standard in this instance.*

Having regard to reasons 2-5 outlined in Wehbe above, the 4.6 variation request has demonstrated that the development standard is unreasonable or unnecessary in the case and seems to have been abandoned in this area. The above reasons are considered to be satisfactory in terms of justifying the contravention of the development standard.

*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 applicant has submitted the following:

*The proposed FSR variation is considered to be justified on the following basis:*

#### **4.4A Exceptions to floor space ratio for residential accommodation**

*(1) The objectives of this clause are as follows:*

*(a) to ensure that the bulk and scale of development is compatible with the character of the locality,*

*The proposed bulk and scale is compatible with the character of the locality as the proposed 2 storey semi-detached dwellings with flat roofs will be compatible with other semi-detached and detached dwellings which are also of a similar scale in the streetscape.*

*The provision of garaging/hard stand car parking as well as landscaping within the front setback area also contributes to achieving a compatible outcome. The 900mm north western side setback for dwelling 1 is also compatible with the typical side setbacks found between dwellings to the north whilst the 5.85m*

*south eastern side setback is also compatible with the setbacks associated with battle-axe style subdivision/dwelling arrangements to the east along Herford Street.*

*The spatial separation of the proposed dwellings is also consistent with the 'corresponding' dwellings to the south whilst it is considered that the use of materials and finishes and high degree of landscaped open space achieves a more sympathetic and modest design response.*

*(b) to promote good residential amenity.*

*It is considered that the additional FSR contributes to a better level of internal amenity for dwelling 1, than if the FSR of 0.5:1 were enforced. The 0.5:1 standard would allow for a dwelling size of 113.5m<sup>2</sup>, noting that the DCP promotes a size of 130m<sup>2</sup> for 3 bedroom apartments. It would also result in the semi-detached dwellings being of an asymmetrical nature, which is untypical of other semi-detached dwellings within the immediate area.*

*The proposed dwellings exhibit a high degree of internal amenity through the provision of 3 bedrooms that are of an adequate size and dimension to suitably accommodate bedroom furniture. The dwellings have been designed to accommodate for a family living environment, with the provision of a guest bedroom at the ground level whilst also providing opportunities for a home office space.*

*The proposed semi-detached dwellings have been designed with dual aspect living areas that allow for natural ventilation to flow throughout the dwelling whilst also being compliant in regards to solar access, private open space, landscaping and car parking which is confirmation that the dwelling will provide the future occupants with a comfortably living environment.*

*It is considered that reduction of the dwellings to achieve an FSR of 0.5:1 would significantly compromise the internal amenity and design intent for these dwellings.*

*Furthermore, it is considered that the proposed FSR promotes good residential amenity for surrounding properties by preserving solar access, views, privacy and outlook. The provision of limited side-facing windows for dwellings 1 & 2 and the provision of an extensive landscaped setback, well beyond that required, will provide for a pleasant view from Herford Street, across the site.*

**BLEP 2013 FSR Objectives:-**

#### **4.4 Floor Space Ratio**

**(1) The objectives of this clause are as follows:**

**(a) to establish standards for the maximum development density and intensity of land use**

*The proposed FSR associated with dwelling 1 & 2 provides for a suitable density and intensity of development on the subject allotment. Dwellings 3-5 at the rear of the semi-detached dwellings are compliant with the 0.55:1 and 0.7:1 standards which are determined by their respective site areas, being well below that permitted. It is only the attached nature of the semi-detached dwellings at the front of the site, which exceeds the FSR standard.*

*Notwithstanding this, it is reiterated that the dwellings exhibit a high degree of compliance with the predominant LEP and DCP controls which are also used to dictate the density of the development on the subject site. In this regard it is evident that the proposed dwelling does not form an overdevelopment of the subject site and does not result in a development that is of a bulk and scale that would not be suitable for the subject site.*

*It is therefore considered that the proposed development's density and intensity is appropriate for the site, particularly given that the dwelling has been designed to limit any adverse impacts upon the north western neighbour (10 Herford Street). In this regard, the dwelling has been designed with limited side facing openings and retains solar access, privacy and outlook to the north western neighbour.*

*Overall, the lack of external impacts associated with the proposed density highlights the suitability of the proposed density for the site. The height, bulk and scale of the proposed dwellings maintain privacy, solar access and outlook for neighbouring properties.*

*The proposed height is well below that permitted whilst the setbacks from neighbouring properties are also well beyond that required and that typically found in the immediate locality.*

*The combination of the above factors confirms that the proposed density and intensity of development is appropriate for the site.*

*(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*

*As outlined above, the proposed height, bulk, scale and siting of dwellings, combined with the proposed setbacks and landscaped areas achieve a compatible outcome for the proposed density. It is reiterated that the FSR non-compliance for dwellings 1 & 2 are of a technical nature as the proposal would be compliant if single dwellings were proposed rather than the semi-detached dwelling, as proposed.*

*If a single detached dwelling was proposed for dwelling 1 & 2, the FSR would be significantly below that permitted on the subject site (0.8:1 allowed opposed to the 0.6:1 proposed). Nevertheless, the proposed semi-detached dwelling is considered to be compatible and consistent with the pattern of development within the Herford Streetscape, which is characterised by 1 and 2 storey dwellings with pitched roofs and flat roofs.*

*In this regard, the form of development and modest height of the proposal is considered to contribute to the existing and desired future character of the Herford Street streetscape.*

*(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*

*The proposed development is considered to achieve an appropriate visual relationship through the provision of a 2 storey scale of development which is*

*compatible with the mix of 1 and 2 storey scale of dwellings (attached and detached) in the locality (along both sides of Herford Street).*

*The spatial separation of dwellings within the site and to adjoining properties either side is also generous which contributes to achieving an appropriate visual relationship, as does the extent of proposed landscaping, particularly along the northern boundary.*

*(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*

*It is considered that the streetscape elevation and 3D images demonstrate that the proposal will not adversely affect the Herford Street streetscape. The combination of the modest height, spatial separation, landscaping and particular design treatment achieve a desirable and compatible relationship when viewed from public and private vantage points. Furthermore, the proposal is not considered to adversely affect the expansive landscaped playground area associated with the adjoining school to the north-east and east towards the rear of the site.*

*(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

*The proposed presentation to the streetscape will represent a significant improvement to the existing dilapidated condition of dwellings on the site whilst the streetscape presentation is also compatible with the scale of development within the streetscape.*

*As detailed above, the proposed height, bulk and siting of development has minimised adverse environmental effects through the retention of solar access, outlook and privacy to surrounding properties. It is also reiterated that if a single dwelling house was proposed, it could have greater bulk and scale than proposed which further demonstrates that a more modest outcome is achieved by way of the proposed semi-detached dwellings.*

*(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*

*This is considered to be demonstrated by the fact the proposed height, bulk and scale are within the permitted setbacks and that the proposed dwelling and associated lot size achieves private open space/landscaped areas beyond that required.*

*Compliance with parking requirements, site coverage, solar access and ventilation is further demonstration that the proposed semi-detached dwelling is appropriately sited on the subject site. The lack of external impacts and the suitable streetscape outcome also contributes to achieving an appropriate correlation between the size of the site and the extent of development proposed. Therefore, it has been demonstrated that the site is appropriate for the proposed semi-detached dwellings and associated allotment size.*

*(g) to facilitate development that contributes to the economic growth of Botany Bay.*

*The additional housing on the site could potentially providing for housing accommodation for employees associated with Port Botany and other commercial retail or industrial components in the Botany Bay Municipality.*

#### Public Interest and Public Benefit

Preston CJ noted that there is a public benefit in maintaining planning controls and a variation to a development standard should not be used in an attempt to affect general planning changes throughout the area.

The proposed FSR exceedance is not contrary to the public interest as the development has been designed to comply with Council's maximum building height controls, the bulk and scale of each dwelling is considered to be appropriate, the site coverage of each lot complies, satisfactory landscaping has been provided to assist in screening and softening the development, where there is a concern for privacy impacts conditions of consent relating to privacy screening of balconies, setting minimum sill height limits and the planting of additional trees particularly at the rear of the internal Lots 3 & 4 overlooking or privacy impacts on adjoining neighbours to minimise any impacts on adjoining properties.

On the basis of this assessment, it is concluded that the variation is not contrary to the public interest and is able to be supported.

#### Matters of State or Regional Importance

The proposed variation to the FSR standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy or ministerial directive.

#### Summary

Based on the above, the applicant's Clause 4.6 justification is well founded. It is clear that the development standard is unreasonable given that other examples exist in the area of a similar FSR breach. Further, the development standard is unnecessary in the circumstances of the case as dwelling houses are also permissible in the zone which permit a bulk and scale which far exceeds that for semi-detached dwellings, where an FSR of 0.80:1 would be permitted.

The proposed development satisfies the objectives of the R2 Low Density Residential zone and the objectives of the FSR standard are achieved as the proposed development is consistent with the maximum development and intensity of the land in the zone and is compatible in bulk and scale with the existing and desired future character of the area.

Given the above, the proposal is satisfactory in terms of the BBLEP 2013.

#### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

There are no current Draft EPIs applicable to this development

#### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

#### **Botany Bay Development Control Plan 2013**

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

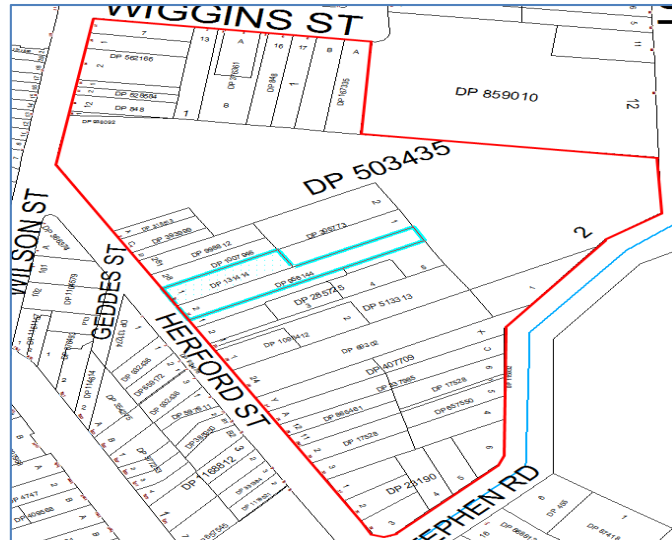
**Part 3A – Parking & Access**

Part	Control	Proposed				Complies
3A.2. Parking Provisions of Specific Uses	<b>Table 1 – Car parking</b> by landuse.  Dwellings with <2 bedrooms = 1 space  Dwellings with >2 bedrooms = 2 spaces	Car parking is proposed for the development as follows:				Yes
		Lot No.	No Bedrooms	Car Spaces Required	Car Spaces Provided	
		1	3 +study	2	2 = Single garage + hardstand space	
		2	3 study +	2	2 = single garage + hard stand space	
		3	4	2	2 = integrated double garage	
		4	4	2	2 = integrated double garage	
		5	5	2	Detached double carport	

**Part 3E – Subdivision and Amalgamation**

The development proposes Torrens title subdivision of the existing 2 lots into 5 lots. Objective 1 of Part 3E.3 – Torrens Title Subdivision of the BBDCP 2013 is to ensure that the proposed subdivision is consistent with the Desired Future Character of the area. The method for assessing Torrens Title subdivision is to consider the prevailing subdivision pattern to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site.

The extent of the area considered is indicated in Figure 14 below.



**Figure 14.** Existing cadastral pattern, properties incorporated into study area are highlighted in red



**Figure 15:.** Aerial image of properties incorporated into study area are highlighted in red

As illustrated in the images above and in the table below, the relevant subdivision pattern in the vicinity of the site is significantly varied in nature and it can be determined that there is no prevailing (characteristic) subdivision pattern or. The lots captured in the study area range in size from 202sq.m to 2.45HA, range in shape and frontage width and there are also other examples of “battle-axe” style subdivisions, similar to the proposed development being No. 16-18 Herford Street (discussed below).

**Table:** Existing subdivision pattern including Lot size and frontage length (yellow indicates similar sized allotments)

Address	Lot Size (in sqm)	Variation from smallest lot proposed	Frontage Length (m)
<b>Allotments to the north</b>			
2 Wiggins Street	601.49	374.5	10.18
6 Wiggins Street	439.5	212.5	5
8 Wiggins Street	774	547	15.2
10 Wiggins Street	608.8	381.8	10.2
12 Wiggins Street	592.9	365.9	9.7
14 Wiggins Street	768.2	541.2	11.4
16 Wiggins Street	765	538	10.5
22 Wilson Street	416.423	189.42	Dual frontage total: 50
20 Wilson Street	421.04	194.04	10
16 Wilson Street	849.3	622.3	20
14 Wilson Street	202.3	-24.7	4.5
12 Wilson Street	228.27	1.27	5.4
10 Wilson Street	445.13	218.13	10.7
PRESCHOOL/SCHOOL	2.45HA	2.47HA	Dual frontage total: 81.3
2 Herford Street	206.5	-20.5	6.09
4 Herford Street	320.99	93.99	9.5
6 Herford Street	208.7	-18.3	6.1
8 Herford Street	543.8	316.8	10.2
10 Herford Street	505.9	278.9	10
<b>Allotments to the south</b>			
16 -18 Herford Street			
• Lot 1	382.4	155.4	5.7
• Lot 2	382.4	155.4	11.8
• Lot 3	385.6	158.6	Nil
• Lot 4	388.7	161.7	Nil
• Lot 5	389.6	162.6	Nil
20 Herford Street			
• Lot 1	471.2	244.2	14.15
• Lot 2	630.4	403.4	Nil
• Lot 3	1088	861	3.5
22 Herford Street	2215	1988	20.1
24 Herford Street	570.54	354.54	10.2
26 Herford Street	529.3	302.3	10.5
28 Herford Street	387	160	8.2
28A Herford Street	381.4	154.4	8.5
30 Herford Street	531.9	304.9	11.19



32 Herford Street	536.71	309.1	12.65
34 Herford Street	423.7	196.7	15.25
36 Herford Street	402.31	175.31	15.25
38 Herford Street	441	214	
<b>Allotments to the South-East</b>			
4 Stephen Road	448.9	221.9	13.5
5 Stephen Road	404.7	177.7	15
9 Stephen Road	480	253	Angled frontage:41.5
<b>Allotments to the East</b>			
86 Stephen Road	580.8	353.8	22.5
84 Stephen Road	581.7	354.7	12.3
82 Stephen Road	619.7	392.7	13.5
80 Stephen Road	568.1	341.1	13.5
78 Stephen Road	710.7	483.7	15.7

In addition to consistency with the established subdivision pattern, Part 3E of the DCP also contains requirements for proposed Torrens title battle-axe subdivision applications. An assessment of the application has been provided below.

Control	Proposed	Complies
<b>Battle-axe Subdivision</b>		
<b>C10</b>  Battle-axe subdivision patterns will not be permitted within residential zones unless it can be demonstrated that it is part of the prevailing subdivision pattern	As previously discussed there is no prevailing subdivision pattern in the locality.	Yes
<b>C11</b>  Battle-axe subdivision patterns must result in one (1) or more allotments fronting the street and only one (1) allotment being serviced by a driveway access corridor.	The amended subdivision plan provides for all 5 lots to have frontage to Herford Street.	Yes
<b>C12</b>  Any proposed battle-axe allotment without a frontage to the street must have a minimum site area of 450m <sup>2</sup> and width of 12 metres.  Note: Battle-axe lots which are serviced via an access corridor are considered to be allotments without a frontage to the street. Where the access corridor is less than 8m wide, it shall not be included in the	The amended subdivision plan provides for all 5 lots to have frontage to Herford Street.	Yes

Control	Proposed	Complies
calculation of the minimum allotment area for either lot.		
<b>C13</b>  The width of an access corridor to a battle-axe lot shall be at least:  a. 4.5 metres for lengths less than 30 metres; and b. 5 metres for lengths exceeding 30 metres.	The proposed access corridor is 4.9m. Council's Development Engineer has reviewed the proposed design and has raised no issue with the proposed width or the length of the access corridor.	Acceptable on merit
<b>C14</b>  Access corridors are to be located to ensure existing street trees are retained.	A small street tree will be required to be removed to facilitate the construction of the new ROW. Council's Landscape Architect has agreed to the removal of the tree subject to replacement planting which has been imposed upon the development as a condition of consent.	Yes

### ***Part 3G- Stormwater Management***

#### Stormwater Management

The application was referred to Council's Development Engineer for comment who raised no objection to the proposal subject to appropriate conditions recommended in the attached schedule of conditions relating to stormwater disposal, erosion and sedimentation controls and for the ongoing maintenance of the stormwater drainage system.

#### Flooding

Council's Flood Engineer has reviewed the proposal and advised that the site is subject to overland flow and advised that the finished floor level of the habitable areas of each dwelling on the site be a minimum of RL5.70. The proposed finished floor levels of the habitable areas of each dwelling are greater than RL5.70 with exception to Dwellings 1 & 2 (Street facing dwellings) which have a finished floor level of RL5.60. In this regard a condition of consent has been imposed upon the development in the attached schedule of conditions to increase the finished floor level of dwellings 1 & 2 from RL5.60 to RL5.70 (an increase in height of 10cm).

### ***Part 3J- Aircraft Noise and OLS***

The provisions of AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF contour. The proposal is permissible subject to a condition requiring compliance with the requirements of AS2021-2000. Appropriate conditions have been imposed in the attached Schedule of conditions of consent.

### ***Part 3K- Contamination***

The relevant requirements and objectives have been considered in the assessment of the development application. The subject site has long been used for residential purposes and

contamination is unlikely. Furthermore, the application has been assessed against SEPP 55 and is found to be satisfactory. Site investigation is not required in this instance.

### ***Part 3L- Landscaping and Tree Management***

There are no substantial trees situated on the sites, and there are no trees proposed to be removed by the application. The application was referred to Council's Landscape Architect who raised no objection to the proposal subject to appropriate conditions recommended in the consent relating to additional site planting, and maintenance and repair of Council's nature strip.

### ***Part 3N- Waste Minimisation & Management***

A Waste Management Plan (WMP) was submitted with the application. Conditions are included to ensure all waste generated will be stockpiled, managed and disposed of appropriately.

### ***Part 4A – Dwelling Houses***

The development application has been assessed against the controls contained in *Part 4A of the DCP – Dwellings*. The following table compares the proposed development with the relevant provisions of this policy.

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>																								
<b>4A.2.4</b> Streetscape Presentation	<b>C2</b> Development must be designed to reinforce and maintain the existing character of the streetscape.	The area surrounding the site is mixed in nature and consists of single storey and two storey detached dwellings, a pre-school, further to the north is medium-high density residential development and to the south is industrial development. It is considered that the proposed development would be an acceptable form of development within this mixed environment and would not detract from the mixed character of the streetscape.	Yes																								
	<b>C3</b> Dwellings must reflect dominant roof lines and patterns of the existing streetscape.	The streetscape of Herford Street presents a variety of roof forms and lines. There is not considered to be any dominant roof pattern however the dwellings directly adjacent to the subject property on either site both have hipped roofs. However it is considered that the proposed flat/skillion roof form proposed for Dwellings 1 & 2 which will be facing Herford Street will not detract from the character of the streetscape.	Yes-																								
<b>4A.2.7</b> Site Coverage	<b>C2</b> <ul style="list-style-type: none"> <li>Sites less than 200sqm is assessed on merit.</li> <li>Sites between 200-250sqm, the maximum site coverage is 65%.</li> </ul>	<table border="1"> <thead> <tr> <th>Lot No.</th><th>Area</th><th>Control</th><th>Proposed</th></tr> </thead> <tbody> <tr> <td>1</td><td>227</td><td>65%</td><td>42.5%</td></tr> <tr> <td>2</td><td>227</td><td>65%</td><td>42.5%</td></tr> <tr> <td>3</td><td>302</td><td>50%</td><td>49%</td></tr> <tr> <td>4</td><td>370</td><td>50%</td><td>40%</td></tr> <tr> <td>5</td><td>533</td><td>50%</td><td>39%</td></tr> </tbody> </table> <p>As demonstrated by the above table the site coverage for each lot complies.</p>	Lot No.	Area	Control	Proposed	1	227	65%	42.5%	2	227	65%	42.5%	3	302	50%	49%	4	370	50%	40%	5	533	50%	39%	Yes
Lot No.	Area	Control	Proposed																								
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[illegible]

Part	Control	Proposed	Complies																								
		<table> <tr> <td>Rear</td><td>15.6m</td><td>13.6 m</td><td>Yes</td></tr> </table> Secondary Dwelling <table> <tr> <th>Lot 5</th><th>Ground</th><th>First</th><th>Comply</th></tr> <tr> <td>Front</td><td>N/A</td><td>N/A</td><td>N/A</td></tr> <tr> <td>Side (Nth)</td><td>910mm</td><td>N/A</td><td>Yes</td></tr> <tr> <td>Side (Sth)</td><td>905mm</td><td>N/A</td><td>Yes</td></tr> <tr> <td>Rear</td><td>900mm</td><td>N/A</td><td>Yes</td></tr> </table>	Rear	15.6m	13.6 m	Yes	Lot 5	Ground	First	Comply	Front	N/A	N/A	N/A	Side (Nth)	910mm	N/A	Yes	Side (Sth)	905mm	N/A	Yes	Rear	900mm	N/A	Yes	Yes
Rear	15.6m	13.6 m	Yes																								
Lot 5	Ground	First	Comply																								
Front	N/A	N/A	N/A																								
Side (Nth)	910mm	N/A	Yes																								
Side (Sth)	905mm	N/A	Yes																								
Rear	900mm	N/A	Yes																								
<b>4A.2.9</b> Landscape Area	<b>C2</b> Development shall comply with the following minimum landscaped area requirements, based on the area of the site in <b>Table 2</b> . Table 2 requires the following minimum landscaped area: (i) 15% for sites <250sqm (ii) 20% for sites 250-350sq.m (iii) 30% for sites 350-400sq.m (iv) 35% for sites 400-450sq.m (v) 40% for sites >450sq.m	The development proposes the following landscaped area for each Lot. <table> <tr> <th>Lot No.</th><th>Area</th><th>Control</th><th>Proposed</th></tr> <tr> <td>1</td><td>227</td><td>15%</td><td>41%</td></tr> <tr> <td>2</td><td>227</td><td>15%</td><td>46%</td></tr> <tr> <td>3</td><td>304</td><td>20%</td><td>25%</td></tr> <tr> <td>4</td><td>370</td><td>20%</td><td>26%</td></tr> <tr> <td>5</td><td>533</td><td>40%</td><td>60%</td></tr> </table> As demonstrated by the above table, each Lot complies with the minimum landscaped area required for lot size.	Lot No.	Area	Control	Proposed	1	227	15%	41%	2	227	15%	46%	3	304	20%	25%	4	370	20%	26%	5	533	40%	60%	Yes
Lot No.	Area	Control	Proposed																								
1	227	15%	41%																								
2	227	15%	46%																								
3	304	20%	25%																								
4	370	20%	26%																								
5	533	40%	60%																								
	<b>C8</b> The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.	The front setback is fully landscaped with the exception of the driveways and planter beds. Permeable paving is also proposed within the front setback.	Condition																								
	<b>C9</b> The front setback area must contain at least one tree for frontages up to 11.5 metres in width and 2 trees for frontages greater than this and properties located on corner blocks.	There are no trees proposed within the front setback. A condition of consent is recommended requiring the planting of trees within the front setback.	Condition																								
<b>4A.3.1</b> Materials and Finishes	<b>C1</b> A Schedule of Finishes and a detailed Colour Scheme for the	A Schedule of Colours and Finishes was provided with the development application. The development will be	Yes																								

Part	Control	Proposed	Complies
	building facade must accompany all Development Applications involving building works (refer to Council's Development Application Guide for further detail).	constructed out of face brickwork, interlocking aluminium panelling, with light and dark stucco rendering.	
<b>4A.3.2</b> Roofs and Attics/ Dormer	<p><b>C1</b> Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch.</p> <p><b>C3</b> A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.</p>	The dwellings incorporate a mix of pitched (hip) roof forms and flat/skillion roofs to reduce the bulk and scale of the development.	Yes
<b>4A.3.4</b> Fences	<b>C7</b> Fences (or returns) that are higher than 1 metre are not encouraged along residential frontages but may be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style	No fencing has been proposed by the development. A condition of consent will be imposed that any front fence shall be no greater than 1 metre above ngl, however may be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style. Details of any fencing shall be submitted on plans prior to the issue of the Construction Certificate	Yes - condition
	<p><b>C18</b> Side fences of a height of 1.8 metres are not to extend beyond the front building line.</p> <p><b>Note:</b> Fences with untextured surfaces that present a blank appearance to the street are unsuitable and discouraged.</p>	The proposal does not specify replacement of the side fences. Any replacement of the side fences is to not exceed 1.8 metres in height.	Yes - condition
	<b>C19</b> The maximum height of a rear fence is not to exceed 1.8 metres.	As above.	Currently as existing
<b>4A.4.1</b> Visual Privacy	<p><b>C2</b> Visual privacy for adjoining properties must be minimised by:</p> <ul style="list-style-type: none"> <li>▪ using windows which are narrow or glazing</li> </ul>	Each new dwelling is two storeys in height, with the exception of the proposed secondary dwelling at the rear of Lot 5 which is single storey in height.	<b>Yes – See Note 2 below.</b>

Part	Control	Proposed	Complies
	<ul style="list-style-type: none"> <li>Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings</li> <li>Screening opposing windows, balconies and courtyards; and</li> <li>Increasing sill heights to 1.5 metres above floor level.</li> </ul>	An assessment of the privacy impacts of each dwelling has been undertaken under Note 2 below.	
	<b>C3</b> First floor balconies are only permitted when adjacent to a bedroom.	See Note 2 below for assessment of first floor balconies.	<b>Yes – See Note 2</b>
<b>4A.4.3</b> Solar Access	<b>C1</b> Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and the principal open space areas such as swimming pools, patios and terraces, and drying areas of both the subject site and adjoining properties.	<p>The subject site has a north-east, south-west orientation and shadow plans submitted with the application indicate that the majority of shadow cast by the development as a whole falls on both Herford Street, and the proposed ROW as they are both located to the south of the new dwellings.</p> <p>The POS of all adjoining properties achieves compliance with the DCP in that in excess of 2 hours solar access is received/maintained between the time stations of 9am and 3pm on 21 June.</p> <p>The only affected adjoining dwelling is No. 18 Herford Street, which is overshadowed between 12-2pm by Dwelling No.5. However this dwelling still achieves/maintains in excess of 4 hours (9-12noon, and 2-3pm) solar access between the time stations of 9am and 3pm on 21 June, therefore complying with the requirements of the DCP.</p>	Yes
	<b>C2</b> Solar panels on adjoining houses that are used for domestic needs within that dwelling must not be overshadowed for more than two hours between 9am to 3pm in mid-winter.	There are no solar panels on the adjoining site that will be impacted by the proposal.	Yes
<b>4A.4.4</b> Private Open Space	<b>C2</b> For sites greater than 250sqm, a minimum area of 36sqm applies.	Each new Lot provides POS areas in excess of 36sq.m as demonstrated in the below table.	Yes

Part	Control	Proposed	Complies																		
		<p>Note: Each of these POS areas are unimpeded (not including deck areas etc.) therefore the deck areas are surplus POS areas for occupants.</p> <table><tr><th>Lot No.</th><th>Dimension</th><th>Area</th></tr><tr><td>1</td><td>8.8m x 6m</td><td>52sq.m</td></tr><tr><td>2</td><td>8m x 6m</td><td>48sq.m</td></tr><tr><td>3</td><td>5.6m x 7.4m</td><td>41.44sq.m</td></tr><tr><td>4</td><td>5.6m x 7.4m</td><td>41.44sq.m</td></tr><tr><td>5</td><td>9m x 9m</td><td>85.5sq.m</td></tr></table>	Lot No.	Dimension	Area	1	8.8m x 6m	52sq.m	2	8m x 6m	48sq.m	3	5.6m x 7.4m	41.44sq.m	4	5.6m x 7.4m	41.44sq.m	5	9m x 9m	85.5sq.m	
Lot No.	Dimension	Area																			
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4	5.6m x 7.4m	41.44sq.m																			
5	9m x 9m	85.5sq.m																			
4A.4.7 Vehicle Access	C1 Driveways within a property shall have a minimum width of 3 metres.	<p>The combined driveway opening for Dwellings 1 &amp; 2 is 6.2m wide</p> <p>The ROW opening is 4.9m wide.</p>	Yes																		
4A.4.8 Car Parking	C1 Development must comply with Part 3A – Car Parking	As discussed under Part 3A above.	Yes																		
	C10 Garages, parking structures (carports and car spaces) and driveways are not to dominate the street. Note: Existing situations where garages dominate the street may not be used as a precedent to justify approval of other similar proposals.	Dwellings 1 & 2 front Herford Street. Each dwelling has a single garage integrated into the dwelling which comprises 33% of the front elevation which complies with the control.	Acceptable																		
4A.6 Ancillary development	C1 The total gross floor area of ancillary structures must not exceed 60sqm.	There are no ancillary structures proposed.	N/A																		

### **Note 1 – Setbacks**

Part 4A.2.8 Building Setbacks of BBDCP 2013 requires minimum setback requirements for dwellings. As demonstrated in the above table the proposal is compliant with setback controls for each dwelling on Lot 1, 2, & 5. However the proposed dwellings on the internal Lots 3 & 4 propose variations to both the side and rear setback control as follows:

Lot 3	Required	Ground	First	Comply	% Variation proposed
Front	Prevailing/6 m	Nil	Nil	No	N/A internal lot
Side (Est)	900mm	Nil	Nil	No	100%
Side (Wst)	900mm	900mm	900mm	Yes	Nil



Rear	6m	5.5m	8.85m	<b>Yes/No</b>	<b>8.3% (500mm)</b>
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<b>Lot 4</b>	<b>Required</b>	<b>Ground</b>	<b>First</b>	<b>Comply</b>	<b>% Variation Proposed</b>
Front	Prevailing/6 m	Nil	Nil	<b>No</b>	N/A Internal Lot
Side (Est)	900mm	1.02m	1.02m	Yes	Nil
Sid (Wst)	900mm	900mm	900mm	Yes	Nil
Rear	6m	5.5m	8.85m	<b>Yes/No</b>	<b>8.3% (500mm)</b>

The proposed nil setback to Dwelling 3 to the rear boundary of Dwelling 2, is considered to be satisfactory in that there is adequate separation provided between the 2 dwellings (7.6m) furthermore there are no windows proposed in the western wall of Dwelling No. 3 that may create the potential for privacy impacts. The bulk and scale of dwelling 3 is considered to be acceptable as the dwelling complies with both Council's FSR and maximum building height controls. In this regard, the proposed nil setback to the boundary can be supported.

With regard to the proposed deviation from the rear setback control of Dwellings 3 & 4, it should be noted that the variation sought is 8.3% or 500mm. Each dwelling has been suitably designed for minimising privacy impacts and additional conditions of consent have been imposed upon the development to increase privacy impacts for the adjoining property, being Banksmeadow Public School playgrounds, for example privacy screens are to be installed for the first floor balconies and the requirement for an established tree to be planted within the rear POS of each lot to assist with screening. The bulk and scale of dwelling 3 & 4 is considered to be acceptable as both dwellings comply with both Council's FSR and maximum building height controls. In this regard, the proposed variation to the rear setback can be supported.

#### Further note for prevailing front setback of Herford Street

As demonstrated by the below image, the prevailing front setback of existing development along the eastern side of Hertford Street is between 3.3m and 3.8m. As the development proposes a front setback of between 4.47m-5.5m, the proposal complies with the front setback control. The prevailing front setback is highlighted in a red line (below).



## Note 2 - 4A.4.1 Visual Privacy

Each new dwelling is two storeys in height, with the exception of the proposed secondary dwelling at the rear of Lot 5 which is single storey in height. Each dwelling contains windows on the first floor, with some dwellings also proposing first floor balconies.

In order to minimise visual privacy impacts both within a development and upon adjoining development. The DCP requires that:

**C1** *Visual privacy for adjoining properties must be minimised by:*

- *using windows which are narrow or glazing;*
- *Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings;*
- *Screening opposing windows, balconies and courtyards; and*
- *Increasing sill heights to 1.5 metres above floor level.*

**C3** *First floor balconies are only permitted when adjacent to a bedroom.*

An assessment of the application under Control C1 & C3 (Part 4A.4.1) is provided in the below table for each dwelling.

<b>Dwelling 1</b>	
Ground Level	<ul style="list-style-type: none"> <li>• Large open able doors in eastern wall accessing rear private open space</li> <li>• No windows proposed for northern external wall</li> <li>• No windows proposed for southern external wall</li> </ul>
First Floor	Windows are proposed to northern external wall servicing void area and stairwell area. There is no direct overlooking by the void window. The window servicing the stairwell area has a sill height of 1.8m above FFL
Balconies (FF)	A first floor balcony is proposed facing the rear POS. There is potential for privacy impacts and as such a condition of consent has been imposed in the attached schedule that a privacy screen be erected with a minimum height of 1.5m above FFL

<b>Dwelling 2</b>	
Ground Level	Large open able doors in eastern wall accessing rear private open space No windows proposed for northern external wall No windows proposed for southern external wall
First Floor	Windows are proposed to southern external wall servicing void area and stairwell area. There is no privacy issue created by the void window as it overlooks the ROW. The window servicing the stairwell area has a sill height of 1.8m above FFL.
Balconies (FF)	A first floor balcony is proposed facing the rear POS. There is potential for privacy impacts and as such a condition of consent has been imposed in the attached schedule that a privacy screen be erected with a minimum height of 1.5m above FFL

<b>Dwelling 3</b>	
Ground Level	No windows are proposed in each side facing wall. Rear windows facing POS are proposed servicing the kitchen and living area. A rear deck is proposed, and accessible from the living area.
First Floor	A window is proposed in the eastern external wall to service the Master Bedroom, there are no overlooking impacts as faces blank wall of Dwelling 4. Windows are proposed facing rear (POS) this is a northerly aspect. Windows service a bedroom and stairwell area. These windows have a minimum sill height of 1.8m above FFL.
Balconies (FF)	A first floor balcony is proposed and is accessible from the bedroom. There is potential for privacy impacts and as such a condition of consent has been imposed in the attached schedule that a privacy screen be erected with a minimum height of 1.5m above FFL.

<b>Dwelling 4</b>	
Ground Level	No windows are proposed in each side facing wall. Rear windows facing POS are proposed servicing the kitchen and living area. A rear deck is proposed, and accessible from the living area.
First Floor	A window is proposed in the eastern external wall to service the Master Bedroom, there are no overlooking impacts as faces the roof of the proposed double carport on Lot 5. Windows are proposed facing rear (POS) this is a northerly aspect. Windows service a bedroom and stairwell area. These windows have a minimum sill height of 1.8m above FFL.
Balconies (FF)	A first floor balcony is proposed and is accessible from the bedroom. There is potential for privacy impacts and as such a condition of consent has been imposed in the attached schedule that a privacy screen be erected with a minimum height of 1.5m above FFL.

<b>Dwelling 5</b>	
Ground Level	Windows are proposed to the northern external wall servicing the rumpus room, walk in pantry, kitchen, dining room and living area. A ground level deck (uncovered) is proposed to the northern setback accessible by the dining area A ground level deck (covered) is proposed to the rear (east) of the dwelling accessible by the living area.
First Floor	Windows are proposed to the northern external wall (facing Public School playground) servicing Bed 1, Bed, 2 Bed, 3, bathroom, living area and Master Bedroom. There is potential for privacy impacts and as such a condition of consent has been imposed in the attached schedule that a privacy screen be erected with a minimum height of 1.5m above FFL. If the windows are to be floor to ceiling, any part of the window under 1.5m in height shall be fixed and constructed from opaque or translucent glass.

Balconies (FF)	A first floor balcony is proposed on the northern side of the dwelling (overlooking the Public School playground) and is to be accessible from the Living area. This does not comply with Council's requirements, furthermore the dwelling proposes two ground level deck areas, and multiple internal living areas as such a first floor deck is not required and a condition of consent has been imposed in the attached schedule that the balcony be <b>deleted</b> from the proposal.
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<b>Secondary Dwelling</b>	
Ground Level	Windows are proposed to the northern, eastern and western external walls servicing the living area, bathroom and bedroom. These windows are highlight windows with a minimum sill height of 1.5m above FFL.
Deck	A deck is proposed on the western side of the secondary dwelling. Given the topography of the site, the deck will be elevated above the POS for the principal dwelling and there is potential for privacy impacts. In this regard a condition of consent shall be imposed that the deck be screened for privacy to a height of 1.5m above the FFL on the western side.

As demonstrated by the above tables the proposal generally achieves a high level of amenity in terms of privacy for both the dwellings within the development, and for adjoining properties. Where privacy impacts are considered to potentially arise, conditions of consent have been imposed for suitable privacy treatment by way of setting a minimum sill height level of 1.5m above FFL and/or by constructing from fixed opaque/translucent glass. As noted above the first floor balcony to be constructed on the northern side of Dwelling 5 has been deleted by way of condition of consent as it was viewed to be superfluous to the requirements of the dwelling.

### **Part 8 – Character Precinct**

Part 8.7.2 Desired Future Character of the Botany Precinct has been considered in the assessment of the application. This section provides rationale for determining the appropriateness and descriptive strategic direction for development in Botany. The site is located within the R2 Low Density Residential zone bound by Stephen Road to the east and Wilson Street to the north.

The proposal has been designed to give the appearance of dwelling houses fronting Herford Street. The architectural design of dwellings is modern in style and the proposed mix of modern skillion roof and hip roofed forms is considered to be in keeping with the varied nature of development within the immediate locality.

Accordingly, the proposal is suitable for the subject site and is compatible with the desired future character as described in the BBDCP 2013 for the Botany precinct.

### **S.79C(1)(a)(iv) - Provisions of regulations**

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

### **S.79C(1)(b) - Likely Impacts of Development**

As outlined in the assessment above, the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

### **S.79C(1)(c) - Suitability of the site**

The issue of likely site contamination has been considered, however, given the nature of the development, and the long standing use of the land for residential purposes, onsite investigation is not warranted.

The site is impacted by overland flow therefore the finished floor level of the ground floor is to be raised to meet Council's requirements. The application was referred to Councils Stormwater and Development Engineer who required the finished floor level of the ground floor of Dwellings 1 & 2 be raised from RL5.60 to RL5.70 which has been imposed upon the development in the attached schedule of conditions.

The provisions of AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF contour. The proposal is permissible subject to a condition requiring compliance with the requirements of AS2021-2000. Relevant conditions have been imposed in the consent relating to aircraft noise intrusion.

Accordingly, it is considered that the site is suitable to accommodate the development.

#### **S.79C(1)(d) - Public Submissions**

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 14 day period from 16 November until 30 November 2016. Two (2) submissions were received in response. One (1) of the two (2) submissions stating that it represents other landowners (names are provided however no signatures are present on the submission).

As stated earlier in the report a second round of notification was undertaken to include the proposed secondary dwelling at the rear of the dwelling on proposed Lot 5. This round of notification was also for a 14 day period from

One (1) submission received (from author of submission in round 1).

The issues raised in the submissions are as follows:

- ***Torrens title subdivision. That a battle-axe subdivision is proposed and this requires 3 rear dwellings to access one driveway.***

Comment: Battle axe subdivisions are permitted with consent under Part 3E of BBDCP 2013. It is noted that the proposal does not comply with the permitted number of internal allotments, however the proposal has been assessed and complies with the majority of controls contained in both the LEP & DCP in relation to FSR, building height, site coverage, landscaping, overshadowing and privacy impacts. It should also be noted that the adjoining development at No. 16-18 Herford Street, was approved by Council in a similar subdivision pattern (battle-axe) establishing a precedent for the proposed type of development. It is considered that the proposed development is an improvement on the adjoining development at 16-18 Herford Street in that it proposes two of the 5 lots to front Herford Street as opposed to the single lot. In this regard the proposed battle-axe subdivision can be supported.

- ***Car Parking.***
  - ***The 3 road crossings and overflow parking from the local schools, and high-rise on Wilson Street already limit on street parking; and,***

- ***The development will result in the further loss of up to 4 on-street parking spaces due to the 3 driveway crossing proposed.***

Comment: The development has been assessed in accordance with Part 3A - Car parking under DCP 2013. Each dwelling provides the required car parking for the number of bedrooms proposed. The proposed secondary dwelling is not required to provide car parking under the provisions of the SEPP for Affordable Rental Housing 2009.

Herford Street is in Council ownership and in this regard, the general public are permitted to park vehicles on Herford Street there is no 'private ownership' of any on-street parking spaces. It is understood that in certain times, particularly school hours parking on-street may be in high demand, which is why it is important for new development to provide the required car parking spaces, as above explained the proposal complies with this requirement.

- ***Privacy and Overlooking.***
  - ***Dwellings 3 & 4 are oriented to side boundaries, and should be facing the street.***
  - ***Dwellings 3 & 4 have first floor balconies which directly overlook the POS of the adjoining property.***
  - ***The rear setback of Dwelling 4 does not comply with Council's code.***
  - ***Dwelling No. 5 is proposed to be two storeys in height which will overlook adjoining properties.***

Comment: As discussed in detail in this report the proposal generally achieves a high level of amenity in terms of privacy for both the dwellings within the development, and for adjoining properties. Where privacy impacts are considered to potentially arise, conditions of consent have been imposed for suitable privacy treatment by way of setting a minimum sill height level of 1.5m above FFL and/or by constructing from fixed opaque/translucent glass. As noted above the first floor balcony to be constructed on the northern side of Dwelling 5 has been deleted by way of condition of consent as it was viewed to be superfluous to the requirements of the dwelling.

- ***Overdevelopment of the site.***
  - ***The LEC ruled against 6 dwellings on the site, but the application proposes an "outbuilding" behind Dwelling 5, which has been designed as a free standing 1 bedroom dwelling***
  - ***The additional single bedroom dwelling will also generate the need for car parking.***
  - ***The additional single bedroom dwelling does not comply with the required setbacks under Council's code.***
  - ***The size of the 3 dwellings on the rear lot should be reduced, or the number of overall dwellings should be reduced.***

Comment: In effect, the development proposes 5 new dwellings and a secondary dwelling. Under the provisions of the Affordable Housing SEPP 2009, no additional car parking is required for the secondary dwelling as it contains only 1 bedroom with a GFA of 40.2sq.m. The development has been assessed against the provisions contained in both Council's LEP and DCP, and the proposal complies with the majority of the controls which have been established to ensure that overdevelopment of a site does not occur. Where the development seeks to vary any of these controls adequate justification for the deviation has been provided by the applicant, and to further ensure that any adverse impacts are minimised upon adjoining landowners conditions of consent have been imposed in the attached schedule, and therefore it is considered that the proposed number of dwellings on the site is appropriate given the context of the site, and the

precedent already established by 16-18 Herford Street, as previously discussed in this report.

- ***The Council approved the removal of 2 substantial trees on the site, we request that 2 substantial trees be planted in the rear yard behind dwellings 3 & 4.***

Comment: Council did permit the removal of 2 trees on the site, however as part of this application additional site planting is proposed. Council notes the request for an additional 2 established trees to be planted in the rear POS of Lots 3 & 4, and a condition of consent has been imposed upon the development in the attached schedule to this effect.

### **S.79C(1)(e) - Public interest**

Granting approval to the proposed development will have no significant adverse impact on the public interest. Issues from the general public have been appropriately addressed. The approval of this application will provided modern accommodation services for the local population.

### **Section 94 Contributions**

Section 94 contributions are payable pursuant to the City of Botany Bay s94 Development Contributions Plan 2016. Under Table 1 a contribution is payable based on the increase in the number of dwellings for semi-detached dwellings, as well as subdivision of land for residential purposes. However, under the plan, where both subdivision and construction of dwellings is proposed, a contribution is only charged on the subdivision of land component which is \$21,981.87.

Section 2.16 of the Plan states that where subdivision is involved, a credit will apply to the lot, not the dwelling. As such, s94 contributions payable are applicable to the additional lot only, being \$21,981.87.

However, in accordance with Section 94E Direction from the Minister dated 21 August 2012, Council must not grant development consent subject to a condition under s94(1) or 94(3) of the *Environmental Planning and Assessment Act 1979* requiring the payment of a monetary contribution that, in the case of a development consent that authorises subdivision into residential lots, exceeds \$20,000 for each residential lot.

Given the above, the s94 contribution payable on the additional lot is capped at **\$20,000.00**.

#### Calculations

##### *New Dwellings*

5 x new 4+bedroom dwellings (capped at \$20,000 each)	= \$100,000.00
1 x 1bedroom dwelling (secondary dwelling)	= \$7,821.88
Total	= \$107,821.88

##### *Existing dwellings*

A concession is required to be given where there are existing dwellings on lots being replaced with more than one additional dwelling. In this regard, a concession is required to be given as follows:

• 2 bedroom dwelling 12 Herford Street, Botany	= \$12,064.06
• 2 bedroom dwelling 14 Herford Street, Botany	= \$12,064.06
Total	= \$24,128.12

Therefore the total payable Section 94 contribution payable for the proposed development is **\$83,693.76**. A breakdown of this contribution is provided in the attached consent conditions.

## Conclusion

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Development Application No.16/189 for the Torrens title subdivision of the land into five (5) lots, and the construction of two (2) semi-detached dwellings (Lots 1 & 2) and three (3) single dwellings (Lots 3,4 & 5) and a secondary dwelling at the rear of Lot 5 at 12-14 Herford Street, Botany, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*.

The development complies with the applicable requirements of ARHSEPP 2009, BBLEP 2013 and BBDCP 2013, therefore the development is recommended for approval, subject to conditions of consent.

**Premises: 12-14 Herford Street, Botany**

**DA No: DA-16/189**

## SCHEDULE OF CONSENT CONDITIONS

### GENERAL CONDITIONS

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent

Plans	Prepared by	Date/Received
Survey Plan Ref No. 2504D2	Survcheck Surveyors	Dated:13 October 2014 Received: 21 October 2016
Concept Drainage Plans Ref No. 161061, Sheets 1 to 6	PAZ Engineering	Dated: 25 March 2016 Received: 21 October 2016
Architectural Plan No.s 01_01 B; 01_04 B; 02_01 B; 02_02 B; 02_03 B; 03_01 B; 03_02 B; 03_03 B; 03_04 B; 03_05 B;	Urban Future	Dated: 27 June 2017 Received: 27 June 2017



04_01 B; 04_02 B; 04_03 B; 04_04 B; 04_05 B;  05_01 B; 05_02 B		
Concept Landscape Plan  09_01 'B'	Urban Future	Dated: 27 June 2017  Received: 27 June 2017
Waste Management Plan  08_01 'A'	Urban Future	Dated: 22 September 2016  Received: 21 October 2016
Colours and Finishes Schedule  07_01 'B' & 07_02 'B'	Urban Future	Dated: 27 June 2017  Received: 27 June 2017

Document	Author	Date/Received
Statement of Environmental Effects	ABC Planning	Dated: September 2016  Received: 21 October 2016
BASIX Certificate No. 762597S Lot 1	Urban Future Organization Pty Ltd	Dated: 22 September 2016  Received: 21 October 2016
BASIX Certificate No. 762608S Lot 2	Urban Future Organization Pty Ltd	Dated: 22 September 2016  Received: 21 October 2016
BASIX Certificate No. 762729S Lot 3	Urban Future Organization Pty Ltd	Dated: 22 September 2016  Received: 21 October 2016
BASIX Certificate No. 762747S Lot 4	Urban Future Organization Pty Ltd	Dated: 22 September 2016  Received: 21 October 2016
BASIX Certificate No. 762699S Lot 5	Urban Future Organization Pty Ltd	Dated: 22 September 2016  Received: 21 October 2016
BASIX Certificate No. 762715S  Secondary Dwelling	Urban Future Organization Pty Ltd	Dated: 22 September 2016  Received: 21 October 2016

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.

2. This Consent relates to land in Lot 1 in DP 131414 and Lot 2 in DP 956144, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
4. Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the approved BASIX Certificates (listed in Condition No. 1) for the development are fulfilled.

Relevant BASIX Certificate means:

- a. A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - b. If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
  - c. BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.
5. The consent given does not imply that works can commence until such time that: -
  - a. Detailed plans and specifications of the building have been endorsed with a Construction Certificate by: -
    - i) The consent authority; or,
    - ii) An accredited certifier; and,
  - b) The person having the benefit of the development consent: -
    - i) Has appointed a principal certifying authority; and,
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - iii) The person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.
  - c) the safe and reliable operation and maintenance of Ausgrid's network.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE DEMOLITION OF ANY BUILDING STRUCTURE**

6. The applicant must prior to the commencement of demolition work, pay the following fees:

- a. Builders Security Deposit                      \$33,500.00
7. The demolisher shall have a current public liability/risk insurance to cover claims up to \$10m, and policy details of such shall be submitted to Council for its records.
8. The demolisher shall lodge with Council, and at least forty-eight (48) hours prior to the commencement of work (due to the potential impact on Council's infrastructure):
- a. Written notice, indicating the date when demolition of the building is to commence,
  - b. This person's full name and address.
  - c. Details of Public Liability Insurance.
9. Security fencing shall be provided around the perimeter of the building/demolition site and precautionary measures taken to prevent unauthorized entries of the site at all times during demolition and construction.
10. The following shall be compiled with:
- a. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
    - i. stating that unauthorised entry to the work site is prohibited;
    - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
    - iii. the Development Approval number; and
    - iv. any such sign is to be removed when the work has been completed.
11. Prior to the commencement of demolition work, the applicant shall submit to Council a full photographic survey of the existing conditions of the road reserve (including footpath, grass, kerb and gutter and roadway), and other Council properties that are adjacent to the property.
- Any damage not shown in the photographic survey submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense.
12. Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The demolition shall not undermine, endanger or destabilise any adjacent structures.
13. Prior to the commencement of demolition work a licensed demolisher who is registered with Safework NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to Safework NSW. The statement must be in compliance with AS2601:1991 – 'Demolition of Structures', the requirements of Safework NSW and conditions of the Development Approval, and shall include provisions for:

- a. Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
  - b. Induction training for on-site personnel;
  - c. Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
  - d. Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
  - e. Disconnection of Gas and Electrical Supply;
  - f. Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
  - g. Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
  - h. Waterproofing of any exposed surfaces of adjoining buildings;
  - i. Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the "Protection of the Environmental Operations Act 1997";
  - j. Working hours, in accordance with this Development Consent;
  - k. Confinement of demolished materials in transit;
  - l. Proposed truck routes, in accordance with this Development Consent;
  - m. Location and method of waste disposal and recycling in accordance with the "Waste Minimisation and Management Act 1995;
  - n. Sewer – common sewerage system.
14. The applicant must, prior to the commencement of demolition works, ensure that utility services to the land upon which the building to be demolished stands, as well as the building itself, are terminated and capped in accordance with the requirements of supply authority, such as water, electricity, gas and telecommunications.
15. Prior to the commencement of any demolition works, the applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant's expense.
16. Erosion and sediment control devices shall be installed prior to the commencement of any demolition works upon the site in order to prevent sediment and silt from site works (including demolition) being conveyed by stormwater into Council's stormwater system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the Protection of Environment Operations Act 1997 and the Department of Environment, Climate Change and Water guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition and construction phases of the development.

17. Prior to commencement of any works, relevant application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993:

(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)

- a. Permit to erect hoarding on or over a public place, including Council's property/road reserve;
- b. Permit to construction works, place and/or storage building materials on footpaths, nature strips;
- c. Permit for roads and footways occupancy (long term/ short term);
- d. Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve;
- e. Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services;
- f. Permit to place skip/waste bin on footpath and/or nature strip; and
- g. Permit to use any part of Council's road reserve or other Council lands.

(Application(s) shall be submitted minimum one (1) month prior to the planned commencement of works on the development site. The application will be referred to the Council's Engineering and Regulatory Services for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s)).

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE**

18. Prior to the issue of any Construction Certificate, the applicant must pay the following fees:

- a. Development Control                      \$2,940.00
- b. Section 94 Contributions                \$83,693.76 (See Condition 10)

19. Prior to the issue of any Construction Certificate, the applicant shall provide the following design change on the Construction Certificate plans:

- a. The balconies at the rear of the first floor of Dwelling No. 1 and No. 2 (on Lots 1 & 2) shall be screened for privacy at the eastern end to a minimum height of 1.5m and maximum height of 1.8m above the finished floor level. The screen shall be a fixed structure but may include semi-operable louvers angled upwards for light and ventilation that does not permit overlooking of the adjoining properties when in a seated position.
- b. The balconies at the rear of the first floor of Dwelling No. 3 and No. 4 (on Lots 3 & 4) shall be screened for privacy at the northern end to a minimum height of 1.5m and maximum height of 1.8m above the finished floor level. The screen shall be a fixed structure but may include semi-operable louvers angled

upwards for light and ventilation that does not permit overlooking of the adjoining properties when in a seated position.

- c. The balcony on the northern side of the first floor of Dwelling No. 5 accessible via the first floor living area **is to be deleted from the proposal**. The door shall be replaced by a window. The window sill shall be a minimum of 1.5m above the FFL, or if additional light is required to the living area, any part of the window <1.5m above the FFL shall be fixed (non-operable) and constructed from opaque/translucent glass.

Reason: privacy impacts upon adjoining property. Multiple outdoor decks and indoor living areas proposed in dwelling.

- d. All windows located in the northern and southern external walls of Dwelling No. 5 shall be suitably treated for privacy. The window sill shall be a minimum of 1.5m above the FFL, or if additional light is required to service the area, any part of the window <1.5m above the FFL shall be fixed (non-operable) and constructed from opaque/translucent glass.
- e. The deck adjoining the Secondary Dwelling shall be suitably screened for privacy on the western side (facing the POS of Dwelling 5) to a minimum height of 1.5m and maximum height of 1.8m above the finished floor level of the deck. The screen shall be a fixed structure but may include semi-operable louvers angled upwards but that does not permit overlooking of the adjoining properties when in a seated position.

- 20. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to the habitable areas shall be submitted to the Principal Certifying Authority for approval. The plans shall incorporate:

- a. The floor level of the habitable areas of each dwelling shall be at least RL 5.70m AHD.

- 21. Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of \$33,500.00 (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.

- 22. Prior to the issue of any Construction Certificate, the City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities in the area, and in accordance with Council's Section 94 Contributions Plan 2005-2010 a contribution of **\$83,693.76** is required to be paid to Council. The contribution amount is broken down as follows:

- a. Community Facilities: \$14,395.33
  - b. Open Space and Recreation: \$62,351.85
  - c. Administration: \$1088.02
  - d. Transport Management: \$5858.56

The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If the payment is made in a later financial year you will be required to pay the fee applicable at the time.

23. Prior to the issue of the Construction Certificate, the applicant shall submit an application for Subdivision Certificate to be accompanied by a linen plan with four (4) copies and appropriate fees.
24. Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
25. The development shall be designed and constructed in accordance with AS 2021-200 *Aircraft Noise Intrusion, Building Siting and Design*. The building plans indicating that all residential dwellings on the site, including the secondary dwelling achieve compliance with AS2021-2000 with details provided on plans and endorsed by a suitably qualified Acoustic Consultant prior to the issue of the Construction Certificate.
26. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E-01, E-04 and E-07.  
  
As part of this development, two (2) new concrete driveways shall be constructed. One new driveway layback servicing the semi-detached dwelling shall be four and a half (4.5) metre wide and the other driveway layback shall be three (3) metres wide. A minimum of one (1.0) metre of kerb and gutter either side of the driveway laybacks shall be replaced to enable the correct tie-in with the existing kerb and gutter.
27. A dilapidation report shall be prepared by a practicing structural engineer and must be submitted in accompaniment with the photographic survey. The report must demonstrate that the structural integrity of the adjoining developments will not be impacted by the construction of the basement level.
28. A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:
  - a. The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
  - b. The proposed phases of construction works on the site and the expected duration of each construction phase,
  - c. The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,

- d. The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
  - e. The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
  - f. The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
  - g. The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
  - h. The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
  - i. Proposed protection for Council and adjoining properties,
  - j. The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation; and
  - k. The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
29. Prior to the release of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by Council's Traffic Engineer, showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
30. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
31. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a. Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
  - b. Negotiate with the utility authorities (e.g. AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
    - i. The additional load on the system, and



- ii. The relocation and/or adjustment of the services affected by the construction.
- c. All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
- d. All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the Construction Certificate.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

32. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority and Council for approval.

*(The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.)*

The plans shall incorporate but not be limited to the following:

- a. An On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff from the site for all storm events up to and including 1 in 100 year ARI storm and **permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the "State of Nature" condition (i.e. the site is totally grassed/turfed), rather than pre-development condition,**
- b. Maximum discharge to Council's kerb and gutter shall be limited to 10L/s for each development lot.

*Note: a Rainwater Tank may be used as an alternative, for which up to half of the capacity may contribute towards the on-site detention system / infiltration trench.*

33. The Landscape Plan prepared by Urban Future (drawing DA 09\_01 revision B, dated 12 August 2016) shall be revised and submitted to Council Landscape Architect for approval prior to construction certificate. The plan shall include the following amendments:

- a. Indicate proposed treatment of the public domain / nature strip. A minimum of two (2) street trees are required to be installed within the Herford street naturestrip. Species: *Callistemon viminalis* cv, min 100L pot size.
- b. Within the rear setback of each new lot include a minimum of one (1) large canopy sized tree within each rear setback to provide amelioration of the

development, minimum 75L pot size. Suggested species include: *Glochidion ferdinandi*, *Corymbia maculata*.

Note: the new trees to be planted at the rear of Lot 3 & 4 must be planted in the most effective position to assist in reducing privacy impacts upon the adjoining properties when the tree is at or near maturity.

34. Prior to the issue of any Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
35. Prior to the issue of any Construction Certificate, the approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.
- a. For further assistance please telephone 13 20 92 or refer to Sydney Water's website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:
  - b. Quick Check agent details - see Plumbing, building and developing then Quick Check agents, and
  - c. Guidelines for Building Over/Adjacent to Sydney Water Assets - see Plumbing, building and developing then Building over or next to assets.
- If you require any further information, please contact Beau Reid of the Urban Growth Branch on 02 8849 4357 or e-mail [beau.reid@sydneywater.com.au](mailto:beau.reid@sydneywater.com.au)
36. An Erosion and Sediment Control Plan (ESCP) shall be prepared in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004) and submitted to the Principal Certifying Authority prior to the release of any Construction Certificate. The ESCP must provide, among other things:-
- a. a sufficient area onsite to enable separate stockpiling and treatment of excavated materials with a pH of less than 5.5; and
  - b. vehicular entry and exit points are to be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.

This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the ESCP shall be kept on site at all times and made available to Council Officers on request. This Plan shall incorporate and reference the construction environmental management plan and address site limitations.

#### **CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK**

37. Prior to the commencement of any works, the Principal Certifying Authority must be satisfied that: -

- a. In the case of work to be done by a licensee under the Home Building Act: -
    - i. Has been informed in writing of the licensee name and contractor licence number, and;
    - ii. Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
  - b. In the case of work to be done by any other person: -
    - i. Has been informed in writing of the person's name and owner-builder permit number, or;
    - ii. Has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner builder work in Section 29 the Home Building Act 1989.
38. Prior to the commencement of any works, the applicant must inform Council, in writing, of:
- a. The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - b. The name and permit number of the owner-builder who intends to do the work;
  - c. The Council also must be informed if: -
    - i. A contract is entered into for the work to be done by a different licensee; or
    - ii. Arrangements for the doing of the work are otherwise changed.
39. In order to ensure that the three (3) x *Syzygium luehmannii* trees along the western boundary are retained and protected during construction, and the health and structural stability ensured, the following is required:
- a.
    - i. Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence or 1.5 metre steel pickets and nylon para-webbing/hessian to form the Tree Protection Zone (TPZ). The fence shall remain in place until construction is complete.
    - ii. The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction.
    - iii. If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).

- b. Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
- c. All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
- d. All TPZ's as well as the entire Council nature strip are a "No-Go" zone. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer (or Consultant Arborist).
- e. Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
- f. Excavation within the canopy dripline or within an area extending 3 metres outward of the canopy dripline of any tree shall be carried out manually using hand tools to minimise root damage or disturbance.
- g. Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer (or the consulting Arborist) after a site inspection so as not to unduly impact or stress the tree.
- h. It is the Applicant's responsibility to ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under separate application. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
- i. Any masonry boundary fencing/walls or retaining walls shall be of piered or bridged construction to minimise damage to major or structural tree roots. Trench or strip footings are not permitted. If a tree root 40mm diameter or greater is in the location of a pier and the root cannot be cut without compromising the tree (must be obtained after Council inspection and advice), the pier will need to be relocated and the root bridged.
- j. There shall be no walls retaining or otherwise, pavements, change in levels, trenching for new subsurface utilities or the location of new overhead services within the primary root zone or canopy of any tree. Any such structures in close proximity to trees must accommodate tree roots without damage or pruning.
- k. The Applicant shall undertake any tree maintenance/remedial pruning as required by Council (or the Consultant Arborist) at the completion of construction.

If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

40. Prior to the commencement of any works, the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
41. Prior to the commencement of any works, building plans must be lodged at a Sydney Water Quick Agent for approval.
42. This consent shall not preclude the demolisher from giving notice to other statutory authorities such as Sydney Water Corporation, WorkCover etc.
43. All management measures recommended and contained with the Erosion and Sediment Control Plan (ESCP), prepared in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004), shall be implemented prior to commencement of any demolition, excavation or construction in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
44. Prior to commencement of any works, relevant application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied):-
  - a. Permit to erect hoarding on or over a public place, including Council's property/road reserve,
  - b. Permit to construction works, place and/or storage building materials on footpaths, nature strips,
  - c. Permit to install temporary ground anchors in public land,
  - d. Permit to discharge ground water to Council's stormwater drainage system,
  - e. Permit for roads and footways occupancy (long term/ short term),
  - f. Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
  - g. Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
  - h. Permit to place skip/waste bin on footpath and/or nature strip, and
  - i. Permit to use any part of Council's road reserve or other Council lands.

45. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- a. Demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
  - b. Each toilet provided:
    - i. must be standard flushing toilet; and,
    - ii. must be connected to a public sewer; or if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or, if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
  - c. The provisions of toilet facilities in accordance with this condition must be in place before work commences.

#### **CONDITIONS WHICH MUST BE SATISFIED DURING WORKS**

46. The Applicant has permission to remove one (1) Council street tree within the naturestrip at their own expense. The tree may only be removed after a Construction Certificate has been issued and removal shall be undertaken by the Applicant at their own expense.
- a. A qualified Arborist with their own public liability insurance must be engaged.
  - b. All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit.
  - c. A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.
  - d. Council will take no responsibility for any damage incurred to persons, property or services during the tree removal works.
47. The proposed development shall comply with the following:
- a. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
    - i. Stating that unauthorised entry to the work site is prohibited;
    - ii. Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
    - iii. The Development Approval number; and
    - iv. The name of the Principal Certifying Authority including an after-hours contact telephone number.

- b. Any such sign is to be removed when the work has been completed.
- 48. Precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:
  - a. Protection of site workers and the general public.
  - b. Erection of hoardings where appropriate;
  - c. Asbestos handling and disposal where applicable;
  - d. Any disused service connections shall be capped off;
  - e. The disposal of refuse is to be to an approved waste disposal depot.
- 49. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
- 50.
- 51. Demolition work shall be carried out in accordance with AS2601 - Demolition of Structures and the requirements of the NSW WorkCover Authority.
- 52. Hazardous, special or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of Safework NSW and the Department of Environment and Climate Change and Water and with the provisions of:
  - a. New South Wales Occupational Health and Safety Act, 2000;
  - b. The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
  - c. The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;
  - d. Protection Of the Environment Operations Act 1997 (NSW); and
  - e. Department of Environment and Climate Change Waste Classification Guidelines (2008).
- 53. Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
  - a. Safework NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos;
  - b. Protection of the Environment Operations Act 1997;
  - c. Protection of the Environment Operation (Waste) Regulation;
  - d. DECC Waste Classification Guidelines 2008.
- 54. No demolition materials shall be burnt or buried on the site.
- 55. The demolition and disposal of materials incorporating lead such as lead paint and dust shall be conducted in accordance with:
  - a. AS2601-2001 - Demolition of structure;

- b. AS4361.2-1998 – Guide to Lead Paint Management-Residential and Commercial Buildings.
56. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
57. All asbestos wastes including used asbestos-cement sheeting (i.e. fibro), must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal dockets must be kept by the applicant for at least 3 years and be submitted to Council on request.
58. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
59. All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
60. Excavation work is to be carried out pursuant to the following:-
- a. All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and
  - b. All excavations shall be properly guarded and protected to prevent them from being dangerous to life or property; and,
  - c. If the soil conditions require it:
    - i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and:-
    - ii. adequate provision must be made for drainage.
61. Existing structures and or services on this and adjoining properties are not endangered during any excavation or construction work associated with this consent. The application is to provide details of any shoring, piling or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilize any adjacent structures.
62. Noise from demolition and construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997. The following shall be complied with during construction and demolition:
- a. Demolition & Construction Noise - Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
  - b. Level Restrictions
    - i. Construction/demolition period of 4 weeks and under:



The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).

- ii. Construction/demolition period greater than 4 weeks and not exceeding 26 weeks:

The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

c. Time Restrictions

- i. Monday to Friday 07:00am to 05:00pm
- ii. Saturday 07:00am to 01:00pm
- iii. No Construction/demolition to take place on Sundays or Public Holidays.

- d. Silencing - All possible steps should be taken to silence construction/demolition site equipment

63. Construction activities shall be carried out having regard to the following:

- a. The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
- b. Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- c. Hosing down or hosing/washing out of any truck (concrete truck), plant (e.g. concrete pumps) or equipment (e.g. wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.
- d. Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.

64. During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

65. During demolition, excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas.
66. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with the Erosion and Sediment Control Plan, "Managing Urban Stormwater - Soils and Construction" (2004) ('The Blue Book') and the Protection of the Environment Operations Act 1997.
67. During construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.
68. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
69. Inspections must be conducted by Council's Engineer at the following occasions:
  - a. Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
  - b. Formwork inspection of Council's kerb and gutter prior to laying of concrete;
  - c. Formwork inspection of Council's footpath prior to laying of concrete,
  - d. Final inspection of driveway layback and adjacent kerb and gutter, and
  - e. Final inspection of Council's kerb and gutter;
  - f. Final inspection of Council's footpath.
70. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:-
  - a. Office of Environment and Heritage (OEH) approved guidelines;
  - b. Protection of the Environment Operations Act 1997; and
  - c. Protection of the Environment Operations (Waste) Regulation 2014
71. All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY OCCUPATION CERTIFICATE**

72. Prior to the issue of any Occupation Certificate, all applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
73. Prior to the issue of any Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

Note: Make an early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Sydney Water Servicing Coordinator. For help visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

74. Prior to the issue of an Occupation Certificate, no more than 50% of the Herford Street setback for dwelling 1 and dwelling 2 shall be hard paved (including stepping stones and large expanses of gravel). The remainder of the setback shall be deep soil and soft landscaped.
75. Prior to the issue of any Occupation Certificate, any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
76. Prior to the issue of any Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
77. Prior to the issue of any Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
78. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
  - a. On Herford St, adjacent to development, reconstruct existing kerb and gutter for the full length of the development in accordance with Council's Infrastructure Specifications, and
  - b. On Herford St, adjacent to development, demolish existing concrete footpath and construct new paved footpath for the full length of the development in accordance with E-04 of Council's Infrastructure Specifications.
79. Prior to the issue of any Occupation Certificate, the fencing adjacent to the site vehicular entrance shall be designed and constructed to ensure there is adequate sight distance between the pedestrians and the vehicles leaving the site.
80. Prior to the issue of any Occupation Certificate, the Council nature strip shall be replaced in accordance with Council Specification at the completion of all construction work at the Applicant's expense.

#### **CONDITIONS APPLYING BEFORE THE ISSUE OF A SUBDIVISION CERTIFICATE**

81. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

If you require any further information, please contact Manwella Hawell of City Shaping on 02 8849 4354 or e-mail [manwella.hawell@sydneywater.com.au](mailto:manwella.hawell@sydneywater.com.au)

82. Prior to the issue of a Subdivision Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- a. Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording,
  - b. Subdivision Certificate plans are to include Reciprocal Rights of Way over the access handles to permit vehicular and pedestrian access and any required easements for Services to the rear lots.

#### **CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE**

83. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
84. Each dwelling including the secondary dwelling shall be used as a single dwelling for use and occupation by a single family. It shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council.
85. Ongoing maintenance of the grass nature strips shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass. Maintenance does not include pruning, trimming or any work to Council's street tree assets located on the Council nature strip under any circumstances at any time, including new street trees. All pruning is undertaken by Council only.
86. Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with AS4282-1997 Control of the obtrusive effects of outdoor lighting.
- 87.

- a. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - b. The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
  - c. The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
  - d. For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
88. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 16/189 dated 21 October 2016 and that any alteration, variation, or extension to the use, for which approval has been given, would require further approval from Council.



# STATEMENT OF ENVIRONMENTAL EFFECTS

## 12-14 Herford Street, Botany

Demolition of the existing two (2) dwellings and subdivision of two (2) lots into five (5) lots to facilitate the construction of two (2) semi-detached dwellings and three (3) single dwelling houses, each with 2 car spaces.

Submitted to Botany City Council  
On behalf of Urban Future

September 2016

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## 1. INTRODUCTION

ABC Planning Pty Ltd has been engaged to prepare this Statement of Environmental Effects to accompany the Development Application for demolition of the existing dwellings and subdivision of two (2) lots into five (5) lots to facilitate the construction of two (2) semi-detached dwellings and three (3) single dwelling houses at 12-14 Herford Street, Botany.

This statement should be read in conjunction with the following drawings prepared by Urban Future, dated 3 August 2016.

This statement provides an outline of the subject and surrounding sites, a description of the proposed development and an assessment under the relevant Planning Controls, including the provisions of *Section 79C* of the *Environmental Planning and Assessment Act, 1979*.

The proposed design and built form is responsive to the issues and concerns that were raised during the court proceedings, *12-14 Herford Street Pty Ltd v Council of the City of Botany Bay* [2016] NSWLEC 1166. It is considered that the modified proposal now suitably addresses the issues as outlined in the judgement, including, but not limited to, a reduction in allotments and a greater degree of compliance with the FSR standards, as contained within Clause 4.4 and Clause 4.4A(3)(d) of the BBLEP2013.

Since the court proceedings, the proposed development has been amended as follows:

- Reduction in dwellings from 6 to 5 (deletion of lot and associated dwelling at the rear);
- Reduction in lots from 6 lots to 5 lots (deletion of rear lot);
- Modifications to the driveway to increase landscaping and meandering and therefore reducing the gun barrel effect;
- Reconfigure the housing typologies from four semi-detached dwellings and two detached dwellings to two semi-detached dwellings and three detached dwellings;
- Reduction in the overall GFA of the site from 914.8m<sup>2</sup> to 872.4m<sup>2</sup>, achieving an FSR of 0.49:1, across the site;
- Reduce the bulk and scale of dwelling 3 and 4 to be part 1, part 2 storey dwellings;
- Increase the lot sizes from an average of 290m<sup>2</sup> to an average of 349m<sup>2</sup>;
- Reduction from 4 to 3 lots which utilise the right of way; and
- Reduction in the length of the driveway.

Overall, the bulk and scale of the proposed development has been substantially reduced, particularly when viewed from 10 Herford Street to the north west of the site and from 16 -18 16A Herford Street to the east and south east of the site. Specifically, the middle two dwellings have been converted from 2 storey semi-detached dwellings to detached dwellings that are of part 1, part 2 storey in height. The two (2) allotments at the rear of the site have now been combined to form one (1) single lot which will comprise a two (2) storey detached dwelling and an associated outbuilding. Lot 5 now includes a substantial degree of landscaping within the centre of the lot and along the side boundaries, which is considered to retain a high degree of amenity, including solar access, privacy and outlook to the northern and southern neighbours.

The access driveway has been significantly reduced in length and includes a number of landscaped indentations to reduce the 'gun-barrel' appearance, when viewed from Herford Street. This is considered to be an appropriate design response for and from the subject site.

Each of the dwellings have also been designed with varying roof forms and architectural features to provide character and visual interest, when viewed from surrounding properties. The front two semi-detached dwellings have been retained in their form which (as amended during the hearing), according to page 14 of the judgement is considered to, "achieve a degree of consistency when viewed from the street."

The proposed allotment sizes, on average, have increased from 290m<sup>2</sup> to 349m<sup>2</sup> which is considered to be consistent with the varied size of allotments within the immediate streetscape.

In accordance with the *Botany Bay Local Environment Plan 2013* (BBLEP 2013), the subject site is located within the R2 Low Density Residential zone, has an allowable height limit of 8.5m and is afforded an FSR of 0.5:1 (dwellings 1 & 2 being the semi-detached dwellings), 0.7:1 (dwellings 3 & 4), 0.55:1 (dwelling 5). Four (4) of the five (5) dwellings are compliant with only Lot 1 being slightly non-compliant.

The proposed semi-detached and detached dwellings and associated Torrens title land subdivision are permissible in the R2 Low Density Residential zone and the provision of these dwellings represents a low density outcome commensurate with the primary objections of the zone.

The proposed semi-detached dwellings along the Herford Street frontage and detached dwellings situated in the centre and at the rear of the site have been designed to achieve compliance with the Botany Bay DCP key numerical controls applicable to the subject site and proposed use. This includes outperformance of the allowable site coverage, landscaped areas and private open space whilst also complying with the front, side and rear setback controls, which vary in accordance with the lot sizes. This therefore demonstrates that the proposed built form is appropriately sited on each of the proposed allotments.

Further to the above, the proposed development has limited external amenity impacts, with the surrounding dwellings achieving at least 3 hours of solar access and being provided with a pleasant outlook through the increased separation distances and substantial landscaping on the subject site. The orientation of the dwellings and placement of windows limits the ability for direct overlooking into habitable properties. In particular, the bulk and scale has been reduced when viewed from the rear yards of the northern neighbours. Solar access has also been retained to all southern neighbours.

Each of the dwellings have also been designed to have varying roof forms and incorporate a range of materials and finishes to provide visual interest and character to the dwellings so as to reduce the visual bulk or the built form when viewed from surrounding properties. The provision of timber battens for the double garages of dwellings 3 & 4 also gives the perception of a light weight structure, which combined with the landscaped nature of the driveway achieves a desirable visual outcome.

The proposed development provides for 5 high quality dwellings (and a secondary dwelling to the rear of Lot 5) which enjoy open plan living areas at ground level which open out onto BBQ terrace areas and landscaped rear yards. Each of the dwellings have decent sized bedrooms at the first floor to accommodate a range of bedroom types. The 1st floor balconies are accessible from bedrooms only and provides for casual surveillance of Herford Street whilst those to the rear are suitably screened to avoid overlooking impacts.

Overall, it is considered that the proposed design appropriately addresses the issues raised during the court proceedings and now is of a satisfactory built form to warrant Council approval.

## 2. SITE ANALYSIS

This section provides a detailed description of the existing site and surrounding development.

### 2.1. Site Location and Context

The subject site, located at 12 - 14 Herford Street, Botany NSW 2019, comprises 2 allotments, being Lot 1 DP131414 and Lot 2 DP956144. The site is located on the eastern side of Herford Street, with a 22.1m frontage to Herford Street in the west, a southern side boundary of 108m and a northern side boundary of 53m, forming a total site area of 1,741m<sup>2</sup>.

The north eastern boundary of the subject site adjoins an open space

The site has a gradually upward slope from the front boundary / southwest to rear / northeast boundary.

The local context consists primarily of a fairly even distribution of one and two storey detached dwellings as well as a number of town house residential developments in the street (on similar battle-axe allotments).

The subject site lies within close proximity to Port botany (700m to the south), Sydney International and Domestic Airports (1.0km to the north) and major bus services on Botany Road. The site is also located within walking distance to the Banksmeadow Public School and (adjoining the northern boundary of the subject site) and a pre-school which is located at the corner of Wilson Street and Herford Street.

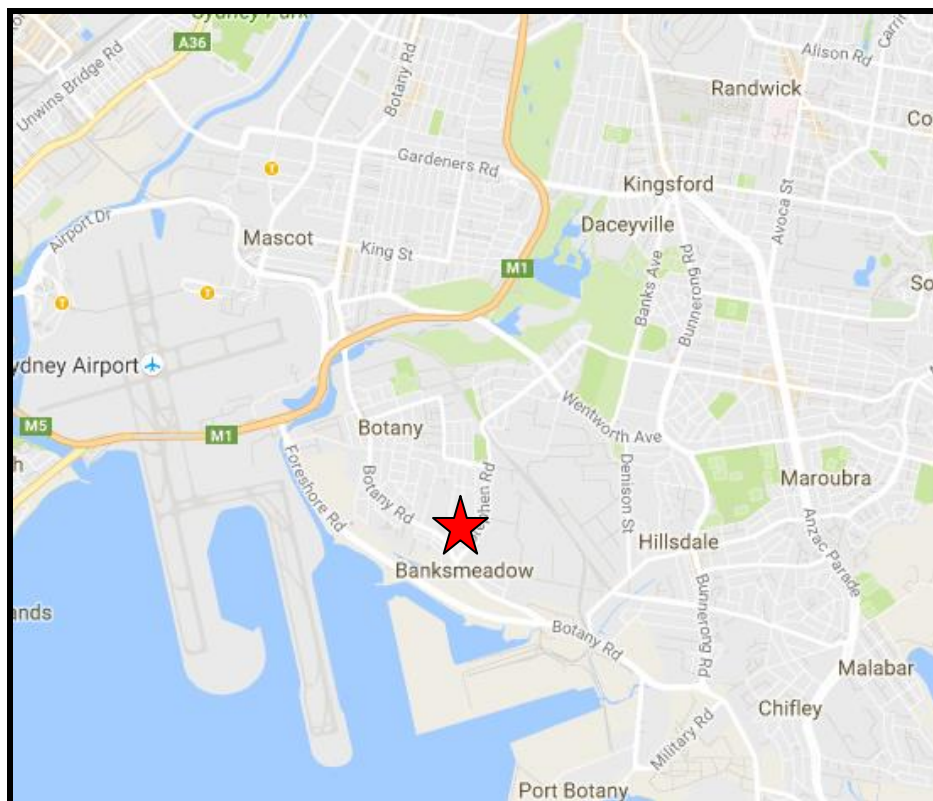


Figure 1: Site location and context





Figure 2: Aerial Photo

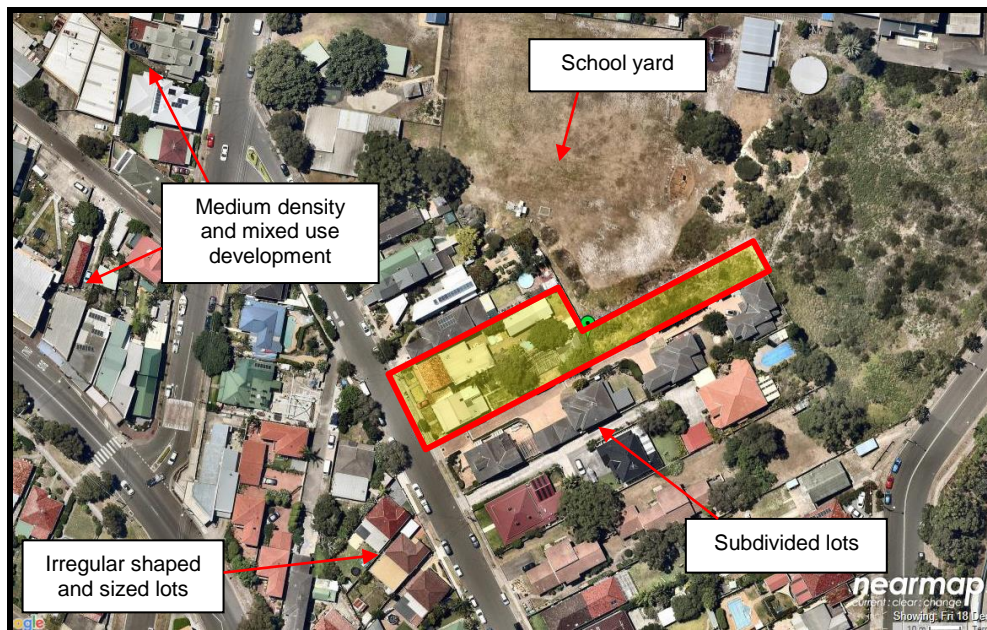


Figure 3: Broader aerial photograph showing the relationship of the site with the school yard to the north and other subdivided dwellings to the south



## 2.2. Existing Development

The subject site currently comprises two dwelling houses, each on their own allotment. Each of the dwellings are single storey dwellings facing Herford Street, Botany with rear gardens that are open grassed.



Figure 4: Subject site as viewed from Herford Street in the west



Figure 5: Rear of 12 Herford Street with outbuilding and existing vegetation



**Figure 6: Vegetated/unkempt rear yard of 14 Herford Street**

### 3. SURROUNDING DEVELOPMENT

#### 3.1. North

To the north of the subject site, at 10 Herford Street is a 2 storey brick dwelling house



Figure 7: Northern neighbour at 10 Herford Street

#### 3.2. East

To the east of the subject site is the Banksmeadow Public School sports playing field.



Figure 8: Banksmeadow Public School, as viewed from the rear of the subject site



### 3.3. South

To the south of the subject site is a multi-dwelling housing development containing 4 dwellings that are accessed via a single shared driveway along the site's northern boundary.



Figure 9: Southern neighbour at 16-18 Herford Street

### 3.4. West

To the west of the subject site, on the corner of Herford Street and Geddes Street, is 1 Herford Street, a single storey dwelling house.



Figure 10: Western neighbour at 1 Herford Street



#### 4. HISTORY

On 14 December 2014, a development application was lodged over the subject site (Council Reference DA-2014/272) for the construction of 8 dwellings, landscaping and subdivision. During the assessment of the application, the proposal was amended and reduced to 6 dwellings.

On 18 September 2015, a Class 1 appeal against Council's deemed refusal was lodged with the Land and Environment Court.

On 5 May 2016, the appeal was dismissed.

The proposed development has including the following amendments, which are considered to address the issues that were raised during the court proceedings:

- Reduction in dwellings from 6 to 5 (deletion of lot and associated dwelling at the rear);
- Reduction in lots from 6 lots to 5 lots (deletion of rear lot);
- Modifications to the driveway to increase landscaping and meandering and therefore reducing the gun barrel effect;
- Reconfigure the housing typologies from four semi-detached dwellings and two detached dwellings to two semi-detached dwellings and three detached dwellings;
- Reduction in the overall GFA of the site from 914.8m<sup>2</sup> to 872.4m<sup>2</sup>, achieving an FSR of 0.49:1, across the site;
- Reduce the bulk and scale of dwelling 3 and 4 to be part 1, part 2 storey dwellings
- Increase the lot sizes from an average of 290m<sup>2</sup> to an average of 349m<sup>2</sup>;
- Reduction from 4 to 3 lots which utilise the right of way; and
- Reduction in the length of the driveway.

Overall, the bulk and scale of the proposed development has been substantially reduced, particularly when viewed from 10 Herford Street to the north west of the site and from 16 -18 16A Herford Street to the east and south east of the site. Specifically, the middle two dwellings have been converted from 2 storey semi-detached dwellings to detached dwellings that are of part 1, part 2 storey in height. The two (2) allotments at the rear of the site have now been combined to form one (1) single lot which will comprise a two (2) storey detached dwelling and an associated outbuilding. Lot 5 now includes a substantial degree of landscaping within the centre of the lot and along the side boundaries, which is considered to retain a high degree of amenity, including solar access, privacy and outlook to the northern and southern neighbours.

The access driveway has been significantly reduced in length and includes a number of landscaped indentations to reduce the 'gun-barrel' appearance, when viewed from Herford Street. This is considered to be an appropriate design response for and from the subject site.

Each of the dwellings have also been designed with varying roof forms and architectural features to provide character and visual interest, when viewed from surrounding properties. The front two semi-detached dwellings have been retained in their form (as amended during the hearing) which, according to page 14 of the judgement is considered to, "achieve a degree of consistency when viewed from the street."

The proposed allotment sizes, on average, have increased from 290m<sup>2</sup> to 349m<sup>2</sup> which is considered to be consistent with the varied size of allotments within the immediate streetscape.

Based upon the above amendments, it is considered that the proposed development now achieves an appropriate form of development on the subject site.

## 5. PROPOSAL

The proposed development seeks to demolish the existing dwellings and associated outbuildings and subdivide the existing two (2) lots into five (5) lots to facilitate the construction of 2 semi-detached dwellings and 3 single dwelling houses.

Specifically, the 2 dwellings fronting Herford Street will be constructed in the form of semi-detached dwellings, each with direct access off Herford Street. A driveway will be constructed along the southern side boundary, providing access to the battle-axe allotments, which comprise two single dwelling houses within the centre of the site and the single dwelling house at the rear of the site.

Each of the dwellings will be 2 storeys in height and will contain 2 car spaces.

Dwellings 1 -4 will each have their main living / dining / kitchen quarters at the ground floor level, with 3 bedrooms at the upper level.

Dwelling 5 will have the living / dining / kitchen quarters at the ground floor with 4 bedrooms at the upper level. An outbuilding is also proposed in association with dwelling 5, which will contain a living area, bathroom and additional bedroom.

The proposed development is summarised below:

**Table 1: Development Summary**

Lot No:	Lot Size	Dwelling Type	Dwelling Configuration
<b>Lot 1</b>	227m <sup>2</sup>	Semi-detached	<u>Ground Floor</u> <ul style="list-style-type: none"> <li>Guest bedroom</li> <li>Laundry / powder room</li> <li>Combined living / dining / kitchen area</li> <li>North east facing deck / courtyard &amp; BBQ</li> <li>2 x car spaces (1 x garage, 1 x hardstand)</li> </ul> <u>First Floor</u> <ul style="list-style-type: none"> <li>3 bedrooms plus 2 bathrooms</li> </ul>
<b>Lot 2</b>	352.9m <sup>2</sup>	Semi-detached	<u>Ground Floor</u> <ul style="list-style-type: none"> <li>Guest bedroom</li> <li>Laundry / powder room</li> <li>Combined living / dining / kitchen area</li> <li>North east facing deck / courtyard &amp; BBQ</li> <li>2 x car spaces (1 x garage, 1 x hardstand)</li> </ul> <u>First Floor</u> <ul style="list-style-type: none"> <li>3 bedrooms plus 2 bathrooms</li> </ul>
<b>Lot 3</b>	304m <sup>2</sup>	detached	<u>Ground Floor</u> <ul style="list-style-type: none"> <li>Guest bedroom</li> <li>Laundry / powder room</li> <li>Combined living / dining / kitchen area</li> <li>North facing rear deck / courtyard &amp; BBQ</li> <li>Double garage</li> </ul> <u>First Floor</u> <ul style="list-style-type: none"> <li>3 bedrooms plus 2 bathrooms</li> </ul>
<b>Lot 4</b>	330.8m <sup>2</sup>	detached	<u>Ground Floor</u> <ul style="list-style-type: none"> <li>Guest bedroom</li> <li>Laundry / powder room</li> <li>Combined living / dining / kitchen area</li> <li>North facing rear deck / courtyard &amp; BBQ</li> <li>Double garage</li> </ul> <u>First Floor</u>

Lot No:	Lot Size	Dwelling Type	Dwelling Configuration
			<ul style="list-style-type: none"> <li>3 bedrooms plus 2 bathrooms</li> </ul>
<b>Lot 5</b>	533m <sup>2</sup>	detached	<p><u>Ground Floor</u></p> <ul style="list-style-type: none"> <li>Laundry / powder room</li> <li>Living / T.V room</li> <li>Combined living / dining / kitchen area</li> <li>North / north-east facing rear deck / courtyard &amp; BBQ</li> <li>Carport accommodating 2 car spaces</li> </ul> <p><u>First Floor</u></p> <ul style="list-style-type: none"> <li>4 bedrooms plus 2 bathrooms</li> </ul> <p><u>Outbuilding</u></p> <ul style="list-style-type: none"> <li>Living</li> <li>Bedroom</li> <li>Bathroom</li> <li>South west facing deck</li> </ul>

## 6. ASSESSMENT UNDER RELEVANT CONTROLS

The following planning instruments are relevant to the proposed development:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Botany LEP 2012; and
- Botany DCP 2013.

### 6.1. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to this proposal. This application is accompanied by a BASIX Certificate demonstrating compliance with the sustainability requirements. Furthermore, the open plan layout, northern or eastern aspects and compliance with solar access requirements demonstrates that the proposed dwellings are of a high quality nature that have been designed to limit reliance on artificial heating and cooling means.

### 6.2. LEP AND DCP COMPLIANCE SUMMARY

Table 2 below provides a snapshot of compliance of the proposed development against the primary the LEP and DCP controls. The following sections expand on the items identified below.

Table 2: Summary Compliance Table

Proposed Lot No:	Lot 1	Lot 2	Lot 3	Lot 4	Lot 5
<b>Botany Bay LEP 2013</b>					
<b>Zoning</b>	R2 Low Density Semi-detached dwelling	R2 Low Density Semi-detached dwelling	R2 Low Density detached dwelling	R2 Low Density detached dwelling	R2 Low Density detached dwelling
<b>Height</b>	8.5m Complies	8.5m Complies	8.5m Complies	8.5m Complies	8.5m Complies
<b>FSR</b>	0.6:1 Non-compliant	0.39:1 compliant	0.54:1 compliant	0.5:1 compliant	0.5:1 compliant
<b>Botany Bay DCP 2013</b>					
<b>Site Coverage</b>	42.6%	27.4%	45.3%	41.7%	31.4%
<b>Deep Soil</b>	41%	29%	25.1%	29.5%	42.3%
<b>Private Open Space</b>	>36m <sup>2</sup>	>36m <sup>2</sup>	>36m <sup>2</sup>	>36m <sup>2</sup>	>36m <sup>2</sup>
<b>Solar Access</b>	3 hours	3 hours	3 hours	3 hours	3 hours
<b>Car Parking</b>	2 spaces	2 spaces	2 spaces	2 spaces	2 spaces

### 6.3. Botany LEP 2012

#### 6.3.1. Zoning

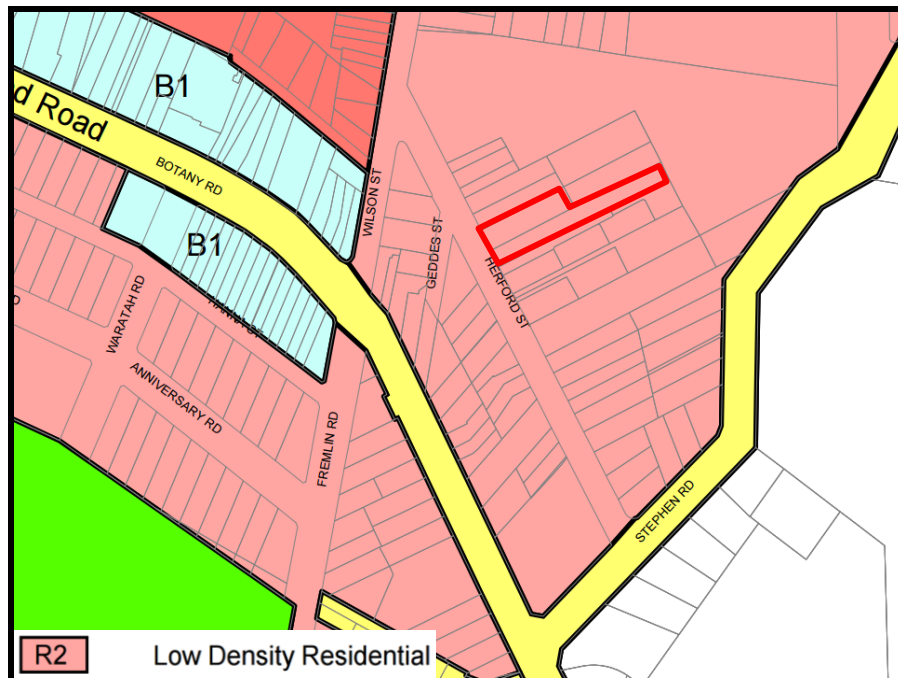


Figure 11: Zoning Map

##### 1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development that promotes walking and cycling.

##### 2 Permitted without consent

Home occupations

##### 3 Permitted with consent

**Attached dwellings;** Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; **Dwelling houses;** Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Hospitals; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings

##### 4 Prohibited

Any development not specified in item 2 or 3

**Assessment:** The site is zoned R2 Low Density Residential under the Botany Bay LEP 2013 (BBLEP 2013). The BBLEP2013 permits development for the purpose of detached dwelling houses and semi-attached dwelling houses.

It is considered that the replacement of the existing two (2) outdated dwellings with five (5) high quality residential dwellings achieves the primary objectives of the zone by way of providing for the housing needs of the community within a low density residential setting.

Furthermore, the site's proximity to the Banksmeadow Neighbourhood Centre as well as the Banksmeadow Public School and childcare centre, Sir Joseph Banks Park and the Botany Golf Club, promotes walking and cycling within the area.

### 6.3.2. Floor Space Ratio

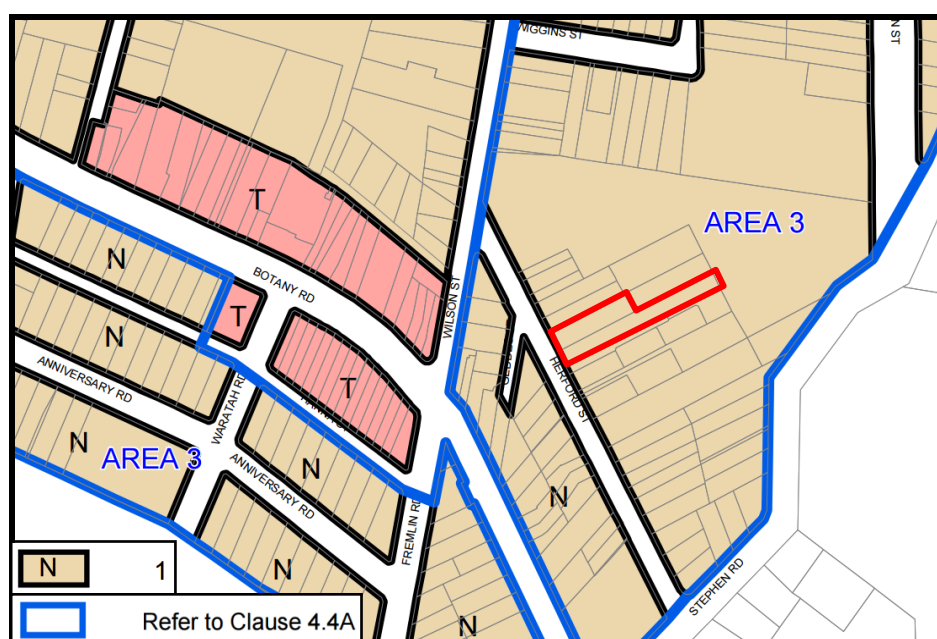


Figure 12: Floor Space Ratio

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

- a) to establish standards for the maximum development density and intensity of land use,
- b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,
- c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,
- d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,
- e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
- f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,
- g) to facilitate development that contributes to the economic growth of Botany Bay.

#### 4.4A Exceptions to floor space ratio for residential accommodation

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

- a) to ensure that the bulk and scale of development is compatible with the character of the locality,
- b) to promote good residential amenity.

(2) This clause applies to land identified as “Area 3” on the Floor Space Ratio Map.

(3) Despite clause 4.4 (2), the following provisions relate to floor space ratios on land to which this clause applies:

- a) the maximum floor space ratio for a dwelling house is not to exceed the floor space ratio applicable to the site area of the land on which the dwelling house is situated:

Site Area	Maximum Floor Space Ratio
<200 square metres	0.85:1
200–250 square metres	0.80:1
251–300 square metres	0.75:1
<b>301–350 square metres</b>	<b>0.70:1</b>
351–400 square metres	0.65:1
401–450 square metres	0.60:1
<b>&gt;450 square metres</b>	<b>0.55:1</b>

- (b) the maximum floor space ratio for multi dwelling housing is not to exceed 0.8:1,  
 (c) the maximum floor space ratio for a residential flat building is not to exceed 1:1,  
**(d) the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.**

**Assessment:** The proposed development consists of both semi-detached dwellings houses and detached dwellings houses.

In accordance with the Botany Bay LEP 2013, the semi-detached dwellings, being dwellings 1 & 2 are afforded an FSR of 0.5:1.

The detached dwellings, being dwellings 3-5, are subject to the sliding scale, in accordance with the corresponding lot sizes. In this regard, dwellings 3 & 4 are afforded an FSR of 0.7:1 whilst dwelling 5 is afforded an FSR of 0.55:1.

The FSR for the proposed development is summarised below:

**Table 3: FSR break down**

Dwelling No.:	FSR Permitted	FSR Proposed	GFA	Compliance
<b>1</b>	0.5:1	0.6:1	138.4m <sup>2</sup>	✗ See Clause 4.6 in <b>Appendix 1</b>
<b>2</b>	0.5:1	0.39:1	138.4m <sup>2</sup>	✓
<b>3</b>	0.7:1	0.54:1	165.3m <sup>2</sup>	✓
<b>4</b>	0.7:1	0.5:1	165.3m <sup>2</sup>	✓
<b>5</b>	0.55:1	0.5:1	265m <sup>2</sup>	✓

As illustrated above, four (4) of the proposed dwellings are significantly below the permitted FSR for the subject site and proposed use. Given that an FSR of 0.75:1 would apply to dwelling 1 if it were a detached dwelling, it is considered that in this instance, the non-compliance is based upon a technicality in relation to the use of the site.

Conversely, if the site was looked at holistically rather than independently, the total site area (1747.8m<sup>2</sup>) and combined GFA (872.4m<sup>2</sup>) results in an overall FSR of 0.5:1. Such FSR would therefore achieve compliance with Clause 4.4.A(3)(d), being a maximum FSR of 0.5:1 for residential development that is not a dwelling house.

It is therefore considered that the FSR non-compliance associated with dwelling 1 is based upon a technical breach rather than being an overdevelopment of that particular allotment.

Furthermore, when the site is viewed from Herford Street or surrounding properties, it is considered that the proposed FSR and associated bulk and scale, is appropriate and consistent in the context of the streetscape.

Overall, the proposed development is considered to achieve a desirable bulk and scale for the site as exhibited by the streetscape diagrams and the lack of impacts to surrounding properties. Each of the dwellings have an appropriate degree of spatial separation to support high quality, landscaped private open space areas which provide for a pleasant outlook both for and from the development and therefore reduces any adverse amenity impacts upon neighbouring properties.

The accompanying Clause 4.6 variation (**Appendix 1**) provides comprehensive justification for the departure from the FSR standard.



### 6.3.3. Building Height

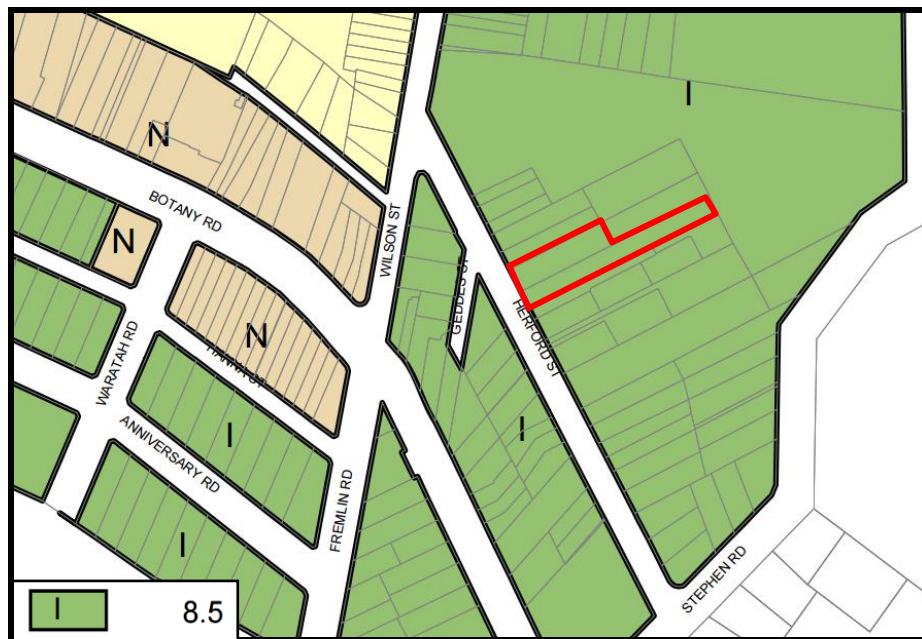


Figure 13: Building Height

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

- a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,
- b) to ensure that taller buildings are appropriately located,
- c) to ensure that building height is consistent with the desired future character of an area,
- d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.

**Assessment:** Each of the dwellings are below the 8.5m height limit. The elevation diagrams on drawings DA04\_01, DA04\_02 & DA04\_03 demonstrate that the proposed dwellings will be significantly below the height limit.

The modest height, combined with extensive separation distances and deep soil landscaping ensures that the presentation of the dwellings will be compatible in the locality, when viewed from private and public vantage points.

Importantly, the spatial separation and modest height retains solar access to surrounding properties. The proposed height is also not responsible for any view or privacy impacts.

The proposed height is considered to be responsive to the streetscape and its context.

### 6.3.4. Heritage Conservation

**Assessment:** The Botany Bay LEP (2013) does not list 12-14 Herford Street as either containing a heritage item or as an inclusion within a heritage conservation area.



### 6.3.5. Acid Sulfate Soils

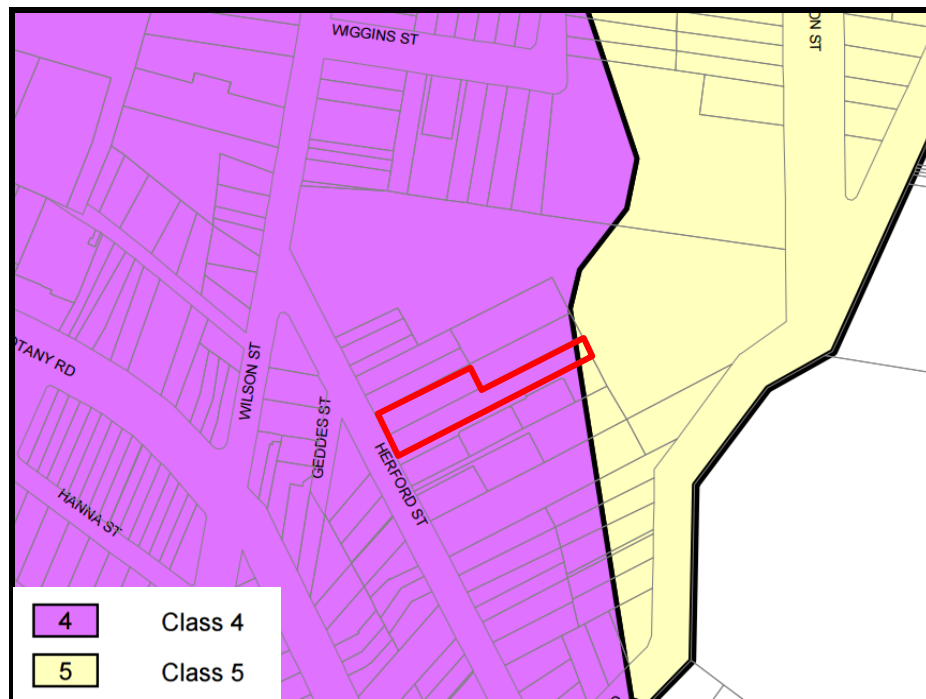


Figure 14: Acid sulfate soils

**Assessment:** The subject site is located on land identified as Class 4 Land on the Acid Sulfate Soils map.

It is noted that the only excavation proposed is that associated with the footings of the house and therefore is considered to be minimal. Accordingly, it is considered that the proposed development does not warrant the preparation of an Acid Sulfate Soils Management Plan.

### 6.3.6. Trees

**Assessment:** Botany Bay City Council has granted approval for the removal of the Peppercorn tree and Avocado trees on the subject site (Council Reference: S16/7-1, dated 21 July 2016).

## 6.4. Botany DCP 2013

### 6.4.1. Character Precincts - Botany

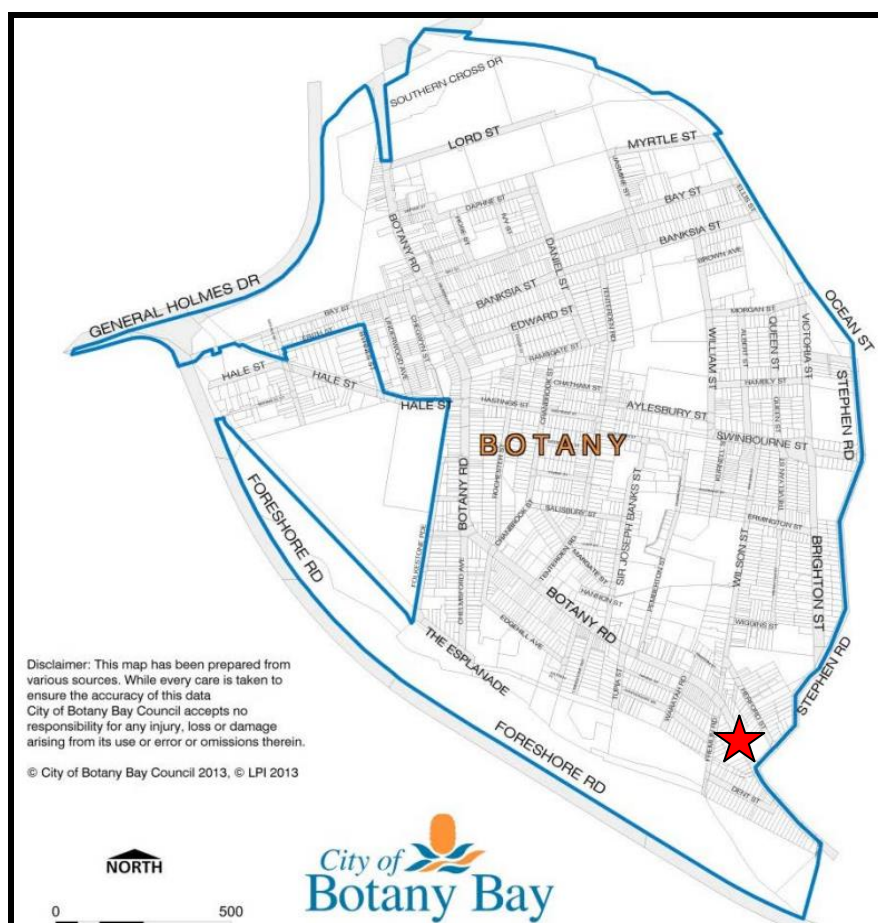


Figure 15: Botany Bay Character Precinct

**Assessment:** As illustrated above, the subject site is located within the south eastern corner of the Botany Bay Character Precinct area (Part 8.4 of the BBDCP 2013).

The proposed development aims to enhance the public domain and streetscape presentation of the subject site through the redevelopment of the existing dilapidated and unkempt site with high quality and attractive housing in a landscaped setting.

The proposal is consistent with the precinct requirements for setbacks, landscaping, fencing, subdivision and solar access, all of which are addressed within the relevant sections of this Statement of Environmental Effects.

The bulk and scale of the proposed development and the variety of dwelling typologies is considered to be consistent and compatible with the existing neighbourhood, and the overall urban context of Botany. The proposed built forms are of a size and scale that is appropriately for the subject site and the spatial proportion of the dwellings is commensurate with that of a low density residential environment.

It is therefore considered that the proposed development reflects the desired future character of Botany, as intended to be achieved by the character precinct controls.

### 6.4.2. General Provisions

The table below sets out the General Provisions of the Botany DCP 2013 that apply to the subject site and proposed development, involving semi-detached dwellings and detached dwelling houses.

**Table 4: Development Compliance Response (Part 3 – General Provisions)**

Controls	Response
<b>3A: Parking &amp; Access</b>	<p><b>Complies</b></p> <p>The proposed development provides for 2 car spaces per each dwelling.</p> <p>For dwellings 1 and 2, 1 car space will be provided in the garage which is recessed behind the front alignment of the façade whilst the other will be a hard stand space within the front setback. This parking arrangement is consistent with numerous dwellings on both sides of Herford Street.</p> <p>Dwellings 3 &amp; 4 have been designed with double garages that are suitably integrated into the overall built form to ensure they do not dominant the main façade. In this regard, the garage doors are constructed of timber battens which present as a light weight structure that are compatible with the brick work wall proposed along the south east elevation, of these dwellings.</p> <p>Dwelling 5 will be serviced by a double space open carport. All car spaces to the rear of the site allow for forward ingress and egress to and from Herford Street.</p> <p>The provision of parking on the subject site achieves compliance with Council's parking rates</p>
<b>3E: Subdivision and Amalgamation</b>	<p><b>Complies</b></p> <p>The proposed subdivision of the existing two (2) allotments is considered to result in a positive planning outcome as it provides for a more orderly and economic use of the subject site. The existing lots, particularly that of 14 Herford Street, are of a depth that is substantially greater than the average allotment depth within the Botany precinct. The narrow and elongated nature of 14 Herford Street has resulted in the rear portion of the allotment being underutilised, which is evident by the overgrown vegetation and the 'rear' fencing and associated sheds which are located in the centre of the site.</p> <p>The amalgamation of the existing two (2) lots into five (5) lots result in allotments that are of an appropriate size and dimension that</p>

Controls	Response
	<p>are consistent with the residential lot sizes within the Botany area and support dwellings that are capable of achieving compliances with the key numerical controls regarding site coverage, landscaping, private open space, solar access and setbacks.</p> <p>It is considered that the proposed layout is responsive to its size and orientation whilst also being compatible with the nature of the battle axe allotments to the south. It is also noted that the rear portion of the site adjoins a school playground to its north and east which also contributes to the atypical arrangement.</p> <p>Since the L&amp;EC decision, the proposed development has been amended so as to result in the amalgamation of proposed lots 5 &amp; 6. As such it is not considered that the resulting lot sizes are not uncharacteristic of the locality and are suitable to accommodate the proposed dwellings, which is evident by way of the high degree of compliance with other DCP controls, including solar access, landscaping, private open space and setbacks.</p> <p>Overall, it is considered that the proposal amalgamation and subdivision of the existing allotments achieves the aims of the subdivision controls as it provides for development which is generally compliant with Council's controls for semi-detached dwelling and outperforms the controls applicable to dwelling houses. The resultant FSR of each of the proposed dwellings (with the exception of dwelling 1) is significantly below that permitted on the proposed lots with is further confirmation that the lot sizes are appropriate for the subject site and surrounding area.</p>
<b>3F: Tree Management</b>	<p><b>Not Applicable</b></p> <p>Approval has already been granted for the removal of the two trees within the rear yard (Council Reference: S16/7-1, dated 21 July 2016)</p>
<b>3G: Stormwater Management</b>	<p><b>Complies</b></p> <p>The proposal is accompanied by a stormwater plan which demonstrates stormwater collection and disposal in accordance with Council's requirements.</p>
<b>3H: Sustainable Design</b>	<p><b>Complies</b></p> <p>The proposal is considered to be a sustainable, orderly and efficient use of the site through the replacement of two (2) dwellings with five (5) dwellings on individual allotments. It is reiterated that the proposed dwelling typology is appropriate on the site given the unique site dimensions, in that it extends for a depth of 108m to the north east, providing for an unusually long site. The adjoining sites to the south east which have similar site dimensions have been developed in a similar manner, therefore</p>

Controls	Response
	<p>demonstrating the appropriateness of the built form on the subject site.</p> <p>All dwellings have two main aspects, including a main north / north-eastern aspect which ensures that each dwelling will enjoy abundant access to sunlight, daylight and natural ventilation, thereby reducing reliance on artificial heating, lighting and cooling means. Water saving devices are also incorporated into the accompanying BASIX Certificate.</p>
<b>3I: Crime Prevention, Safety and Security</b>	<p><b>Complies</b></p> <p>The proposal significantly improves causal surveillance to both Herford Street and to Banksmeadow Public School to the north and the Council reserve to the east. The private open space areas and small upper level balconies provide an outlook to the street or school / reserve. All properties will also be secured by fencing from both the street and school / reserve.</p>
<b>3J: Aircraft Noise &amp; OLS</b>	<p><b>Complies</b></p> <p>The subject site is located within the 20-25 ANEF contours which requires conditional approval of residential development in this zone to comply with noise attenuation requirements set by Council DCP Part 3J.</p> <p>The proposed development will comply with the acoustic requirements.</p>
<b>3K: Contamination</b>	<p><b>Complies</b></p> <p>The site has a history of residential usage which ensures that there is no risk of contamination.</p>
<b>3L: Landscaping</b>	<p><b>Complies</b></p> <p>The proposal provides for abundant landscaping in the front and rear yards of each of the dwellings. It is noted that the proposal replaces the unsightly sheds and the unkempt nature of the rear of the allotments with landscaping opportunities. The proposal also incorporates appropriate low level landscaping in the front setback and on islands along the driveway profile which softens the appearance of the built form whilst also allowing for a pleasant outlook.</p> <p>It is reiterated that the proposal complies with the landscaped area requirements.</p>
<b>3N: Waste Minimisation and Management</b>	<p><b>Complies</b></p> <p>The existing dwellings and associated outbuildings will be demolished in an appropriate manner whilst there is scope for bin storage to be discreetly located in the garages or private yards.</p>

### 6.4.3. Residential Provisions

The table below sets out the Residential Provisions of the Botany DCP 2013 that apply to the subject site and proposed residential development, comprising two (2) semi-detached dwellings and three (3) detached dwellings.

**Table 5: Residential Provisions (Part 4A – Botany DCP 2013)**

Controls	Proposed	Complies
<b>4A.2 SITE DESIGN</b>		
<b>4A2.1 Design Excellence</b>	<p>The proposal seeks to achieve design excellence by significantly improving the existing dwelling and moving towards a contemporary architectural style. The proposal complies with the controls and objectives of section 4A.3.1 by maintaining the same character of the local context, reflecting the surrounding dominant buildings patterns of height, scale and architectural style, while providing an innovative contemporary design that responds to its context.</p> <p>Many of these controls are further established in this SEE, responding to the related sub-sections of the Botany DCP.</p>	✓
<b>4A.2.2 Site Analysis</b>	Please refer to the accompanying architectural plans prepared by Urban Future which includes a site analysis plan demonstrating the siting and scale of the semi-detached dwellings and detached dwelling houses and their relationship to the adjoining properties, the school, reserve and the Herford Street streetscape.	✓
<b>4A.2.3 Local Character</b>	<p>The subject site is located in the Botany Character Precinct Areas, under Part 8G of the DCP.</p> <p>An assessment of the proposed development against the applicable controls is contained 6.1.1 of this Statement of Environmental Effects.</p>	✓
<b>4A.2.4 Streetscape Presentation</b>	<p>The proposed semi-detached dwelling houses (dwelling 1 and dwelling 2) have been designed with a symmetrical façade with the provision of a single driveway crossing in the centre of the site. Such style is consistent with semi-detached dwellings with the streetscape.</p> <p>As such, the proposed built form is consistent and compatible with the desired future streetscape character of Herford Street.</p> <p>The semi-detached dwellings, being the dwellings that are considered to be readily perceived from the streetscape,</p>	✓

Controls	Proposed	Complies
	<p>have been designed to address the Herford Street streetscape. The primary openings of these dwellings are easily recognisable from the street, whilst the provision of high quality landscaped front yards and the use of appropriate materials and finishes ensures that the semi-detached dwellings are reflective of the character of recently constructed buildings within the streetscape.</p> <p>The proposed subdivision of the existing 2 lots into 5 lots results in regular shaped allotments that are of a similar size to those within the area (proposed lot sizes range between 227m<sup>2</sup> – 533m<sup>2</sup>), noting that Herford Street is characterised by allotments that are of different lot sizes and configurations, which range in size from 209m<sup>2</sup> – 2207m<sup>2</sup>. It is considered that the proposed subdivision results in a better planning outcome than the current lot arrangement as it results in the sustainable, orderly and economic use of the subject site which currently contains two outdated dwellings with unkempt and unused rear yards, particularly that of 14 Herford Street. The lot sizes and dimensions are now considered to be more appropriate as they provide for more manageable private open space areas whilst being of a sufficient size and dimension to accommodate semi-detached and detached dwellings, which comply with the key numerical controls under the Botany Bay LEP and DCP.</p> <p>It is therefore considered that the proposed development provides for five (5) high quality dwellings that are consistent with the height, bulk and scale to those dwellings to the north west and south east of the site.</p> <p>The replacement of the existing unkempt and outdated dwelling houses with the proposed modern and contemporary semi-detached and detached dwellings is considered to contribute to the character of the low density residential precinct.</p>	
<b>4A.2.5 Height</b>	<p>The subject site has an allowable height limit of 8.5m.</p> <p>The proposed height is consistent with other 2 storey dwellings within the immediate area</p> <p>Please refer to Section 6.3.3 of this Statement of Environment Effects which provides a full assessment against the height objectives, as contained within the Botany Bay LEP 2013.</p>	✓
<b>4A.2.6 FSR</b>	<p>Please refer to Section 6.3.2 of the Statement of Environment Effects which provides a full assessment against Clause 4.4 and 4.4A of the Botany Bay LEP 2013.</p>	<p>✗</p> <p>See Clause 4.6</p>

Controls	Proposed	Complies																		
	<p>In summary, the proposed development, with the exception of Dwelling 1, has an FSR well below that permitted on the site. Dwelling 1 forms a semi-detached dwelling and therefore the maximum allowable FSR on that lot is 0.5:1. The proposed FSR for that lot is 0.6:1. However, if a detached dwelling was constructed on that allotment, an FSR of 0.75:1 would apply and therefore the proposed semi-detached dwelling would comply. On this basis, it is considered that the proposed development results in a technical non-compliance rather than a non-compliance associated with the overdevelopment of the site.</p> <p>This is further confirmed when looking at the site as a whole, rather than independently. In this regard, the proposed development has an FSR of 0.5:1, being the total combined GFA divided by the total combined site area.</p> <p>In this regard, it is considered that the proposed development is of a bulk and scale that is appropriate for the subject site and is consistent with the surrounding area.</p> <p>Overall, the proposed development is considered to achieve a desirable bulk and scale for the site as exhibited by the streetscape diagrams and the lack of impacts to surrounding properties. Each of the dwellings have an appropriate degree of spatial separation to support high quality, landscaped private open space areas which provide for a pleasant outlook both for and from the development and therefore reduces any adverse amenity impacts upon neighbouring properties (in particular, visual bulk, privacy and overshadowing).</p> <p>The accompanying Clause 4.6 variation (<b>Appendix 1</b>) provides comprehensive justification for the departure from the FSR standard.</p>	contained in <b>Appendix 1</b> of this report																		
<b>4A.2.7 Site Coverage</b>	<p>Each of the proposed semi-detached dwellings and detached dwellings are fully compliant with the allowable site coverage as indicated in the table below:</p> <table><tr><th></th><th>Dwelling 1</th><th>Dwelling 2</th><th>Dwelling 3</th><th>Dwelling 4</th><th>Dwelling 5</th></tr><tr><td><b>Allowable site coverage</b></td><td>65%</td><td>50%</td><td>50%</td><td>50%</td><td>50%</td></tr><tr><td><b>Proposed site coverage</b></td><td>42.6%</td><td>27.4%</td><td>45.3%</td><td>41.7%</td><td>31.4%</td></tr></table>		Dwelling 1	Dwelling 2	Dwelling 3	Dwelling 4	Dwelling 5	<b>Allowable site coverage</b>	65%	50%	50%	50%	50%	<b>Proposed site coverage</b>	42.6%	27.4%	45.3%	41.7%	31.4%	✓
	Dwelling 1	Dwelling 2	Dwelling 3	Dwelling 4	Dwelling 5															
<b>Allowable site coverage</b>	65%	50%	50%	50%	50%															
<b>Proposed site coverage</b>	42.6%	27.4%	45.3%	41.7%	31.4%															



Controls	Proposed	Complies
	The outperformance of the proposed development against the allowable site coverage is further confirmation that the proposed bulk and scale and overall density of the development is appropriate for the subject site. The smaller building footprint also allows for a high degree of landscaping and supports appropriate side and rear setbacks to allow for areas of private open space whilst also reducing privacy, overshadowing and acoustic impacts on neighbouring properties.	
<b>4A.2.8 Building and Setbacks</b>	<p>The proposed semi-detached dwellings (dwellings 1 and 2) have a front setback ranging between 4.47m - 6m which allows for a degree of articulation whilst also form a consistent alignment with the setbacks of the neighbouring properties to the north west and south east. These dwellings also support a rear setback of 7.8m which outperforms the 4m requirement under the DCP.</p> <p>Dwellings 3 &amp; 4 each have side setbacks of 900mm at the interfacing side boundary. Dwelling 3 has a nil side setback along the south western façade which is considered reasonable and appropriate given that there are no openings along this side.</p> <p>Dwelling 5 has side setbacks greater than 900mm. The main dwelling has a rear setback of 19.7m whilst the proposed outbuilding will be located 930mm off the rear boundary, which is consistent with other outbuildings within the area.</p>	✓
<b>4A.2.9 Landscaped Open Space</b>	The proposed development outperforms the requirements for landscaped open space. Please refer to the development summary compliance table contained in Section 6.2 of this Statement of Environment Effects	✓
<b>4A.3 BUILDING DESIGN</b>		
<b>4A.3.1 Materials and Finishes</b>	<p>Please refer to drawing number DA07_01 and DA07_02 of the accompanying architectural drawings which demonstrates the high quality nature of the materials and finishes.</p> <p>In particular, the proposed elevations are designed with a combination of various materials such as brick, render, aluminium frame windows and timber which intend to provide material articulation.</p> <p>Overall, it is considered that the proposal incorporates a number of complimentary materials which assist in providing greater articulate to the façade whilst the selected palette seeks to reflect contemporary buildings in the surrounding local context.</p>	✓

Controls	Proposed	Complies
<b>4A.3.2 Roofs and Attics / Dormers</b>	The proposed development incorporates a variety of flat and pitched roofs to provide for visual interest whilst also bringing character to each of the dwelling homes.	✓
<b>4A.3.3 Fences</b>	All fences will comply with Council's DCP requirements and will be characteristic of the fences in the immediate locality.	✓
<b>4A.3.5 Voids</b>	Void spaces are provided above the entry area and associated stair case only and do not lead to any additional bulk or scale impacts nor does it result in adverse amenity impacts on neighbouring properties.  The voids are designed and located so that they cannot reasonably be infilled at a later stage and are designed to provide greater amenity to the ground floor entry foyer.	✓
<b>4A.4.1 Visual Privacy</b>	Privacy needs of the residents of the subject site and the neighbours have been taken into consideration  Windows of the proposed dwelling will not directly face the windows of the adjacent properties. There will not be any privacy issues with  The proposed windows to the first floor of dwellings 1, 3 & 4 will have sill height of 1.7m therefore not looking into the neighbouring property at No. 10 Herford Street.  The main windows are offset from neighbouring windows, as well as ensuring a minimum 1.5m sill height on all windows. A proposed 1.8m high fence between properties will ensure a reasonable degree of privacy is maintained.  First floor balconies can only be directly accessed off bedrooms and are located wholly over the ground floor.	✓
<b>4A.4.2 Acoustic Privacy</b>	The position and siting of the dwellings on the subject site, in combination with the location of openings and orientation of bedrooms / living areas ensures that an appropriate level of aural privacy is maintained between dwellings on the subject site and dwellings on the adjacent sites.	✓
<b>4A.4.3 Solar Access</b>	Please refer to the accompanying shadow diagrams prepared by Urban Future which demonstrates compliance with the solar access requirements.	✓
<b>4A.4.4</b>	Please refer to the accompanying architectural plans prepared by Urban Future which demonstrates that each	✓

Controls	Proposed	Complies
<b>Private Open Space</b>	<p>dwelling is provided with private open space in excess of 36m<sup>2</sup>.</p> <p>Private open spaces proposed for all dwellings are provided at the ground level with direct access to the living area.</p> <p>The proposed rear facing private open spaces receive more than three hours of solar access.</p> <p>The proposed decks have minimum area of 10m<sup>2</sup> and minimum dimension of 2m. Decks are at ground level.</p>	
<b>4A.4.7 Vehicle Access</b>	<p>Each of the proposed dwellings are provided with 2 car spaces either in the form of tandem parking, double garage or carport.</p> <p>The proposed semi-detached dwellings share a single vehicle cross over which complies with the DCP requirements and relevant Australian Standards.</p> <p>Lots 2, 3 &amp; 4 have a right of way which provides vehicular access to Lots 3, 4 &amp; 5. The proposed driveway has been designed with a number of indentations which are designed to form small landscaped islands and thus will reduce the appearance of a 'gun barrel' driveway and will provide for visual interest when viewed from the streetscape and surrounding properties.</p> <p>The indentations are located adjacent to the entries of dwellings 3 &amp; 4 and therefore created greater separation and privacy between the entrance of the dwellings and vehicles using the driveway. It is also noted that since the original lodgement of the DA, the proposed driveway has been significantly reduced in length and services 3 dwellings, instead of 4.</p> <p>It is therefore considered that the proposed driveway profile is reasonable and appropriate in this instance.</p>	✓
<b>4A.5.8 Car Parking</b>	<p>Provision has been made for off street car parking with a single garage, double garage or carport provided for each dwelling. The driveway area is sufficient to cater for an additional vehicle. The proposal adheres to the controls outlined above.</p> <p>The colour and material of the garage doors is indicated in the material elevations and adheres to the requirements of non-reflective and textured material.</p> <p>All car parking complies with the relevant Australian Standards, with the site allowing for forward ingress and egress to and from Herford Street.</p>	✓

## 7. SECTION 79C CONSIDERATIONS

In considering this development application, Council must consider the relevant planning criteria in Section 79 of the Environmental Planning and Assessment Act, 1979.

This assessment has taken into account the following provisions:

### STATUTORY POLICY AND COMPLIANCE – s.79C (1) (a)

The proposed development has been assessed in relation to all relevant LEPs and DCPs above in the *Statement of Environmental Effects*.

The LEP which is relevant to the proposal is:

#### Botany LEP 2013

**Comment:** The proposed subdivision of the existing two (2) lots into five (5) lots and associated semi-detached and detached dwelling development is permissible within the R2 Low Density Residential zone. The proposed development achieves the primary zone objectives and the intent of the zone.

Furthermore, the proposal achieves compliance with the key LEP numerical controls for height and FSR. Proposed dwelling 1 seeks a minor variation to the FSR development standard however this is considered to be a technical breach and does not result in any adverse external impacts upon the surrounding properties.

The proposed variation to the FSR standard is comprehensively justified in the accompanying Clause 4.6 variation contained in **Appendix 1** of this Statement of Environment Effects.

The relevant development control plan is:

#### Botany DCP 2013

**Comment:** The proposed semi-detached dwelling and associated land subdivision has been assessed against the relevant components of the Botany DCP 2013. As demonstrated within this Statement of Environmental Effects, the proposed development exhibits a high degree of compliance with the relevant objectives and provisions. In particular, the proposal outperforms the requirements for site coverage, landscaping, private open space and the rear setback. This is confirmation that the proposed development is of an appropriate built form and achieves the intent for development on the subject site.

### NATURAL ENVIRONMENT IMPACTS s.79C (1)(b)

Throughout the period of construction, all measures will be taken to ensure that any noise, dust, and vibration will be kept to a minimum. All construction works will comply with the Building Code of Australia and any other relevant legislation for the duration of the works.

Upon completion of the proposal, the day-to-day operations of the development are unlikely to cause undue impact in relation to noise, pollution, drainage and pedestrian / vehicular traffic flows.

The proposed development will not result in the loss of views or outlook from any surrounding public or private place.

There are no wilderness areas on the site while no endangered fauna have been identified on or around the site.

The proposed development does not involve the removal of any significant trees or vegetation on the site. These have already been approved for removal, as stated in Section 6.3.6 of this Statement of Environmental Effects.

**SOCIAL AND ECONOMIC IMPACTS s.79C (1)(b)**

The proposed development will not be detrimental to the social and economic environment in the locality.

**BUILT ENVIRONMENTAL IMPACTS s.79C (1)(b)**

The proposed development is considered appropriate and will not be responsible for any adverse environmental impacts in relation to loss of privacy, loss of view, noise, or traffic and parking impacts.

**SUITABILITY OF THE SITE FOR DEVELOPMENT s.79C (1)(c)**

The size and shape of the site is suitable for the proposed development and proposed built form is not considered to create any adverse bulk or scale impacts. The development will not result in any unreasonable loss of amenity to neighbouring properties.

**THE PUBLIC INTEREST s.79C (1)(e)**

Amenity impacts have been minimised and the proposal is considered to be a positive contribution to the built and natural environment in Herford Street, particularly in relation to the existing dilapidated and unkempt nature of the subject site.

## 8. CONCLUSION

This Statement of Environmental Effects has demonstrated that the proposed demolition of the existing dwellings and subdivision of the existing two (2) lots into five (5) lots to facilitate the development of 5 dwellings on individual allotments (being 2 x semi-detached dwellings and 3 x detached dwellings) is appropriate for the subject site and surrounding context.

The bulk and scale of the proposed development has been carefully considered and is compatible with the desired future character of the area, as envisaged by the R2 Low Density Residential zoning.

As stated within this Statement of Environmental Effects, the proposed development demonstrates a high degree of compliance with the applicable LEP and DCP controls, particularly in regard to height, FSR (with the exception of dwelling 1), site coverage, private open space, landscaping and solar access.

The proposed lot sizes, semi-detached dwellings and detached dwellings have been designed in response to the issues raised within the original development application (DA-2014/272) and the subsequent court proceedings associated with that development application. In this regard, the proposed development has been amended as follows:

- Reduction in dwellings from 6 to 5 (deletion of lot and associated dwelling at the rear);
- Reduction in lots from 6 lots to 5 lots (deletion of rear lot);
- Modifications to the driveway to increase landscaping and meandering and therefore reducing the gun barrel effect;
- Reconfigure the housing typologies from four semi-detached dwellings and two detached dwellings to two semi-detached dwellings and three detached dwellings;
- Reduction in the overall GFA of the site from 914.8m<sup>2</sup> to 872.4m<sup>2</sup>, achieving an FSR of 0.49:1, across the site;
- Reduce the bulk and scale of dwelling 3 and 4 to be part 1, part 2 storey dwellings;
- Increase the lot sizes from an average of 290m<sup>2</sup> to an average of 349m<sup>2</sup>; and
- Reduction in the length of the driveway.

Overall, the bulk and scale of the proposed development has been substantially reduced, particularly when viewed from 10 Herford Street to the north west of the site and from 16 -18 16A Herford Street to the east and south east of the site.

Lot 5 now includes a substantial degree of landscaping within the centre of the lot and along the side boundaries, which is considered to retain a high degree of amenity, including solar access, privacy and outlook to the northern and southern neighbours.

The access driveway has been significantly reduced in length and includes a number of landscaped indentations to reduce the 'gun-barrel' appearance, when viewed from Herford Street. This is considered to be an appropriate design response for and from the subject site.

Each of the detached dwellings have also been designed to provide character and visual interest, when viewed from surrounding properties. The front two semi-detached dwellings have been retained in their original form, which is consistent with the character of the Herford Street streetscape.

The proposed allotment sizes, on average, have increased from 290m<sup>2</sup> to 349m<sup>2</sup> which is considered to be consistent with the varied size of allotments within the immediate streetscape.

Based on these considerations, the proposal is considered to be appropriate for the site and worthy of approval.

## **APPENDIX 1**

### **CLAUSE 4.6**

#### **EXCEPTIONS TO DEVELOPMENT STANDARDS**

#### **FLOOR SPACE RATIO STANDARD – CLAUSE 4.4A (3)(d) IN BOTANY LEP 2013**

*Demolition of the existing two (2) dwellings and subdivision of two (2) lots into five (5) lots to facilitate the construction of two (2) semi-detached dwellings and three (3) single dwelling houses, each with 2 car spaces.*

12-14 HERFORD STREET, BOTANY

SUBMITTED TO  
BOTANY BAY CITY COUNCIL

PREPARED BY  
ABC PLANNING PTY LTD

SEPTEMBER 2016

## CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS UNDER BOTANY LEP 2013

This Clause 4.6 submission has been prepared to accompany the proposal submitted to Botany Bay Council for the proposed demolition of the existing dwellings, subdivision of the existing two lots into five lots and the construction of two semi-detached dwellings and three detached dwellings, with associated parking and landscaping, on land located at 12-14 Herford Street, Botany.

The proposal seeks a variation to the development standard contained within Clause 4.4A(3)(d) of *Botany Bay LEP 2013* – maximum FSR 0.5:1 for all other residential accommodation, (proposed dwelling 1).

The development proposes a maximum FSR of 0.6:1 which represents a variation of 0.1:1. This submission contends that strict compliance with the maximum FSR of 0.5:1 is unreasonable and/or unnecessary in the circumstances of the case and that the variation sought can be supported and that the Clause 4.6 exception to the development standard should be upheld.

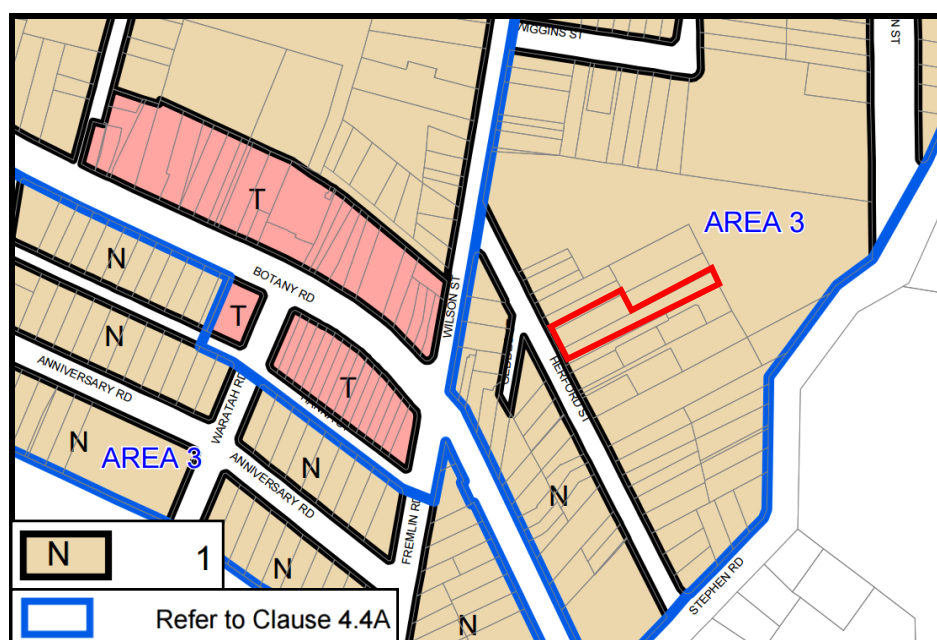


Figure 16: Floor Space Ratio

### 4.4A Exceptions to floor space ratio for residential accommodation

- (1) The objectives of this clause are as follows:
  - (a) to ensure that the bulk and scale of development is compatible with the character of the locality,
  - (b) to promote good residential amenity.
- (2) This clause applies to land identified as "Area 3" on the Floor Space Ratio Map.
- (3) Despite clause 4.4 (2), the following provisions relate to floor space ratios on land to which this clause applies:
  - (a) the maximum floor space ratio for a dwelling house is not to exceed the floor space ratio applicable to the site area of the land on which the dwelling house is situated:



<b>Site Area</b>	<b>Maximum Floor Space Ratio</b>
<200 square metres	0.85:1
200–250 square metres	0.80:1
251–300 square metres	0.75:1
301–350 square metres	0.70:1
351–400 square metres	0.65:1
401–450 square metres	0.60:1
>450 square metres	0.55:1
(b) the maximum floor space ratio for multi dwelling housing is not to exceed 0.8:1,	
(c) the maximum floor space ratio for a residential flat building is not to exceed 1:1,	
<b>(d) the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.</b>	

It is noted that the remaining 4 dwellings have FSR's which are significantly below that permitted on the respective allotments, with the only dwelling exceeding the allowable FSR being the semi-detached dwelling situated on lot 1. It is also noted that if this dwelling was redesigned to form a detached dwelling, then the site would permit an FSR of 0.8:1, of which the proposed dwelling would be significantly less than that permitted on the site.

It is therefore reiterated that the proposed semi-detached dwelling does not form an overdevelopment of the subject site and it is considered that the variation results in a technical breach of the development standard.

Furthermore, if the FSR of the development were calculated as an un-subdivided site, the entire proposal would involve an FSR of 0.5:1, which again would be compliant with Clause 4.4A(3)(d).

#### **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.*

(2) *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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(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 Director-General has been obtained.*

*(5) In deciding whether to grant concurrence, the Director-General 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, and*

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

### **1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – clause 4.6(3)(a)**

I submit that compliance with the standard is unreasonable or unnecessary in the circumstances of the case because the proposal complies with the objectives of the standard and the zone. Please see the assessment under 4 – The proposed development will be in the public interest because it is consistent with the objectives for development within the zone in which the development is proposed to be carried out – clause 4.6(4)(a)(i).

The development standard is unreasonable and unnecessary as a potentially compliant form of development (in the form of detached dwellings) could have a greater bulk and scale.

Reference is also made to another development proposal in the same Council jurisdiction for 4 x 2 semi-detached dwellings (8 in total) at 1390 Botany Rd, Botany. Council agreed to consent orders for these 8 dwellings, notwithstanding that the FSR on 7 of the 8 allotments breached the 0.5:1 FSR standard. The FSRs for each of the lots ranged from a minimum of 0.56:1 (0.06:1 over the control) to 0.71:1. The overall FSR across this site was 0.58:1.

It is clear from a comparison between the subject and the abovementioned development that the subject development is significantly more compliant, in regard to overall FSR, the number of lots which are compliant and the degree of compliance.

A significant point to note is that if a dwelling house was proposed on Lot 1, a greater FSR would be allowed which would subsequently result in a greater bulk and scale than proposed.

Lots 1 has the following area:

Lot 1- site area= 227m<sup>2</sup> – an FSR of 0.8:1 would be permitted whilst only 0.61:1 is proposed.

The justification above and those provided in the following assessment against the criteria under Clause 4.6 demonstrate that the development standard for FSR is unreasonable and unnecessary in the circumstances.

Furthermore, given that the proposal achieves a desirable and compatible streetscape outcome and has no adverse environmental impacts, it is considered to demonstrate that the standard is unreasonable and unnecessary in the circumstances.

The fragmented form of development and unusual shape and relationship with adjoining properties contributes to the particular site circumstances which are unique to this site. The site has an expansive relationship with the undeveloped landscaped playground which minimises the potential visual and amenity impacts that would typically be associated if adjoined by residential properties either side. Furthermore, the combined separation distance achieved by aligning the proposed accessway with the existing accessway on the southern neighbouring site achieves a substantially greater separation distance than would be typically associated if standard residential allotments were either side.

The extreme depth of the site also allows for substantial separation and fragmentation of the proposed built form across the site. This allows for the development forms to be significantly separated and avoids any unreasonable perception of visual bulk, particularly when viewed from the properties to the south at 16-18 Herford Street. The depth of the allotment also supports a landscaped rear yard that comprises 64.3m<sup>2</sup> of deep soil planting which further alleviates the perception of visual bulk from neighbouring properties, whilst the front setback also supports landscaping which softens the appearance of the built form when viewed from Herford Street.

These circumstances demonstrate that the proposed allotment can suitably accommodate the semi-detached dwelling on the subject site, in the proposed form.

The proposed colours, materials and finishes associated with the modest scale of development further contributes to achieving a bulk and scale (and density) which will sit comfortably in its context.

The lack of amenity impacts to surrounding properties further confirms that the standard is unreasonable and unnecessary in these circumstances. The proposal maintains solar access, privacy and outlook whilst there are no significant views affected by the proposed density.

In addition to consistency with the objectives of the standard and the zone, there are circumstances particular to the site that support that compliance with the development standard is unreasonable or unnecessary.

It is thereby considered that the circumstances are particular to the subject site which confirms the reasonable nature of the variation in this instance. Therefore, there would be no public benefit in maintaining the development standard in this instance.

#### ***THE VARIATION ALLOWS FOR A BETTER PLANNING OUTCOME***

The variation also allows for a better planning outcome internally whilst also allowing for the semi-detached dwellings to be consistent when viewed from Herford Street and the surrounding properties.

In this regard, it is considered that the proposed streetscape presentation and the overall built form results in a better planning outcome than if dwelling 1 had a reduced FSR to dwelling 2.

## 2. Sufficient environmental planning grounds to justify contravening the development standard – clause 4.6(3)(b)

The additional FSR is not responsible for any greater environmental impacts than a proposal with a compliant FSR.

In this regard, the proposal is appropriately sited on the subject site to retain privacy, solar access, outlook, and adequate spatial separation to surrounding properties.

The proposed semi-detached dwelling is also contained within a building envelope that outperforms a number of Council's building envelope controls, including height, setbacks, site coverage, private open space and landscaping.

The objective of the above planning provisions is to control development density on sites by ensuring that are of an appropriate size and scale for the allotment of which they are located, as well as ensuring that the built form does not unreasonable impact upon the amenity of the neighbouring properties.

Given that the semi-detached dwelling on proposed lot 1 outperforms a number of the key numerical controls, it is considered that the built form and associated density is suitable for the subject site and within the surrounding context.

The following table demonstrates the high degree of compliance that proposed dwelling 1 exhibits in relation to the key numerical controls:

**Table 6: Development compliance for dwelling 1**

Development Control	Allowable Numeric	Proposed Numeric
Height	8.5m	6.5m
Site Coverage	65%	42.6%
Private Open Space	36m <sup>2</sup>	70m <sup>2</sup>
Landscaped Open Space	15%	41%
Front setback	Complying with prevailing setback or 6m	5.5m
Side Setback	Merit based – eaves are 450mm from boundary	0.92m
Rear Setback	4m	7.8m

Notwithstanding the FSR non-compliance, the proposed semi-detached dwelling on lot 1 outperforms the predominant LEP and DCP controls which are considered to inform the building envelope and density on the subject site. Given the high degree of compliance and lack of external amenity impacts associated with the proposed semi-detached dwelling, it is considered that there is no sound planning justification for retaining the development standard, in this instance.

It is also reiterated that a greater bulk and scale would be permitted on proposed lot 1, if this dwelling was designed in the form of a detached dwelling house. It is therefore considered

that the proposed development represents a desirable outcome both for and from the subject site and.

This is considered to demonstrate that there are sufficient planning grounds to justify contravening the development standard in this instance.

**3. Adequately addressed the matters required to be demonstrative by subclause (3) – clause 4.6(4)(a)(i)**

Please see submission in relation to clause 4.6(3)(a)(i) and (ii) above.

**4. 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 – clause 4.6(4)(a)(ii)**

For completeness, the following is an assessment of both sets of FSR objectives in Council's LEP. The first assessment is against the objectives for FSR under Clause 4.4A(3)(d) whilst the second assessment is against the general FSR objectives under Botany Bay LEP 2013.

The proposed FSR variation is considered to be justified on the following basis:

**4.4A Exceptions to floor space ratio for residential accommodation**

*(1) The objectives of this clause are as follows:*

*(a) to ensure that the bulk and scale of development is compatible with the character of the locality,*

**Assessment:** The proposed bulk and scale is compatible with the character of the locality as the proposed 2 storey semi-detached dwellings with flat roofs will be compatible with other semi-detached and detached dwellings which are also of a similar scale in the streetscape.

The provision of garaging/hard stand car parking as well as landscaping within the front setback area also contributes to achieving a compatible outcome. The 900mm north western side setback for dwelling 1 is also compatible with the typical side setbacks found between dwellings to the north whilst the 5.85m south eastern side setback is also compatible with the setbacks associated with battle-axe style subdivision/dwelling arrangements to the east along Herford Street.

The spatial separation of the proposed dwellings is also consistent with the 'corresponding' dwellings to the south whilst it is considered that the use of materials and finishes and high degree of landscaped open space achieves a more sympathetic and modest design response.



Figure 17: Photo from adjacent to the subject site looking west which shows that the proposed dwellings (including Dwelling 1) would be compatible with the 1 and 2 storey scale semi-detached and attached dwellings.

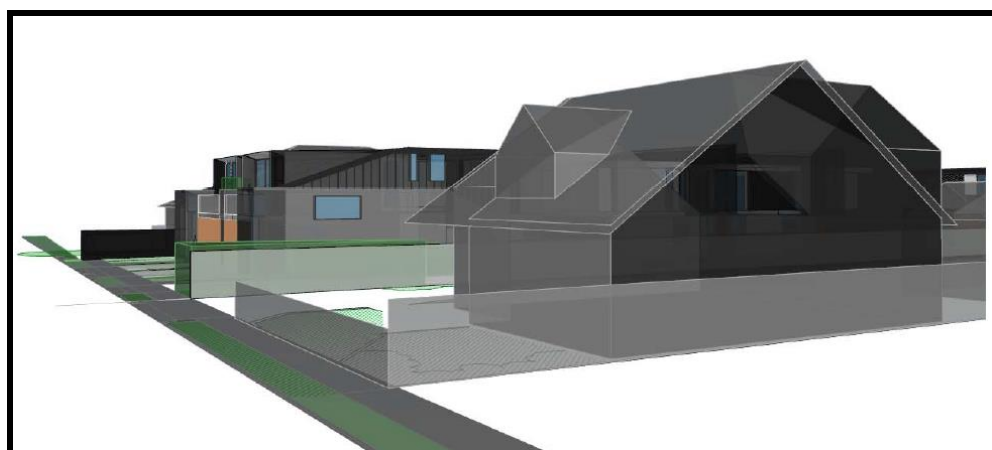


Figure 18: Visualisation of proposed dwelling which confirms the compatibility of the height, bulk and scale.

*(b) to promote good residential amenity.*

**Assessment:** It is considered that the additional FSR contributes to a better level of internal amenity for dwelling 1, than if the FSR of 0.5:1 were enforced. The 0.5:1 standard would allow for a dwelling size of 113.5m<sup>2</sup>, noting that the DCP promotes a size of 130m<sup>2</sup> for 3 bedroom apartments. It would also result in the semi-detached dwellings being of an asymmetrical nature, which is untypical of other semi-detached dwellings within the immediate area.

The proposed dwelling (dwelling 1) exhibits a high degree of internal amenity through the provision of 3 bedrooms that are of an adequate size and dimension to suitably accommodate bedroom furniture. The dwellings have been designed to accommodate for a family living environment, with the provision of a guest bedroom at the ground level whilst also providing opportunities for a home office space.

The proposed semi-detached dwelling has been designed with dual aspect living areas that allow for natural ventilation to flow throughout the dwelling whilst also being compliant in

regards to solar access, private open space, landscaping and carparking which is confirmation that the dwelling will provide the future occupants with a comfortably living environment.

It is considered that reduction of the dwellings to achieve an FSR of 0.5:1 would significantly compromise the internal amenity and design intent for this dwelling.

Furthermore, it is considered that the proposed FSR promotes good residential amenity for surrounding properties by preserving solar access, views, privacy and outlook. The provision of limited side-facing windows for dwelling 1 and the provision of an extensive landscaped setback, well beyond that required, will provide for a pleasant view from 10 Herford Street, across the site.

**BLEP 2013 FSR Objectives:-**

**4.4 Floor Space Ratio**

(1) *The objectives of this clause are as follows:*

(a) *to establish standards for the maximum development density and intensity of land use*

**Assessment:** The proposed FSR associated with dwelling 1 provides for a suitable density and intensity of development on the subject allotment. Dwellings 3-5 at the rear of the semi-detached dwellings are compliant with the 0.55:1 and 0.7:1 standards which are determined by their respective site areas, being well below that permitted. It is only the attached nature of the semi-detached dwellings at the front of the site, and specifically dwelling 1, which exceeds the FSR standard.

Notwithstanding this, it is reiterated the dwelling 1 exhibits a high degree of compliance with the predominant LEP and DCP controls which are also used to dictate the density of the development on the subject site. In this regard, the proposed dwelling has a maximum height of 6.5m, a site coverage of 42.6%, private open space of 70m<sup>2</sup> and deep soil landscaping of 41%, whilst also having a rear setback of 7.8m, all of which significantly outperform the applicable numerical controls. In this regard it is evident that the proposed dwelling does not form an overdevelopment of the subject site and does not result in a development that is of a bulk and scale that would not be suitable for the subject site.

It is therefore considered that the proposed development's density and intensity is appropriate for the site, particularly given that the dwelling has been designed to limit any adverse impacts upon the north western neighbour (10 Herford Street). In this regard, the dwelling has been designed with limited side facing openings and retains solar access, privacy and outlook to the north western neighbour.

Overall, the lack of external impacts associated with the proposed density highlights the suitability of the proposed density for the site. The height, bulk and scale of the proposed dwellings maintain privacy, solar access and outlook for neighbouring properties. The proposed height is well below that permitted whilst the setbacks from neighbouring properties are also well beyond that required and that typically found in the immediate locality.

The combination of the above factors confirms that the proposed density and intensity of development is appropriate for the site.

(b) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*

**Assessment:** As outlined above, the proposed height, bulk, scale and siting of dwellings, combined with the proposed setbacks and landscaped areas achieve a compatible outcome for the proposed density. It is reiterated that the FSR non-compliance for dwelling 1 is of a

technical nature as the proposal would be compliant if single dwellings were proposed rather than the semi-detached dwelling, as proposed.

If a single detached dwelling was proposed for dwelling 1, the FSR would be significantly below that permitted on the subject site (0.8:1 allowed opposed to the 0.6:1 proposed). Nevertheless, the proposed semi-detached dwelling is considered to be compatible and consistent with the pattern of development within the Herford Streetscape, which is characterised by 1 and 2 storey dwellings with pitched roofs and flat roofs.

In this regard, the form of development and modest height of the proposal is considered to contribute to the existing and desired future character of the Herford Street streetscape.

*(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*

**Assessment:** The proposed development is considered to achieve an appropriate visual relationship through the provision of a 2 storey scale of development which is compatible with the mix of 1 and 2 storey scale of dwellings (attached and detached) in the locality (along both sides of Herford Street). The spatial separation of dwellings within the site and to adjoining properties either side is also generous which contributes to achieving an appropriate visual relationship, as does the extent of proposed landscaping, particularly along the northern boundary.

*(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*

**Assessment:** It is considered that the streetscape elevation and 3D images demonstrate that the proposal will not adversely affect the Herford Street streetscape. The combination of the modest height, spatial separation, landscaping and particular design treatment achieve a desirable and compatible relationship when viewed from public and private vantage points. Furthermore, the proposal is not considered to adversely affect the expansive landscaped playground area associated with the adjoining school to the north-east and east towards the rear of the site.

*(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

**Assessment:** The proposed presentation to the streetscape will represent a significant improvement to the existing dilapidated condition of dwellings on the site whilst the streetscape presentation is also compatible with the scale of development within the streetscape.

As detailed above, the proposed height, bulk and siting of development has minimised adverse environmental effects through the retention of solar access, outlook and privacy to surrounding properties. It is also reiterated that if a single dwelling house was proposed, it could have greater bulk and scale than proposed which further demonstrates that a more modest outcome is achieved by way of the proposed semi-detached dwellings.

*(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*

**Assessment:** This is considered to be demonstrated by the fact the proposed height, bulk and scale are within the permitted setbacks and that the proposed dwelling and associated lot size achieves private open space/landscaped areas beyond that required.

Compliance with parking requirements, site coverage, solar access and ventilation is further demonstration that the proposed semi-detached dwelling is appropriately sited on the



subject site. The lack of external impacts and the suitable streetscape outcome also contributes to achieving an appropriate correlation between the size of the site and the extent of development proposed. Therefore, it has been demonstrated that the site is appropriate for the proposed semi-detached dwellings and associated allotment size.

*(g) to facilitate development that contributes to the economic growth of Botany Bay.*

**Assessment:** Not directly relevant to this development proposal. The additional housing on the site could potentially providing for housing accommodation for employees associated with Port Botany and other commercial retail or industrial components in the Botany Bay Municipality.

#### **CONSISTENCY WITH THE OBJECTIVES OF THE R2 LOW DENSITY RESIDENTIAL ZONE**

##### **Objectives of zone**

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development that promotes walking and cycling.*

**Assessment:** The proposed development and its associated FSR assists in achieving the objectives of the zone as it allows for 5 high quality dwellings on 5 Torrens title allotments.

The proposed dwellings are provided in the form of semi-detached and detached dwellings which are consistent and compatible with the nature, scale and form of other nearby developments in the R2 Low Density Residential zone. The proposed streetscape presentation, height, bulk, scale and siting of development achieve a compatible outcome with the streetscape along both sides of Herford Street as well as maintaining amenity to surrounding properties.

The proposal and its associated FSR thereby achieve consistency with the objectives of the R2 Low Density Residential zone, notwithstanding the additional FSR sought in this instance.

#### **OTHER MATTERS - CONSISTENCY WITH STATE AND REGIONAL PLANNING POLICIES**

**Assessment:** The replacement of the outdated 2 dwellings on the subject site with the proposed high quality 5 dwellings which are in close proximity to shops and services represents a sustainable, orderly and economic use of the site. The proposed additional density is considered to be appropriate for the site given the site's close proximity to shops, public transport and services along Botany Rd (200m to the south). The proposal is therefore consistent with the State Policy of Urban Consolidation and is not inconsistent with any State or Regional Policies.

#### **Conclusion**

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the variation to the FSR associated with the development proposal at 12-14 Herford Street, Botany and is requested to be looked upon favourably by Council.



## Land and Environment Court New South Wales

Case Name: 12-14 Hereford Street Pty Ltd v Council of the City of Botany Bay

Medium Neutral Citation:

Hearing Date(s): 19-20 April 2016

Date of Orders: 5 May 2016

Date of Decision: 5 May 2016

Jurisdiction: Class 1

Before: Tuor C

Decision:

- (1) The appeal is dismissed.
- (2) The development application (272/2014) for the construction of six dwellings, landscaping and subdivision at 12-14 Herford Street, Botany, is refused.
- (3) The exhibits, except Exhibit 4, are returned.

Catchwords: DEVELOPMENT APPLICATION: breach of floor space ratio control, subdivision, streetscape character.

Legislation Cited: Environmental Planning and Assessment Act 1979  
Land and Environment Court Act  
Botany Bay Local Environmental Plan 2013

Cases Cited: Bates Smart Pty Ltd v Council of the City of Sydney [2014] NSWLEC 1001

Texts Cited:

Category: Principal judgment

Parties: 12-14 Hereford Street Pty Ltd (Applicant)  
Council of the City of Botany Bay (Respondent)

Representation: Counsel:  
Mr M Staunton, (Applicant)

Solicitors:

Mr M Sonter Lawyers (Applicant)

Mr J Cole, HWL Ebsworth Lawyers (Respondent)

File Number(s): 10840 of 2015

Publication Restriction:

## JUDGMENT

- 1 This is an appeal under s 97 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal by the Council of the City of Botany Bay (council) of a development application (272/2014) for the construction of six dwellings, landscaping and subdivision at 12-14 Herford Street, Botany (the site).
- 2 The main issues that remain in dispute are whether the proposed subdivision and development are compatible with the existing and desired future character of the area and whether the breach of the floor space ratio (FSR) standard is acceptable.

### Site and locality

- 3 The site is located on the eastern side of Herford Street. It comprises two lots being Lot 1 DP 131414 (12 Herford Street) and Lot 2 DP 956144 (14 Herford Street). The site is relatively flat and irregular in shape with a combined area of 1,729sqm and a frontage to Herford Street of 22.925m. 14 Herford Street has depth of about 108m and 12 Herford Street is about 52m deep. Each lot is developed with a single storey dwelling and outbuildings and has vegetation, including a large avocado tree located on 12 Herford Street.
- 4 To the north, 12 Herford Street adjoins a part one, part two storey dwelling (10 Herford Street) and 14 Herford Street adjoins Banksmeadow Public School. Both allotments adjoin the school at their rear eastern boundary.
- 5 To the south, 14 Herford Street adjoins a “battle-axe” development with four dwellings accessed off a driveway that runs along the common boundary (16-18A Herford Street). This adjoins another “battle-axe” development with three dwellings (20, 20A and 20B Herford Street) and a Department of Housing development (22 Herford Street). To the west, on the opposite side of Herford Street, are single storey dwellings.

- 6 Development in Herford Street is predominantly residential, single storey detached houses some with two storeys set back from the street. A pre-school is located on the corner of Wilson Street with medium density housing opposite.

### **Statutory framework**

- 7 The site is zoned R2-Low Density Residential under *Botany Bay Local Environmental Plan 2013* (LEP). A range of residential uses are permitted with consent within the zone including: Attached dwellings; Dwelling houses; Semi-detached dwellings.
- 8 Multi dwelling housing and Residential flat buildings are also permissible in the R2 zone but, under cl 6.11 of the LEP, they are only permitted for the adaptive reuse of non-residential land and buildings. This clause is not relevant to the site or any other property in the street.
- 9 Under clause 2.3(2), the consent authority must have regard to the objectives of the zone which relevantly include:
- To provide for the housing needs of the community within a low density residential environment.
- 10 Under cl 4.3 and the Height Map of the LEP, the maximum height of a building is 8.5m. Clause 4.4 and the Floor Space Ratio (FSR) Map specify maximum FSRs. However, the site is within "Area 3" on the FSR Map and therefore cl 4.4A applies which provides:

#### **4.4A Exceptions to floor space ratio for residential accommodation**

- (1) The objectives of this clause are as follows:
- (a) to ensure that the bulk and scale of development is compatible with the character of the locality,
  - (b) to promote good residential amenity.
- (2) This clause applies to land identified as "Area 3" on the Floor Space Ratio Map.
- (3) Despite clause 4.4 (2), the following provisions relate to floor space ratios on land to which this clause applies:

(a) the maximum floor space ratio for a dwelling house is not to exceed the floor space ratio applicable to the site area of the land on which the dwelling house is situated:

Site Area	Maximum Floor Space Ratio
<200 square metres	0.85:1
200–250 square metres	0.80:1
251–300 square metres	0.75:1
301–350 square metres	0.70:1
351–400 square metres	0.65:1
401–450 square metres	0.60:1
>450 square metres	0.55:1

(b) the maximum floor space ratio for multi dwelling housing is not to exceed 0.8:1,

(c) the maximum floor space ratio for a residential flat building is not to exceed 1:1,

(d) the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.

- 11 The proposed semi-detached dwellings 1 and 3 exceed the 0.5:1 FSR specified for “other development” in cl 4.4A. The parties disagree on the extent of the non-compliance based on different interpretations of whether stairs are included in the definition of Gross floor area (GFA) but have accepted the GFA and FSR set out below. On this basis, Dwelling 1 would exceed the standard by 25.8% (29.3sqm) and Dwelling 3 by 31.25% (43.6sqm). The applicant has submitted a written request to vary the this standard under cl 4.6 of the LEP, which provides:

#### **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.

(2) 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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(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.

- 12 Clause 5.9 of the LEP would require development consent for the removal of the trees on the site, including the avocado tree.
- 13 *Botany Bay Development Control Plan 2012* (DCP) is relevant. It includes General Provisions for Car parking (Part 3A), Subdivision (Part 3E), Tree Management (Part 3F), Stormwater management (Part 3G) and Landscaping and tree management (Part 3L).
- 14 Part 4 of the DCP provides specific provisions for residential development, including dwelling houses (Part 4A). It relevantly provides objectives and controls for Site analysis (Part 4A.2.2), Local character (Part 4A.2.3), Streetscape presentation (Part 4A.2.4), Height (Part 4A.2.5), Floor space ratio (Part 4A.2.6), Site coverage (Part 4A.2.7), Building setbacks (Part 4A.2.8), Landscaped Area (Part 4A.2.9), Vehicle access (Part 4A.3.7 and Car parking (Part 4A.4.8).
- 15 A number of these provisions aim to ensure that the Desired Future Character (DFC) for the relevant Precinct is achieved.

- 16 The site is within the Botany Character Precinct (Part 8.4). The existing local character is relevantly described in Part 8.4.1 as:

Over the last decade the Botany Precinct has been in the process of transition with the conversion of industrial zoned land to residential zoned land. This process has resulted in the emergence of stylish and high quality medium density housing in the areas of Daphne Street, Banksia Street and William Street.

.....

The street network within the Precinct is a combination of regular and irregular grids with some large blocks with private internal access ways. As a result the permeability of the area is highly varied. A concentration of single and double storey villas and townhouses in the middle of the Botany Precinct is a notable departure from the traditional urban structure of residential development in the area.

.....

Traditional detached housing occupies a large proportion of residential land, although more recent villas, townhouses and apartments (generally located on former industrial sites) provide a significant number of dwellings, particularly in the eastern area of the Precinct. Some shop top housing occurs in the traditional strip shopping centres of Botany and Banksmeadow. Low dwelling densities of up to 15 dwellings per hectare characterise the Precinct.

.....

- 17 The Desired future character for the precinct is set out in Part 8.4.2 of the DCP and relevantly includes:

#### **Function and diversity**

.....

Development should:

- promote neighbourhood amenity and enhance pedestrian comfort;
- encourage site layout and building styles and designs that promote commonality and a visual relationship with the surrounding built form and dwelling styles;
- encourage dwelling styles that maintain and complement existing development patterns;
- encourage a strong landscape and vegetation theme within both the public and private domain; and

.....

#### **Form, Massing, Scale and Streetscape.**

.....

- Promote medium residential development in areas adjacent/adjoining existing medium density housing development with an FSR of 0.85:1 and 2 storeys with attic (a maximum height of 10 metres) unless the site area is over 2000m<sup>2</sup> which then permits a FSR of 1.5:1 and 2 to 6 storeys (a maximum height of 22 metres).
- Maintain and enhance low density residential accommodation in the form of detached/attached dwellings with a maximum height of 2 storeys in the remainder of the Precinct.



- Promote site access and parking facilities that do not dominate the streetscape.
- Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character.
- Maintain roof forms to reflect the characteristics of the prevailing designs within the street

#### **Setbacks**

- Retain front setbacks which are consistent within a street and promote landscaping to soften the built form.
- Retain side setbacks, where they are consistent within a street.

#### **Landscaping**

- Encourage landscaping within the front and side setback to soften the built form particularly in high density terrace, unit and residential flat buildings.
- Promote landscaping in rear private open space areas to provide privacy to adjoining properties.

.....

#### **Subdivision**

- Retain and preserve the rectilinear grid pattern within the Precinct.

.....

#### **Traffic and access**

- Encourage new development to have a minimal impact on traffic flow and demand for on street parking spaces.
- Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks.

.....

### **Background and the proposal**

- 18 The development application was lodged on 14 November 2014. It proposed the demolition of the existing structures on the site, removal of vegetation, construction of eight new dwellings with landscaping and common driveway, together with the consolidation of the two existing allotments and subdivision into nine Torrens title allotments (Original Application).
- 19 The Original Application was advertised and notified. It was amended during the assessment process to reduce the number of dwellings to six and was renotified. The applicant filed an appeal against council's deemed refusal of the application on 18 September 2015 and it was subsequently refused under delegated authority on 20 October 2015. A conciliation conference under s 34 of the *Land and Environment Court Act* was held on site on 17 December 2015. The parties did not reach agreement and the conference was

terminated but they agreed to my hearing the appeal. The applicant was granted leave on 26 February 2016 to rely on further amended plans, which were renotified. Further amendments were subsequently made and I granted leave at the commencement of the hearing for the applicant to rely on these plans (Exhibit A).

20 The Exhibit A plans propose:

- demolition of the existing structures on the site
- removal of vegetation
- construction of four semi-detached and two detached dwellings and an access driveway.
- Landscaping
- Consolidation of the two existing allotments and subdivision into six Torrens title allotments. Proposed lots 2, 3, 4 and 5 would be burdened by a right of way (ROW) for the access driveway.

21 A summary of the development is set out below:

	Dwelling 1	Dwelling 2	Dwelling 3	Dwelling 4	Dwelling 5	Dwelling 6
<b>Site area (sqm)</b>	227	352	279	355	301	231
<b>GFA (sqm)</b>	142.8	142.8	183.1	178.1	155.5	133.5
<b>FSR</b>	0.63	0.40	0.66	0.50	0.52	0.58
<b>Building Height</b>	Within 8.5m	Within 8.5m	Within 8.5m	Within 8.5m	Within 8.5m	Within 8.5m
<b>Storey</b>	2	2	2	2	2	2

<b>Bedrooms</b>	3 plus TV room and study/fourth bedroom	3 plus TV room and study/fourth bedroom	3 plus TV room	3 plus TV room	4	3
<b>Car parking</b>	1	1	2	2	1 plus one stacked space	2

## Evidence

- 22 The Court visited the site and heard from objectors. The key concerns were that the proposal did not fit with the existing low density character of the area as the proposed subdivision does not comply with the minimum allotment size of 450sqm and consequently there would be too many dwellings on the site. They recognised that the amendments had made significant improvements to the proposal but maintained their concern that the number of dwellings results in unacceptable impacts, including removal of vegetation without adequate replacement; loss of privacy and visual bulk of the development. They were concerned about the increased traffic and demand for parking, in particular, the loss of on street parking spaces resulting from the provision of two additional cross overs.
- 23 The Court heard evidence from Mr A Betros, planner and Mr R Nettle, traffic engineer, for the applicant, and Mr S Kerr, planner, and Mr C McLaren, traffic engineer, for the council.

### Character of the area and subdivision pattern

- 24 The key disagreement between the planners was whether the proposed subdivision and built form would be characteristic of the area. The experts agree that the DFC would generally reflect the existing character of the street. The existing subdivision pattern is not strictly that of a rectangular grid and that there were different lot sizes and configurations in the street, which range in size from 209sqm to 2207sqm.

- 25 Mr Kerr considered that the prevailing subdivision pattern was primarily lots with east-west orientation, an average site area of about 350sqm. The predominant form of development is detached single storey dwellings with pitched rooves and landscaping at the front and rear.
- 26 The Existing Local Character statement in the DCP notes that “Low dwelling densities of up to 15 dwellings per hectare characterise the Precinct”, which equates to about lots of about 530sqm. The average lot size in the proposal is 288sqm, which includes the access driveway. Even if the existing pattern of only the adjoining lots at 16-18A and 20 Herford Street were considered, these have average allotment sizes of 475sqm and 727sqm respectively.
- 27 Mr Kerr referred to the objectives of Part 3E.2.2 of the DCP, which seek to ensure that proposed subdivision is consistent with the DFC and the existing or prevailing subdivision pattern and the controls for battle-axe subdivision require a minimum site area of 450sqm and width of 12m. In his opinion, the subdivision would not meet the numerical requirements or the objectives of the control. In particular, the resultant built form would not be consistent with existing or DFC and does not comply with a number of the controls for dwelling houses in Part 4A of the DCP. The proposal would be two storeys at the street with flat rooves, it would be visible along the “gun barrel” driveway and from adjoining properties with insufficient landscaping, including canopy trees to compensate for the removal of the avocado, the spatial separation between the proposed dwellings would be insufficient to break up the built form and the width of the site at the rear result in built form that was on or close to the boundary. In his opinion, the proposal would have unacceptable visual bulk that was not consistent with the existing character and DFC.
- 28 Mr Betros, considered the Character Statement refers to more typical allotments and that the subdivision in the street is varied with no predominant pattern. In his opinion, it is not appropriate to compare the site with smaller allotments and that it had more similarity with the original size of the adjoining larger lots at 16-18A, 20 and 22 Herford Street, which have similar frontages and depths. The proposed subdivision is consistent with the later subdivision



of 16-18 and 20 Hereford into “battle-axe” allotments. He questioned the relevance of the controls for battle-axe subdivision in Part 3E.2.2 as the controls require one allotment facing the street and only one allotment to be serviced by a driveway access corridor. Nevertheless, he considered that the proposal would achieve the objectives despite any non-compliance with the numerical controls. In his opinion, the subdivision and built form would be consistent with the existing and DFC as the built form would be broken into four buildings which were lower in height and of similar or less bulk to other existing dwellings. The DCP supports “innovative” design and the combination of flat and pitched roofs were an appropriate response to the streetscape. The proposal included adequate planting, including along the driveway, to provide an appropriate landscape setting and there were no amenity impacts such as loss of privacy or solar access.

## **Findings**

- 29 The LEP does not include a minimum allotment standard. However, Part 3E of the DCP provides objectives and controls for Residential Torrens Title Subdivision which include:

### **Objectives**

- O1 To ensure that the proposed subdivision is consistent with the Desired Future Character of the area;
- O2 To ensure the proposed subdivision is consistent the existing or prevailing subdivision pattern;
- O3 To ensure the site features and constraints are considered;
- .....
- O6 To facilitate the orderly development of land without adversely impacting on the amenity of existing developments within the locality; and
- O7 To ensure that future development can be accommodated on the land subject to controls with the DCP (ie. site frontage widths and setbacks).

### **Controls**

#### **General**

- C1 Development Applications shall demonstrate that the proposed subdivision or amalgamation is consistent with the Desired Future Character of the area (refer to relevant sections in Part 8 - Character Precincts, Part 9 - Key Sites Part 5 - Business Centres and Part 6 – Employment Zones).
  - C2 Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation.
- Note: Council generally considers the ‘prevailing subdivision pattern’ to be the typical characteristic of up to ten allotments on either side of the subject site

and corresponding number of allotments directly opposite the subject site. Properties located in the surrounding streets do not usually form part of the streetscape character and are therefore not taken into consideration when determining the prevailing subdivision pattern.

.....

C5 Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that:

- (i) Acknowledge site constraints;
- (ii) Address the street;
- (iii) Minimise impacts on adjoining properties including access to sunlight, daylight, privacy and views;
- (iv) Provide usable private open space;
- (v) Provide vehicle access.
- (vi) Protect existing vegetation;
- (vii) Mitigate potential flood affectation and stormwater management requirements;

.....

#### **Battle-axe Subdivision**

C10 Battle-axe subdivision patterns will not be permitted within residential zones unless it can be demonstrated that it is part of the prevailing subdivision pattern.

C11 Battle-axe subdivision patterns must result in one (1) or more allotments fronting the street and only one (1) allotment being serviced by a driveway access corridor.

C12 Any proposed battle-axe allotment without a frontage to the street must have a minimum site area of 450m<sup>2</sup> and width of 12 metres.

Note: Battle-axe lots which are serviced via an access corridor are considered to be allotments without a frontage to the street. Where the access corridor is less than 8m wide, it shall not be included in the calculation of the minimum allotment area for either lot.

C13 The width of an access corridor to a battle-axe lot shall be at least:

- a. 4.5 metres for lengths less than 30 metres; and
- b. 5 metres for lengths exceeding 30 metres.

C14 Access corridors are to be located to ensure existing street trees are retained.

- 30 Although the proposed subdivision provides more than one allotment off an access handle, it is best described as a "battle-axe" and the experts agree that it does not comply with the numerical controls. There are a range of lot sizes in the street and no prevailing pattern. There are other battle-axe subdivisions on the adjoining sites at 16-18A and 20 Herford Street, which are part of the existing character and it is appropriate for the subdivision on the site to respond to the prevailing subdivision pattern on these lots due to the similarities in the dimensions of the original lots. However, the average size of the proposed lots of 288sqm is well below the average size of the adjoining lots of 475sqm and 727sqm.

- 31 The proposed lots 3-6 range in size from 231sqm to 355 sqm and are well below the minimum allotment size of 450sqm in the DCP, particularly as access corridors less than 8m are not included in the allotment area. Consequently, the proposal does not meet objectives O1 and O2 of Part 3E.2.2 to be consistent with the DFC and the existing or prevailing subdivision pattern.
- 32 There are a number of trees on the site which were all to be removed. The applicant has agreed to retain the Lilli Pilli trees adjoining the boundary to 10 Herford Street however, the large Pepper tree and Avocado tree are to be removed. The Pepper tree is in poor condition and its removal is accepted but the Avocado tree is in good health and condition. While it is not a "Significant" tree it provides "High Visual Amenity". It is a site constraint that has not been adequately considered in the proposal and may be able to be retained (Part 3F.4). While replacement trees are proposed the open space in the proposed allotments may not be of sufficient size to provide large replacement canopy trees. The proposal therefore does not satisfy objective O3 of Part 3E.2.2 of the DCP.
- 33 The proposed subdivision also does not meet objective O6 and O7 of Part 3E.2.2 of the DCP as it will result in a built form which has impacts of visual bulk when viewed from the street along the driveway and from the adjoining properties at 8 and 10 Herford Street. Existing development in the street is predominantly single storey with pitched rooves and second storeys are set back. The proposal has sought to respond to this with pitched roof elements at the end, behind an entry portico. The experts agreed that the entry could be reduced in height to better reveal the pitched roof and improve the relationship to 10 Herford Street. With these changes, I accept that Dwellings 1 and 2, while being two storeys with a flat roof element would achieve a degree of consistency when viewed from the street. However, the proposal provides three cross overs to the street for access to Dwellings 1 and 2 and to the access driveway. This impacts on the number of on-street parking spaces and the amount of landscaping and is a negative feature of the development.

If access to Dwelling 2 were off the access driveway it would improve this arrangement.

- 34 The combined width of the proposed driveway and the driveway to 16-18A Herford Street result in the length of both these developments being highly visible from the street. Even with further amendments there would be limited landscaping along the proposed access driveway to soften the development. Dwellings 2, 3, 4 and 5 would be visible along the driveway and due to the limited space between the built form, the development would appear as medium density rather than as a low density development sought by the planning controls. Similarly, the development would appear from 10 and 8 Herford Street and the school as a medium density development. The proposal is therefore not consistent with the DFC to maintain and enhance low density residential accommodation in parts of the Precinct, to encourage a strong landscape and vegetation theme and provide landscaping within the side setback to soften the built form.
- 35 The width of the rear of the site is 9.54m (14 Herford Street). This results in limited space for the driveway and significant parts of Dwellings 5 and 6 being built on or close to the school boundary with limited opportunity for landscaping. The car parking for Dwelling 5 is stacked arrangement and relies on complex manoeuvring for access. The provision of two dwellings in this part of the site is "tight" and not characteristic of the precinct.
- 36 Furthermore, Part 4A.4.7 of the DCP includes controls which do not permit internal driveways that are characterised by large expanses of concrete (C5) and require the alignment of driveways, where possible, to avoid "gun barrels". As the development includes subdivision of the site it is clearly possible to avoid a "gun barrel" driveway with a different arrangement of the lots and greater setback from the boundary to enable "meandering" of the driveway and landscaping.
- 37 The proposal generally meets the requirements for site coverage and landscaped area, although it is unclear why the garages have not been



include in the calculation for site coverage. However, allotments which better complied with the minimum requirements for “battle-axe” allotments would require less percentage of site coverage and greater percentage of landscaped area and consequently result in a different arrangement of built form to open space that would be more characteristic of a low density environment.

### **Floor space ratio**

- 38 Dwellings 1 and 3 do not comply with the maximum FSR for semi-detached dwelling of 0.5:1 in cl 4.4A of the LEP and the overall FSR of the site is 0.52:1.
- 39 Mr Betros prepared a written request required under cl 4.6(3) of the LEP seeking to justify the contravention of the FSR standard (the Request).
- 40 The Request provides that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) for the following reasons:
- the proposal complies with the objectives of the standard and the zone (discussed below),
  - a greater FSR would be permissible for a dwelling house on the proposed allotments and would result in greater bulk and scale than the proposed semi-detached dwellings,
  - semi-detached dwellings have been approved with non-complying FSRs on other sites in the area,
  - the proposal achieves a desirable streetscape outcome and has no adverse environmental impacts,
  - the fragmented form of development and unusual shape and relationship with adjoining properties contribute to particular site circumstances which are unique to the site,

- the combined driveways achieves greater separation with the development to the south,
  - the depth and width of the site allows for greater separation between dwellings and breaks up the perception of visual bulk.
- 41 The Request states that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)) for similar reasons to those outlined above, in particular that the additional FSR would not result in any greater environmental impacts than a complying development.
- 42 Mr Kerr did not support the Request. He considered that the depth of the site, narrow width at the rear and the Avocado tree are environmental constraints which do not justify varying the FSR standard. The variation is indicative of the overdevelopment of the site and results in uncharacteristically bulky buildings with insufficient landscaping to provide a buffer to the southern boundary or to soften the development.
- 43 For the reasons discussed above, Mr Betros and Mr Kerr held different opinions on whether the proposal would be consistent with the objectives of the R2 zone and the FSR standard in the LEP.
- 44 In summary, Mr Betros considered that the height, bulk and scale, setbacks and landscaping were compatible with the low density character of the locality and would not result in any unacceptable amenity impacts. Whereas, Mr Kerr considered the proposal to be consistent in character with a medium density development and due to its bulk and scale, minimal landscaping and separation between dwellings would result in impacts of visual bulk.

## Findings

- 45 In *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1001, Brown C outlines the following assessment framework for a variation under cl 4.6:

39 Clause 4.6 of LEP 2012 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)), the second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the height standard (cl 4.6(4)(a)(ii)), the third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) and the fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

.....

41 A negative finding for any precondition must see the appeal dismissed and a positive finding would enliven the power to grant development consent subject to a merit assessment.

46 The experts held different opinions as to whether the proposal would be consistent with the objective of the R2 zone "To provide for the housing needs of the community within a low density residential environment".

47 The experts also held different opinions on whether the proposal will be consistent with the objectives of the FSR standard (cl 4.6(4)(a)(ii)) The objectives of cl 4.4A are:

(a) to ensure that the bulk and scale of development is compatible with the character of the locality,

(b) to promote good residential amenity.

48 The planning controls establish the likely future context for the Precinct. They recognise that traditional detached housing occupies a large proportion of residential land with more recent villas, townhouses and apartments generally located on former industrial sites. This diversity is reflected in the different zonings, height and FSR controls within the Precinct such as land opposite the northern end of Herford Street which is R3 – Medium Density Residential permits a range of residential uses, including Multi dwelling housing and

Residential flat buildings with greater FSR and height than that permissible on the site.

- 49 The DFC for the Precinct recognises the different character of different parts of the Precinct and the character that is sought to be maintained in Herford Street is a low density environment. As discussed above, the subdivision, resultant built form and spatial separation result in a density of development which would appear as medium density and would not be consistent with the objective of the R2 zone or Objective (a) of cl 4.4A of the LEP.
- 50 While it is reasonable, given the size of the site, to expect that it will be developed with a form of “battle-axe” development, it is not reasonable to expect that 10 and 8 Herford Street would have a 24 m long built form (Dwellings 3 and 4) adjoining their rear open space area. The built form has been setback 5.6m, the upper level is articulated with further setbacks and privacy impacts have been addressed with screening, however, the DCP anticipates that this “battle-axe” form of development would be on a larger allotment size and consequently, even if the built form remained the same, there would be greater opportunity for increased spatial separation between and around the built form, with greater opportunity for landscaping screening. The proposal will result in impacts of visual bulk beyond what is anticipated by the planning control and is not consistent with Objective (b) of cl 4.4A of the LEP.
- 51 The experts held different opinion about whether the Request adequately addresses the matters required to be demonstrated in cl 4.6(3)(a) and (b).
- 52 The FSR of the dwellings is a direct result of the proposed subdivision, larger allotment would enable FSR compliance to be achieved. Alternatively, the proposed dwellings are large, with effectively four bedrooms and a TV room. A reduction in the size of the dwellings could easily be achieved to ensure compliance with the FSR control. There are no circumstances particular to this site or this development that demonstrate that compliance with the standard is unreasonable or unnecessary or that there are sufficient

environmental planning grounds to justify contravening the development standard. I am therefore not satisfied, as required under cl 4.6(4)(a), that the Request has adequately addressed the matters required to be demonstrated under cl 4.6(3).

53 Clause 4.6 is a precondition that must be satisfied before consent can be granted. For the above reasons, I am not satisfied under cl 4.6(4) and consequently there is no power to grant consent to the development application which does not comply with the FSR control in cl 4.4A of the LEP and the application must fail.

54 Accordingly, it is not necessary for me to discuss the other matters in dispute between the parties.

### **Orders**

- (1) The appeal is dismissed.
- (2) The development application (272/2014) for the construction of six dwellings, landscaping and subdivision at 12-14 Herford Street, Botany, is refused.
- (3) The exhibits, except Exhibit 4, are returned.



**Annelise Tuor**

**Commissioner of the Court**



BOTANY BAY COUNCIL  
DEVELOPMENT APPLICATION SUBMISSION

PROPOSED 5 DWELLING HOUSES TO 12-14 HERFORD STREET, BOTANY, NSW



DRAWING LIST

NO.	TITLE
DA 00_01	LOCALITY MAP & DRAWING LIST
DA 01_01	SITE ANALYSIS PLAN
DA 01_02	AREA CALCULATION DIAGRAMS - DWELLING 1-4
DA 01_03	AREA CALCULATION DIAGRAMS - DWELLING AND COMBINED COMPLIANCE TABLE
DA 01_04	EXISTING / PROPOSED STREET ELEVATION
DA 02_01	EXISTING LOT BOUNDARIES
DA 02_02	PROPOSED SUBDIVISION PLAN
DA 02_03	DEMOLITION PLAN
DA 03_01	PROPOSED DWELLING 1-4 GROUND FLOOR PLAN
DA 03_02	PROPOSED DWELLING 1-4 FIRST FLOOR PLAN
DA 03_03	PROPOSED DWELLING 1-4 ROOF PLAN
DA 03_04	PROPOSED DWELLING 5 GROUND FLOOR PLAN
DA 03_05	PROPOSED DWELLING 5 FIRST FLOOR PLAN
DA 03_06	PROPOSED DWELLING 5 ROOF PLAN
DA 04_01	PROPOSED SOUTHEAST & NORTHWEST ELEVATION (1:200)
DA 04_02	PROPOSED SOUTHEAST & NORTHWEST ELEVATION (1:100)
DA 04_03	PROPOSED SOUTHWEST & NORTHEAST ELEVATIONS TO DWELLING 1-2
DA 04_04	PROPOSED SOUTHWEST & NORTHEAST ELEVATIONS TO DWELLING 3-4
DA 04_05	PROPOSED SOUTHWEST & NORTHEAST ELEVATIONS TO DWELLING 5
DA 05_01	PROPOSED SECTION A-A TO DWELLING 2-3-4
DA 05_02	PROPOSED SECTION A-A TO DWELLING 5
DA 06_01	SHADOW DIAGRAMS - WINTER SOLSTICE - 9AM-10AM
DA 06_02	SHADOW DIAGRAMS - WINTER SOLSTICE - 11AM-12PM
DA 06_03	SHADOW DIAGRAMS - WINTER SOLSTICE - 1PM-2PM
DA 06_04	SHADOW DIAGRAMS - WINTER SOLSTICE - 3PM
DA 06_05	SHADOW DIAGRAMS - EQUINOX - 9AM - 12PM
DA 06_06	SHADOW DIAGRAMS - EQUINOX - 3PM
DA 07_01	EXTERNAL FINISHES SCHEDULE - MATERIAL SAMPLE BOARD & ELEVATIONS - DWELLING 1-2
DA 07_02	EXTERNAL FINISHES SCHEDULE - MATERIAL SAMPLE BOARD & ELEVATIONS - DWELLING 3-4-5
DA 08_01	WASTE MANAGEMENT PLAN
DA 09_01	PROPOSED LANDSCAPE PLAN

BASIX CERTIFICATES - DEVELOPMENT TO COMPLY WITH BASIX CERTIFICATES BELOW

Project summary				
Project name	12-14 HER Lot 1			
Street address	12 Herford Street Botany 2019			
Local Government Area	Botany Bay City Council			
Plan type and plan number	deposited 131414			
Lot no.	1			
Section no.	-			
Project type	attached dwelling house			
No. of bedrooms	3			
Project score				
Water	✓ 41	Target 40		
Thermal Comfort	✓ Pass	Target Pass		
Energy	✓ 46	Target 40		

Project summary				
Project name	12-14 HER Lot 2			
Street address	12 Herford Street Botany 2019			
Local Government Area	Botany Bay City Council			
Plan type and plan number	deposited 131414			
Lot no.	1			
Section no.	-			
Project type	attached dwelling house			
No. of bedrooms	3			
Project score				
Water	✓ 40	Target 40		
Thermal Comfort	✓ Pass	Target Pass		
Energy	✓ 46	Target 40		

Project summary				
Project name	12-14 HER Lot 3			
Street address	12 Herford Street Botany 2019			
Local Government Area	Botany Bay City Council			
Plan type and plan number	deposited 131414			
Lot no.	1			
Section no.	-			
Project type	separate dwelling house			
No. of bedrooms	4			
Project score				
Water	✓ 42	Target 40		
Thermal Comfort	✓ Pass	Target Pass		
Energy	✓ 50	Target 40		

Project summary				
Project name	12-14 HER Lot 4			
Street address	12 Herford Street Botany 2019			
Local Government Area	Botany Bay City Council			
Plan type and plan number	deposited 131414			
Lot no.	1			
Section no.	-			
Project type	separate dwelling house			
No. of bedrooms	4			
Project score				
Water	✓ 41	Target 40		
Thermal Comfort	✓ Pass	Target Pass		
Energy	✓ 50	Target 40		

Project summary				
Project name	12-14 HER Lot 5			
Street address	14 Herford Street Botany 2019			
Local Government Area	Botany Bay City Council			
Plan type and plan number	deposited 956144			
Lot no.	2			
Section no.	-			
Project type	separate dwelling house			
No. of bedrooms	5			
Project score				
Water	✓ 40	Target 40		
Thermal Comfort	✓ Pass	Target Pass		
Energy	✓ 46	Target 40		

Project summary				
Project name	12-14 HER Lot 5 Outbuilding			
Street address	14 Herford Street Botany 2019			
Local Government Area	Botany Bay City Council			
Plan type and plan number	deposited 956144			
Lot no.	2			
Section no.	-			
Project type	separate dwelling house			
No. of bedrooms	1			
Project score				
Water	✓ 40	Target 40		
Thermal Comfort	✓ Pass	Target Pass		
Energy	✓ 43	Target 40		

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LEGEND

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12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

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LOCALITY MAP & DRAWING LIST

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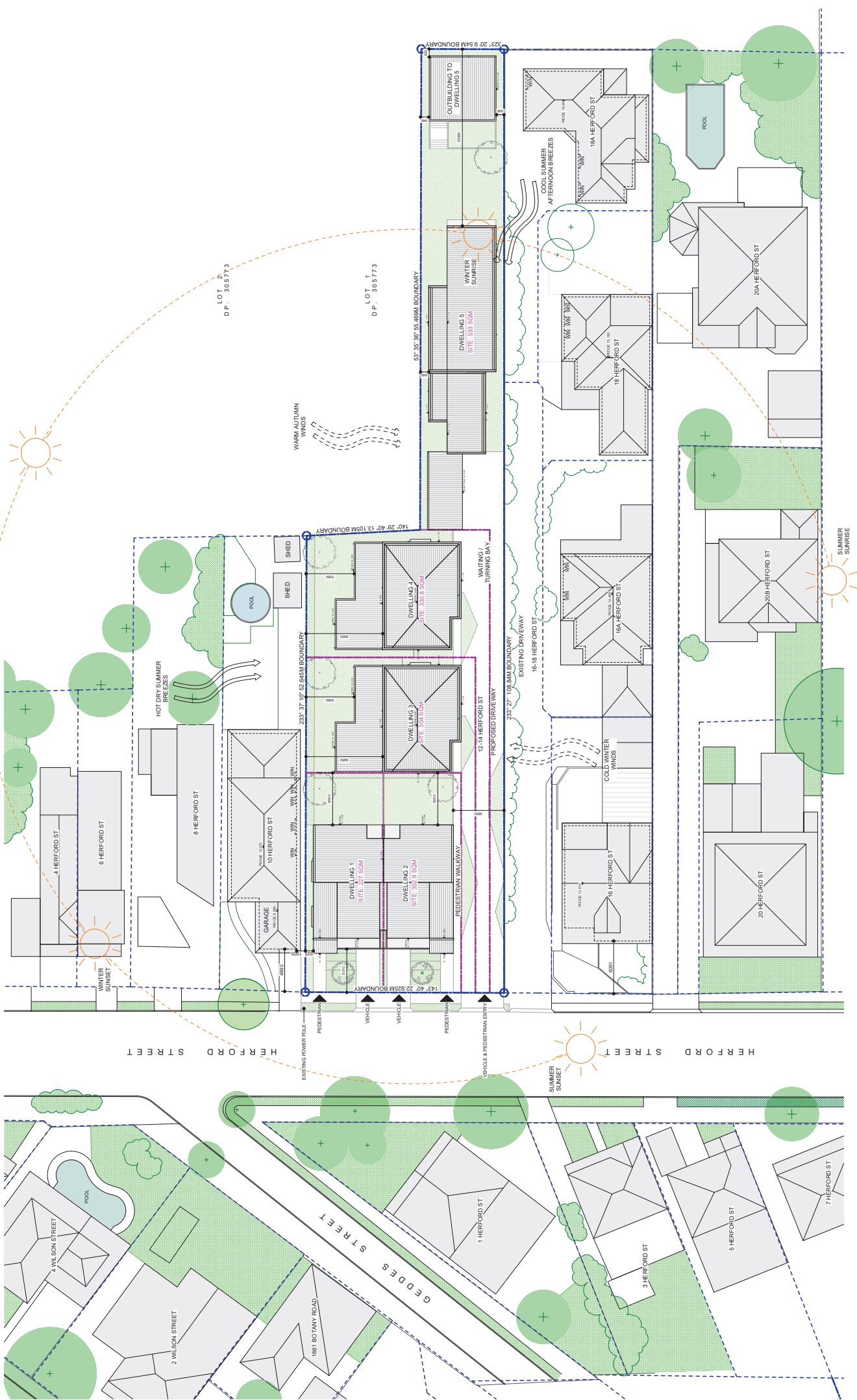
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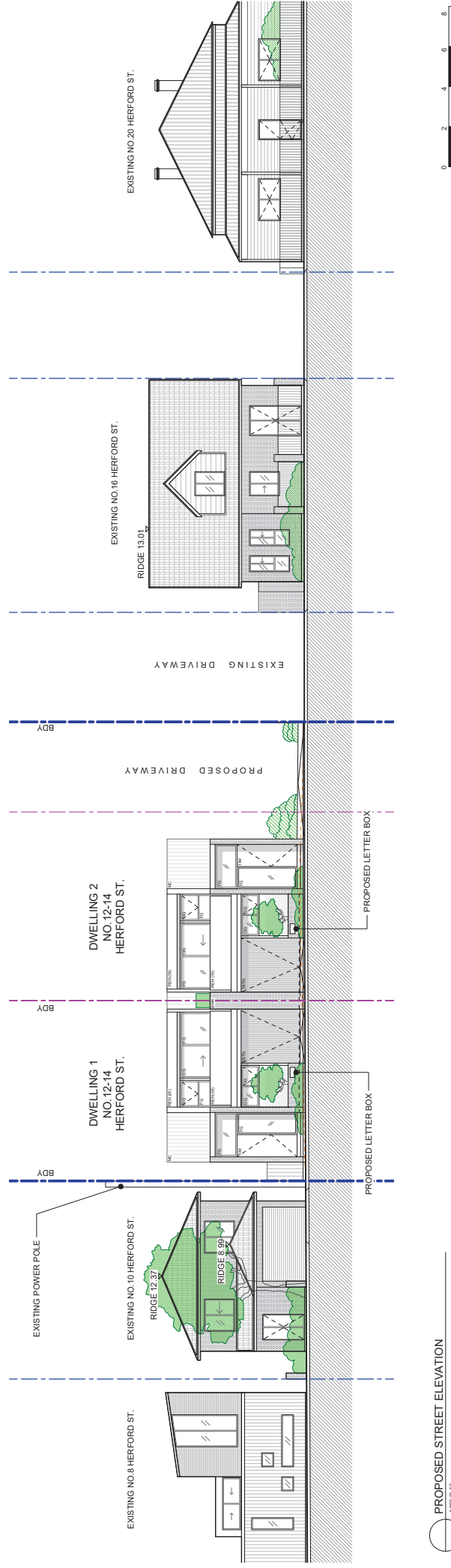
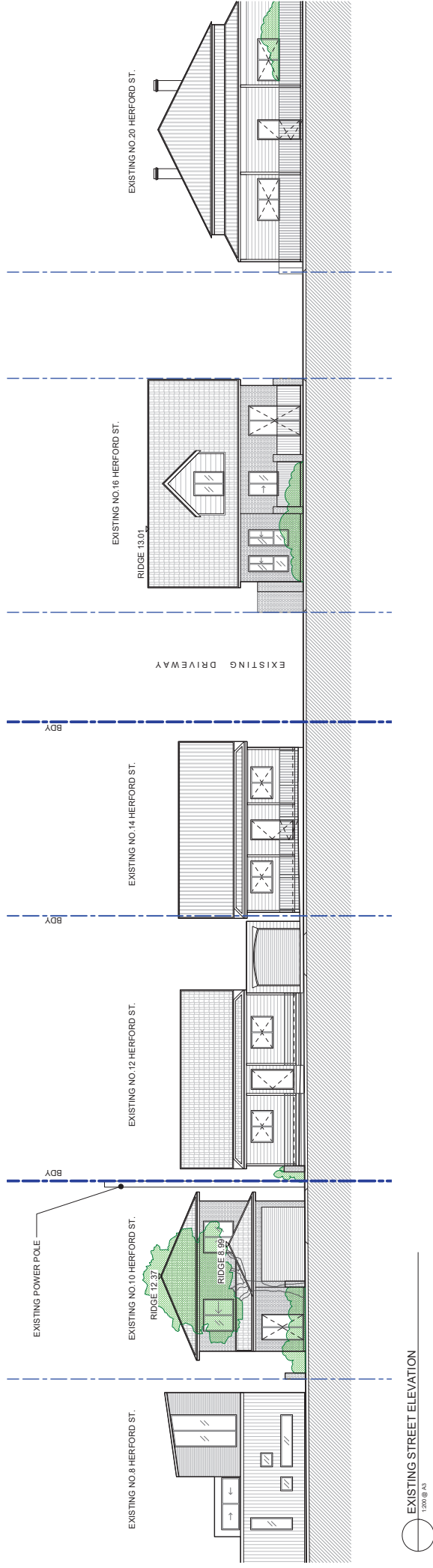
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-  LINE OF EXISTING BUILDING
-  BWK - BRICK WORK WALL
-  ALU - ALUCOBOND
-  REN (W) - WHITE STUCCO EXTERNAL RENDER
-  REN (D) - DARK STUCCO EXTERNAL RENDER
-  TMA - TITANIUM ANODIZED

TLVR - TIMBER LOUVRES  
COL - COLORBOND  
MC - METAL CLADDING  
HMB - HT + MISS BRICKWORK  
SCY - AXON SOYON CLADDING  
TOTAL - TIMBER PATTERNS

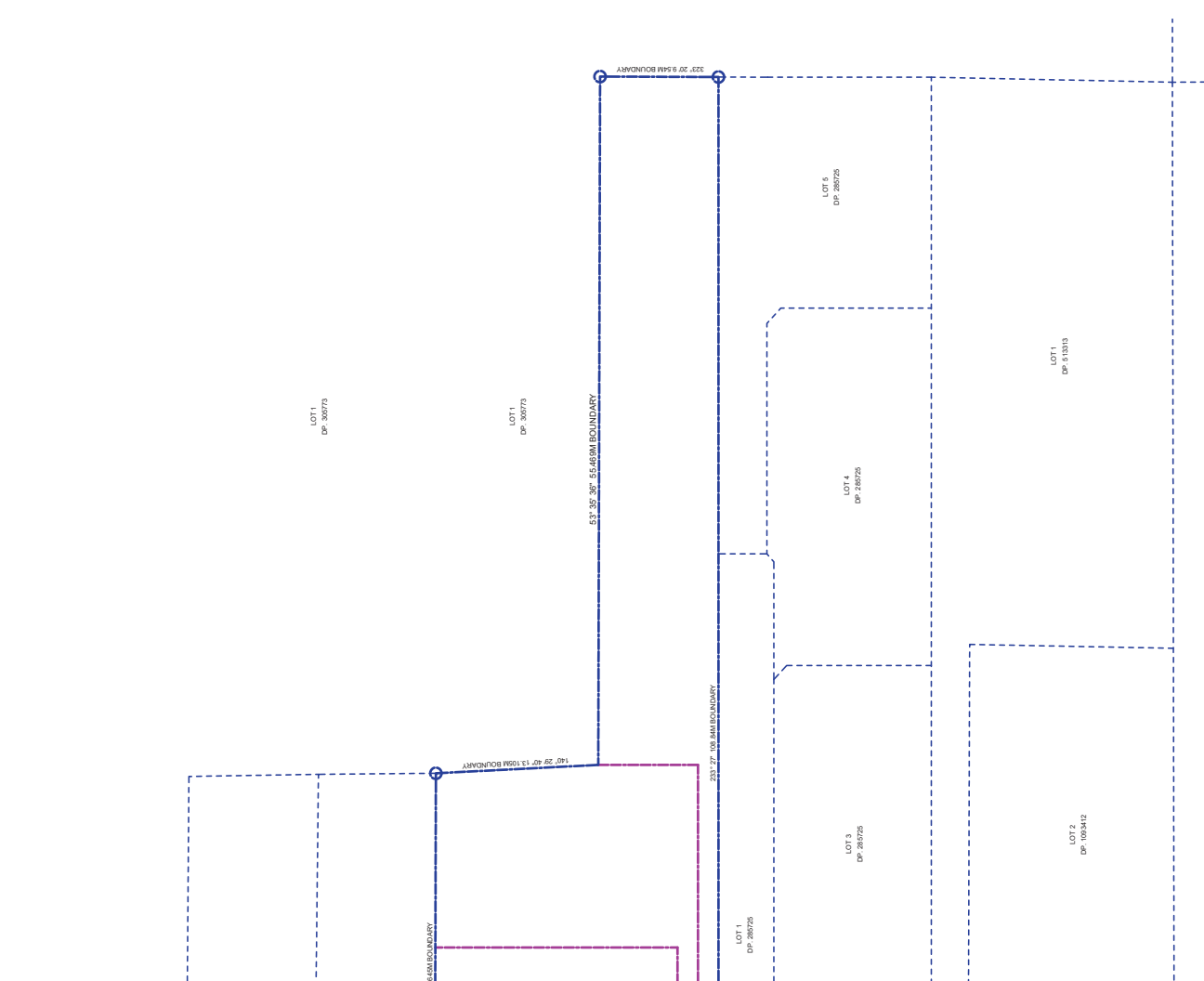
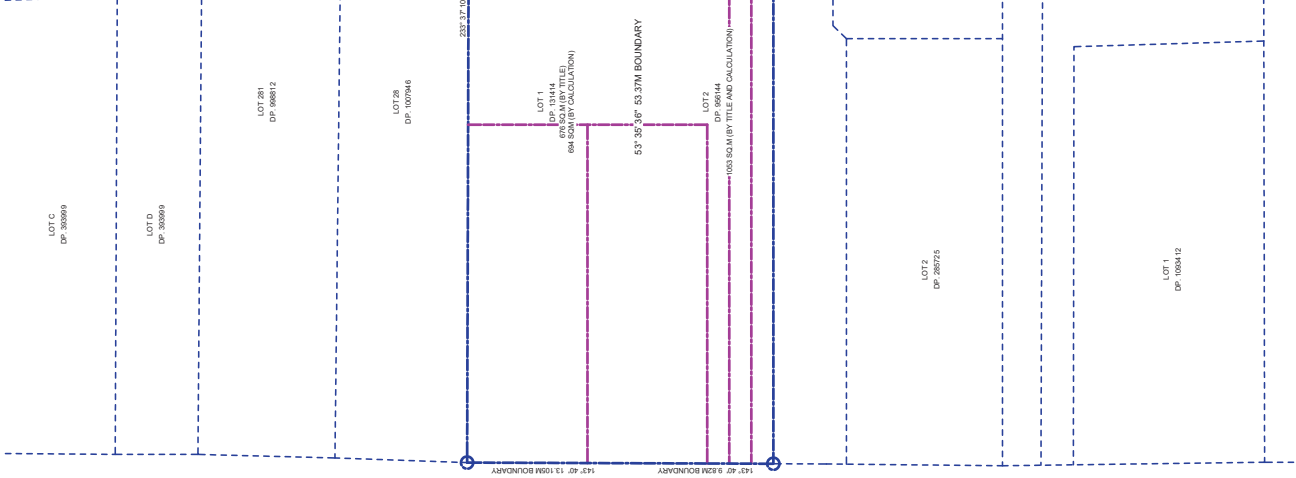
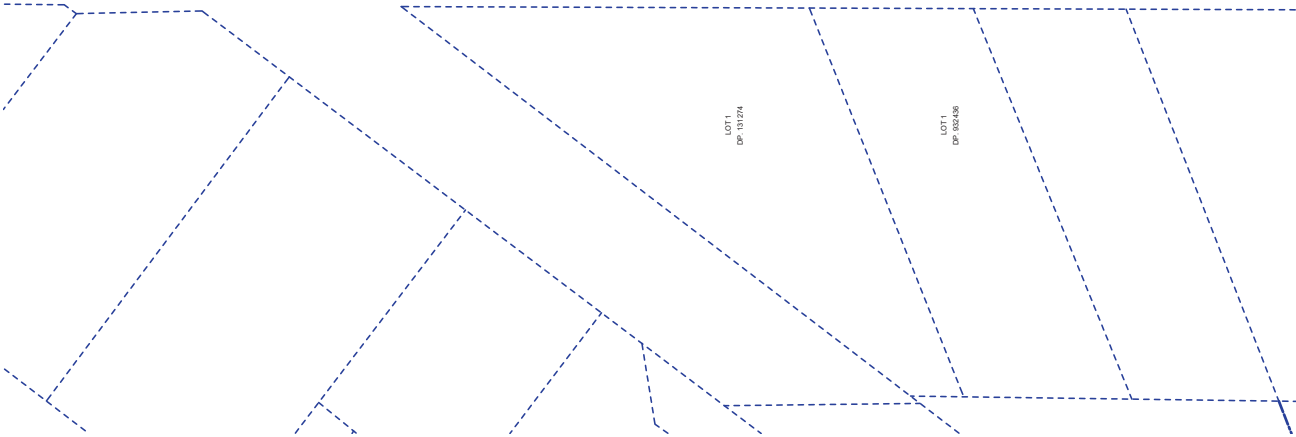
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12 - 14 HERFORD STREET  
BOTANY NSW 2010

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HERFORD STREET

LEGEND  
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PROPOSED SUBDIVISION BOUNDARY  
NEIGHBOURS PROPERTIES

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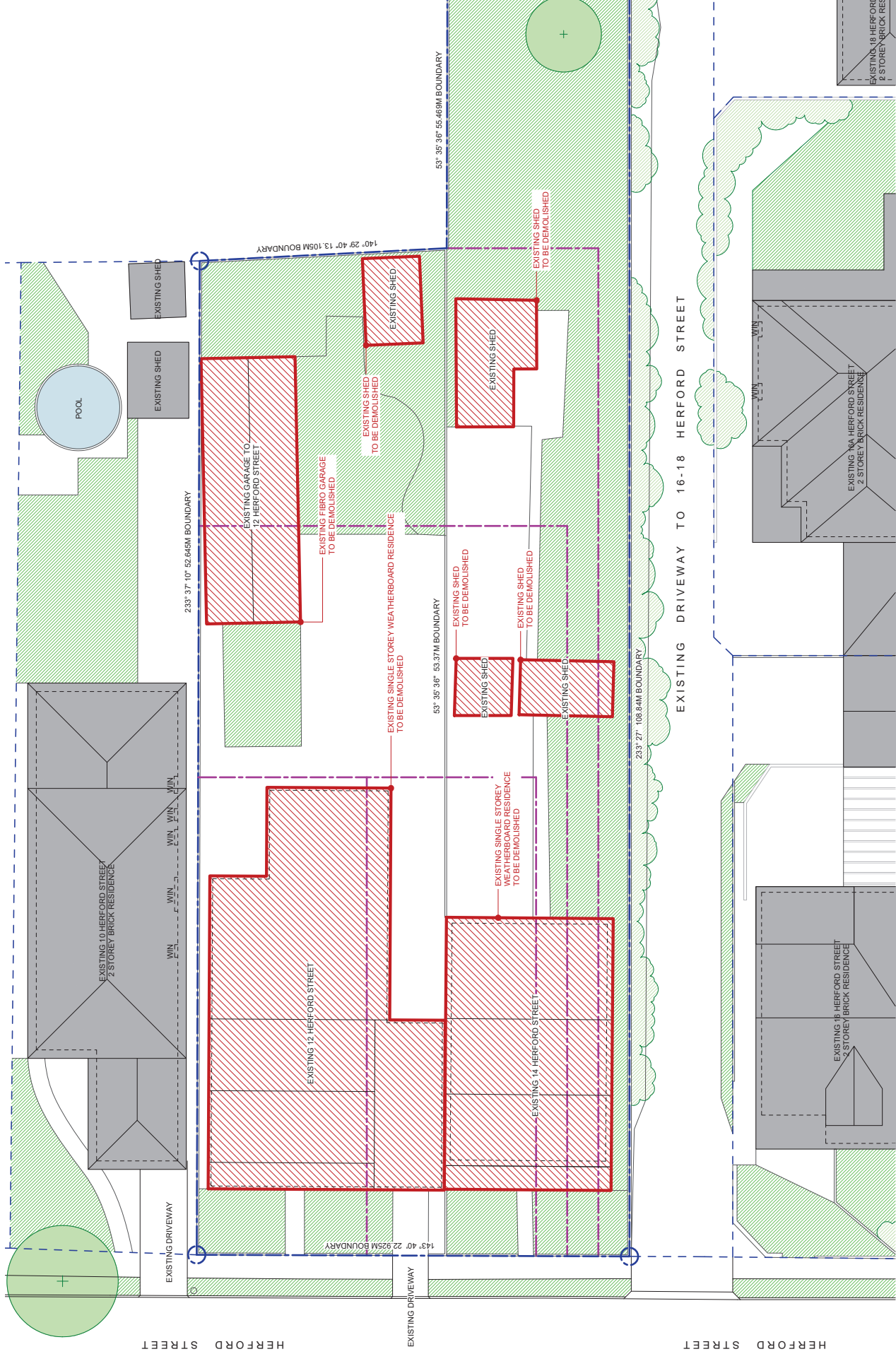
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- PROPOSED SUBDIVISION BOUNDARY
- NEIGHBOURING PROPERTIES

PROJECT  
12 - 14 HERFORD STREET,  
BOTANY, NSW. 2019

TITLE  
PROPOSED SUBDIVISION PLAN

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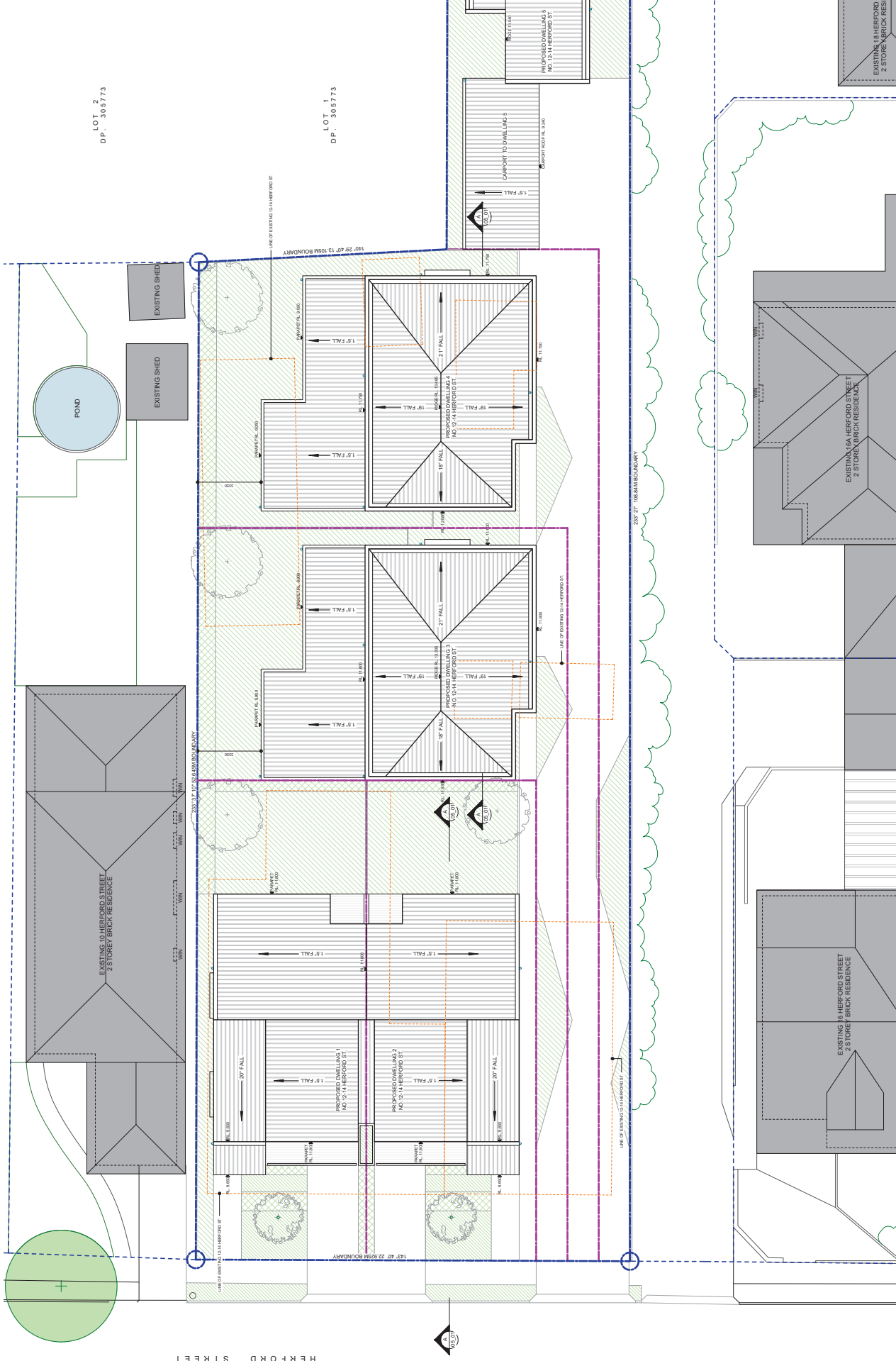
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EXISTING DRIVEWAY  
EXISTING POOL

PROJECT  
12-14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
DEMOLITION PLAN

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PROPOSED SUBDIVISION BOUNDARY  
NEIGHBOURHOOD PROPERTIES

PROJECT  
12 - 14 HERFORD STREET,  
BOTANY, NSW, 2019

TITLE  
PROPOSED ROOF PLAN  
DWELLING 1 - 4

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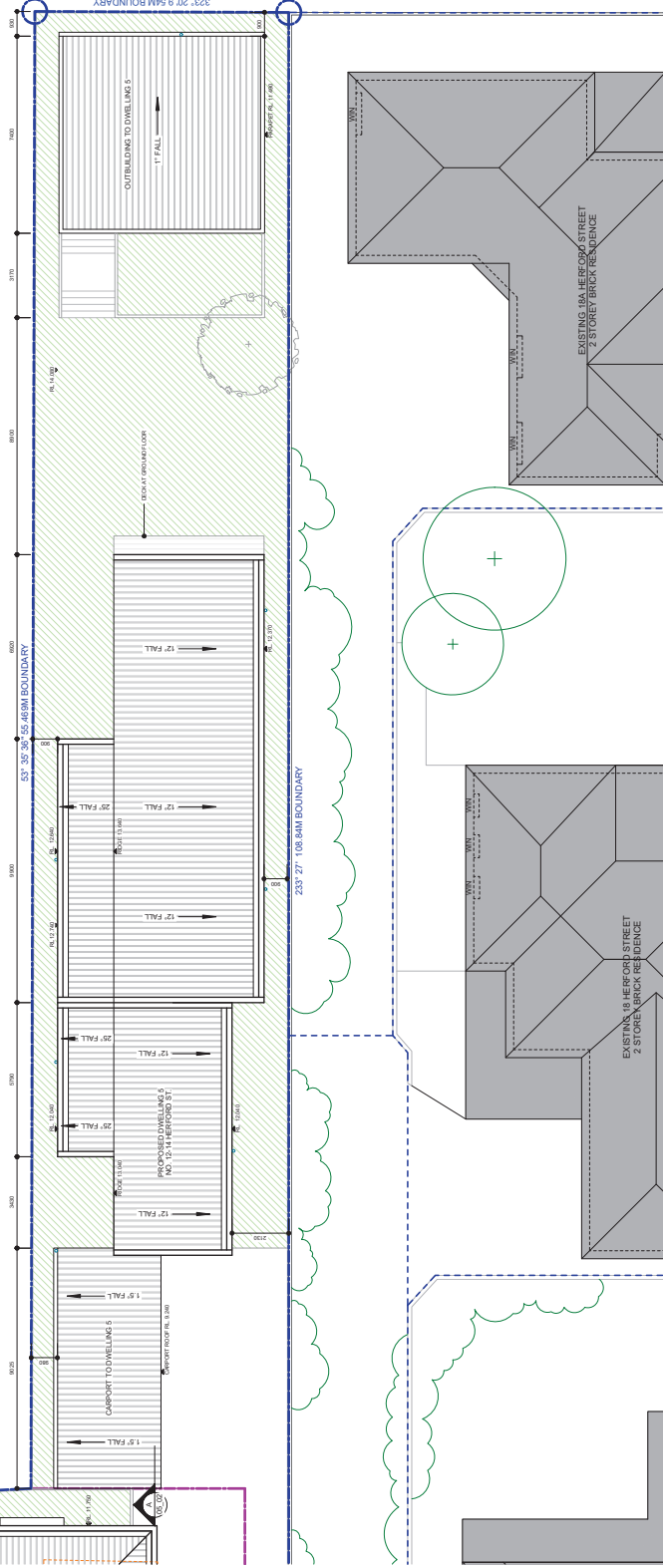
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LOT 1  
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LEGEND  
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PROPOSED SUBDIVISION BOUNDARY  
NEIGHBOURS PROPERTIES

PROJECT  
12 - 14 HERFORD STREET,  
BOTANY, NSW, 2019

TITLE  
PROPOSED ROOF PLAN  
DWELLING 5 - 6

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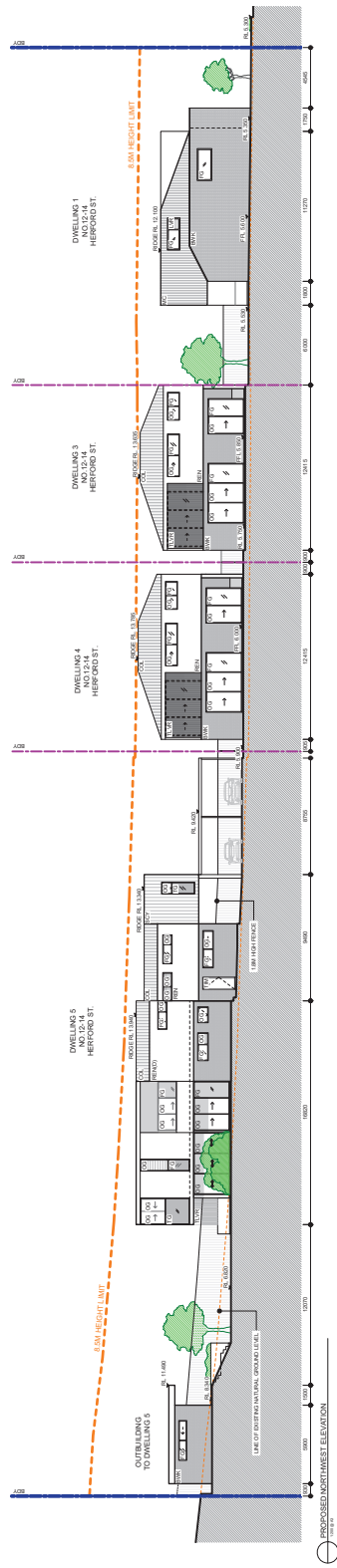
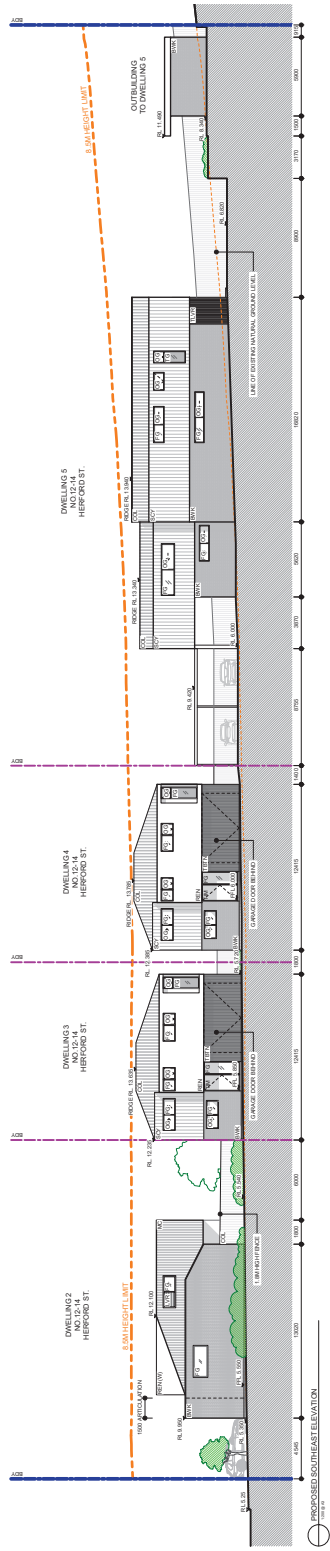
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DATE  
27-JUN-17

LEVEL 1:2 BROWN ST DARLINGHURST 2010, NSW

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LEGEND  
 LINE OF EXISTING BUILDING  
 BAYK - BRICK WORK WALL  
 A.U. - ALUCOBOND  
 REN (W) - WHITE STUCCO EXTERNAL RENDER  
 REN (G) - GREY STUCCO EXTERNAL RENDER  
 TIM - TIMBER VENEER

TLVR - TIMBER LOUVRES  
COL - COLORBOND  
MB - METAL CLADDING  
HMB - HIT + MISS BRICKWORK  
SCY - AXON SCYON CLADDING  
TBTN - TIMBER PATTERNS  
OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
TO - TRANSLUCENT GLAZING  
GB - GLASS BALUSTRADE  
LYR - OPERABLE LOUVER WINDOW

TLVR - TIMBER LOUVRES  
COL - COLORBOND  
MB - METAL CLADDING  
HMB - HIT + MISS BRICKWORK  
SCY - AXON SCYON CLADDING  
TBTN - TIMBER PATTERNS  
OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
TO - TRANSLUCENT GLAZING  
GB - GLASS BALUSTRADE  
LYR - OPERABLE LOUVER WINDOW

PROJECT  
12 - 14 HERFORD STREET,  
BOTANY, NSW. 2019

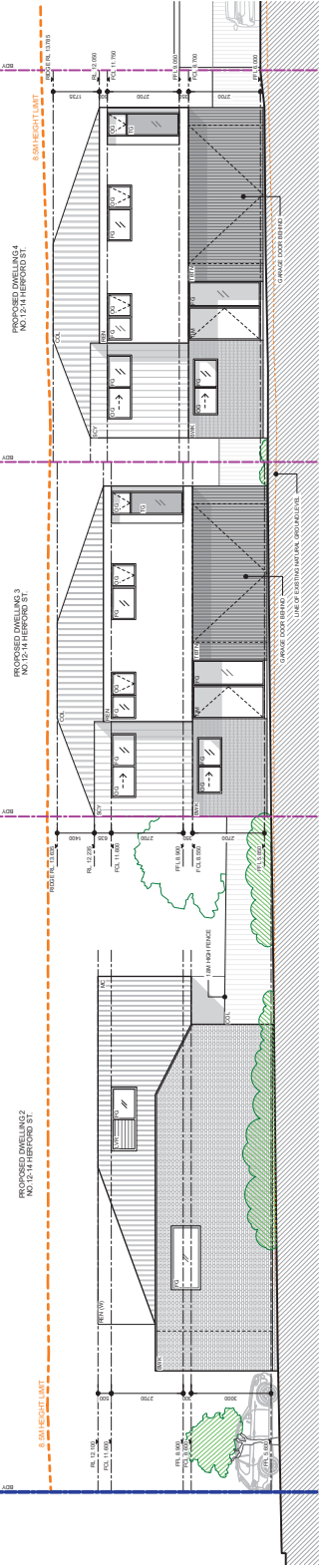
TITLE  
PROPOSED SOUTH EAST + NORTH WEST  
ELEVATION

SCALE	DRAWN
1:200 @ A1	J.S.L.
DRAWING NO.	ISSUE
DA 04 01	B

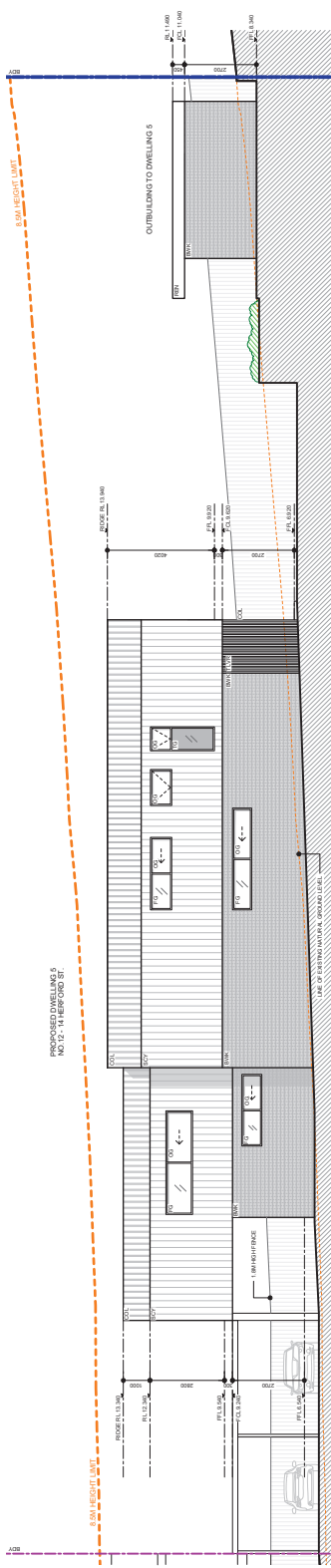
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LEVEL 1, 218 CROWN ST, DARLINGHURST 2101, NSW  
MANAGEMENT BY EIRLIE.COM AU 1300 660 111



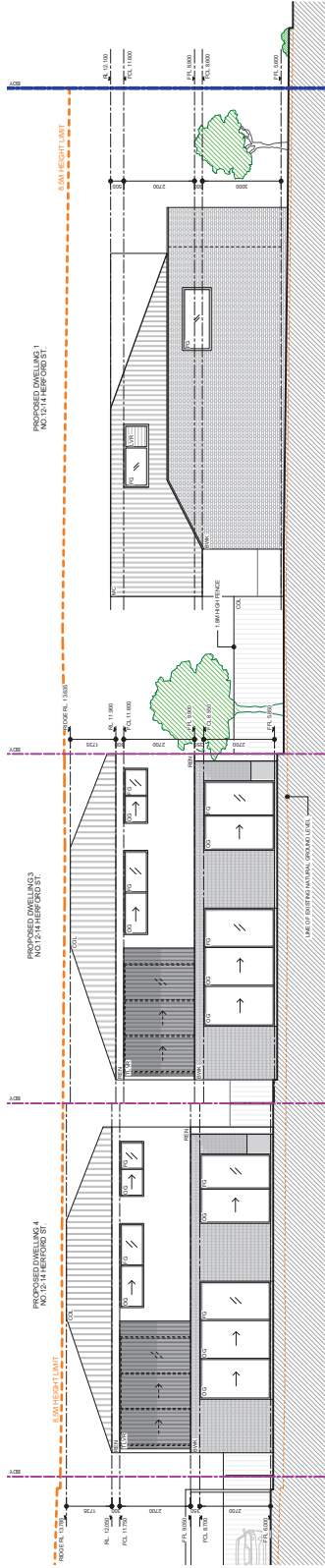




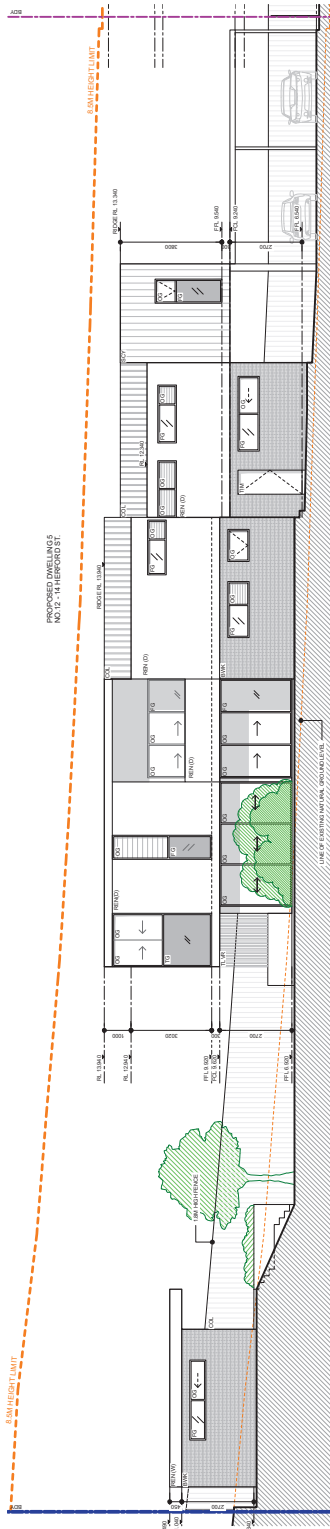
PROPOSED SOUTHEAST ELEVATION - DWELLING 2 - 4  
1:100 @ A1



PROPOSED SOUTHEAST ELEVATION - DWELLING 5  
1:100 @ A1



PROPOSED NORTHWEST ELEVATION - DWELLING 1 - 4  
1:100 @ A1



PROPOSED NORTHWEST ELEVATION - DWELLING 5  
1:100 @ A1

NOTES  
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5. MATERIALS AND FINISHES TO BE DETERMINED BY THE CLIENT.  
6. MATERIALS AND FINISHES TO BE DETERMINED BY THE CLIENT.  
7. MATERIALS AND FINISHES TO BE DETERMINED BY THE CLIENT.  
8. MATERIALS AND FINISHES TO BE DETERMINED BY THE CLIENT.  
9. MATERIALS AND FINISHES TO BE DETERMINED BY THE CLIENT.  
10. MATERIALS AND FINISHES TO BE DETERMINED BY THE CLIENT.

LEGEND  
1. LINE OF DWELLING BUILDING  
2. LINE OF DWELLING BUILDING  
3. LINE OF DWELLING BUILDING  
4. LINE OF DWELLING BUILDING  
5. LINE OF DWELLING BUILDING  
6. LINE OF DWELLING BUILDING  
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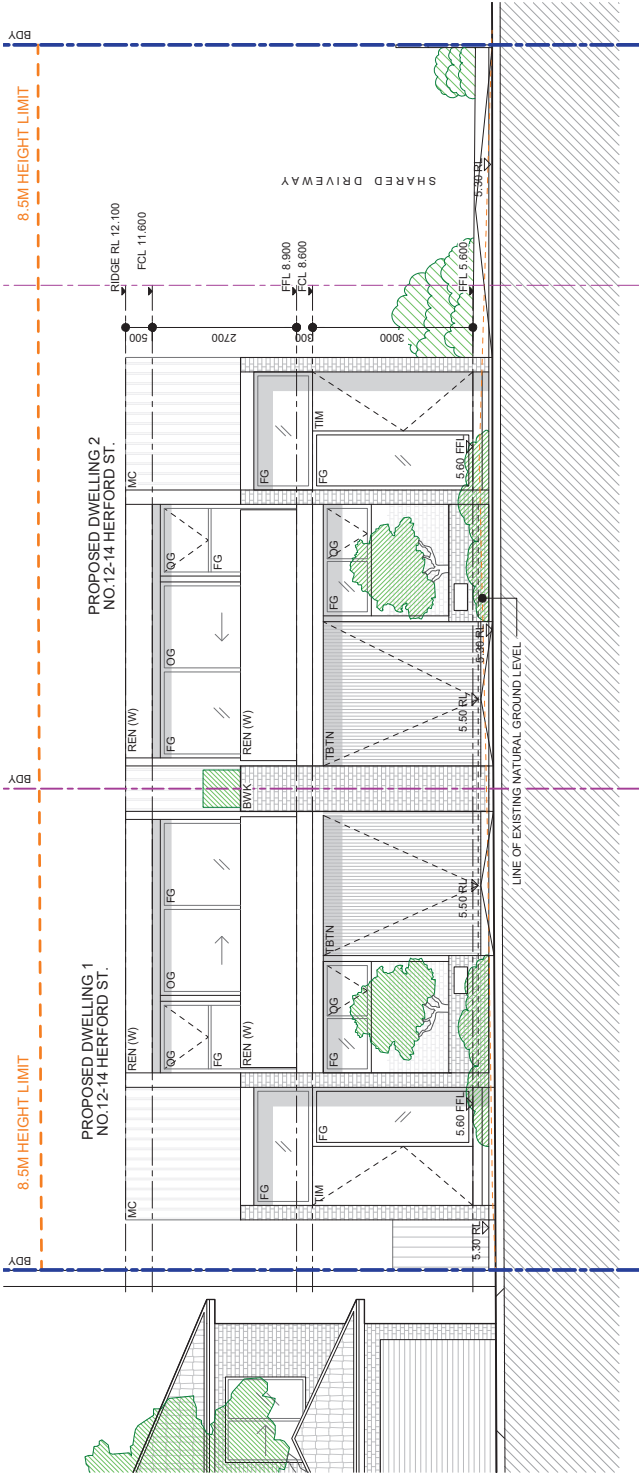
PROJECT  
12 - 14 HERFORD STREET,  
BOTANY, NSW, 2019

TITLE  
PROPOSED SOUTHEAST & NORTHWEST  
ELEVATION TO DWELLINGS 1-5

SCALE  
1:200 @ A1

DRAWN  
J.S.L.  
ISSUE  
B  
DATE  
27-JUN-17  
LEVEL 1:2 BROWN ST. DARLINGHURST 2010, NSW  
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PINNACLE PLUS



PROPOSED SOUTHWEST ELEVATION TO DWELLING 1-2

1:200 @ A3

8.5M HEIGHT LIMIT

8.5M HEIGHT LIMIT



PROPOSED NORTHEAST ELEVATION TO DWELLING 1-2

1:200 @ A3

8.5M HEIGHT LIMIT

0 1 2 3 4

NOTES  
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LEGEND  
LINE OF EXISTING BUILDING  
ALU - ALUMINIUM  
GL - GLASS  
REIN - REINFORCED CONCRETE  
TIM - TIMBER VENEER

CL - CLADDING  
MC - METAL CLADDING  
SCY - ACON SCOTON CLADDING  
BTN - TIMBER BATTENS

OG - OPEN SPACE  
OG - GLASS BALUSTRADE  
OG - OPEN SPACE WINDOW

PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

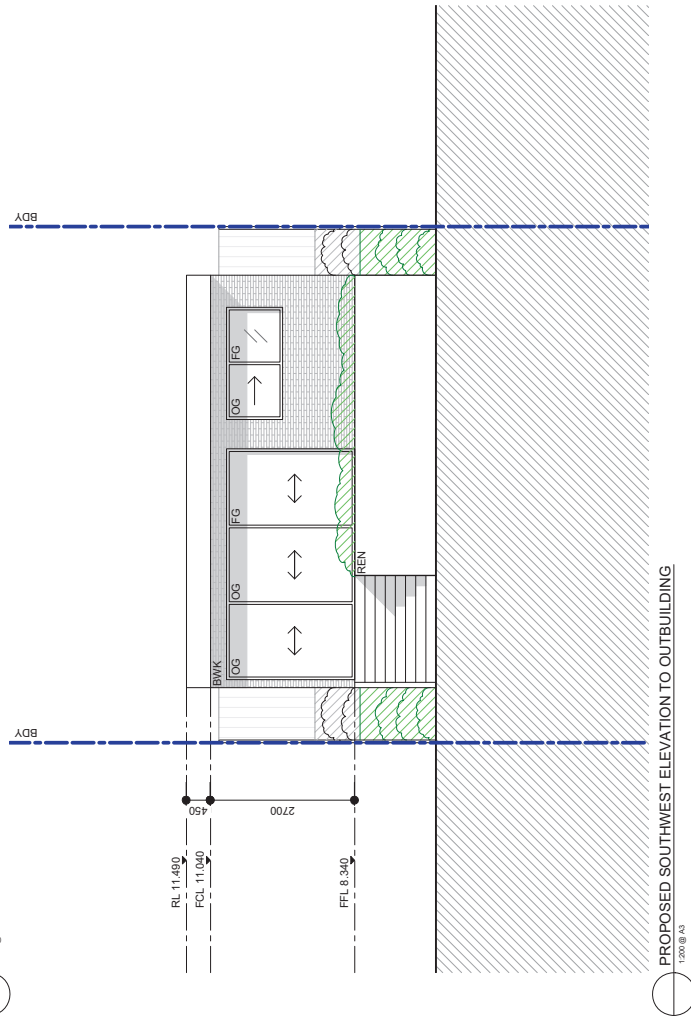
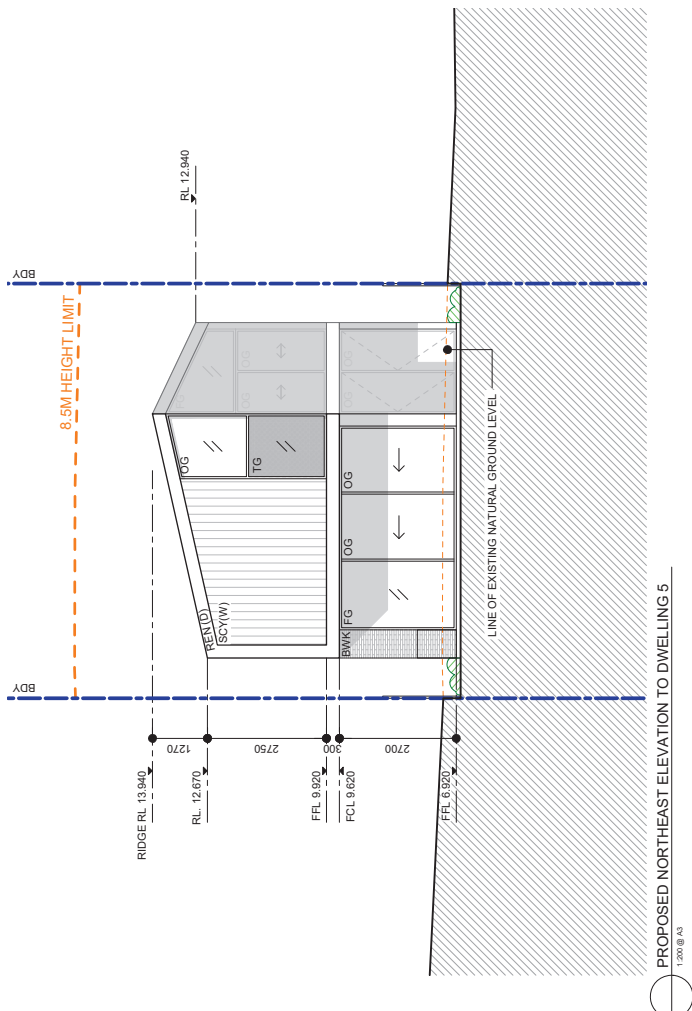
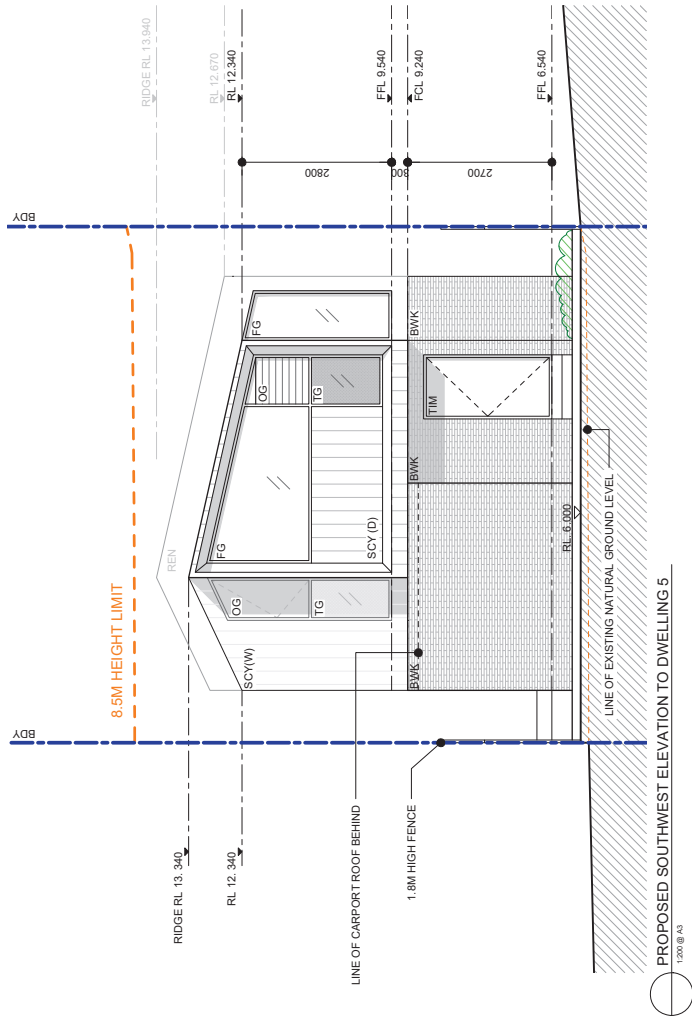
TITLE  
PROPOSED SOUTHWEST + NORTHEAST  
ELEVATION TO DWELLING 1 - 2

SCALE  
1:100 @ A3  
DRAWN  
J.S.L.  
ISSUE  
B  
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**LEGEND**

-  LINE OF EXISTING BUILDING
-  BWK - BRICK WORK WALL
-  ALU - ALUCOBOND
-  REN (W) - WHITE STUCCO EXTERNAL RENDER
-  REN (D) - DARK STUCCO EXTERNAL RENDER
-  TM - TIMBER VENEER

TLVR - TIMBER LOUVRES  
COL - COLORBOND  
MC - METAL CLADDING  
HNB - HIT + MISS BRICKWORK  
SCY - AXON SCYON CLADDING  
TBTN - TIMBER BATTENS

OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
QB - GLASS BALUSTRADE  
LVR - OPERABLE LOUVER WINDOW

PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
PROPOSED SOUTHWEST + NORTHEAST  
ELEVATION TO DWELLING 5

SCALE	DRAWN	ISSUE
1:100 @ A3	J.S.L.	B
DRAWING NO.		
DA 04 05		

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8.5M HEIGHT LIMIT



8.5M HEIGHT LIMIT



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**LEGEND**  
 LINE OF EXISTING BUILDING  
 BWK - BRICK WORK WALL  
 ALLU - ALLUCOROND  
 REN (M) - WHITE STUCCO EXTERNAL  
 REN (D) - DARK STUCCO EXTERNAL  
 TM - TIMBER VENEER

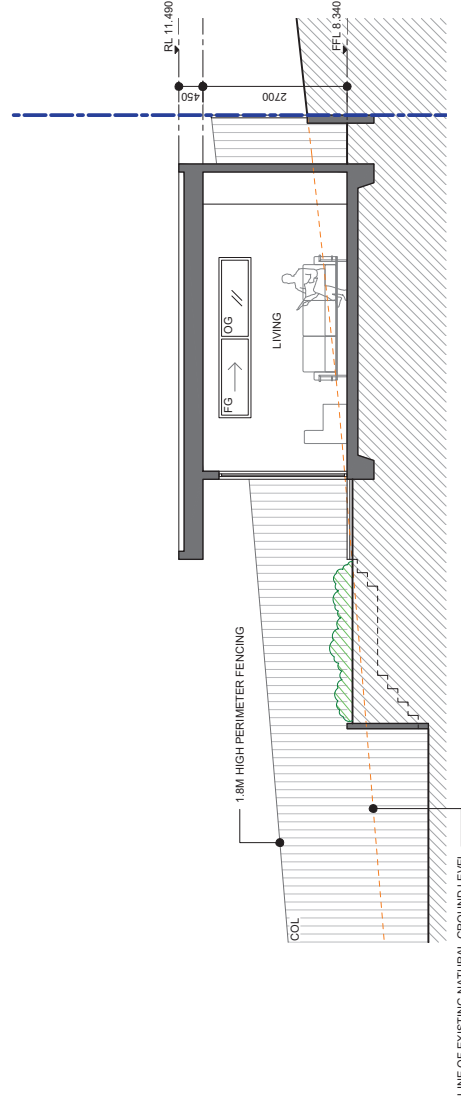
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Architectural floor plan of a residential building. The plan shows a layout of rooms including a Master bedroom, Living & Study, Kitchen, Dining, Rumpus, and several other bedrooms and bathrooms. The plan includes elevations (RL 13.340, FFL 9.920, FFL 9.620, FFL 9.540, FFL 8.920) and a dashed orange line indicating the 8.5M HEIGHT LIMIT. The plan also shows a LINE OF EXISTING NATURAL GROUND LEVEL and a dashed line for the LAUNDRY area.



SECTION A-A TO DWELLING 5  
1:100 @ A3



SECTION A-A TO DWELLING 5 OUTBUILDING  
1:100 @ A3

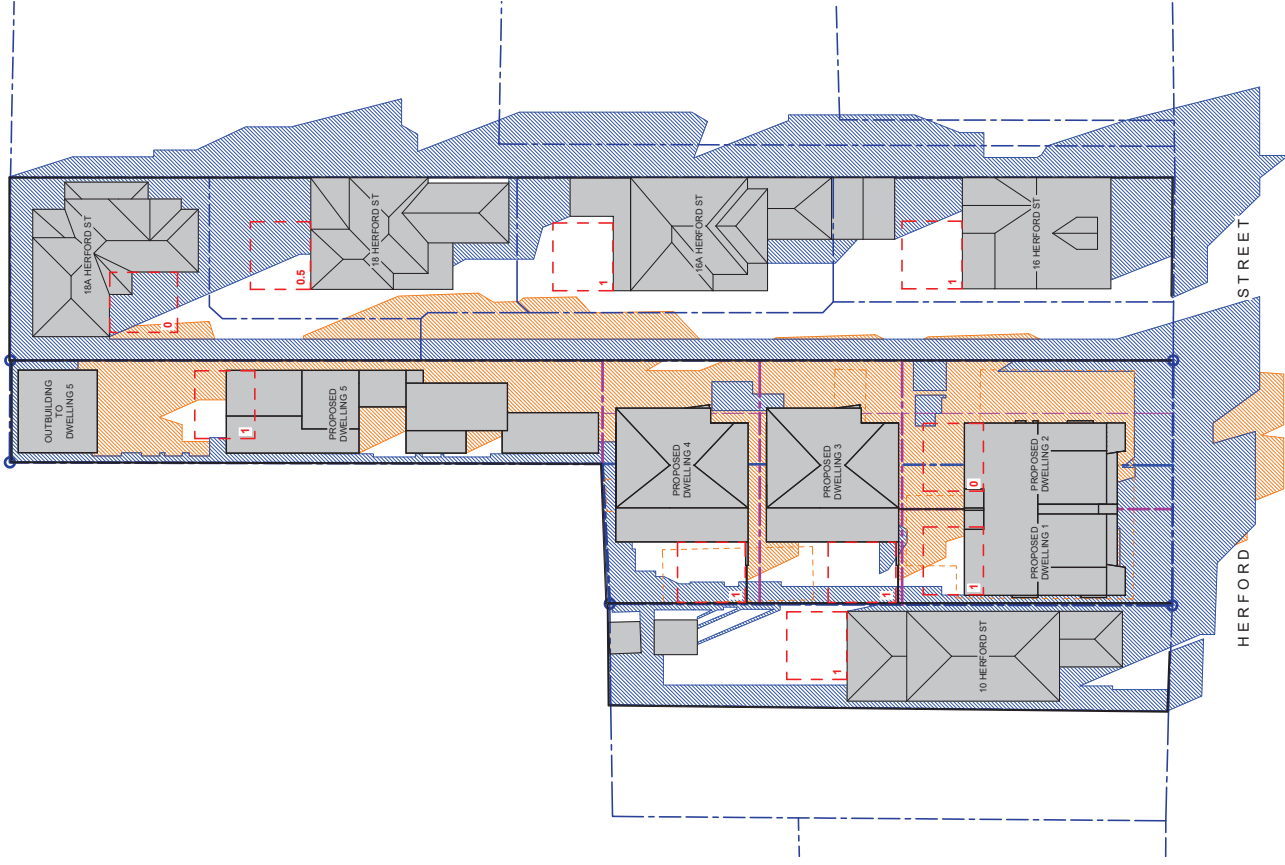
LEGEND  
 E LINE OF EXISTING BUILDING  
 BWK - BRICK WORK WALL  
 ALU - ALUCOBOND  
 REN (W) - WHITE STUCCO EXTERNAL RENDER  
 REN (D) - DARK STUCCO EXTERNAL RENDER  
 TM - TIMBER VENEER

PROJECT  
12-14  
BOTANICAL

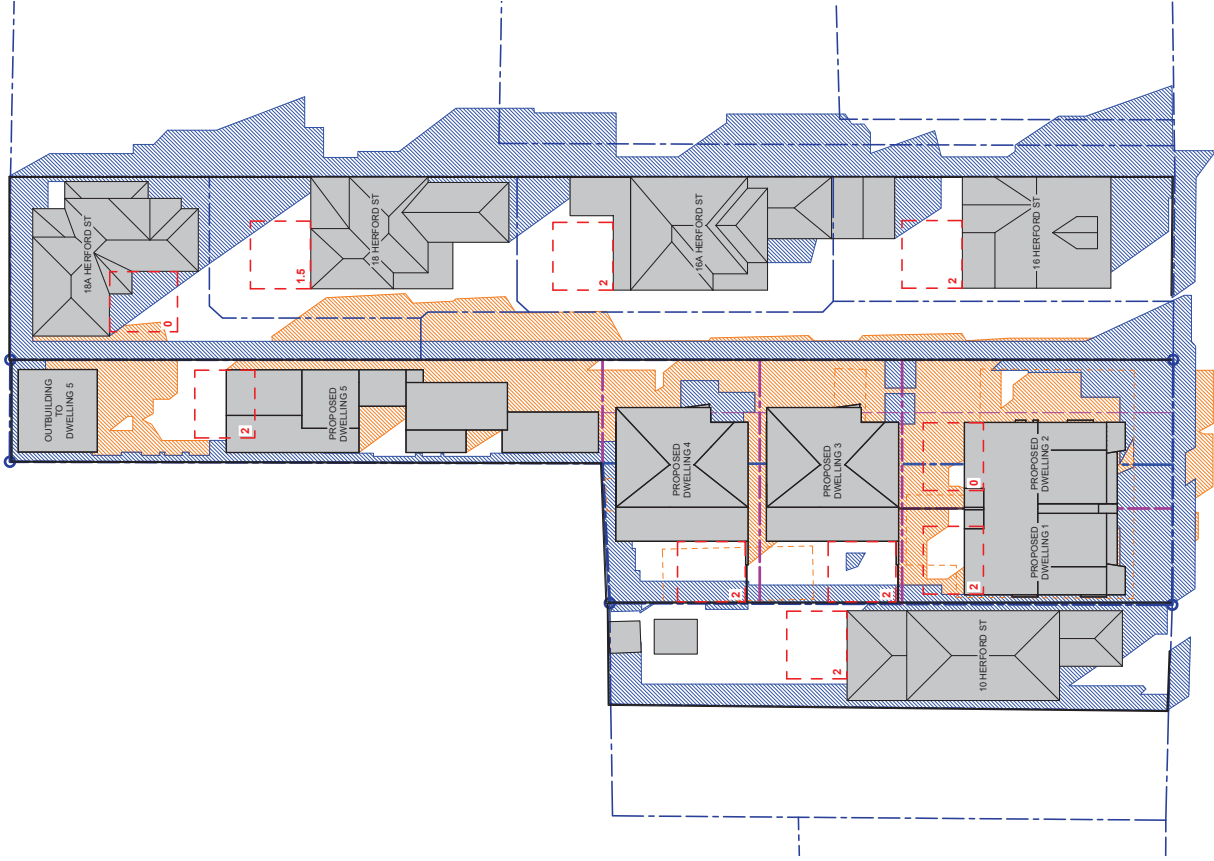
**TITLE**  
**PROPOSED SECTION A - A**  
**TO DWELLING 5**

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WINTER SOLSTICE SHADOW DIAGRAM - 9:00 AM



WINTER SOLSTICE SHADOW DIAGRAM - 10:00 AM

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LEGEND  
EXISTING BUILDINGS  
30' 30" PRIVATE OPEN SPACE  
EXISTING BUILDING ENVELOPE

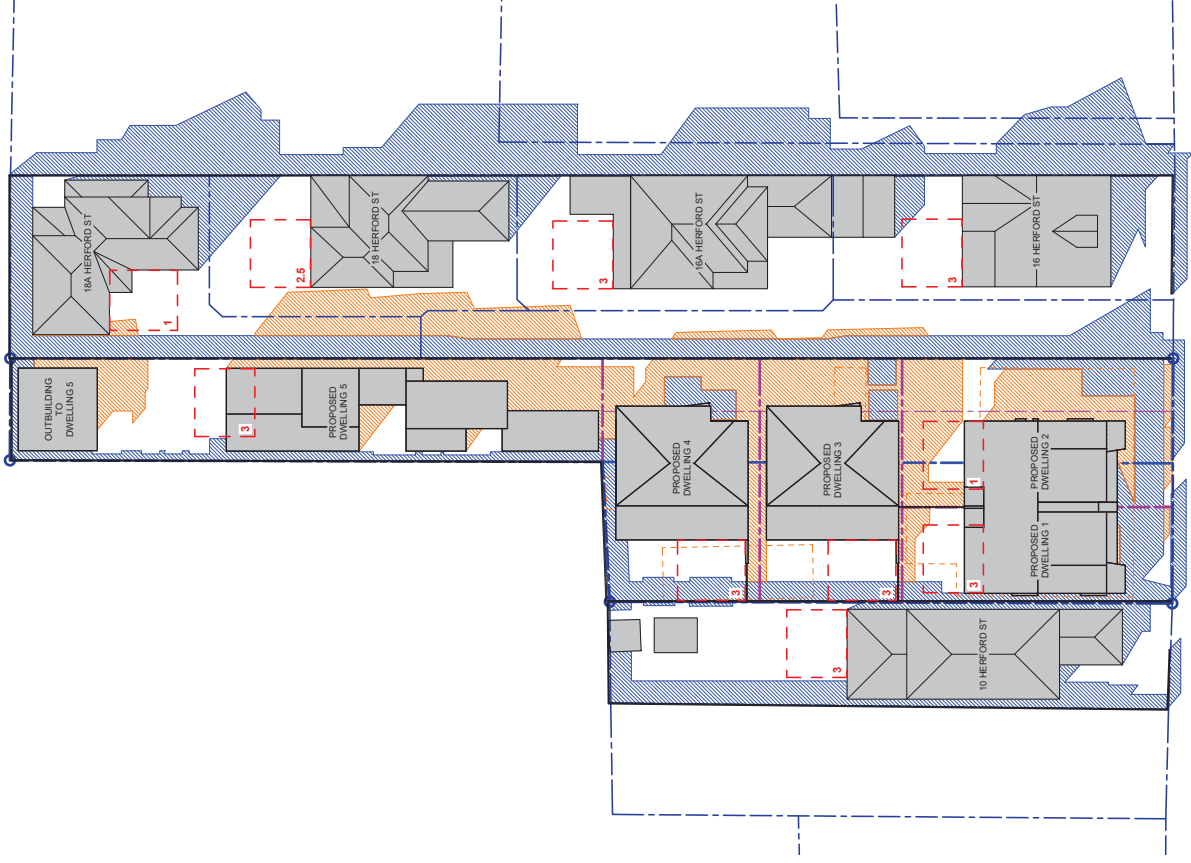
PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
WINTER SOLSTICE SHADOW DIAGRAMS  
9AM + 10AM

SCALE  
1:500 @ A3  
DRAWN  
J.S.L.  
ISSUE  
B  
DRAWING NO.  
DA\_06\_01  
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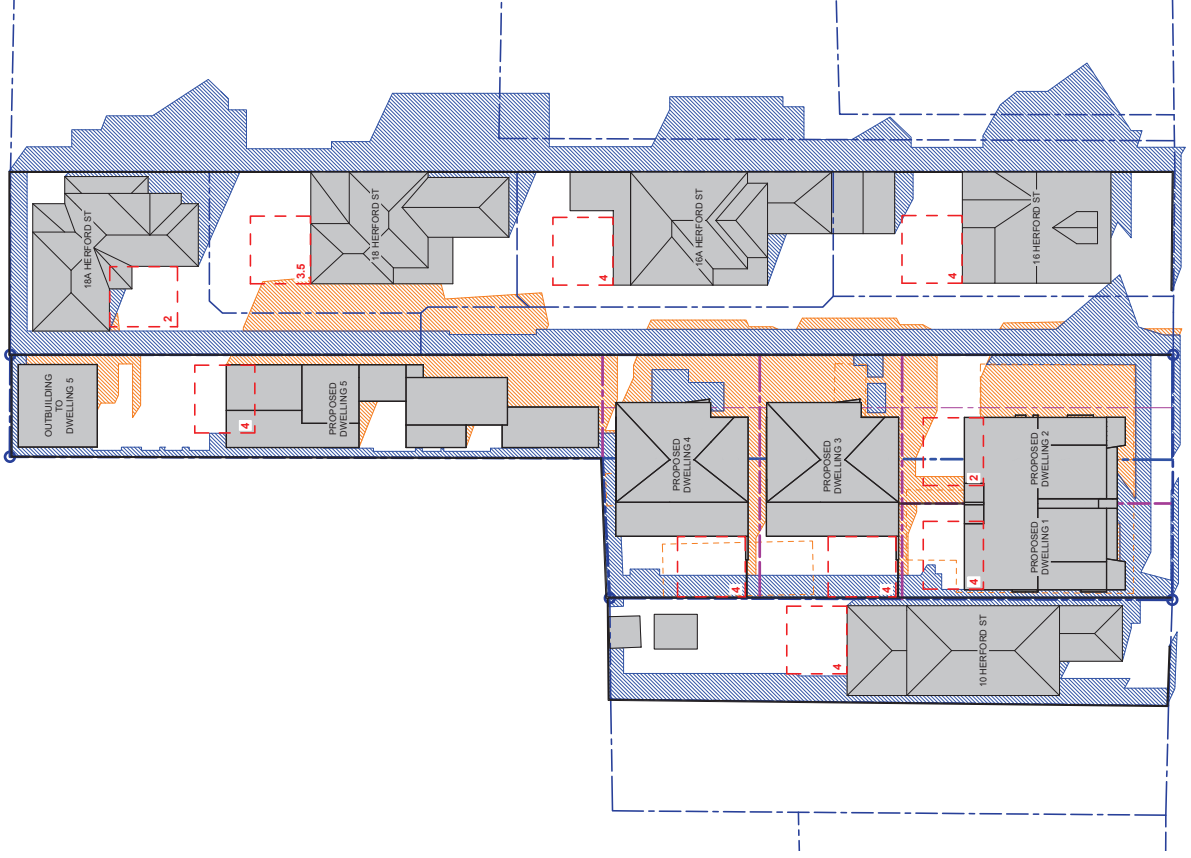
PINNACLE PLUS  
LEVEL 1, 28 CROWN ST, DARLINGHURST 2010, NSW  
DATE  
27-JUN-17





HERFORD STREET

WINTER SOLSTICE SHADOW DIAGRAM-11:00 AM



HERFORD STREET

WINTER SOLSTICE SHADOW DIAGRAM - 12:00 PM

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LEGEND:  
EXISTING BUILDINGS  
PROPOSED BUILDINGS  
30' (9M) PRIVATE OPEN SPACE  
EXISTING BUILDING ENVELOPE

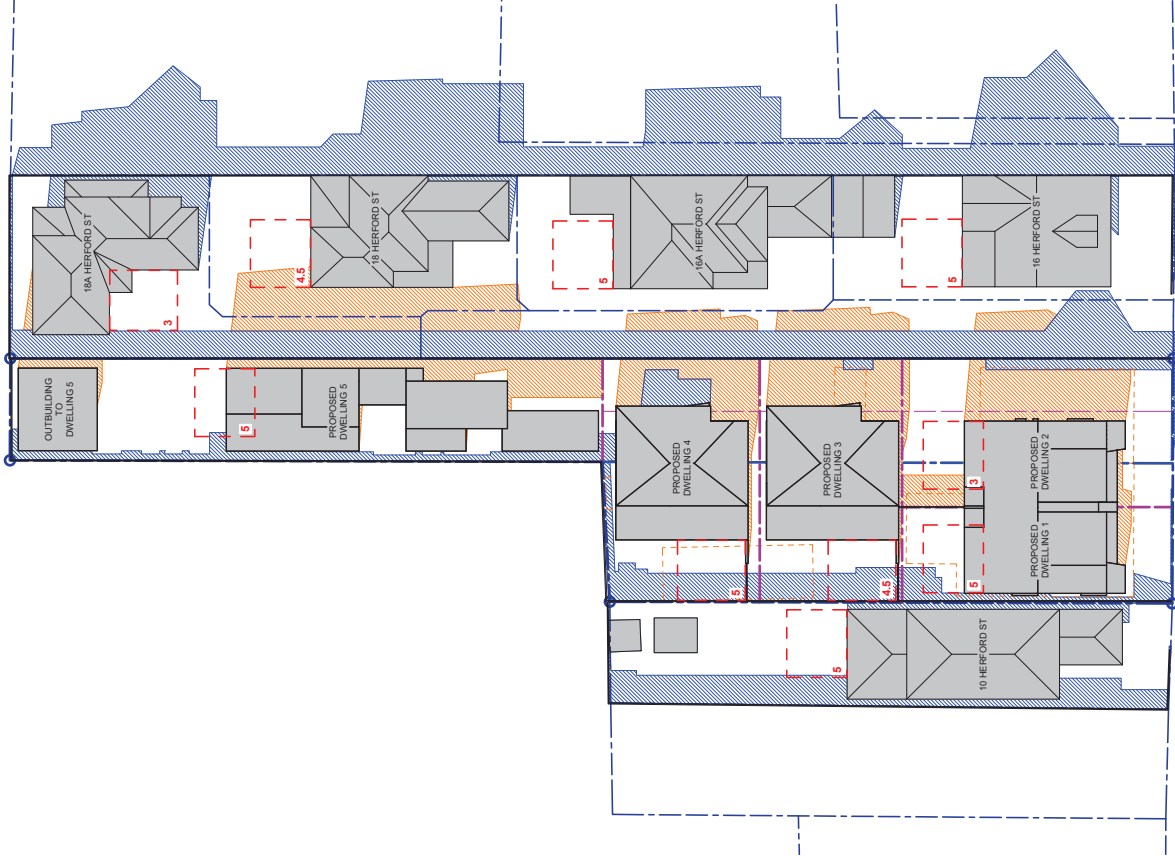
PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
WINTER SOLSTICE SHADOW DIAGRAMS  
11AM + 12PM

SCALE  
1:500 @ A3  
DRAWN  
J.S.L.  
DRAWING NO.  
DA\_06\_02  
ISSUE  
B  
DATE  
27-JUN-17  
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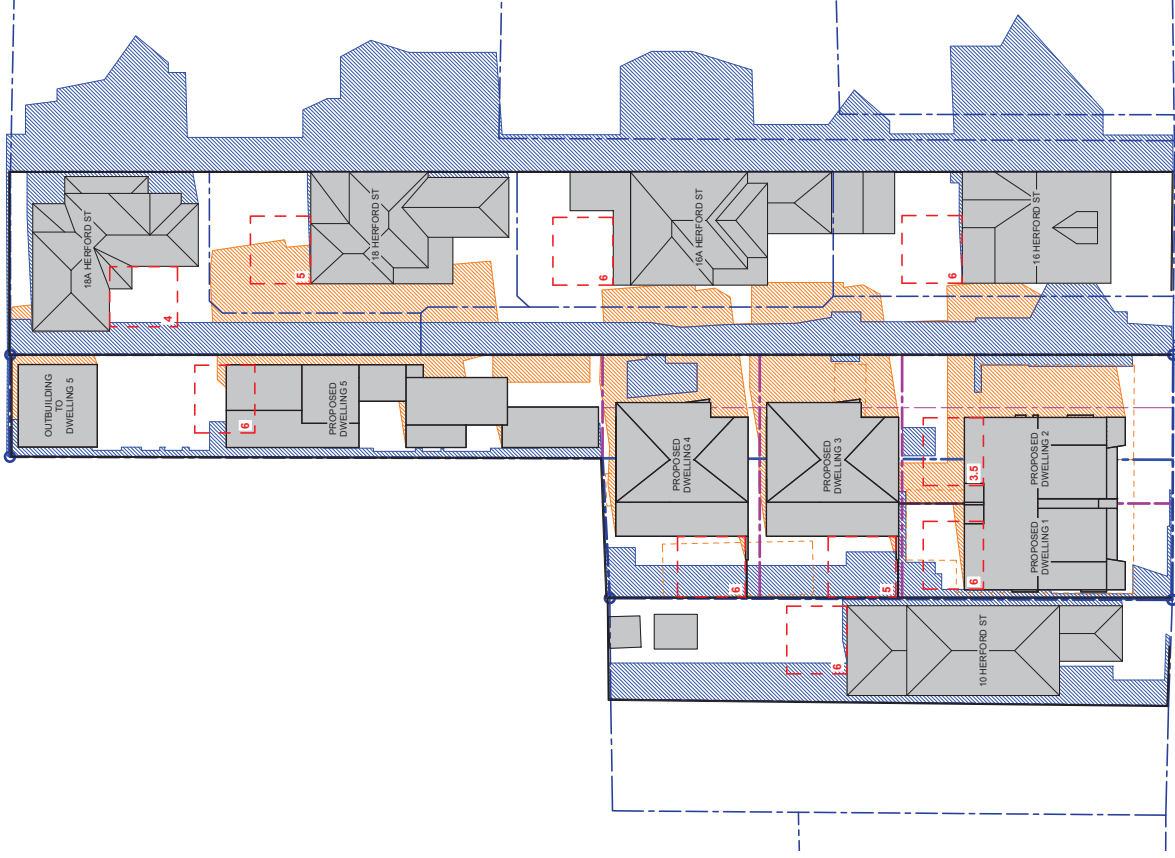
PINNACLE PLUS  
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27-JUN-17  
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HERFORD STREET

WINTER SOLSTICE SHADOW DIAGRAM - 1:00 PM



HERFORD STREET

WINTER SOLSTICE SHADOW DIAGRAM - 2:00 PM

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LEGEND  
EXISTING BUILDINGS  
30' (9M) PRIVATE OPEN SPACE  
EXISTING BUILDING ENVELOPE

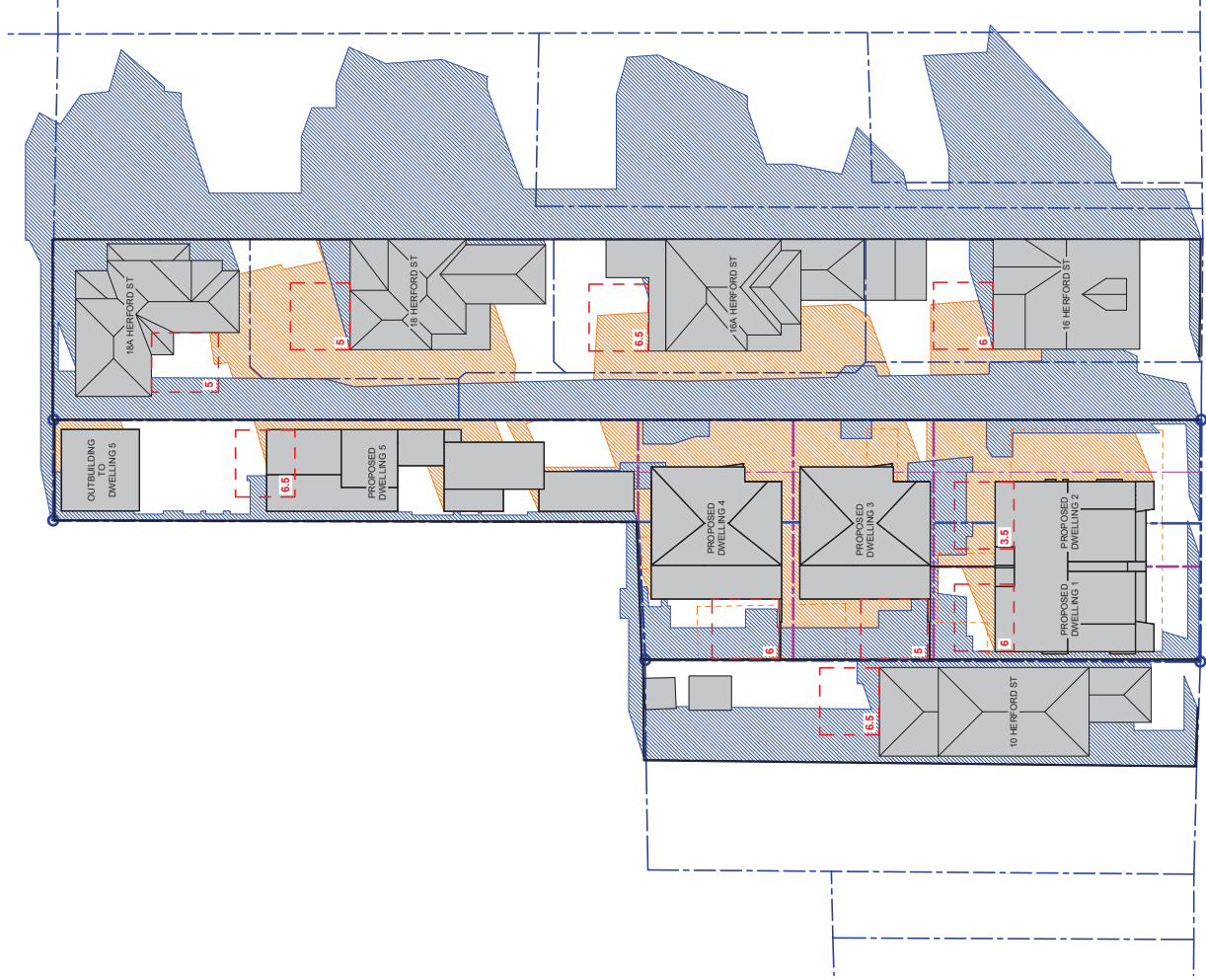
PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
WINTER SOLSTICE SHADOW DIAGRAMS  
1PM + 2PM

SCALE  
1:500 @ A3  
DRAWN  
J.S.L.  
ISSUE  
B  
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LEVEL 1, 28 CROWN ST, DARLINGHURST 2010, NSW  
DATE  
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HERFORD STREET

WINTER SOLSTICE SHADOW DIAGRAM - 3:00 PM



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LEGEND

- EXISTING Dwellings
- PROPOSED Dwellings
- 30' (9M) PRIVATE OPEN SPACE
- EXISTING BUILDING ENVELOPE

PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
WINTER SOLSTICE SHADOW DIAGRAMS  
3PM

SCALE  
1:500 @ A3

DRAWN  
J.S.L.

ISSUE  
B

DRAWING NO.  
DA\_06\_04

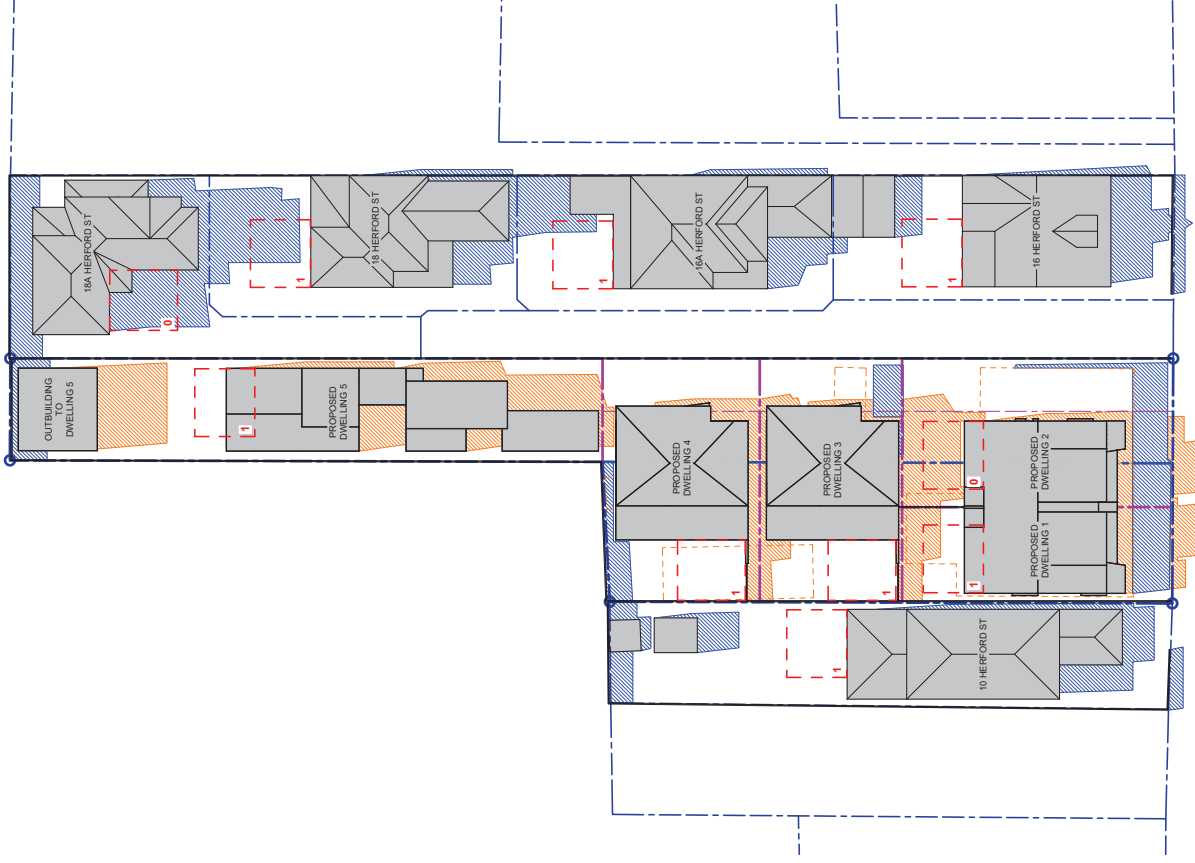
DATE  
27-JUN-17

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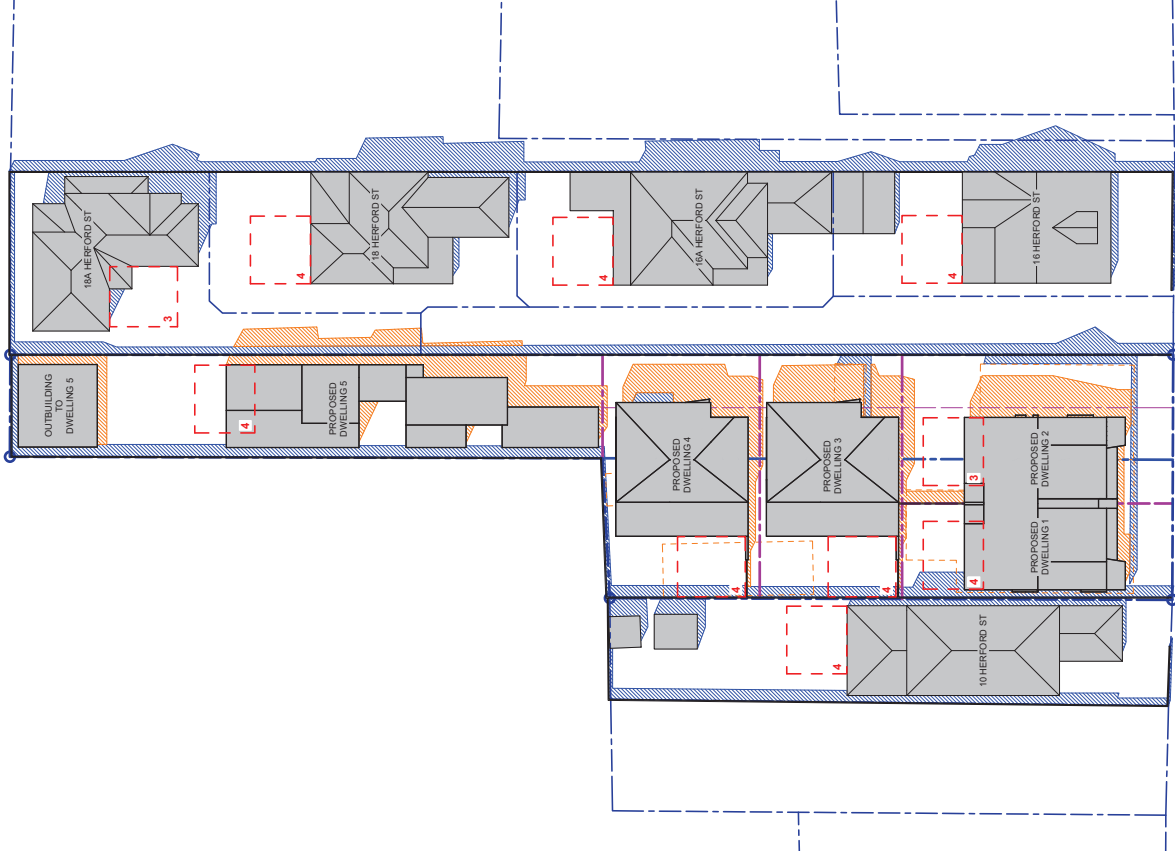
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0 5 10 15 20



EQUINOX SHADOW DIAGRAM - 9:00 AM



EQUINOX SHADOW DIAGRAM - 12:00 PM

HERFORD STREET

HERFORD STREET

NOTES  
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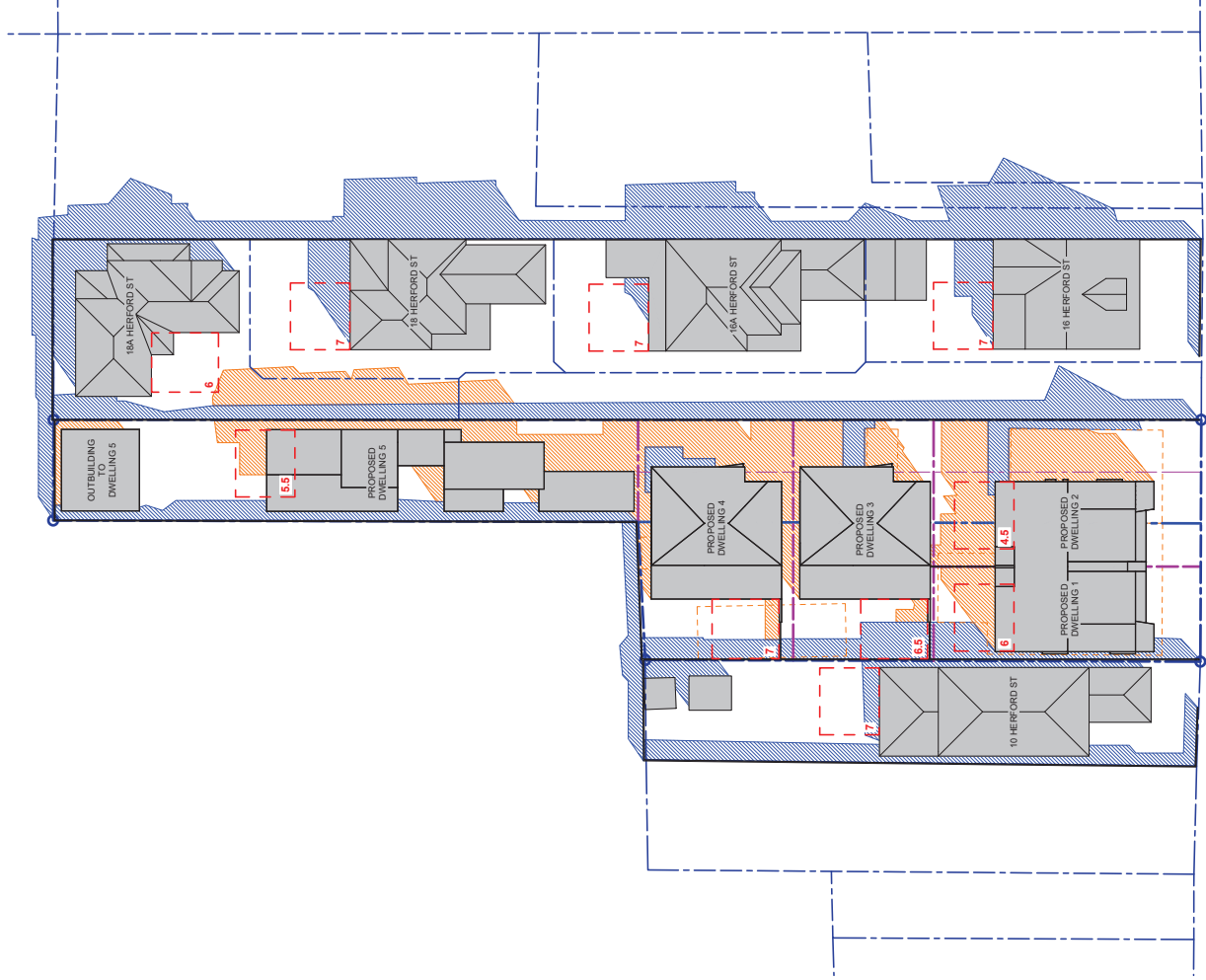
LEGEND  
EXISTING BUILDINGS  
30' (9M) PRIVATE OPEN SPACE  
EXISTING BUILDING ENVELOPE

PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
EQUINOX SHADOW DIAGRAMS  
9AM + 12PM

SCALE  
1:500 @ A3  
DRAWN  
J.S.L.  
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HERFORD STREET

EQUINOX SHADOW DIAGRAM - 3:00 PM



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- LEGEND
- EXISTING BUILDINGS
  - PROPOSED BUILDINGS
  - 30' (9M) PRIVATE OPEN SPACE
  - EXISTING BUILDING ENVELOPE

PROJECT  
12 - 14 HERFORD STREET  
BOTANY, NSW, 2019

TITLE  
EQUINOX SHADOW DIAGRAMS  
3PM

SCALE  
1:500 @ A3

DRAWN  
J.S.L.

ISSUE  
B

DRAWING NO.  
DA\_06\_26

DATE  
27-JUN-17

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0 5 10 15 20





