
Bayside Planning Panel

28/11/2017

Item No	6.4
Application Type	Development Application – Residential/Subdivision
Application Number	DA-2017/1023
Lodgement Date	13 February 2017
Property	79 Middlemiss Street, Mascot
	Lot 1 in DP 795157
Owner	Youssef Chalich
Applicant	Pinnacle Plus Pty Ltd
Proposal	Demolition of existing structures, subdivision into two Torrens title allotments and construction of two semi-detached dwellings and swimming pool for each dwelling.
No. of Submissions	First Round – One Submission Second Round – Nil
Cost of Development	\$471,129.71
Report by	Lincoln Lawler, Acting Coordinator Development Assessment

Officer Recommendation

- 1 That 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 as it is consistent with the objective of the Floor Space Ratio and the objectives for the R2 Low Density Residential zone.
 - 2 That Development Application No. 2017/1023 for the demolition of existing structures, subdivision into two Torrens title allotments and construction of two semi-detached dwellings and swimming pool for each dwelling at 79 Middlemiss Street, Mascot 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.
 - 3 That the objectors be advised of the Bayside Planning Panel's decision.
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Attachments

- 1 Planning Assessment Report;
- 2 Supplementary Statement of Environmental Effects and Clause 4.6 submission;
- 3 Site Analysis Plan;
- 4 Subdivision Plan;
- 5 West & South Elevations;
- 6 North & East Elevations;
- 7 Roof Plan;
- 8 Revised Landscape Plan
- 9 Schedule of Finishes Plan

Location Plan

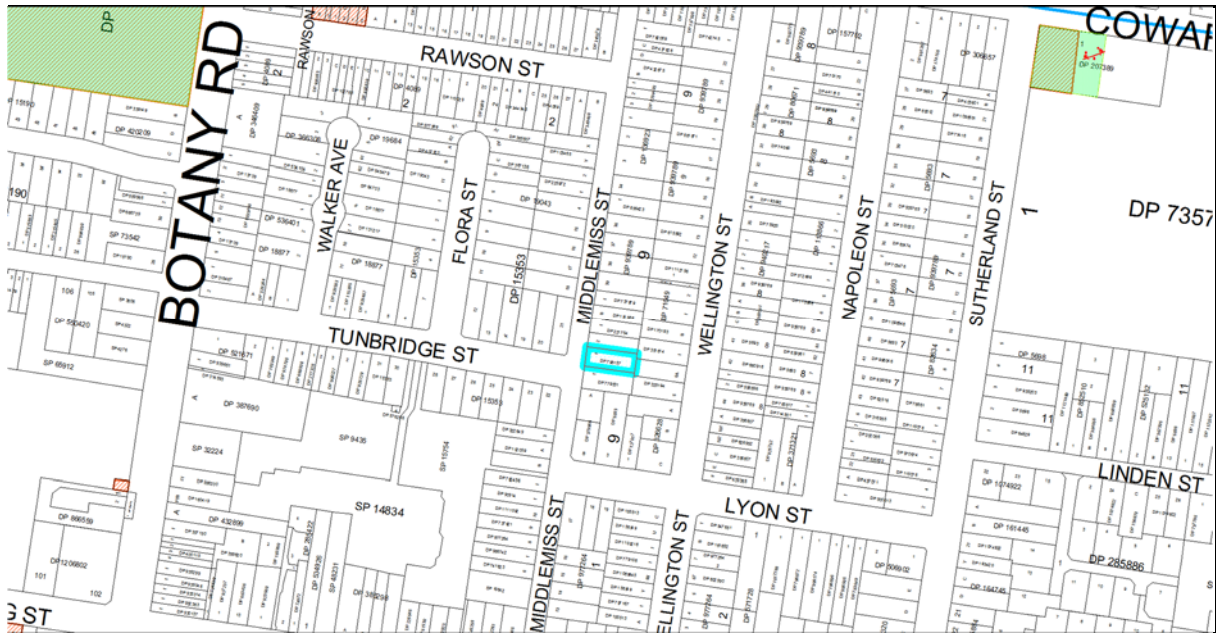


Figure 1: Locality Plan (subject site outlined in blue)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/1023
Date of Receipt:	13 February 2017
Property:	79 Middlemiss Street Mascot
Lot & DP/SP No:	Lot 1 in DP 795157
Owner:	Youssef Chalich
Applicant:	Pinnacle Plus Pty Ltd
Proposal:	Demolition of existing structures, subdivision into two Torrens title allotments and construction of two semi-detached dwellings and swimming pool for each dwelling.
Property Location:	Located on the eastern side of Middlemiss Street, between Tunbridge Street to the south west and Rawson Street to the north west.
Value:	\$471,129.71
Zoning:	R2 Low Density Residential Zone Botany Bay Local Environmental Plan 2013
Author:	Lincoln Lawler Acting Coordinator Development Assessment
Date of Report:	11 November 2017
Classification of Building:	Class 1a – Dwelling House Class10b – Swimming Pool
Present Use:	Residential
No. of submissions:	First Round of Notification – One Submission Second Round of Notification - Nil

Key Issues

The key issues with this application are subdivision pattern and floor space ratio. The subdivision controls relating to Mascot are contained within Part 3E of Botany Bay Development Control Plan 2013, where subdivisions are assessed on merit, and are subject to being consistent with the prevailing pattern of subdivision in the street, for the 10 properties on either side of the subject site and including the sample on the opposite side of the street. The proposal has been amended to reduce its bulk and scale impacts and to lower the exceedance of floor space ratio. A Clause 4.6 variation is sought for the proposed 17% variation for each proposed dwelling.

Recommendation

1. That 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 as it is consistent with the objective of the Floor Space Ratio and the objectives for the R2 Low Density Residential zone.
2. That Development Application No. 2017/1023 for the demolition of existing structures, subdivision into two Torrens title allotments and construction of two semi-detached dwellings and swimming pool for each dwelling at 79 Middlemiss Street, Mascot 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.
3. That the objectors be notified of the Panel's Decision.

Site Description

The subject premises is registered as Lot 1 in DP 795157, and contains an area of 390 sqm. The site is currently occupied by a single story timber framed weatherboard cottage with aluminium framed windows. The roof is both gabled and hipped, with roof tiles.

The rear garden is generally open and grassed with a large concreted patio adjacent to the house. The north eastern corner of the garden is occupied by a single standing garage. Vehicular access to the garage is via a driveway to the northern side of the property. The front garden is grassed with a central pathway and low brick fence to the boundary. There are no significant trees or vegetation on the site.

Surrounding local context consists primarily of a fairly even distribution of one and two storey properties with examples of gentrification, attached dwellings, semi-detached dwellings and some examples of garages located on the boundary. Residential flat buildings and townhouses are also present in the immediate vicinity.

The site is located in the R2 Low Density Residential zone and is surrounded by one and two storey detached dwellings of varying architectural styles. The adjacent allotment to the east of the site is currently vacant land.



Figure 1: Aerial plans showing the subject site and the surrounding environment and a close up of the site.

Site History

There is no site history that is pertinent to the current application. The site appears to have been continually used for residential purposes and

Description of Development

Development Application No. 2017/1023 proposes the construction of a new semi-detached dwelling on each allotment as detailed on the accompanying architectural plans. The specifics of the proposal are as follows:

Demolition of the existing structures on the site

It is proposed to construct a four bedroom, two storey semi-detached dwelling on each allotment. The ground floor of each semi-detached dwelling includes a single garage, open plan kitchen lounge /dining, toilet and laundry. A covered terrace adjoins the rear of each building.

The first floor is occupied by bedroom 1 and ensuite with three adjoining bedrooms, a bathroom and study. Swimming pools are proposed to the rear of the dwelling. The proposal requires the subdivision of the existing allotment into two Torrens Title allotments.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

A BASIX Certificate pursuant to the provisions of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 is required and has been issued with the relevant certificate number 778063S and 778062S.

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 State Environmental Planning Policy 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.

Botany Bay Local Environmental Plan 2013

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

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned R2 – Low Density Residential under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed subdivision and construction of semi-detached dwellings is permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zones?	Yes	The proposed development is consistent with the objectives in the BBLEP 2013. In particular the proposed development will provide for the day to day needs of resident and provide a variety of housing stock or the residents.
What is the height of the building? Does the height of the building exceed the maximum building height?	Yes	Maximum permissible height = 9 metres The maximum height of the proposed development is 7.2m. The maximum height of the development complies with the development standard.
What is the proposed Floor Space Ratio (FSR)? Does the FSR of the building exceed the maximum FSR?	Refer to Clause 4.4A	The maximum permissible floor area for the subject site is stipulated by Clause 4.4A as the site is located in Area 3.
Is the site within land marked "Area 3" on the FSR Map? If so, does it comply with the sliding scale for FSR in Clause 4.4A?	No – Refer to Clause 4.6 discussion	The site is within land marked "Area 3" and the proposed development falls under "All other residential accommodation" which has a maximum FSR of 0.5:1. Each dwelling proposed has an FSR of 0.67:1 each allotment equating to 130.71sqm. A clause 4.6 variation has been submitted and is discussed below.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<p>The following provisions in Part 6 of the LEP apply to the development–</p> <ul style="list-style-type: none"> 6.1 – Acid sulfate soils 6.2 – Earthworks 6.3 – Stormwater management 6.9 – Development in areas subject to aircraft noise 	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>6.1 – Acid sulfate soils (ASS): The subject site is within the land classed with Class 4 ASS. Further ASS investigations are not required as the proposed excavation will not exceed a depth of 2.0m below natural ground. Council's Development Engineer and Environmental Scientist have not raised issues in this regard.</p> <p>6.2 – Earthworks: Proposed excavations will be conditioned to not exceed a depth of 2.0m below natural ground level. Sediment and erosion control measures will be installed prior to work commencing and will be maintained throughout the duration of works.</p> <p>6.3 – Stormwater management: Any stormwater runoff from the development will be connected to the existing system. Council's Development Engineer has reviewed and supports the application subject to conditions.</p> <p>6.9 – Development in areas subject to aircraft noise: The subject site is affected by Aircraft Noise being located between ANEF (2029 and 2033) Contour 20-25. As the proposed development is for dwelling house appropriate noise attenuation measures will be addressed through a condition of consent and acoustic report.</p>

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

As discussed in the above table, the proposed development is non-compliant with Clause 4.4A – Floor Space Ratio. 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 0.67:1.

The development proposes the following:

Table 2: FSR exceedance

Lot	Site Area	Proposed FSR	Proposed GFA	Exceedance
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Lot 1	195.2sqm	0.67:1	130.71sqm	24.9sq.m (11%)
Lot 2	195.2sq.m	0.67:1	130.71sq.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 or 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?

It is noted that the applicant has incorrectly identified that the site is within Special Area "H1", an area that promotes greater density within the R2 Low Density Residential zone similar to the style of development now proposed. Notwithstanding this, the applicant has submitted the following:

The proposed development complies with the floor space ratio control which applies to dwelling houses, multi-dwelling housing and residential flat buildings in Area 3. As such, the intensity of development on the site is entirely consistent with that permitted for other forms of residential accommodation in the vicinity of the site. The resulting bulk of the development is therefore consistent with that of other development in the area. Reducing the floor space of the development is not necessary to achieve an intensity of development which is compatible with other residential development in the area.

- The proposed development of two semi-detached dwellings on the site is a form of development which is permitted with consent under the BBLEP 2013 and is consistent with the existing subdivision of the site and the pattern of subdivision in the locality. Accordingly the density of two dwellings is appropriate in the zone and locality.*
- The development reflects the desired built form character of the locality having regard to the proposal's compliance with the height of buildings development standard, the height of buildings encouraged in Special Area H1 under the BBDCP 2013 and general consistency with the private open space and setback requirements of the BBDCP2013.*
- The development can be serviced by existing utilities and infrastructure.*

Officer comment: Refer to comment below.

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

The applicant has submitted the following:

The proposed variation results in a development which is entirely compatible with the density and intensity of existing and future development in the locality as a floor space ratio of 0.85:1 is permitted for dwelling houses with a site area of less than 200 square metres, a floor space ratio of 1:1 is permitted for residential flat buildings and a floor space ratio of 0.85:1 is permitted for multi-dwelling housing. The BBDCP also indicates that the area within which the site is located (Special Area H1) there is the opportunity for increased height and density in the form of terrace style housing.

Officer Comment: The site is not located within Special Area H1 and the FSR indicated as 0.85 has now been reduced to 0.67:1. In this regard, drawing a comparison to the type of development that could be generally anticipated on the site, a comparison to a detached dwelling house is appropriate in this instance. Taking the parent site, with an area of 390sqm, the anticipated compliant FSR of 0.65:1 or 253.56sqm applies. The setbacks required are the same as what is proposed including the ability to zero lot line the garage. The rear setback required for a dwelling house on this parent site would be 6m, which is similar to the 5.1 m proposed to the ground floor and 6.1m proposed to the top floor. The proposed subdivision and resultant development maintains the rhythm within the streetscape with the proposed bulk and scale and setbacks proposed.

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 this case as the Floor space anticipated by a dwelling house is similar to what is being proposed.

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,

Development in the vicinity of the site comprises a mix of housing types including detached dwellings, semi-detached dwellings, multi- dwelling housing developments and a residential flat building. Figure 3 of the Statement of Environmental Effects which accompanies the application illustrates the variety of housing types found in George Street.

The site is located within Special Area H1 under Part 4a of the Botany Bay Development Control Plan 2013 (BBDP 2013) (as shown in the extract from Council's DCP below). The character of the locality is described in the DCP as:

Special Area H1 is located within Mascot and is characterized by narrow residential streets, lack of on-site parking and a mixture of reasonably high density developments ranging from semi-detached dwellings, newer terrace style housing on narrow allotments, single storey dwellings and some 3 storey walk up residential flat buildings... This area provides the opportunity for increased height and density in the form of terrace style housing, to reflect the style of dwellings that has been occurring recently. The proposed development of two semi-detached dwellings is consistent with the varied types of residential accommodation in the vicinity of the site.

Each allotment has an area of less than 200 square metres. Pursuant to clause 4.4 of the BBLEP a maximum floor space ratio of a dwelling house with a site area of less than 200 square metres is 0.85:1. The maximum floor space ratio for multi-dwelling housing is 0.83:1 and the maximum floor space ratio for a residential flat building is 1:1.

Given that the other forms of residential accommodation in the area are permitted to have a higher floor space ratio than 0.5:1, and that the DCP indicates that it is appropriate for terrace style housing in Special Area H1 to have a higher floor space ratio, the proposed floor space ratio of 0.83:1 for each dwelling and resulting building bulk is entirely compatible with that of residential development permitted in the locality.

The proposed setbacks are consistent with the pattern of side and rear boundary setbacks evident in the street and locality for both detached dwellings and semi-detached dwellings or dual occupancy developments which indicates the building bulk proposed is appropriate despite the variation to the floor space ratio development standard. The proposed setbacks are varied. The majority of the development incorporates a 0.9 metre setback to the southern and northern boundaries. Generally dual occupancy and semi-detached dwelling developments in the vicinity of the site incorporate nil or limited side boundary setbacks. The developments include:

- 143 King Street, Mascot
- 49 Middlemiss Street, Mascot
- 16 Alfred Street, Mascot
- 110 King Street, Mascot

A complying area of private open space is proposed on both allotments which further indicates the bulk and scale of the development on the site is reasonable and appropriate. The development fully complies with the applicable height of buildings development standard of 10metres with House A having a maximum height of 7.2 metres. As the development sits well below the maximum height permitted and the two storey scale of the dwellings is compatible with the predominate building height in the locality, the scale of the development is compatible with the character of the locality.

(b) to promote good residential amenity.

The proposed development does not result in any unreasonable impacts on the amenity of the adjoining residential properties notwithstanding a variation is proposed to the floor space ratio development standard.

The skillion roof proposed minimises the height of the development and the impact of the development on the solar access available to the surrounding properties. 2 hours of solar access is maintained to the living areas and private open spaces of the dwellings on the adjoining properties.

The acoustic impacts associated with the development of a semi-detached dwelling on each allotment will not exceed that which can reasonably be expected in a low density residential setting.

BLEP 2013 FSR Objectives:

Clause 4.4 of the BBLEP 2013 also includes objectives related to the maximum floor space permitted on a site. The objectives of clause 4.4 are addressed below.

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

The density of development on the site (being two dwellings) is permitted with consent under the applicable planning provisions and is compatible with the varied development typology in the street and general locality.

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

As detailed above the scale of the development is appropriate having regard to the complying height of the building and given the development has a height of two storeys whereas the DCP permits a height of three storeys.

The size of the building footprint and form of the building, modulation of the facades provided by varied setbacks and the articulation proposed delivers a building bulk which is compatible with that of other developments in the street and locality generally.

- (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 locality will continue to be a low density residential area however new developments tend to be in the form of semi-detached dwellings or dual occupancy developments as is encouraged in Special Area H1.

- (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,*

The proposed dwellings achieve a high level of compatibility with the form of development in Middlemiss Street. The development will not adversely impact on any views from public places particularly given the development sits comfortably below the maximum height permitted.

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

The proposed development does not result in any unreasonable or excessive impacts on the amenity of the adjoining properties considering the adjoining property at 33 Beach Street maintains over 2 hours of solar access to the private open space and north facing living areas and the fenestration of each façade and location of the balcony for House A has been designed to minimise the potential for the overlooking of the adjoining properties.

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

The floor space ratio of each dwelling is appropriate to the size of the site having regard to the maximum floor space ratio of 0.85:1 which is permitted for a dwelling house with a site area of less than 200 square metres and given the DCP indicates that the site is within an area (Special Area H1) that provides the opportunity for increased height and density in the form of terrace style housing.

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

The increased residential population on the site which results from replacing a single dwelling with two semi-detached dwellings will contribute to the success of local businesses.

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.

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 0.65:1 would be permitted for the parent site or 0.85:1 for each new allotment.

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.

The objectives and provisions of the BBLEP 2013 have been considered in relation to the subject development application. The proposal is considered 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

The following Development Control Plan is relevant to this application:

Botany Bay Development Control Plan 2013

Part 3A – Parking & Access

Part	Control	Proposed	Complies
3A.2. Parking Provisions of Specific Uses	C2 Semi-detached dwelling house = 1 space	Each dwelling provides a single car garage within the front building footprint. There is direct access to Middlemiss Street. The driveway on both sites can accommodate an additional hard stand parking space.	Yes
3A.3.1 Car Park Design	C26 The minimum width of the access driveway at the property boundary shall be:- (i) For dwelling houses: ▪ 3 metres	Each driveway/vehicular crossing is 3 metres wide.	Yes

Part 3E- Subdivision & Amalgamation -3E.2.2. Residential Torrens Title

Control	Proposed	Complies
C1 Development applications shall demonstrate that the proposed subdivision is consistent with the Desired Future Character of the area. Desired Future Character – Subdivision Retain and preserve the rectilinear grid pattern within the Precinct	Two allotments are proposed which are both rectangular in pattern and will maintain the rectilinear grid pattern within the precinct which is also characterised within the Mascot Desired Future Character.	Yes – Refer to Note 1
C2 – Proposed Subdivision must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation	The proposed lots will have a site area of 195sqm (Lot A) and 195sqm (Lot B), will have an east west orientation, rectilinear shape and frontage to Middlemiss Street. The area and dimensions of the proposed allotments are similar to a examples of smaller lots along the street. The street comprises a range of lot sizes.	Yes – Refer to Note 1
C3 – Development application which proposes the creation of new allotments must be accompanied by a conceptual building plan that demonstrates compliance with relevant building controls.	Building Plans for the development have been provided.	Yes
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) Minimize impacts on adjoining properties including access to	The proposed allotments can accommodate dwelling houses that acknowledge site constraints, street frontage, solar access,	Yes

Control	Proposed	Complies
sunlight, daylight, privacy and views iv) Provide usable private open space v) Protect existing vegetation vi) Mitigate potential flood affectation and stormwater management requirements vii) Acknowledge contamination of the land viii) Protect heritage items	private open space, vegetation, flood affectation and contamination.	
C7 All lots created shall have at least one (1) frontage to the street.	Both lots have a frontage to Middlemiss Street.	Yes

Note 1– Prevailing Subdivision Pattern

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.

As part of this development application, the site will be subdivided into two (2) individual allotments namely Lot 1 (195sqm) and Lot 2 (195sqm). The proposed street frontages of 6m for Lot 1 and Lot 2 and are the same as 49, 49A and 51 Middlemiss Street.

Address	Lot Size (in sqm)	Variation (in sqm) from smallest lot proposed
59 Middlemiss Street	388.43sqm	193.36
61 Middlemiss Street	390 sqm	194.93
63 Middlemiss Street	387 sqm	191.93
65 Middlemiss Street	387 sqm	191.93
69 Middlemiss Street	390 sqm	194.93
71 Middlemiss Street	296 sqm	100.93
73 Middlemiss Street	283 sqm	87.93
75 Middlemiss Street	294 sqm	98.93
77 Middlemiss Street	280 sqm	84.93
79 Middlemiss Street (Subject Site)	390 sqm	194.93
81 Middlemiss Street	443 sqm	247.93
85 Middlemiss Street	301 sqm	105.93
1 Lyon Street	385 sqm	189.93
2 Lyon Street	411 sqm	215.93
85 Middlemiss Street	360 sqm	164.93

87 Middlemiss Street	360 sqm	164.93
89 Middlemiss Street	391 sqm	195.93
91 Middlemiss Street	366 sqm	170.93

It is noted that within the same streetscape and view catchment of the site is 49, 49A and 51 Middlemiss Street which all have a site area of 191 sqm and a frontage of 6m.

An assessment of the Middlemiss Streetscape confirms that the streetscape is varied and includes; 3-storey residential flat buildings, single storey detached cottages, 2-storey detached dwellings and semi-detached dwellings. The underlying pattern in Middlemiss Street is redevelopment that results in 2-storey dwellings of similar bulk and scale to the proposal, as demonstrated by adjacent properties 77 & 81 Middlemiss Street and properties at 42 – 46 Middlemiss Street. This is further confirmed by the recently approved boarding house development at 40 Middlemiss Street (DA-2016/55/1) which is a 2-storey built form with an FSR of 0.80:1. Overall, it is demonstrated that the proposal is compatible with surrounding properties, emerging 2-storey built form streetscape and the desired future character of the area.

On its merits, the appropriateness of the resultant subdivision is acceptable when taking into consideration the existing semi-detached dwellings along Middlemiss Street, the provision of housing opportunities in the locality and compliance with the controls under the Botany Bay Local Environmental Plan 2013 and Botany Bay Development Control Plan 2013.

Part 3G – Stormwater Management

Council's Development Engineer has no issues with the proposed management of stormwater on the site. Appropriate conditions of consent have been recommended to ensure the development and swimming pools are adequately drained as per Council's Stormwater Management Technical Guidelines.

Part 3L- Landscaping and Tree Management

The proposed development requires 15% of each allotment to be landscaped: The proposed landscaping as follows:

- Lot 1 (House 1) = 46.55sqm (23.87%)
- Lot 2 (House 2) = 46.55sqm (23.87%)

The landscaped areas are to be fully permeable deep soil zones which are green landscaped. The proposal includes no ancillary structures. The landscape plan clearly identifies the proposed areas of open and landscaped areas and has been designed in accordance with Part 3L.

Part 3N- Waste Minimisation and Management

A waste management plan prepared by Pinnacle Plus Pty Ltd has been provided to Council, which addresses the operational waste requirements. A condition of consent is recommended to ensure all waste generated by the proposal during construction stages and ongoing is stockpiled, managed and disposed of appropriately.

Part 4A- Dwelling House

Control		Proposed	Complies
4A.2.4 Streetscape Presentation	C3 Dwellings must reflect dominant roof lines and patterns of	The roof incorporates a flat roof which is almost identical to the attached dwellings at 49 Middlemiss Street.	Yes-Acceptable

	the existing streetscape.		
	C4 Buildings must address the street.	Both dwellings address the street with the dwellings facing Middlemiss Street. The front fence and letter boxes are also located along Middlemiss Street.	Yes
	C6 Dwellings front door is to be readily apparent from the street.	The front door at Lot A and Lot B are provided with front entrances located off Middlemiss Street and are readily apparent from the street.	Yes
4A.2.7 Site Coverage			
<p>C1 Refer to Part 3L.1.4 – Definitions for definitions of site coverage, deep soil zones, and soft and hard landscape areas.</p> <p>For sites of 200-250 – 65%</p> <p>For sites smaller than 200sqm, a merit assessment is required, <i>which will include consideration of the following:</i></p> <p>(i) Bulk of the proposed/existing dwelling;</p> <p>(ii) Impacts on adjoining land and buildings;</p> <p>(iii) Setbacks;</p> <p>(iv) Overshadowing and privacy;</p> <p>(v) Streetscape considerations (visual bulk and scale);</p> <p>(vi) Parking and landscape requirements;</p> <p>(vii) Existing views & sightlines;</p> <p>(viii) Impact to significant trees on site;</p> <p>(ix) The provision of a private recreation area on site; and</p> <p>(x) Site topography and allotment size.</p>		<p>The existing site coverage, soft landscaped area and hard landscaped areas have been calculated by Council as follows:</p> <p>The area for each lot is 195.2sqm with a site coverage of 116.85sqm or 61.5%. The proposal does not exceed the maximum coverage determined within the Botany Bay DCP 2013.</p> <p>Given that the proposal complies with a more stringent site coverage control for a larger lot it is considered that the proposal is appropriate in this instance.</p>	Acceptable
4A.2.8 Building Setbacks			
<p>C.1 Dwelling houses must comply with the following minimum setbacks as set out in Table 1.</p> <p>Minimum front setback – comply with the prevailing street setback or 6 metres (min)</p> <p>Minimum side setback - Assessed on merit based – depending on visual impact to street, pattern of adjoining development, sunlight and natural daylight access, privacy, visual amenity of adjoining residential properties and streetscape.</p> <p>Minimum rear setbacks – 4 metres</p>		<p>Front setback is 5.5m which is in excess of the setback prevalent in the street</p> <p>The side setback is 900mm for both ground and first floor with the exception of the zero lot line for the length of the proposed garages. The side setbacks are considered to provide visual relief and the articulation through the zero lot lined garage, Further the proposal is consistent with similar examples in the street.</p> <p>A rear setback of at least 5m is provided.</p>	Yes

4A.2.9 Landscape Area		
C2 Development shall comply with the following minimum landscaped area requirements, based on the area of the site in Table 2 . Table 2 requires the following minimum landscaped area: 200m ² - 15%	The proposed landscape area = 45m ² or 23.871% which complies with this provision.	Yes
C3 Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).	The landscaped area within the front yard is predominately a deep soil area.	Yes
C8 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 includes landscaped area and driveway and path to the front door. The paved areas do exceed 50% of the front setback area however given the space required for parking this is considered acceptable in this instance.	No – Considered acceptable
C9 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.		
4A.4.1 Visual Privacy		
C2 Visual privacy for adjoining properties must be minimised by: <ul style="list-style-type: none">▪ 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.	The existing 1.8m boundary fences will obstruct any views into neighbouring properties from the pool area. The upstairs rooms are largely bedrooms with highlight windows to side and rear boundaries to afford privacy.	Yes
4A.4.3 Solar Access		
C1 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.	The site is east west oriented and as such the shadowing resultant from the proposed development falls to the south. The dwelling to the south has habitable windows oriented to the north. This will be explored in depth in Note 3 – Discussion.	Yes Refer to Note 3
4A.4.4 Private Open Space		
C1 Each dwelling is to have a private open space that: <ul style="list-style-type: none">(i) Has at least one area with a minimum area of 36m²;(ii) Is located at ground level with direct access to the internal living areas of the dwelling;(iii) Maximises solar access;(iv) Is visible from a living room door or window of the subject development;	The site provides approximately 36m ² paved area for Private Open Space to the rear of the site. The private open space is generally consistent with the private open space provisions.	Y

(v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented to provide for optimal year round use; (viii) Is appropriately landscaped; and (ix) Is located or screened to ensure privacy; Note: Private open space is not to include: (i) Non-recreational structures (including garages, tool sheds and such like structures); (ii) Swimming pools; and (iii) Driveways, turning areas and car spaces, drying areas and pathways.		
4A.4.8 Car Parking C1 Development must comply with Part 3A – Car Parking	The development provides two off-street parking spaces for each lot. Each dwelling will comprise of a single car garage within the building footprint and hard stand car parking space on the driveway at the front of the site.	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.	The garages are not dominating the front setback with the expanse of garage door being 50% of the front elevation. The articulation and bedroom on the first floor are forward of the garages which reduce the prominence of the garages. This is accepted by Council.	Acceptable

Part 70 - Swimming Pools

70.2 General Requirements		
C1 Development must comply with the maximum site coverage requirements of the relevant Parts of the DCP.	The proposal will not exceed result in development on the site exceeding the site coverage requirements of Part 4A.2.7.	Y
C2 Swimming pools and spas must be located at ground level. Where a site slopes, swimming pools and associated structures (like decks or coping) must not be elevated more than 500mm above existing ground level.	The proposed swimming pool will be built in-ground. The coping surrounding the pool will not exceed a height of 100mm.	Y
C4 A Geotechnical report is required where the site is located in a groundwater exclusion zone.	The site is not in Groundwater exclusion zone where domestic use is banned.	Y
C5 An acid sulfate soils (ASS) evaluation is required where the site is located within a potential acid sulfate area. Where acid sulfate soils are found to exist, an Acid Sulfate Soils Management Plan will be required.	An Acid Sulfate Soils investigation is not required as the proposed excavation will not exceed a depth of 2.0m below natural ground or lower the water table beyond 2.0 metres below natural surface.	Y
C7 Swimming pools and spa pools are to be located at the rear of properties and not within the front setback.	The proposed swimming pool is located to the rear of the property.	Y

<p>C8 The following minimum setbacks are required for swimming pools and spas (refer to Figure 1):</p> <p>(i) 1m from side boundaries;</p> <p>(ii) In cases where a proposed pool adjoins a habitable room of a neighbouring dwelling, a setback greater than 1.5 metres may be required by Council in order to protect the amenity of residents; and</p> <p>(iii) Setbacks are required to accommodate existing trees including their root systems, as well as trees on adjoining properties.</p>	<p>The siting of the pool has ensured a setback of at least 1.0m is achieved from all external site boundaries.</p>	<p>Y</p>
<p>C9 All existing significant trees are to be retained and the pool sited accordingly (including trees on adjoining properties).</p>	<p>There are no significant trees on the site.</p>	<p>N/A</p>
<p>C10 Where a swimming pool is proposed in the vicinity of an existing tree an arborist's report may be required by Council at the development application stage to ensure that the tree can be retained without damage.</p>	<p>Not Applicable</p>	<p>N/A</p>
<p>C12 Equipment associated with a swimming pool or spa must be located in a soundproof enclosure and setback from any adjoining buildings. Details of the soundproof enclosure must be included within the development application plans.</p>	<p>A soundproof enclosure for pool equipment has been identified on plans. A condition of consent will be required to ensure an enclosure is provided and appropriately located on the site.</p>	<p>Conditioned</p>
<p>C13 Direct sightlines into neighbouring residential properties must be reduced.</p>	<p>The proposed 1.8m perimeter fencing will ensure direct sightlines into neighbouring properties are reduced/obstructed.</p>	<p>Y</p>
<p>C14 All swimming pool safety fences and requirements for spas must comply with the relevant Acts, Regulations and Australian Standards.</p>	<p>The proposed 1.2m high fence will be installed to comply with the relevant Acts, Regulations and Australian Standards. Conditions of consent have been recommended to ensure this.</p>	<p>Y</p>
<p>C15 Swimming pools are to be orientated to the northern aspect of the site to maintain a sufficient level of solar access or incorporate energy efficient heating systems if the swimming pool is to be heated (e.g. solar heating systems connected to the roof of the dwelling).</p>	<p>The proposed pool is appropriately sited within the rear yard which is within the northern aspect of the site.</p>	<p>Y</p>
<p>C17 All drainage or overflow associated with a swimming pool or spa is to be pipe drained to the nearest sewer main in accordance with the requirements of Sydney Water Corporation.</p>	<p>Councils Development Engineer has reviewed the application and recommended appropriate conditions of consent.</p>	<p>Conditioned</p>
<p>C18 The surrounds or concourse of a swimming pool shall have minimum 1% grade towards the pool to prevent surface waters (e.g. from rainfall) overflowing into the adjoining properties. In some instances, additional surface drains may be required.</p>	<p>Councils Development Engineer has reviewed the application and recommended appropriate conditions of consent.</p>	<p>Conditioned</p>

C20 A pool cover must be installed with any new swimming pool or spa to minimize evaporation rates.	Councils Development Engineer has recommended an appropriate condition of consent to ensure this.	Conditioned										
C21 A rainwater tank must be installed to ensure that the pool / spa can be filled up without the need to rely on potable water supplies. The tank capacity must comply with Table 1. Table requires the following: <table><tr><th colspan="2">Table 1 - Water Tank Size</th></tr><tr><th>Pool Size</th><th>Tank Size</th></tr><tr><td>20,000 Litres</td><td>1,000 Litre Tank</td></tr><tr><td>20,000 – 40,000 Litres</td><td>2,000 Litre Tank</td></tr><tr><td>> 40,000 Litres</td><td>Complies with BASIX</td></tr></table>	Table 1 - Water Tank Size		Pool Size	Tank Size	20,000 Litres	1,000 Litre Tank	20,000 – 40,000 Litres	2,000 Litre Tank	> 40,000 Litres	Complies with BASIX	Councils Development Engineer has requested 1,000 Litre tank through a condition of consent	Y
Table 1 - Water Tank Size												
Pool Size	Tank Size											
20,000 Litres	1,000 Litre Tank											
20,000 – 40,000 Litres	2,000 Litre Tank											
> 40,000 Litres	Complies with BASIX											

Note 1 – Solar Access Discussion

Part 4A.4.3 of Botany Bay DCP 2013 states that the minimum amount of direct solar access to the dwelling and adjoining dwellings primary open space area shall not be less than 2 hours between 9:00am and 3:00pm on the 21st June. In addition, Control C5 states that where an existing development currently receives less than the required amount of sunlight (on 21st of June) the amount of sunlight available on the 21st of March or the 21st of September will be used as an alternative standard.

The subject allotment is east-west orientated with west being the Middlemiss Street frontage of the property and east being the rear boundary. Consequently, any two storey development will cast a shadow upon the sites to the south.

Shadow diagrams have been submitted which demonstrate that the proposal generally complies with the solar access requirements of DCP 2013. The extent of additional overshadowing is considered to be acceptable and is less than what could be expected given the proposal is well within the height limits prescribed under BBLEP 2013. It is noted that the living room and at least 50% of the private open space of 81 Middlemiss Street maintains two hours of sunlight.

A detailed assessment is provided against the Land and Environment Court planning principle on the impact on solar access of neighbours (Parsonage V Ku-ring-gai (2004) NSWLEC 347) and (The Benevolent Society V Waverley Council (2010) NSWLEC 1082) as follows:

- The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The site is located within the Mascot Precinct, in a locality identified as a low density residential area. However the site is located within Area 3 which recognizes a higher floor space ratio for dwelling houses on smaller allotments.

To the north and south of the site are two level dwellings on larger allotments. To the east is a mix of single and two storey dwellings. To the west is Tunbridge Street.

Shadow diagrams have been submitted with the plans. These indicate that the adjoining developments to the south will be affected by overshadowing, however will continue to receive a minimum of 2 hours sunlight during winter solstice for 50% of the private open space (given the increased first level rear setback. The dwelling at 81 Middlemiss Street has on the northern side of the dwelling a family room (with a west oriented window) the family room is connected with the

dining room which contains a north oriented window. To the rear of the dwelling is the kitchen which contains an east facing window.

The kitchen window is largely in shadow for the majority of the day, however the dining room and lounge receive in excess of the 2 hours of solar access. The dining room although its window is overshadowed enjoys secondary solar access through the family room.

The shadow diagrams also indicate that sites to the east will continue to receive 2 hours of solar access.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: The proposal is of quality design and is appropriate in context given the primary location. The design has been cognitive of the existing development given the proposal is lower in height than that permissible.

The width of the shadow in this instance is acceptable given that the development fully complies with the height controls and could be reasonably anticipated in terms of bulk and scale given a similar scale dwelling house could be built which complies with the FSR controls.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Comment: As submitted on the shadow analysis, the northern side of 81 Middlemiss Street will be impacted, however it is noted that the proposal generally complies with the required bulk and scale controls. The primary living room window maintains 2 hours of daylight on winter solstice.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Comment: The private open space of 81 Middlemiss Street will be impacted by the proposed development however it is considered that between the hours of 9am and midday adequate solar access will be received, particularly given the amended first floor rear setback.

The properties to the north are not impacted by the proposal, the properties to the east and south retains 3 hours of solar access. The properties to the east have small changes to the solar access but are generally not impacted to a substantial degree until 3pm.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: Overshadowing from fencing, roof overhang, and vegetation have been taken into consideration. Given the topography, density locality and separation distances, impacts from fencing and the like are minimal.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.*

Comment: The location is undergoing change with similar development both approved and proposed as discussed throughout the body of the report. The adjoining properties to the north and south have the same potential to accommodate future residential development similar to the proposal as envisaged under the controls of BBLEP 2013 and BBDCP 2013 and currently contain a two storey dwelling circa 1990.

Part 8 – Mascot Character Precinct

The site is located within the R2 Low Density Residential zone of the precinct between Botany Road to the east and Sutherland Street to the west.

The proposed development has been designed to address the street and is consistent with the streetscape. The proposal is compliant with setbacks, site coverage and private open space and is considered to have acceptable landscaping and solar access impacts to neighbouring sites. Overall, the proposal is suitable for the site and is consistent with the desired future character of the Mascot Precinct pursuant to Botany Bay Development Control Plan Part 8 Character Precincts.

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

Clause 92 of the Regulation has been considered and there are no applicable provisions to the development.

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

The proposed development will have no adverse environmental, social or economic impacts in the locality. Matters relating to the exceedance in site coverage and floor space ratio are addressed in detail in this report and on balance are acceptable. The overshadowing impacts are considered acceptable and no adverse traffic or streetscape impacts are likely to result from the proposed development.

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

The site is zoned R2 – Low Density Residential and currently accommodates an existing dwelling. There is no existing vegetation that requires removal and the site is not affected by flooding. 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 subject site is affected by Aircraft Noise (ANEF (2029 and 2033) contour 20-25) and further investigation of aircraft noise will be required through a condition of consent. On this basis, the site is suitable for the proposed development.

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

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners for a fourteen (14) day period until 28 March 2017 and for 14 days until 18 July 2017 (submitters only)

First Round of Notification – Summary of issues

1) There are some windows on the south side of our house, facing the north side of No 79's property, but there are no windows on the north side of our house. We ask for No 79's north-facing

windows (both ground floor and upstairs) to not be positioned directly across from our south side windows for the sake of privacy for both our family and their residents. Please see attachment for clarification.

Comment: Amended Plans have been received that indicate that the ground floor windows are now offset. Study and bedroom 1 have windows that do create privacy issues and this can be addressed through privacy shutters on these windows. A condition is recommended to address this issue.

2) If the upstairs window can be a skylight it will be better; otherwise, please install the windows at a higher level.

Comment: The windows have since been amended to a minimum sill height of 1.5m above floor level.

3) The fence separating our properties sits within our land (No 77). Please do not demolish or remove any part of the fence.

Comment: This is a civil matter between the two land owners. The landscape plan indicates that the fence will either be repaired, replaced or reinstated.

4) No 79's dwelling has to be set back 0.9 metres from the boundary line.

Comment: This is compliant with Council's controls. The garage is set on the boundary how this is considered acceptable in this instances as the rest of the dwelling is setback 0.9m. The zero lot line provides articulation to the streetscape.

Second Round of Notification – No Submissions

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

Granting approval to the proposed development will have no adverse impact on the public interest. The proposal will facilitate the orderly development of the land.

Section 94 Contributions

The City of Botany Bay's Section 94 Development Contributions Plan 2016 became effective on 14 June 2016.

Contribution Rates

1 x New 4 Bedroom dwellings: \$21,981.87

1 x New 4 Bedroom dwellings: \$21,981.87

Total Contribution: \$43,963.74

Credit

Since there is an existing dwelling house on the existing lot, the applicant is entitled to a credit. The credit applies to the smaller of the new dwellings. The dwellings are the same size therefore a credit applies to one dwelling.

Credit applicable: \$21,981.87

Subtotal: \$43,963.74- \$21,981.87= \$21,981.87

As the total amount of each dwelling is over \$20,000.00, the section 94 contribution rate is capped at \$20,000.00

Total contribution

The total Section 94 Contribution applicable to the proposed development is **\$20,000.00**. In accordance with the Plan, the contribution is to be paid prior to the release of the subdivision certificate.

Conclusion

Development Application No. 2017/1023 for the demolition of the existing dwelling, construction of 2 x two storey semi-detached dwellings, swimming pools and subdivision of the allotment into two lots at 79 Middlemiss Street, Botany, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*.

The development is compliant in height, landscaped area, private open space and car parking. The amenity of the subject development and the neighbouring development will not be adversely impacted by the proposal and continues to receive adequate sunlight and appropriate visual privacy. The development is not considered to be out of context in the area and in the street as it proposes similar street frontage widths and site areas within a suitable catchment of the site. The subdivision pattern is acceptable as there are a number of semi-detached smaller lots along Middlemiss Street. The inconsistency in lot sizes further benefits the site in its subdivision pattern. Therefore, the proposal is recommended for approval, subject to conditions of consent in the attached Schedule.

Schedule 1 – Conditions of Consent

Premises: 79 Middlemiss Street, Mascot

DA No: 2017/1023

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.

Drawing N°	Author	Dated Received
Ground Floor Plan A03-005 Rev3	Pinnacle Plus	Dated and Received 10 November 2017
First Floor Plan A03-010 Rev3		Dated and Received 10 November 2017
Roof Plan A03-020 Rev 2		Dated and Received 10 November 2017
West and South Elevation		Dated and Received 10 November 2017

A06-001 3		
North and South Elevation A06-002 3		Dated and Received 10 November 2017
Landscape Plan LPDA 17 - 326 / 1, 2 and 3 (S Sheets)	Concept Landscapes	Dated May 2017 received 6 June 2017

Documents	Author	Date Received
Statement of Environmental Effects	Pinnacle Plus	Received 12/02/17
BASIX Certificate Nos. 778063S and 778062S	Prepared by Urban Future Organization PTY LTD	Dated 22 November 2016

2. This Consent relates to land in Lot 1 DP 795157 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. The following shall be complied with:
 - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
 - b) In accordance with Clause 94 *Environment Planning & Assessment Regulation 2000*, an automatic smoke detection and alarm system for early warning of occupants must be installed in the building (dwellings). The installation must satisfy the following:
 - i) smoke alarms must comply with AS3786 - 1993;
 - ii) smoke alarms must be connected to the consumer mains power where consumer power is supplied to the building; and
 - iii) be located in a position as required by Vol 2. BCA.
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 relevant BASIX Certificates (as referenced at Condition No. 1) for the development are fulfilled.

Note:

- a) Relevant BASIX Certificate means:
 - i) 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
 - ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.

- b) 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 persons intention to commence the erection of the building.

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

- 6. For compliance with the conditions of consent, a separate application must be made for a Subdivision Certificate. The application is to be accompanied by documentary evidence demonstrating compliance with all conditions of consent. Submission of a subdivision certificate application accompanied by a linen plan with six (6) copies and appropriate fees.
- 7. Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at www.sydneywater.com.au then the “e-developer” icon or telephone 13 20 92.
 - a) Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design.
 - b) The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the release of the linen plan or occupation of the development.
- 8. Prior to the issue of Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority showing all the structures are wholly located within the property boundary.

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

- 9. Prior to the issue of the 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.

10. Prior to the issue of the Construction Certificate the following fees are to be paid:
 - a) Builders Security Deposit \$5,276.00 (Refer Below)
 - b) Development Control \$875.00
 - c) Footpath Inspection Fee \$150.00
 - d) Section 94 Contributions \$20,000.00 (Refer Below)
11. The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2016. This result is a total contribution of **\$20,000.00**, to be paid to Council prior to the issue of the Construction Certificate.
12. Prior to the issue of the Construction Certificate, 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.
13. Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of \$5276.00 (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.
14. Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, a full photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and the Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the road, kerb, gutter, footpath, 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 will result in the applicant 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.
15. A Waste Management Plan prepared in accordance with Council's Waste Management and Minimisation Guidelines Development Control Plan shall be submitted to the Council for approval prior to the release of the Construction Certificate. The Waste Management Plan shall include the size and storage of bins, the collection point for the waste contractor recycling contractor, maintenance of the bins and the provision of recycling and composting facilities.
16. 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, a new concrete driveway shall be constructed. A new three (3) metre wide driveway layback shall be constructed as part of each new driveway. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie-in with the existing kerb and gutter.

17. Prior to the issue of the construction certificate, the windows on the northernmost dwelling for the study and bedroom 1 shall have fixed privacy screen louvres on amended architectural plans to protect the privacy of No.77 Middlemiss Street.
18. Prior to the issue of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Principal Certifying Authority, showing the storage location of construction building materials and plants and the method of access to the property. No storage of construction materials and plants to be allowed in road reserve area.
19. 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 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.*
20. The building shall be constructed in accordance with AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction, the details of which must be prepared by a practicing professional acoustical consultant. The report shall be submitted to Principal certifying authority prior to the release of the Construction Certificate and the building plans endorsed with the required acoustical measures.

The measures required shall be undertaken in accordance with the provisions of AS 2021 – 2000: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021 – 2000 shall be incorporated into the construction of the building.

The work detailed in the report includes:

- a) Appropriate acoustic glazing to stated windows and doors;
- b) Detailed roof and ceiling construction;
- c) Wall and ceiling corner details;
- d) External door specification; and
- e) Acoustically treated mechanical ventilation.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK (INCLUDING DEMOLITION)

21. The demolisher shall lodge with Council, and at least forty-eight (48) hours prior to the commencement of work:-
 - a) Written notice, indicating the date when demolition of the building is to commence;
 - b) This persons full name and address;
 - c) Details of Public Liability Insurance.

22. Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
23. The upper noise level from the demolition operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).
24. If any material containing asbestos is found on site during the demolition process the material is to be removed and disposed of in accordance with Work Cover requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
25. The operation shall not give rise to offensive odour or other air impurities in contravention of the *Protection of the Environment Operations Act 1997*. The Principle contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
 - a) Covering excavated areas and stockpiles;
 - b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas;
 - c) Maintenance of equipment and plant to minimise vehicle exhaust emissions;
 - d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources;
 - e) All loads entering or leaving the site are to be covered;
 - f) The use of water sprays to maintain dust suppression; and
 - g) Keeping excavated surfaces moist.
26. Prior to the commencement of any demolition works:
 - a) The applicant shall submit to Council a full photographic survey showing the existing conditions of Council's infrastructure. The survey shall identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and in the vicinity of the development. Failure to do so will result in the applicant 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; and
 - b) The applicant must supply the Consent Authority with a Dilapidation Report for the adjoining properties, which documents and photographs the condition of buildings and improvements. The report is to clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, water supply, sewer works, street trees, street signs or any other Council assets in the vicinity of the development. The report must be submitted to the Consent Authority prior to issue of a Construction Certificate and will be made available by the Consent Authority in any private dispute between the neighbours regarding damage arising from site and construction works.

27. 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 persons 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.
28. Prior to the commencement of 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.
29. 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.
30. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.
31. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
32. If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.
33. Erosion and sediment control devices shall be installed prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) 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 device 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.

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

(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, footpath, kerb and gutter over road reserve;
- e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever;
- 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.

DURING WORKS

35. 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.

36. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".

37. Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
38. Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover 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 WorkCover NSW.

The statement must be in compliance with AS2601:1991 – ‘Demolition of Structures’, the requirements of WorkCover 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.
39. 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.
40. Hazardous or Special Wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment, Climate Change and Water and with the provisions of the:
- a) Occupational Health and Safety Act, 2000;
 - b) Occupational Health and Safety Regulation 2001;
 - c) Protection Of the Environment Operations Act 1997 (NSW); and
 - d) NSW Department of Environment and Climate Change Waste Classification Guidelines (2008).
41. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
- a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m2 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; and
 - e) No demolition materials shall be burnt or buried on the site.
42. 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;
43. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
44. No demolition materials shall be burnt or buried on the site.
- 45.
- a) To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -

- i) 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.
 - ii) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -
 - 1 The additional load on the system; and
 - 2 The relocation and/or adjustment of the services affected by the construction.
 - b) 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.
- 46. Should the demolition process require a building waste container(s) (builders' skip), then such container must not be placed or left upon the public road, footpath, reserve or the like without the prior approval of the Council. The use of any part of Council's road reserve must also have prior approval of Council.
- 47. 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.
- 48. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
- 49. 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.
- 50.
 - a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property;
 - b) 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 construction shall not undermine, endanger or destabilise any adjacent structures.
 - c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - i) Protect and support the adjoining premises from possible damage from the excavation, and
 - ii) Where necessary, underpin the adjoining premises to prevent any such damage.

51. The following shall be complied with during construction and demolition:

a) Construction Noise

Noise from 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.

b) Level Restrictions

i) Construction 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 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 08:00am to 01:00pm

iii) No Construction to take place on Sundays or Public Holidays.

d) Silencing

All possible steps should be taken to silence construction site equipment.

52. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.

53.

- a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion; and,
- b) In addition, concrete trucks and any other trucks that used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. 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 enter Council's land.
- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or

other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.

- 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.
 - e) Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
54. 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 construction. The area fronting the site and in the vicinity of the development shall also be 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.
55. 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.
56. 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;
 - e) Final inspection of Council's kerb and gutter;
 - f) Final inspection of Council's footpath.

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

57.

- a) A 1% grade towards the pool to prevent surface water overflowing into the adjoining properties;
- b) Where a dividing fence, being a dividing fence that separates the lands of adjoining owners or a public place, is to form part of the safety enclosure in which the swimming pool is to be located, then such fencing must be a minimum of 1.8m in height from the finished surface level surrounding the pool, sound and in a state

of good repair and condition. The boundary fencing shall be installed prior to the completion of the swimming pool;

- c) The swimming pool shall be fenced in accordance with Section 7 of the Swimming Pools Act 1992 and Australian Standard AS1926 (2012), prior to the filling of water in the pool or use of the pool. Such fence shall be provided with a self-latching and self-closing gate, opening outwards, capable of being opened from the poolside only and with provision for permanent locking when not in use. The fence shall be installed to the satisfaction of the Principal Certifying Authority, prior to the filling of water in the pool/use of the pool;
- d) The fence required surrounding the swimming pool and in relation to any gate that forms part of such fence shall be erected in accordance with the approved plans and specifications, together with the standards set out in AS1926 entitled "Fences and Gates for Private Swimming Pools";
- e) The pool shall be provided with at least two depth markers above the water line, being of numerical figures or at least 75mm in height, and shall be located in two locations on either side of the pool, indicating the corresponding depth of the pool;
- f) The Principal Certifying Authority shall confirm that a pool cover is installed across the entirety of the swimming pools to minimise evaporation;
- g) The provision of a suitable poster showing the details of resuscitation techniques shall be erected. This poster should also contain the advice that "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in accordance with the relevant provisions of the document entitled "Cardio Pulmonary Resuscitation", according to the AS 1926.1 2012 and the Swimming Pool Regulation 2008;
- h) An approved resuscitation poster, outlining life-saving resuscitation procedures, shall be erected and displayed in a prominent position adjacent to the pool;

Note: The above notices shall be kept in a legible condition and at a visible location on the pool side at all times;

Note: The definition of "swimming pool" is that given under Clause 3 of the Swimming Pools Act 1992.

- 58. Prior to issue of any Occupation Certificate, Principal Certifying Authority shall confirm that all the safety barriers enclosing the new swimming pool are installed and satisfy AS1926.1 Swimming Pool Safety – Safety Barriers for Swimming Pools.
- 59. Prior to use or operation of the swimming pool, any infiltration equipment or pump(s) shall be enclosed with appropriate sound insulation materials to ensure noise levels do not exceed 5dBA above the ambient background noise level when measured at the side and rear boundaries of the property
- 60. 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.
- 61. Prior to release of the Occupation Certificate the developer must submit to the Principal Certification Authority an acoustic report to verify that the measures stated in the

required acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).

62. Prior to the issue of an 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 accepted practice.
63. 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.
64. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
 - a) On Middlemiss Street, adjacent to development, reconstruct the existing footpath for the full length of the proposed new properties in accordance with Council Infrastructure Specifications; and
 - b) On Middlemiss Street, adjacent to development, reconstruct the existing kerb and gutter for the full length of the proposed new properties in accordance with Council Infrastructure Specifications.
65. 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.
66. Prior to the issue of the Occupation Certificate, a Positive Covenant and Restriction on the Use of Land on the Title under Section 88B of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the on-site detention system, in relation to the building footprint, shall be shown on a scale sketch and attached as an annexure to the plans/ forms.
67. Prior to the issue of any Occupation Certificate(s), 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 Infiltration System. Refer to Appendix A of the Stormwater Management Technical Guidelines for suggested wording.
68. Prior to the issue of Occupation Certificate, maintenance schedule of the on-site detention system shall be prepared by a qualified engineer and included in the Positive Covenant of the 88B Instrument, as a cross-reference or appendix.

69. The Council nature strip in Middlemiss Street shall be repaired and/or replaced and maintained in accordance with Council Specification at the completion of all construction work at the Applicant's expense.
70. Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.

CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE

71. 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.
72. The building is approved as a single dwelling on each site 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.
73. 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.
74. All intruder alarms shall be fitted with a timing device in accordance with the requirements of *Regulation 12A of the Noise Control Act, 1975*, and *AS2201, Parts 1 and 2 - 1978 Intruder alarm systems*.
75.
 - a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
 - b) Noise from any air-conditioning units (measured as the $L_{aeq\ 15\ minute}$) is not to exceed the background level (measured as the $L_{a90\ 15\ minute}$) by more than 5dBA at any time. The measurement is to be taken at boundary of the property. If the noise from the air conditioner contains any annoying characteristics, the measurements are to be corrected in accordance with the New South Wales Industrial Noise Policy. In addition noise from any air conditioning units are not to be audible within habitable room of other residence before 7am or after 10pm (Monday to Friday) or before 8am or after 10pm (Sat/Sun/Public Holidays).

Note: In order to meet this condition, the compressors and any other noise generating part of the air conditioning unit, are to be located a sufficient distance from any residential boundary to permit the sound from the unit to decay sufficiently to meet the standard, or enclosed in a suitable acoustic enclosure.



20th June 2017

Attn: Lincoln Lawler
Bayside Council

SUPPLEMENTARY STATEMENT OF ENVIRONMENTAL EFFECTS
79 Middlemiss Street, Mascot – DA-2017/1023

ABC Planning has been engaged to prepare this supplementary Statement of Environmental Effects in response to Council's preliminary assessment and request for additional information regarding the development application for 79 Middlemiss Street, Mascot (DA-2017/1023).

This letter, in conjunction with the amended plans prepared by Pinnacle Plus dated 20th June 2017, provides an update of the revised proposal.

The primary amendments to the development include:

- Introduction of internal courtyard at the common boundary of both dwellings
- Reduction in size of master bedroom so that they are setback from side boundaries
- Overall significant reduction in FSR from 0.86:1 to 0.67:1

The following sections respond to each of the issues raised in Council's email dated 4th June 2017.

1. Subdivision Pattern

The subject site comprises a total site area of 390.04m² and it is considered that the proposed subdivision of the site into 2 lots is suitable for the area of the site, creating two individual lots of 195.02m². These lot sizes allow for an orderly use of the site as displayed by the high level of design and amenity for both dwellings whilst also having no adverse or unreasonable external impacts

The proposed subdivision is also consistent with the subdivision pattern of a number of lots in the vicinity of the site as shown on the subdivision map and table below:



Figure 1: Lot size map

Site Address	Site Area (m ²)	Frontage (m)
Subject Site		
79 a Middlemiss Street	195	6.1m
79b Middlemiss Street	195	6.1m
43 Middlemiss Street	197	6.2
45 Middlemiss Street	194	6.1m
49 Middlemiss Street	191	6m
49B Middlemiss Street	196	6m
51 Middlemiss Street	203	6m
51 Wellington Street	197	5.9m
53 Wellington Street	193	6.3m
75 Wellington Street	196	6m
77 Wellington Street	196	6.2m
87 Wellington Street	194	6m
89 Wellington Street	199	6.1m
38 Napoleon Street	217	6.8m
40 Napoleon Street	173	5.3m
74 Napoleon Street	202	6.3m
76 Napoleon Street	197	6.1m
77 Napoleon Street	189	6.2m
79 Napoleon Street	198	6.2m

The subdivision map above demonstrates that the proposed subdivision pattern is characteristic of the locality.

Furthermore, there are a number of examples of existing semi-detached development on Middlemiss Street including, further confirming that the proposal will be compatible with existing development along Middlemiss Street:

- 18 Middlemiss Street
- 20 Middlemiss Street
- 22 Middlemiss Street
- 24 Middlemiss Street
- 71 Middlemiss Street
- 73 Middlemiss Street





It is also considered that the proposal achieves the aims of the subdivision controls within the Botany Bay DCP 2012 as it provides for a development which is compliant with Council's controls for semi-detached dwellings. In this regard, the proposal complies with or outperforms key controls which contribute to the neighbourhood character, including overall height, site coverage, private open space, landscaped area and general compliance with front, side and rear setbacks.

2. Floor Space Ratio

It is acknowledged that the subject site is located within the R2 Low Density Residential zone.

In accordance with Botany LEP 2012, the subject site is located in Area 3 on the FSR map and therefore Clause 4.4a of the LEP applies to the subject proposal. In this regard, the proposed semi-detached dwellings (being a residential accommodation type other than a dwelling house) are each afforded an FSR of 0.5:1.

The proposed semi-detached dwelling development has been amended to reduce the FSR from 0.86:1 for each dwelling to 0.67:1. While the proposal still exceeds the allowable FSR by 0.17:1, it is considered that this variation is reasonable and appropriate in the circumstances for the following reasons:

- The proposed dwellings are compatible with the bulk and scale of adjoining properties
- If proposed as detached single dwellings, an FSR of 0.85:1 would be permitted, which the proposed floor space is well below
- The proposed height of the development is below the permissible 9m height limit
- The dwellings achieve a high level of internal amenity whilst retaining reasonable amenity to the adjoining properties in regard to solar access and privacy

- There are numerous examples in the area where Council have approved semi-detached dwellings with an FSR over the 0.5:1 standard, the most recent being at 40 Rawson Street, Mascot where 0.76:1 was approved

A Clause 4.6 variation to the LEP development standard is contained within Appendix 1 attached to this report which provides a comprehensive justification for the departure from the BBLEP FSR control.

3. Solar Access

Elevation shadow diagrams have been provided with the amended plan set.

The shadow diagrams demonstrate that the adjoining properties to the north and south will continue to receive 3 hours solar access to their primary living and private open space areas on June 21st.

The southern adjoining neighbour has no primary openings on its northern elevation and will retain solar access through the front primary openings

4. Streetscape

The proposal has been amended to provide side setbacks on the first floor at the front of the dwelling. This improves the streetscape outcome as it provides for more articulation and reduces the visual impact of the proposal.

It is considered that visual outcome of the subject proposal is compatible with the adjoining properties as demonstrated on the streetscape elevation below:



Figure 2: Proposed streetscape elevation

5. Swimming Pool

As shown on the accompanying Section A (A05-001), the maximum depth of the proposed swimming pools is 1.8m. It is therefore considered that the proposed works do not fall under Integrated Development.

It is considered that the amended plans and supporting documentation have comprehensively responded to the issues raised by Council.

APPENDIX 1

CLAUSE 4.6 TO CLAUSE 4.4 OF BOTANY LEP 2012 EXCEPTIONS TO DEVELOPMENT STANDARDS - **FSR VARIATION**

*Demolition of existing dwelling and erection of two semi-detached dwellings with Torrens title
subdivision*

79 MIDDLEMISS STREET, MASCOT

**SUBMITTED TO
BAYSIDE COUNCIL**

**PREPARED BY
ABC PLANNING PTY LTD**

JUNE 2017

BOTANY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 submission has been prepared to accompany the development application for the demolition of the existing dwelling and the erection of a semi-detached development at 79 Middlemiss Street, Mascot.

The proposal seeks a variation to the development standard contained within clause 4.4a of the *Botany LEP 2013* - maximum FSR of 0:5:1.

The proposed FSR of 0.76:1 for each lot represents a variation of 0.26:1 from the numerical FSR standard in the LEP.

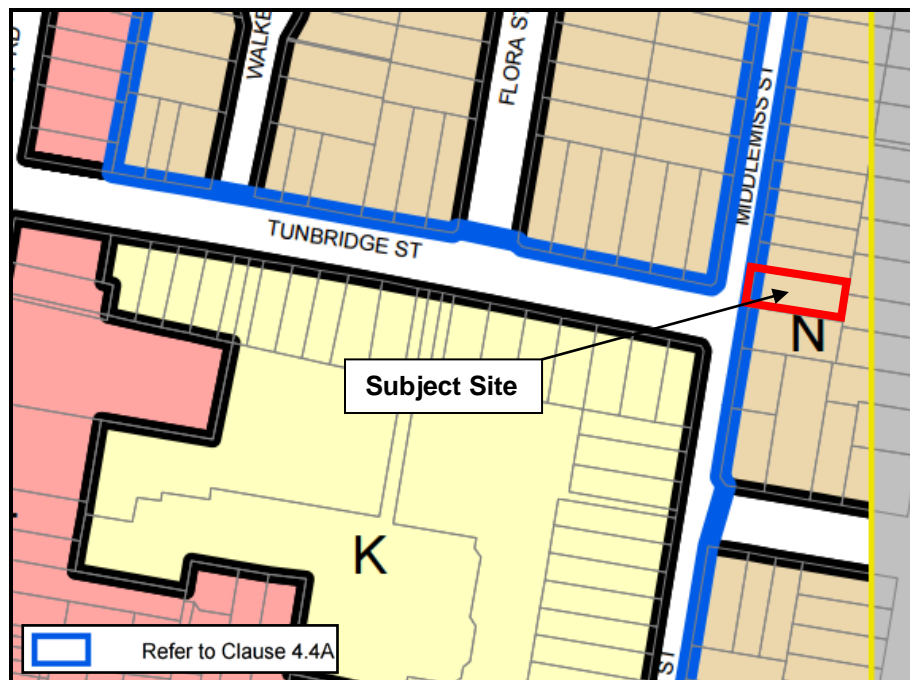


Figure 3: FSR Map

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.

It is considered that the development standard for FSR on the site is **unreasonable and unnecessary** for the following reasons:

- The visual bulk of the proposal will be compatible with the height, bulk and scale of nearby adjoining dwellings to the north and south.
- If proposed as two detached single dwellings, an FSR of 0.85:1 would be permitted, which the proposed dwellings are well below
- The proposed height is well below the 9m height limit for the subject site.
- The dwellings achieve a high level of internal amenity whilst retaining reasonable amenity to the adjoining properties in regard to solar access and privacy
- The façade presentation is highly articulated with the first floor recessed in from the side boundaries, softening the visual outcome of the proposal.
- The proposal is setback further from the Middlemiss Street frontage than the dwellings to the north and south, further reducing visual impacts of the proposal.
- As shown on the accompanying shadow diagrams, the additional FSR is able to be accommodated on the site whilst retaining solar access to the southern adjoining neighbour to a greater degree than anticipated by the DCP controls (i.e. more than 2 hours solar access retained to their primary living area windows and 50% of their primary private open space area)
- Compliance with site coverage, landscaped area and deep soil planting, combined with the provision of a built form which is compatible with neighbouring properties demonstrates that the proposed bulk and scale (and associated FSR) is suitable for the subject site.
- Furthermore, Council has approved semi-detached dwellings with an FSR above that proposed in the vicinity of the subject site, with the most recent approval being at 40 Rawson Street, Mascot where 0.76:1 was approved (DA-2016.119)

The above factors demonstrate that the LEP FSR standard is unreasonable and unnecessary in this circumstance.

The following assessment addresses each of the relevant criteria under Clause 4.6:

1. Consistency with the objectives of the FSR standard in the LEP

Clause 4.4 FSR:

1. *The objectives of this clause are as follows:*

- a. to establish standards for the maximum development density and intensity of land use,*

Assessment: As previously stated, the proposed development is contained within a compliant building envelope as informed by the LEP height limit and various DCP controls, including the site coverage, setbacks, private open space and landscaped areas.

Given that the proposal complies with, and outperforms, the LEP height and applicable DCP controls that inform the siting, bulk and scale of the built form, it is considered that the proposed FSR is contained within a built form that is reasonable whilst also being consistent with adjoining built forms on Middlemiss Street.

This is further confirmation that the proposal retains the low density residential nature of the area and compatibility with the built form of the surrounding area. As such, the proposed development retains the intended density and intensity of the land use, as established by the various DCP controls.

Therefore, given that there are no unreasonable impacts that arise from the increased floor space ratio, there are no tangible benefits that would arise by the deletion of the additional floor space.

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

Assessment: The proposed semi-detached development is well below the 9m height limit and is consistent with the front setbacks of the adjoining dwellings. The proposed bulk and scale is also consistent with adjoining neighbouring dwellings to the north and south.

As such, it is considered that the proposed bulk and scale is compatible with the 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,*

Assessment: The proposed development is considered to maintain an appropriate visual relationship between new development and the existing character of the area.

It is considered that some of the surrounding area is undergoing transition, with the replacement of a number of outdated dwelling houses with modern contemporary dwellings.

This is particularly evident to the north of the subject site at 49 Middlemiss Street where 3 x 2-storey dwellings have been recently constructed on one lot that has been subdivided into 3 lots.

Another site at 40 Rawson Street, Mascot, north-west of the subject site has recently gained approval for a similar semi-detached development with an FSR of 0.7:1.

The proposal is considered to contribute to the transitioning nature of the locality whilst being of a built form that remains compatible with the existing character of the area.

This further confirms that the proposed development maintains an appropriate visual relationship between existing and new developments within the area.

- 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: The proposed development is not considered to adversely affect the streetscape, skyline or landscape when viewed from Middlemiss Street or Tunbridge Street to the west. This is demonstrated by a proposed height that is well below the LEP height limit and the compatible nature of the proposed development with adjoining properties.

The proposed development will not be visible from any other adjoining roads, parks or public spaces.

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

Assessment: The proposed development is appropriately sited on the subject site to ensure that there are no adverse environmental effects on the residential use of the adjoining properties.

Compliant side and rear setbacks ensure that there will be no unreasonable or adverse overlooking impacts to neighbouring properties, whilst maintaining a degree of casual surveillance.

The limitation in size and number of side facing windows and the restriction of primary living areas to the ground floor ensures that there are no adverse acoustic or visual privacy impacts as a result of the proposed development.

It is considered that the proposed FSR will allow for appropriate solar access to the primary living and outdoor areas of the southern adjoining neighbour.

It is therefore demonstrated that there are no adverse environmental effects on the use or enjoyment of adjoining properties associated with the additional floor space.

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

Assessment: The proposed size and scale of the development is considered to be reasonable and appropriate for the site given that the proposed development remains

compatible with the bulk and scale of adjoining developments, whilst also being contained within a compliant building envelope, as dictated by the height, site coverage, setbacks and landscaped open space.

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

Assessment: The replacement of an outdated and unkempt dwelling house with 2 high-quality and contemporary semi-detached dwellings, with each containing 4 bedrooms, is considered to contribute to the economic growth of Botany Bay.

2. 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 FSR variation does not raise any inconsistency with the R2 Low Density Residential zone objectives. The additional FSR is associated with a built form which is compatible with the height, bulk and scale of dwellings in the vicinity of the site.

The provision of 2 high quality homes meets the objectives of the zone by providing for the housing needs of the community. The subject site is located 270m from bus stops on Botany Road servicing regular bus routes as well as restaurants, cafes and shops along Botany Road which would encourage walking and cycling.

Therefore the proposed development achieves the objectives of the zone.

3. Consistency with State and Regional planning policies

Assessment: The proposed variation to the FSR does not raise any inconsistencies with State or Regional planning policies.

The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*. The proposed FSR allows for achievement of the building envelope/density without creating a development with overbearing bulk and scale and without compromising the desired future character of the area. The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional densities near transport and established services.

4. The variation allows for a better planning outcome

Assessment: The variation to the FSR standard allows for a better planning outcome as it facilitates the provision of two high quality dwellings on individual allotments that meet the housing needs of the community within a low density residential setting.

It is considered that the provision of additional floor space allows for a greater degree of high quality residential accommodation in a compliant form of development (as established by the compliant height, site coverage, landscaping and private open space and thus the desired building envelope).

It is reiterated that should two single dwellings be proposed for the subject site, an FSR of 0.85:1 would apply to each lot, and the proposal of 0.67:1 is well below the amount of floor space that could potentially be accommodated on the subject site.

Furthermore, it is considered that the proposed FSR is associated with a more appropriate building density than if it were associated with a compliant FSR, given that the variation supports the provision of 2 high quality homes, each with 4 bedrooms and 3 bathrooms which results in a desirable form of development, that is highly sought after in this location.

It is therefore considered that that strict compliance with the standard is unreasonable and unnecessary in the particular circumstances of the case.

5. There are sufficient environmental grounds to permit the variation

Assessment: Outperformance of the key amenity indicators within the DCP in relation to solar access, overshadowing and privacy demonstrate that there are sufficient environmental grounds to permit the variation.

Furthermore, compliance with the LEP height limit for the site ensures that the proposal is not responsible for any view loss impacts.

Visual bulk impacts have been minimised by recessing the first floor from the side boundaries as well as by providing articulation in the form of modulation to the façade.

The proposal is also compliant with the site coverage, landscaped open space and deep soil planting provisions of the DCP.

It is therefore considered that there are sufficient environmental grounds to permit the FSR variation.

6. The variation is in the public interest

Assessment: The above justification demonstrates that the proposed FSR satisfies the objectives of the standard and the zone and therefore confirms that the proposed FSR is in the public interest.

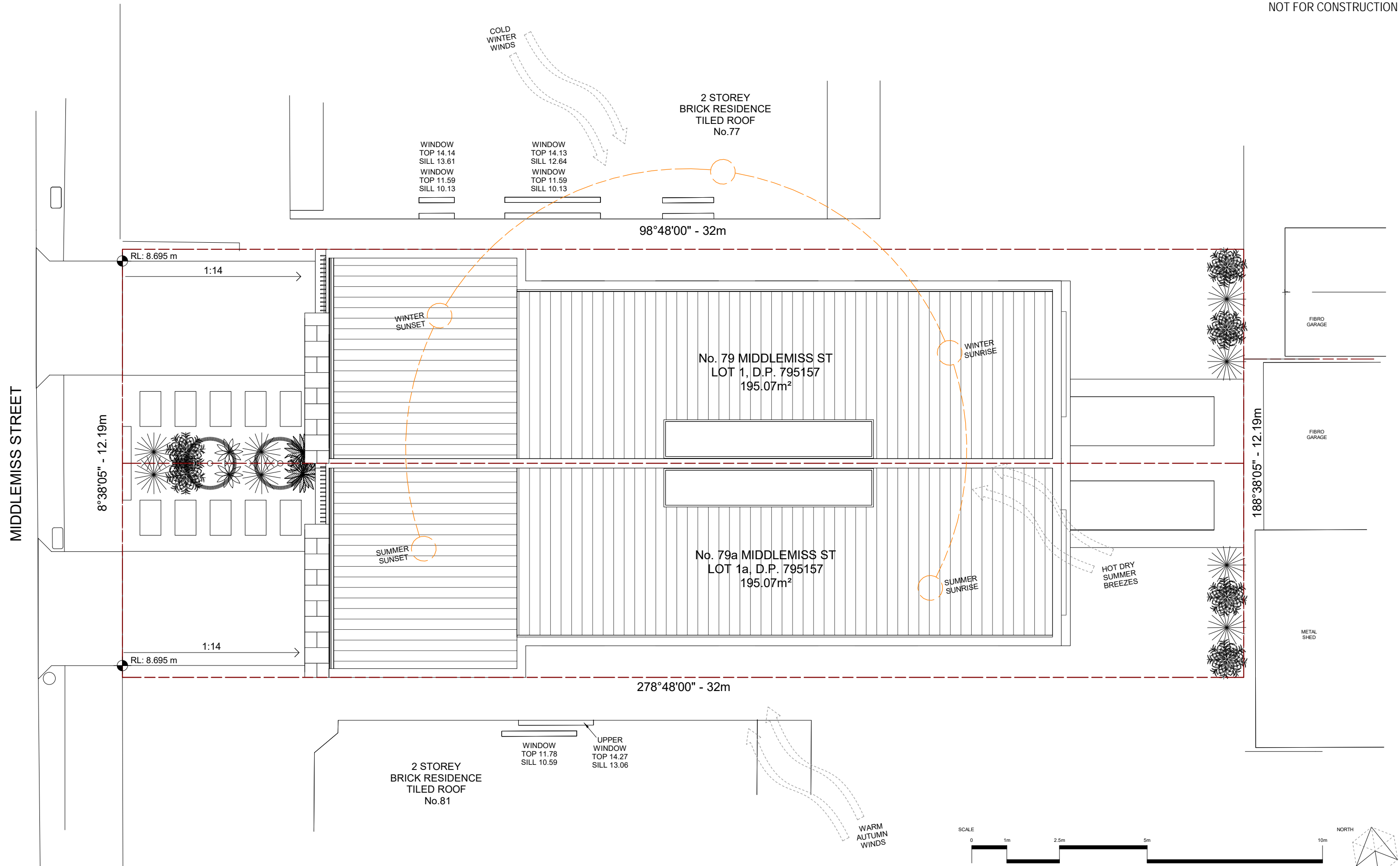
Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

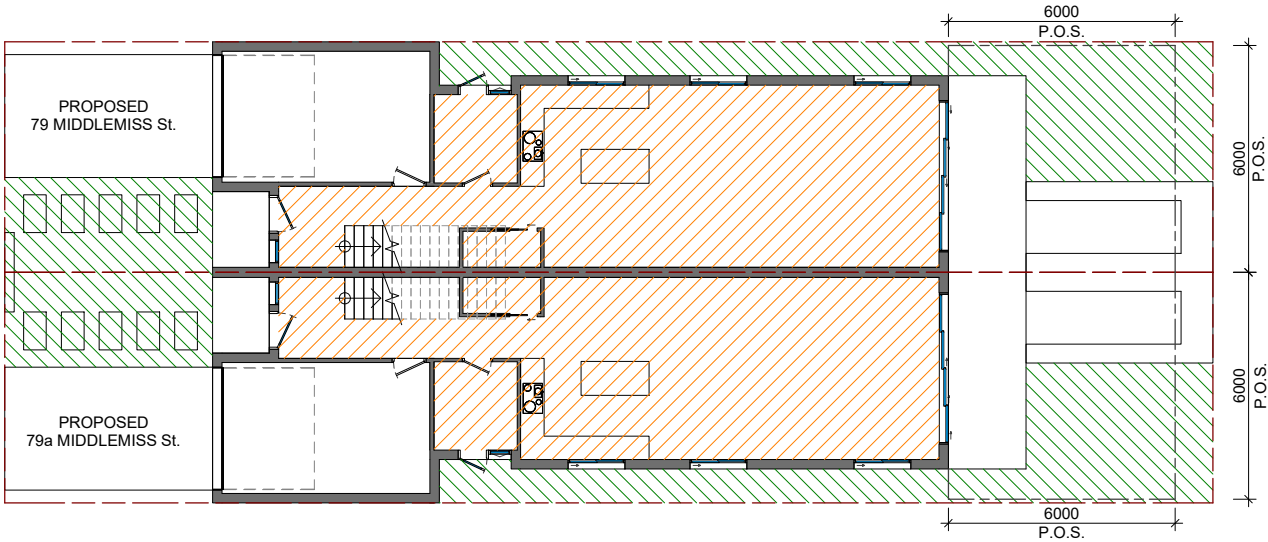
It is also noted that there is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

Conclusion

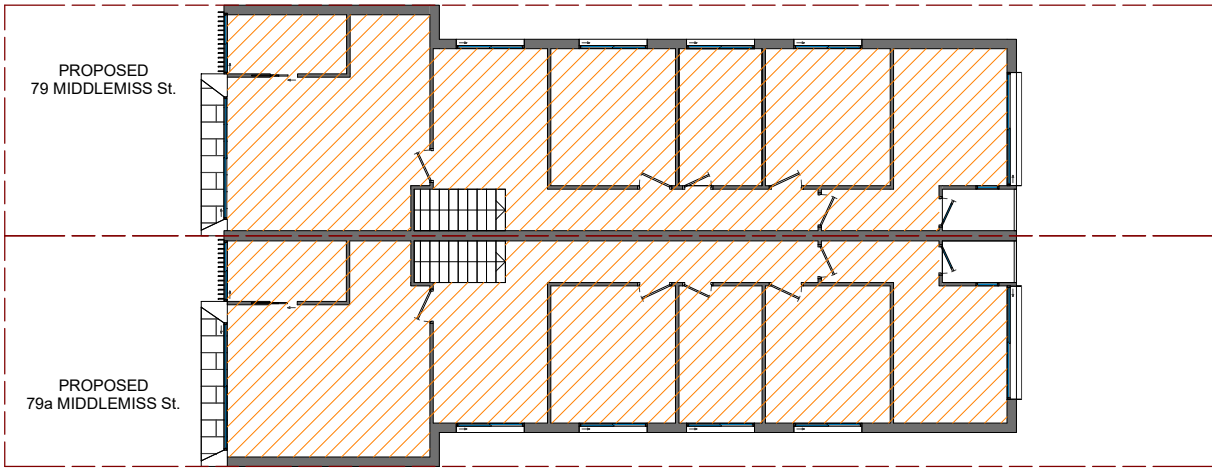
For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the development proposal at 79 Middlemiss Street, Mascot and is requested to be looked upon favourably by Council.



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	ADDRESS 79 MIDDLEMISS STREET MASCOT, 2020 LOT 1, D.P. 795157	CLIENT NAME 79 MIDDLEMISS ST PTY LTD	TITLE SITE & ANALYSIS SITE ANALYSIS			#	Date	Description	
		PROJECT NUMBER 1610-MID				1	06.02.17	ISSUED FOR DA	
					SCALE @ A3 1 : 100				



1 GROUND FLOOR
-- 1 : 200

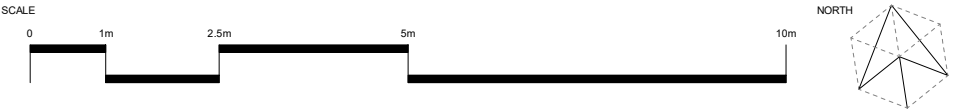
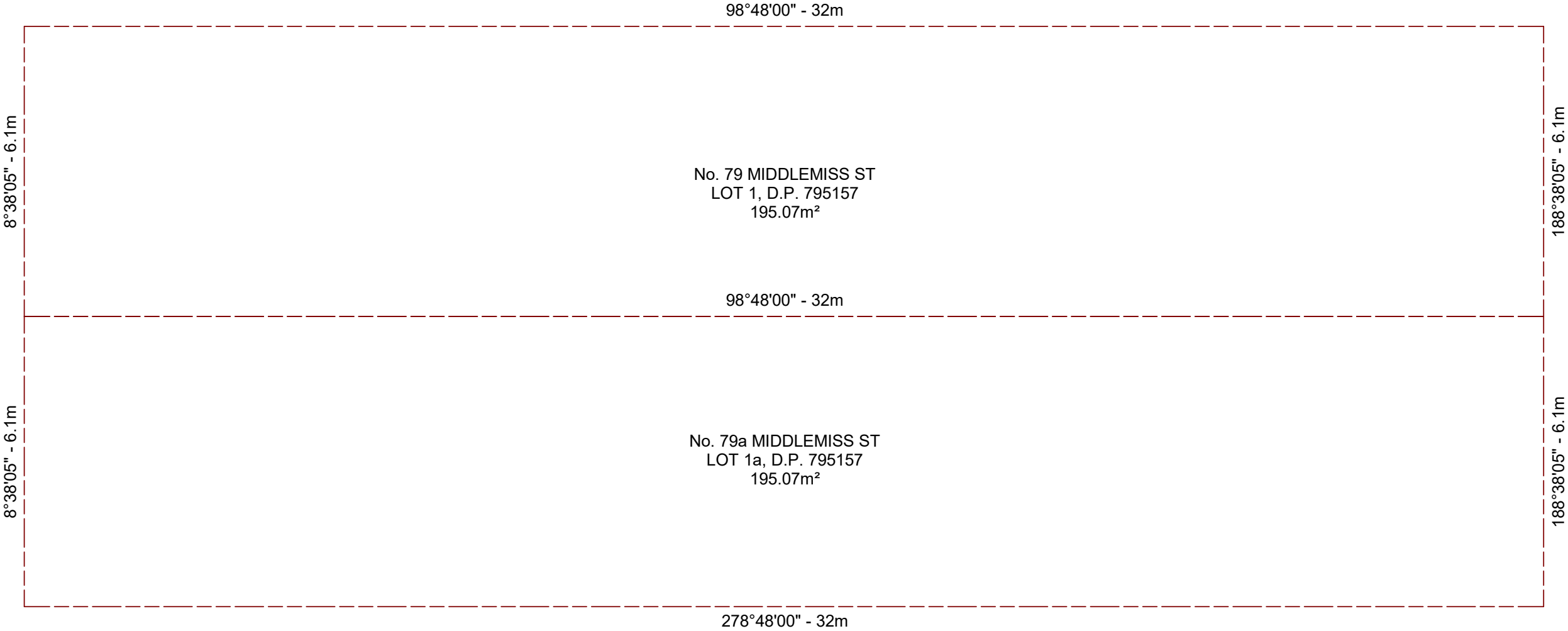


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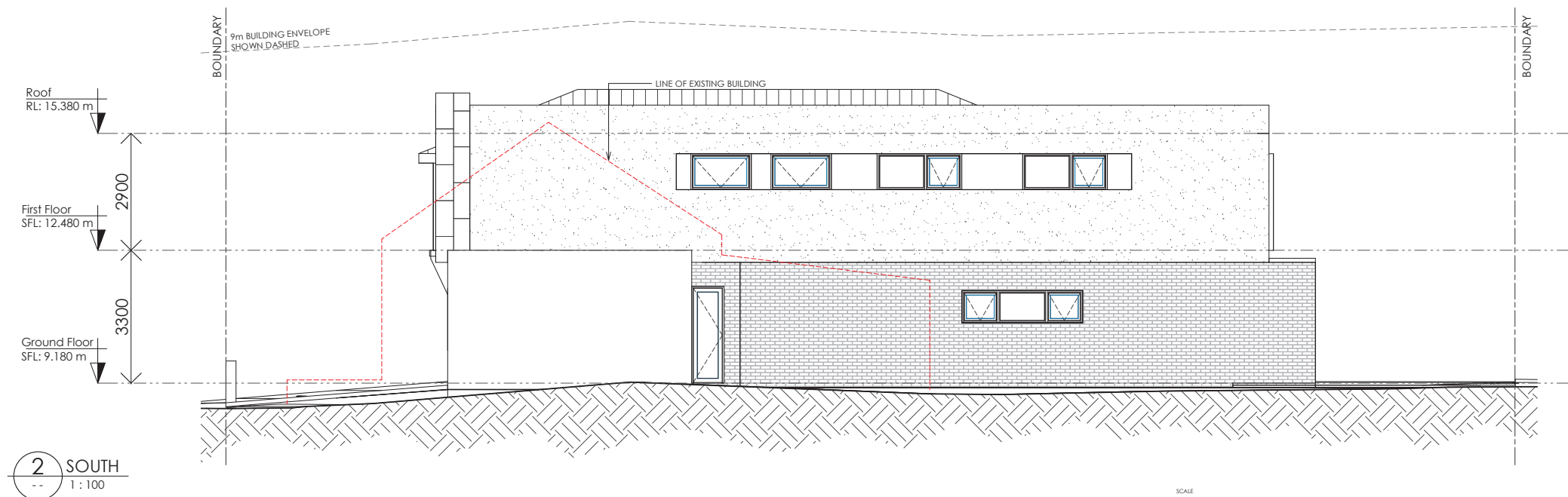
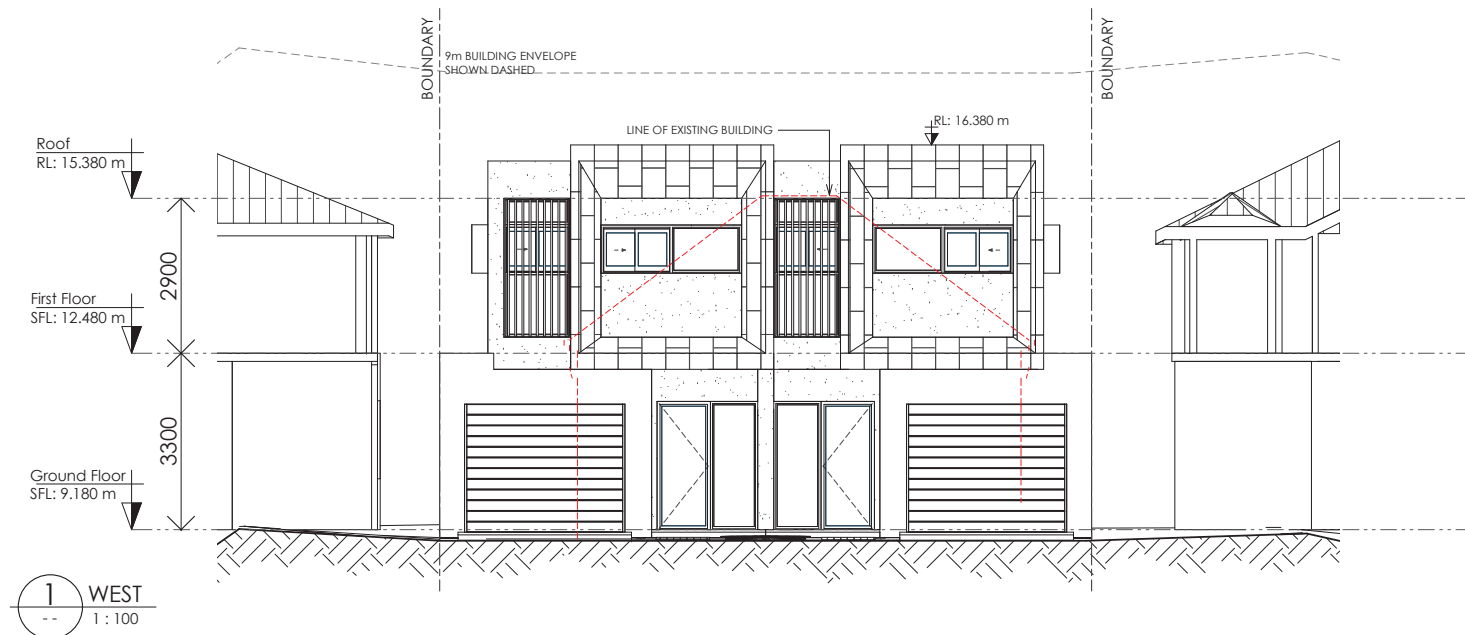
COMPLIANCE TABLE

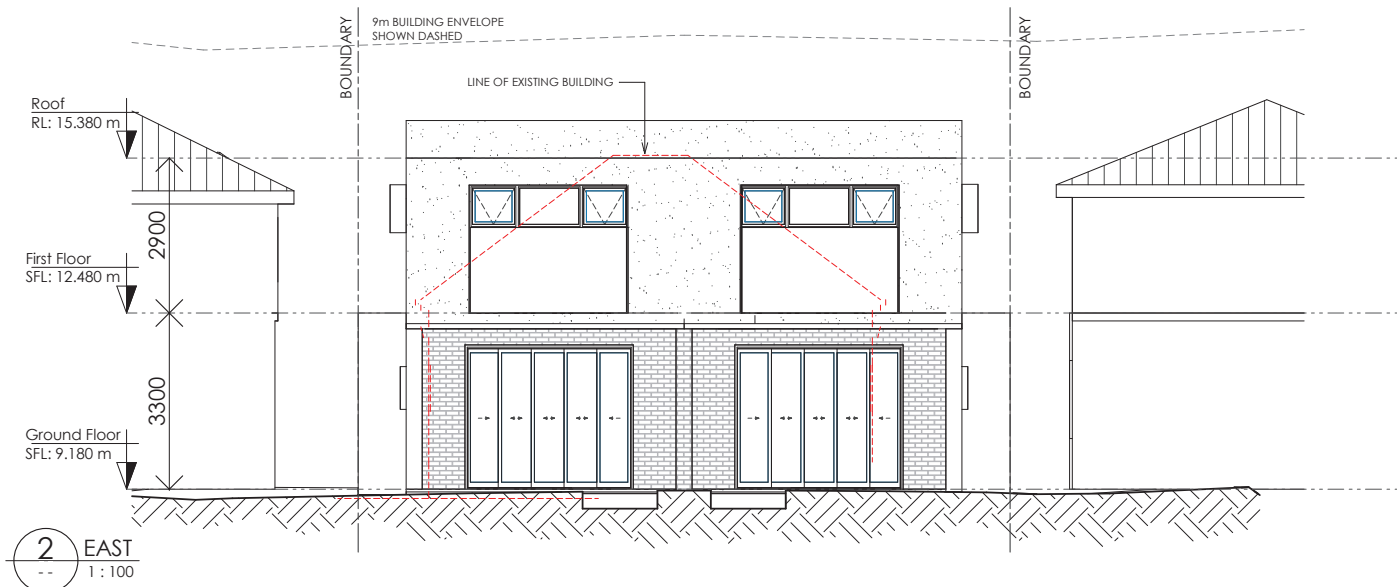
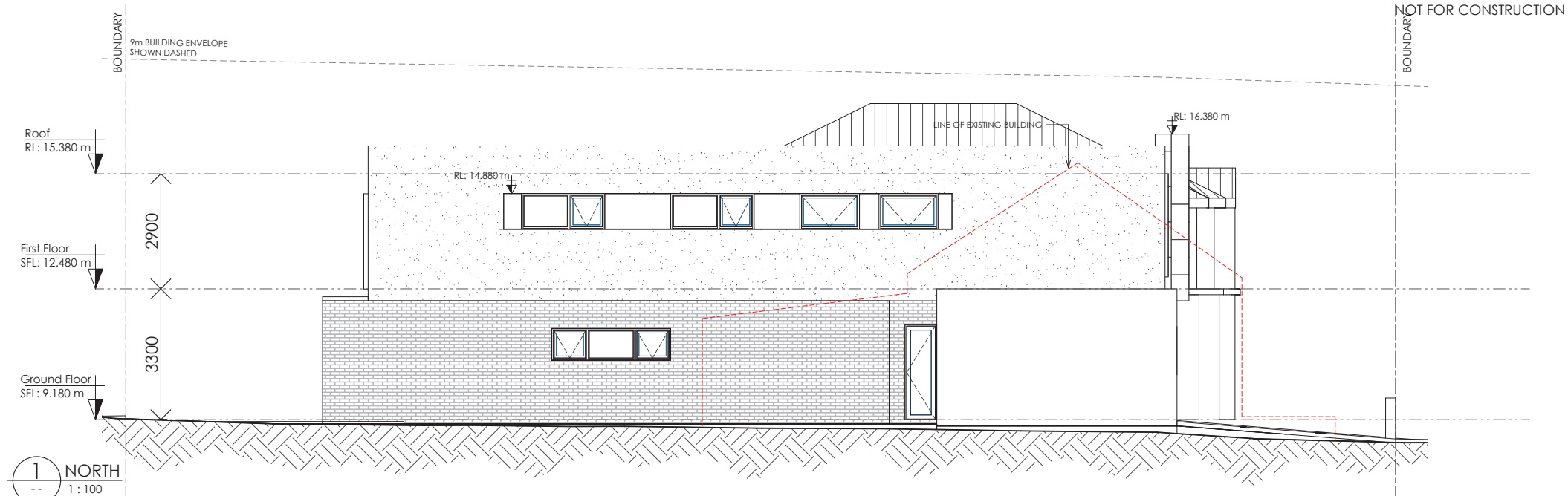
LOT 1, DP 795157 79 MIDDLEMISS St, MASCOT ZONING: R2		
SITE AREA: 195.02m ²	CONTROL	PROPOSED
FSR:	< 0.5:1 (GFA 97.51m ²)	0.83:1 (GFA 161.32m ²)
HEIGHT:	< 9m	< 9m
SITE COVERAGE:	MERIT ASSESSED	116.85m ² (59.92%)
DEEP SOIL:	> 29.25m ² (> 15%)	46.55m ² (23.87%)
P.O.S:	> 25m ²	> 6 x 6m ²

LOT 1a, DP 795157 79a MIDDLEMISS St, MASCOT ZONING: R2		
SITE AREA: 195.02m ²	CONTROL	PROPOSED
FSR:	< 0.5:1 (GFA 97.51m ²)	0.83:1 (GFA 161.32m ²)
HEIGHT:	< 9m	< 9m
SITE COVERAGE:	MERIT ASSESSED	116.85m ² (59.92%)
DEEP SOIL:	> 29.25m ² (> 15%)	46.55m ² (23.87%)
P.O.S:	> 25m ²	> 6 x 6m ²



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	79 MIDDLEMISS STREET MASCOT, 2020 LOT 1, D.P. 795157	79 MIDDLEMISS ST PTY LTD	SITE & ANALYSIS SUBDIVISION PLAN	PP	#	Date	Description	A04-201	1
		PROJECT NUMBER		1	06.02.17	ISSUED FOR DA			
		1610-MID							






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	#	Date	By	Description																			
1	04.02.17	JT	ISSUED FOR DA																				
2	20.06.17	JC	LAYOUT REVISED																				
3	10.11.17	JK	REV																				
MASCOT, 2020	PROJECT NUMBER	NORTH & EAST	SCALE # A3																				
LOT 1, D.P. 795157	1610-MID		1 : 100																				



LEGEND & SCHEDULE


NOTES:
1. ALL FINAL PLANT QUANTITIES INDICATED ON PLANS SHALL BE CHECKED AND VERIFIED BY SUCCESSFUL LANDSCAPE CONTRACTOR.
2. ANY PLANT SUBSTITUTES REQUIRED DUE TO UNAVAILABILITY SHALL BE RECOMMENDED BY THE LANDSCAPE CONTRACTOR TO BEST MATCH SUBSTITUTED PLANTS AND APPROVED PRIOR TO PURCHASING BY THE LANDSCAPE ARCHITECT.
3. WORKS CERTIFIED FOR FINAL OCCUPANCY CERTIFICATE ARE TO MATCH APPROVED LANDSCAPE PLANS.
4. LANDSCAPE CONTRACTOR SHALL LOCATE AND AVOID SITE STORM WATER & DRAINAGE SERVICES. LOCATE TREES A MINIMUM 1.25M FROM PITS
5. ALL PLANTING AROUND EXISTING TREES SHALL BE ADJUSTED TO AVOID DAMAGE AND CLASHING WITH SURFACE ROOTS


TREES


**Botanical Name:** *Waterhouseia 'Sweeper'*
Common Name: Weeping Myrtle (Native)
Pot size: 45Lt
Mature H x S: 6-8m x 3-4m
Qty Required: 2

**Botanical Name:** *Michelia figo*
Common Name: Port Wine Magnolia (Native)
Pot size: 45Lt
Mature H x S: 3m x 2m
Qty Required: 2


SHRUBS AND HEDGES


**Botanical Name:** *Syzygium 'Cascade'*
Common Name: Cascade Lilly Pilly (Native)
Pot size: 200mm
Mature H x S: 2.5m x 1.8m
Qty Required: 10


**Botanical Name:** *Callistemon citrinus 'Endeavour'*
Common Name: Endeavour Bottlebrush (Native)
Pot size: 200mm
Mature H x S: 3m x 2m
Qty Required: 6

**Botanical Name:** *Westringia fruticosa*
Common Name: Native Rosemary (Native)
Pot size: 300mm
Mature H x S: 1.3m x 1.1m
Qty Required: 10








GRASSES / GROUNDCOVERS

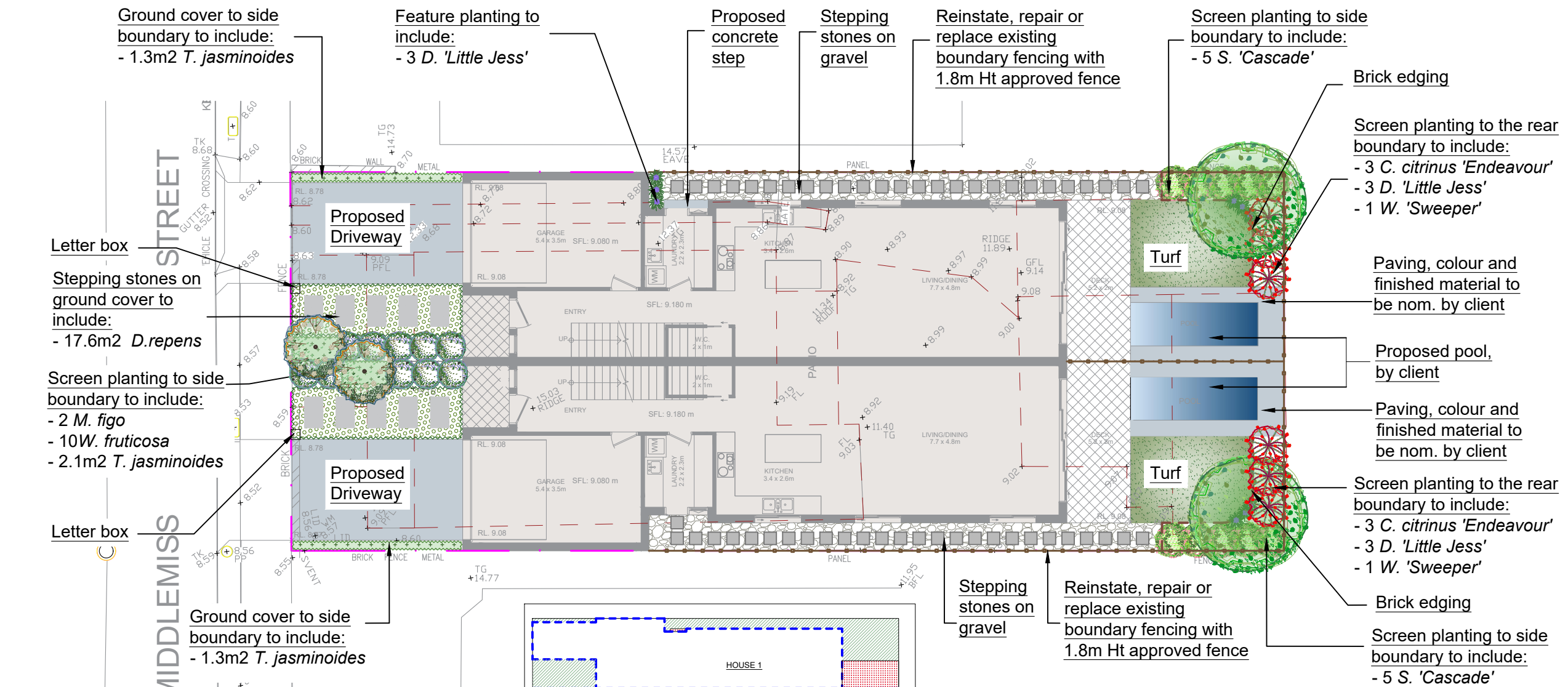
**Botanical Name:** *Dianella 'Little Jess'*
Common Name: Little Jess Flax Lily (Native)
Pot size: 140mm
Mature H x S: 0.4m x 0.4m
Qty Required: 9

**Botanical Name:** *Dichondra repens*
Common Name: Kidney Weed (Native)
Pot size: 140
Mature H x S: 0.15m x spreading
Qty Required: 9/m2 (**17.6m2 total**)

**Botanical Name:** *Trachelospermum Jasminoides*
Common Name: Star Jasmine (Exotic)
Pot size: 140mm
Mature H x S: 0.3m x 0.6m
Qty Required: 5/m2 (**4.7m2 total**)

OTHER LANDSCAPE ITEMS

-  Brick edging - refer detail
-  Turf area - refer detail
-  Stepping stones with pebbles in gaps - refer detail
-  Retaining / raised planter wall - refer detail
-  1.8m Gate and fence - colour and style to be nom. by client
-  Trees proposed to be removed and replaced with new landscaping
-  Existing trees proposed to be retained and protected



Waterhouseia 'Sweeper'



Syzygium 'Cascade'



Dianella 'Little Jess'



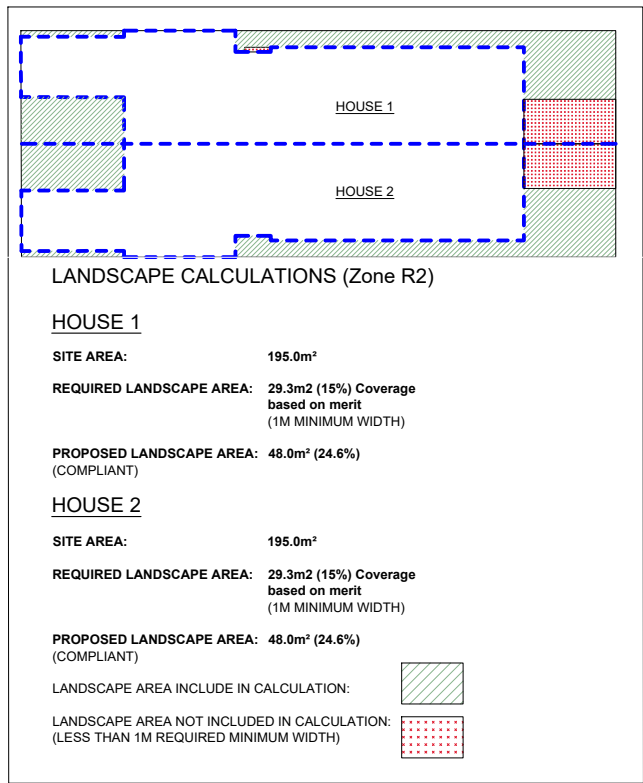
Callistemon citrinus 'Endeavour'



Westringia fruticosa



Trachelospermum jasminoides



BASIX COMMITMENT
Indigenous or low water used species of vegetation throughout 20m2 of site

LANDSCAPE PLAN NOTES

This plan should be read in conjunction with the architectural and hydraulics plans. Work specific to these plans should be prepared in accordance to these plans, including specification and details prior to the installation of landscaping, and should not be altered or compromised during landscape construction. Elements such as drainage swales may be incorporated in garden bed areas (using non-floatable mulch) without compromising the capacity or form.

This plan has been prepared for Development Application approval only, not for construction.

This plan has been prepared with reference to **BOTANY BAY Councils** Landscaping Guidelines & requirements. Planting proposed using mainly indigenous, commercially available plant species selected from local planting lists and the BASIX local plant list and from Sydney Waters "Plant Selector"

web site one-drip rated native plants (**acceptable for Basix planting**).

The Design & location of new letter boxes shall be in accordance with Australia Post's "Requirements for Delivery of Mail to Residential Premises" published Feb '97. All noxious weeds listed in Councils weed lists & located on the site shall be continually removed & suppressed. Reinstate all boundary fencing in poor condition with Council approved 1.8m fencing to rear of building line, rake to 1m forward of BL. Pollution, sediment & erosion control devices as specified shall be in place, and maintained for the duration of the construction period. Proposed excavation near existing established trees to be supervised by arborist.

D.A approved landscape plan's are required to be constructed as approved to obtain occupancy certificate. **Permeable areas may be indicated to achieve site coverage restrictions & should be constructed as drawn on this plan.**

General Notes:

Figured dimensions take preference to scale readings. Verify all dimensions on site. PDF'd plans may vary slightly in Scale for that indicated on plans. Report any discrepancies to the Landscape Architect before proceeding with the work.

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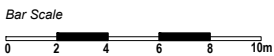
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AILA Associate

www.dialbeforeyoudig.com.au



REV	DATE	NOTATION/AMENDMENT
A	22.05.17	Preliminary plan prepared for review
B	24.05.17	Revised preliminary plan prepared for review
C	25.05.17	Co-ordinated with client's comments

COUNCIL	BOTANY BAY
CLIENT	HUSS CHALICH
ARCHITECT	PINNACLE PLUS
STATUS / ISSUE	DA - ISSUE C


Conzept
Landscape Architects
Conzept Landscape Architects Suite 101, 506 Miller St CAMMERAY NSW 2062
www.conzept.net.au Phone: 9922 5312
enquiries@conzept.net.au Fax: 8209 4982 Mob: 0413 861 351

TITLE:	LANDSCAPE PLAN
DWG No:	LPDA 17 - 326 / 1
SCALE:	1:150 @ A3
DATE:	MAY 2017
DRAWN:	S.S
CHECKED:	R.F



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We retain the right to withdraw this information from the assessment process if such payments are not made following the notification period.</div>	<div>AILA Associate</div> <div></div> <div><div><div><div><div></div><div></div></div><div><div></div><div></div></div></div><div><div><div></div><div></div></div><div><div></div><div></div></div></div></div><div><div><div><div></div><div></div></div><div><div></div><div></div></div></div><div><div><div></div><div></div></div><div><div></div><div></div></div></div></div><div><div><div></div><div></div></div><div><div></div><div></div></div></div></div> <div><div><div></div><div></div></div><div><div></div><div></div></div></div> <div><div><div></div><div></div></div><div><div></div><div></div></div></div> <div><div><div></div><div></div></div><div><div></div><div></div></div></div> <div><div><div></div><div></div></div><div><div></div><div></div></div></div> <div><div><div></div><div></div></div><div><div></div><div></div></div></div> 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Project:

1.01 GENERAL

- The landscape plans should be read in conjunction with the architectural plans, hydraulic plans, service plans and survey prepared for the proposed development.
- All services including existing drainage should be accurately located prior to the commencement of landscape installation. Any proposed tree planting which falls close to services will be relocated on site under the instruction of the landscape architect.
- Installation of conduit for required irrigation, electrical and other services shall be completed prior to the commencement of landscape works and hardstand pours.
- All outdoor lighting specified by architect or client to be installed by qualified electrician
- Anomalies that occur in these plans should be brought to our immediate attention.
- Where an Australian Standard applies for any landscape material testing or installation technique, that standard shall be followed.

The Contractor shall take all precautions to prevent damage to all or any adjacent finishes by providing adequate protection to these areas / surfaces prior to the commencement of the Works

Existing trees identified to be retained shall be done so in accordance with NATSPEC Guide 2 "A Guide to Assessing Tree Quality". Where general works are occurring around such trees, or pruning is required, a qualified Arborist shall be engaged to oversee such works and manage tree health.

Existing trees designated on the drawing for retention shall be protected at all times during the construction period. Any soil within the drip-line of existing trees shall be excavated and removed by hand only. No stockpiling shall occur within the root zone of existing trees to be retained.

Any roots larger in diameter than 50mm shall only be severed under instruction by a qualified arborist. Roots smaller than 50mm diameter shall be cut cleanly with a saw.

Temporary fencing shall be installed around the base of all trees to be retained prior to the commencement of landscape works. Where possible, this fencing will be located around the drip line of these trees, or a minimum of 3m from the trunk. The fencing shall be maintained for the full construction period.

The Contractor shall take all proper precautions to prevent the erosion of soil from the subject site. The contractor shall install erosion & sediment control barriers and as required by council, and maintain these barriers throughout the construction period. Note that the sediment control measures adopted should reflect the soil type and erosion characteristics of the site.

- Construction of a sediment trap at the vehicle access point to the subject site.
- Sediment fencing using a geotextile filter fabric in the location indicated on the erosion control plan or as instructed on site by the landscape architect.
- Earth banks to prevent scour of stockpiles
- Sandbag kerb sediment traps
- Straw bale & geotextile sediment filter.
- Exposed banks shall be pegged with an approved Jute matting in preparation for mass planting

SOIL WORKS

The specified soil conditioner for site top-soil improvement shall be an organic mix, equal to "Botany Humus", as supplied by ANL. Note that for sites where soil testing indicates toxins or extremes in pH, or soils that are extremely poor, allow to excavate and supply 300mm of imported soil mix.

New garden and planting areas shall consist of a 50/50 mix of clean site soil (refer d) below) and imported "Organic Garden Mix" as supplied by ANL or approved equal. All mixes are to comply with AS 4419 Soils for landscaping & garden use, & AS 4454 Composts, Soil conditioners & mulches.

The specified soil mix for all turf areas shall be a min 75mm layer of imported soil mix consisting of 80% washed river sand (reasonably coarse) and 20% composted organic matter equivalent to mushroom compost or soil conditioner, or other approved lawn top dress.

Site topsoil is to be clean and free of unwanted matter such as gravel, clay lumps, grass, weeds, tree roots, sticks, rubbish and plastics, and deleterious materials and materials toxic to plants. The topsoil must have a pH of between 5.5 and 7. Use 100% imported soil mix when site topsoil runs out.

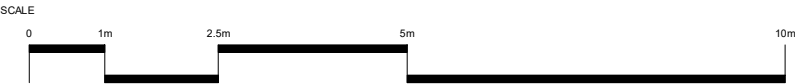
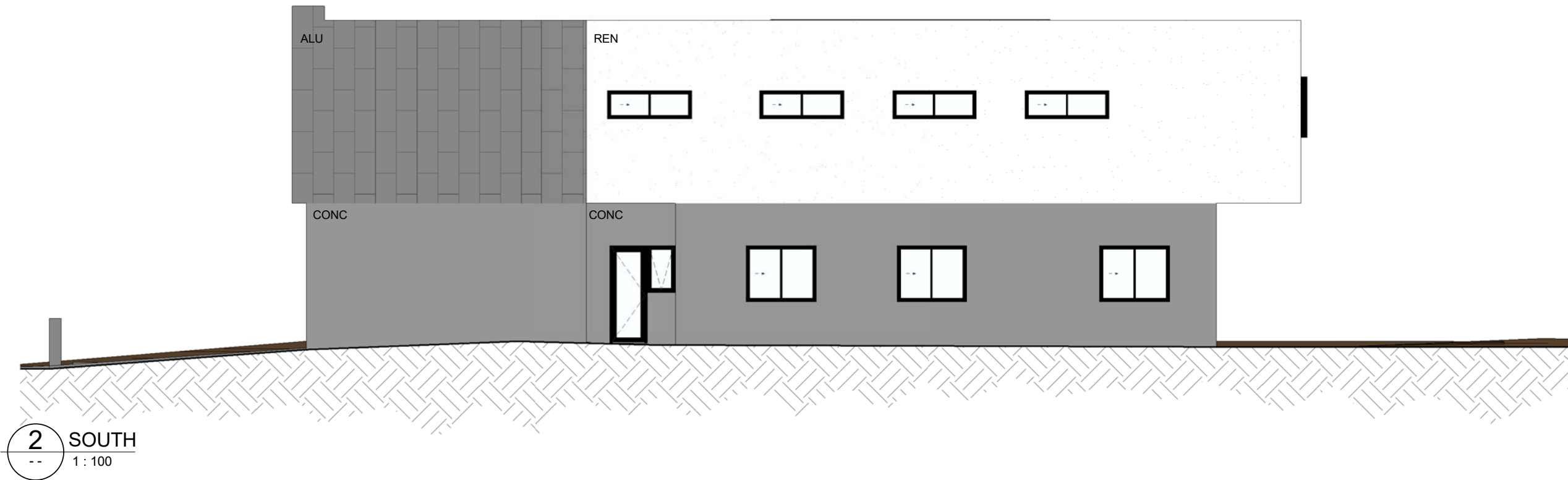
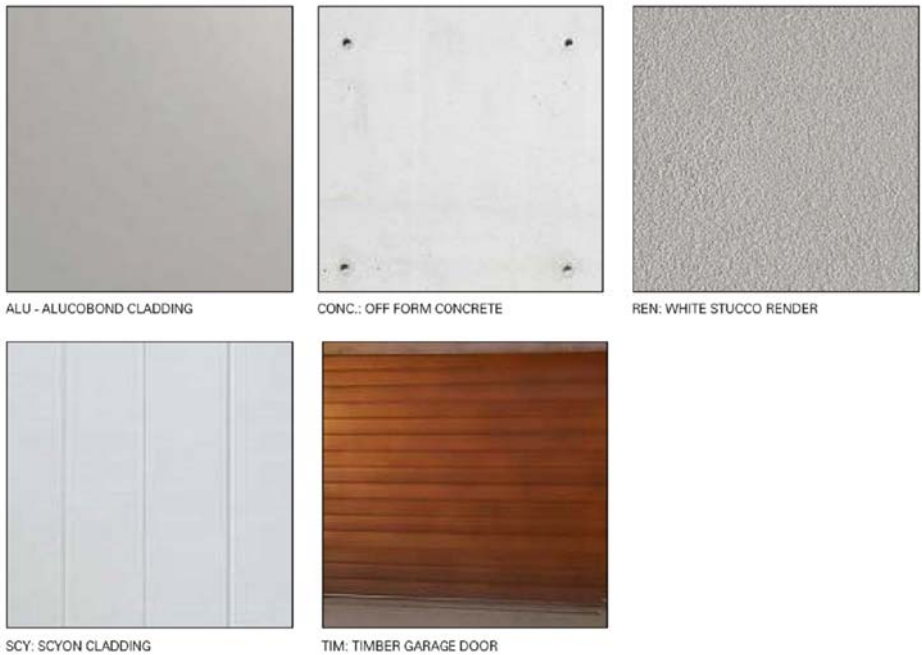
All testing is to be conducted in accordance with AS 1289 Methods for testing soils for engineering purposes. Site soil shall be given a pH test prior to modifying to ensure conditions are appropriate for planting as stated above. Tests shall be taken in several areas where planting is proposed, and the pH shall be adjusted accordingly with sulphur or lime to suit.

Staking and tying shall be in strict accordance with the drawings and shall occur immediately following plant placement and soil backfilling. All plants identified as "Trees" on the planting schedule shall be staked with a min. 3 stakes.

The consolidation and maintenance period shall be 12 months beginning from the approved completion of the specified construction work (Practical Completion). A qualified landscape maintenance contractor shall undertake the required landscape maintenance works. Consolidation and maintenance shall mean the care and maintenance of Contracted works by accepted landscaping or horticultural practices, ensuring that all plants are in optimum growing conditions and appearance at all times, as well as rectifying any defects that become apparent in the contracted works.

On the completion of the maintenance period, the landscape works shall be inspected and at the satisfaction of the superintendent or landscape architect, the responsibility will be signed over to the client.

[illegible]



NOTE	PROJECT INFO		DRAWING INFO						
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	79 MIDDLEMISS STREET MASCOT, 2020 LOT 1, D.P. 795157	79 MIDDLEMISS ST PTY LTD			#	Date			Description
		PROJECT NUMBER		GENERAL ARRANGEMENT ELEVATIONS	PP	1	06.02.17	ISSUED FOR DA	A06-801
		1610-MID	ELEVATED FINISHES	SCALE @ A3 1 : 100					