

## **MEETING NOTICE**

A meeting of the  
**Bayside Planning Panel**  
will be held in the Committee Room, Botany Town Hall  
Corner of Edward Street and Botany Road, Botany  
on **Tuesday 25 September 2018 at 6:00 pm.**

## **ON-SITE INSPECTIONS**

On-site inspection/s will precede the meeting.

## **AGENDA**

### **1 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**

Bayside Council respects the traditional custodians of the land, and elders past and present, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

### **2 APOLOGIES**

### **3 DISCLOSURES OF INTEREST**

### **4 MINUTES OF PREVIOUS MEETINGS**

4.1 Minutes of the Bayside Planning Panel Meeting - 11 September 2018...3

### **5 REPORTS – PLANNING PROPOSALS**

Nil

### **6 REPORTS – DEVELOPMENT APPLICATIONS**

6.1	SF18/1583 - DA-2018/1084 - 57 Middlemiss Street, Mascot.....	17
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6.6	F18/404 - DA-2016/117/6 - 671-683 Gardeners Road, Mascot.....	359

Members of the public, who have requested to speak at the meeting, will be invited to address the Panel by the Chaiperson.

The meeting will be video recorded and live streamed to the community via Council's Facebook page.

Meredith Wallace  
**General Manager**



## **Bayside Planning Panel**

**25/09/2018**

Item No	4.1
Subject	<b>Minutes of the Bayside Planning Panel Meeting - 11 September 2018</b>
Report by	Bruce Cooke, Acting Manager Governance & Risk
File	SC17/816

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## **Recommendation**

That the Minutes of the Bayside Planning Panel meeting held on 11 September 2018 be confirmed as a true record of proceedings.

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## **Present**

Jan Murrell, Chairperson  
Robert Montgomery, Independent Specialist Member  
Stephen Moore, Independent Specialist Member  
Amber O'Connell, Community Representative

## **Also Present**

Luis Melim, Manager Development Services  
Bruce Cooke, Acting Manager Governance & Risk  
Fiona Prodromou, Senior Development Assessment Planner  
Andrew Ison, Senior Development Assessment Planner  
Pascal Van de Walle, Senior Development Assessment Planner  
Sumeet Badhesha, Development Assessment Planner  
Helen Lai, Development Assessment Planner  
Ben Tesoriero, Consultant Planner – CPS Planning  
Bill Nikolovski, IT Support Officer  
Lauren Thomas, Governance Officer

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## **1 Acknowledgement of Traditional Owners**

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

## **2 Apologies**

There were no apologies received.

## **3 Disclosures of Interest**

There were no disclosures of interest.

## 4 Minutes of Previous Meetings

### 4.1 Minutes of the Bayside Planning Panel Meeting - 28 August 2018

#### Decision

That the Minutes of the Bayside Planning Panel meeting held on 28 August 2018 be confirmed as a true record of proceedings.

## 5 Reports – Planning Proposals

Nil.

## 6 Reports – Development Applications

### 6.1 DA-2017/558 - DA-2017/558 - 24 Oswell Street, Rockdale

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mrs Phoebe Scali, concerned resident, spoke for the officer's recommendation of refusal.
- Mr Jim Manwaring, affected neighbour, spoke for the officer's recommendation of refusal.
- Mr John Tsenekes, affected neighbour, spoke for the officer's recommendation of refusal.
- Mr Darren Laybutt from Gat and Associates, spoke against the officer's recommendation of refusal and responded to the Panel's questions.

#### Panel Determination

- A. That Development Application DA-2017/558 for the demolition of existing structures and construction of a two storey detached dual occupancy including roof top terraces, basement level parking, front side fences and Torrens Title Subdivision from one lot into two lots, is **REFUSED** pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment act 1979* for the following reasons:
1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the following requirements of *Rockdale Local Environmental Plan 2011*:
    - a) Clause 2.3 Zone objectives and Land Use Table – the proposed development is not consistent with the objectives for the R2 Low

Density Residential Zone in which the development is proposed to be carried out.

- b) Clause 4.1 Minimum subdivision lot size – the site area does not achieve the minimum subdivision lot size for dual occupancy development.
- c) Clause 4.4 Floor space ratio – the floor space ratio of the proposed development exceeds the maximum floor space ratio shown for the land on the Floor Space Ratio Map.
- d) Clause 4.6 – The applicant's written request to justify the contravention of clause 4.1 of the *Rockdale Local Environmental Plan 2011* has been considered, however the consent authority is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) of clause 4.6.

Further, the consent authority is not satisfied that the proposed development will be in the public interest because it is inconsistent with the objectives of clause 4.1 and also the objectives of the R2 Low Density Residential Zone in which the development is proposed to be carried out.

As such, pursuant to clause 4.6(4) of the *Rockdale Local Environmental Plan 2011*, development consent must not be granted for the development.

- e) Clause 4.6 – The applicant has not provided a written request that seeks to justify the contravention of the development standard under clause 4.4 of the *Rockdale Local Environmental Plan 2011*. Pursuant to clause 4.6(3) of the *Rockdale Local Environmental Plan 2011* development consent must not be granted for the development.
2. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the following objectives and provisions of *Rockdale Development Control Plan 2011*:
- a) Part 4.1.1 Views and Vistas – Due to the topography of the local area, the proposal is in a prominent location. With the removal of street trees, site vegetation and a non-compliant floor space ratio, the design does not appropriately respond to the prominence of the site.
  - b) Part 4.1.7 Tree Preservation – The proposed development will result in the removal of two (2) street trees on the Holland Avenue frontage, and a large tree within the front setback to Oswell Street. The design of the proposed development has not adequately ensured the retention of significant trees.
  - c) Part 4.1.9 Lot size and Minimum Site Frontage – With a site area of 694.5sqm, the site fails to achieve compliance with the minimum 700sqm site area control for dual occupancy development.

- d) Part 4.2 Streetscape – Streetscape character – The use of a flat roof design in a local area characterised by pitched roofs fails to ensure a cohesive streetscape.
  - e) Part 4.2 Sandstone Walling, Rock Outcrops and Kerbing – the proposal includes excavation of a sandstone wall/rock outcrop on Holland Avenue where alternative access could be obtained via Oswald Street where the current vehicle access to the site is located.
  - f) Part 4.3.2 Private Open Space – The large roof top terraces on both dwellings give rise to unreasonable overlooking opportunities to adjoining property, and also impacts on acoustic amenity. The private open space area for Dwelling 1 will not receive adequate solar access at ground level, and the dwelling only achieves compliance overall by virtue of the oversized roof top terraces – see Part 4.4.2 Solar Access.
  - g) Part 5.1 Building Design – The proposed design and architectural style of the development fails to appropriately interpret and respond to the positive characteristics of the locality, including the dominant patterns, textures and compositions of buildings.
3. Having regard to the proposed development's non-compliances with the above-mentioned development standards of the *Rockdale Local Environmental Plan 2011*, as well as the development controls under the *Rockdale Development Control Plan 2011*, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development will have an unacceptable impact on the natural and built environment.
  4. Pursuant to the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not suitable for the site.
  5. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development application is not in the public interest.

B. That the objectors be advised of the decision of the Panel.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for the Panel's Determination:**

- On behalf of the applicant a request was made to defer determination of this matter however, the panel was not persuaded that a deferral could overcome the shortcomings of the application before it and address the community concerns as articulated at the meeting. As such, the applicant was advised that they have the opportunity to amend the plans with a Section 8.2 Review.
- The Panel considered the matter should be refused for the reasons in the officer's report and, in summary, the panel considers the proposal would be an inappropriate intrusion into this local area.

**6.2 F18/404 - DA-2016/1155/3 - 671-683 Gardeners Road, Mascot**

The following person spoke:

- Walter Gordon from Meriton spoke for the officer's recommendation and responded to the Panel's questions.

**Panel Determination**

That the Section 4.55(1A) application for the Modification of conditions 54 and 58 and deletion of condition 59 of DA-2017/1155 IS APPROVED subject to the following:

- Amend Condition 54 for the landscaping to be completed to the public domain following the completion of the footpath by West Connex. These landscape works are to be completed in accordance with the approved landscape plan prior to the issue of the final occupation certificate.
- Amend Condition 58 to change the timing of the lodgement of Certificate of Survey to prior to the issue of the final Occupation Certificate.
- Retain the wording of Condition 59 as per the original development consent issued under DA-2017/1155, as the public domain works carried out for West Connex along Gardeners Road and Kent Road relate to the footpath only.

<b>Name</b>	<b>For</b>	<b>Against</b>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for the Panel's Determination:**

- The Panel considers that the modifications are minor and will not impact on the final outcome for landscaping works.

**6.3 F18/404 - DA-2016/117/5 - 671-683 Gardeners Road, Mascot**

The following person spoke:

Walter Gordon from Meriton spoke for the officer's recommendation and responded to the Panel's questions.

**Panel Determination**

That the Section 4.55(1A) application for the modification of Conditions 38, 83, 85, 86, 87, 88, 90, 93, 96, 97 and 101, and deletion of Condition 95 at 671-683 Gardeners Road, Mascot is APPROVED.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for the Panel's Determination:**

- The Panel is satisfied that the proposed modifications will not be an impact on the development.

**6.4 SF18/1595 - DA-2017/1085 - 49 George Street, Eastlakes**

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Handojo Widjaja, affected neighbour, spoke against the officer's recommendation.
- Mr Roy Gutierrez, affected neighbour, spoke against the officer's recommendation.
- Ms Winnie Ho, affected neighbour, spoke against the officer's recommendation.
- Mr Tymur Chaskckyu, affected neighbour, spoke against the officer's recommendation.
- Moe Hijazi from Space 0.618:1 Design spoke for the officer's recommendation and responded to the Panel's questions.

**Panel Determination**

- 1 That Development Application DA-2017/1085 for the demolition of existing structures and construction of 2 x two storey semi-detached dwellings with

basement parking at 49 George Street Eastlakes, is granted DEFERRED COMMENCEMENT CONSENT requiring the approval of the General Manager or nominee for amended plans to give effect to the following:

- The driveway is to be re-designed to a central single driveway, a maximum 3 metres at the kerb and boundary. The landscape plan is to be amended accordingly to provide additional soft landscaping area and canopy trees both on the property and the Council verge.
- The rear fourth bedrooms at the upper level are to be set back an additional 1 metre from the side boundaries.
- The alfresco area outside walls are to be deleted and replaced with lightweight privacy screens a maximum of 3 metres in depth.
- The landscape plan is to also provide for rear boundary plantings to provide intervening vegetation for the properties at the rear.
- The fill on the western side pathway area is to be removed to provide for a better relationship with the property to the west and a dividing fence provided.
- The materials, finishes and colours shall be reviewed to mitigate adverse impacts on adjoining properties and the streetscape particularly with regard to reflectivity and glare.
- A right of way for the shared driveway is to be put in place prior to any occupation certificate.

On the submission of amended plans, both landscape and architectural, to satisfy the above requirements and being approved by Council, the operational conditions as recommended become effective.

- 2 That the 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 FSR Standard and the objectives for the R2 Low Density Residential zone.
- 3 That any objectors be notified of the determination made by the Bayside Local Planning Panel.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for the Panel's Determination:**

- The Panel is of the opinion that, with the changes emunerated above, the development will provide an appropriate fit in the streetscape more consistent with the low density zone by also providing landscaping, trees that is reflective of a low density area.
- The Panel is satisfied that the conditions regarding window treatment, the requirement for enhanced landscaping, and the raising of sill heights to 1.5 metres will mitigate against the privacy concerns of neighbours. Especially having regard to the use of the rooms as bedrooms upstairs at the rear. In an urban/suburban situation, a certain degree of mutual overlooking is to be expected. With respect to the western living room window, given the relationship with the adjoining dwelling and the separation distance, the sill height is to be raised to 1.7 metres.
- The Panel is of the view that the changes proposed in the deferred commencement conditions will reduce the bulk of the building, particularly at the rear and will further reduce impacts to neighbouring properties.

### **6.5 DA-2017/224/B - DA-2017/224/B - 206 Rocky Point, Kogarah; 152-200 Rocky Point Road, Kogarah**

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Ben Craig of Ethos Urban spoke for the officer's recommendation and responded to the Panel's questions.

**Panel Determination**

That Modification Application No. DA-2017/224/B, being a Section 4.55(1A) application to amend Development Consent No. DA-2017/224, for modification of Condition 19(a)(ii) to permit conversion of six (6) x three (3) bedroom units to two (2) bedroom units instead of one (1) bedroom units at 152-200 & 206 Rocky Point Road, Rockdale, is APPROVED pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 and subject to the modifications of conditions of consent attached to this report.

<b>Name</b>	<b>For</b>	<b>Against</b>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>



**Reason for the Panel's Determination:**

- The Panel is satisfied that the modifications will not adversely impact on the outcome of the development.

**6.6 DA-2016/296/C - DA-2016/296/C - 7-13 Willis Street, Wolli Creek**

An on-site inspection took place at the property earlier in the day.

The following person spoke:

- Mr Joseph El Khowaja, Architect - Urban Link, spoke for the officer's recommendation and responded to the Panel's questions.

**Panel Determination**

That Modification Application No. DA-2016/296/C, being a Section 4.55(1A) application to amend Development Consent Number DA-2016/296 at 7-13 Willis Street, Wolli Creek, is APPROVED and the consent be amended in the following manner:

That conditions 2, 14, 30, 99, 111 be amended as follows:

2. *The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.*

Plan/Dwg No.	Drawn by	Dated	Received by Council
DA1000 (Issue D) – Areas / Compliance	Urban Link Architecture	26/09/16	26/09/16
DA2000 (Issue D) - Site Plan	Urban Link Architecture	26/09/16	26/09/16
DA2001 (Issue D) – Site Analysis Plan	Urban Link Architecture	24/02/16	26/02/16
DA2100 (Issue D) – Basement 02	Urban Link Architecture	26/09/16	26/09/16
DA2101 (Issue D) – Basement 01	Urban Link Architecture	26/09/16	26/09/16
DA2102 (Issue G) – Ground Floor	Urban Link Architecture	13/08/2018	13/08/2018
DA2103 (Issue F) – Level 01	Urban Link Architecture	23/5/17	10/7/17
DA2104 (Issue F) – Level 02	Urban Link Architecture	23/5/17	10/7/17
DA2105 (Issue F) – Level 03	Urban Link Architecture	23/5/17	10/7/17
DA2106 (Issue F) – Level 04	Urban Link Architecture	23/5/17	10/7/17

DA2107 (Issue F) – Level 05	Urban Link Architecture	23/5/17	10/7/17
DA2108 (Issue F) – Level 06	Urban Link Architecture	23/5/17	10/7/17
DA2109 (Issue F) – Level 07	Urban Link Architecture	23/5/17	10/7/17
DA2110 (Issue F) – Level 08	Urban Link Architecture	23/5/17	10/7/17
DA2111 (Issue D) – Roof Plan	Urban Link Architecture	26/09/16	26/09/16
DA3000 (Issue F) – North Elevation	Urban Link Architecture	23/5/17	10/7/17
DA3001 (Issue D) – North Internal Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3002 (Issue D) – East Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3003 (Issue F) – South Elevation	Urban Link Architecture	23/5/17	10/7/17
DA3004 (Issue D) – South Internal Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3005 (Issue D) – West Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3006 (Issue D) – Streetscapes	Urban Link Architecture	26/09/16	26/09/16
DA3100 (Issue F) – Sections North-South	Urban Link Architecture	23/5/17	10/7/17
DA3101 (Issue D) – Sections North-South	Urban Link Architecture	26/09/16	26/09/16
DA3102 (Issue D) – Sections East-West	Urban Link Architecture	26/09/16	26/09/16
DA3103 (Issue D) – Ramp Detail Section	Urban Link Architecture	26/09/16	26/09/16
DA3104 (Issue D) – Driveway Detail Section	Urban Link Architecture	26/09/16	26/09/16
DA5000 (Issue F) - Materials	Urban Link Architecture	23/5/17	10/7/17

[Amendment A - S96(1A) amended on 08/12/2017]

[Amendment C - 4.55(1A) amended on 11/09/2018]

14. Loading & Unloading (e.g. Removalist Vans / Trucks):

*Loading and unloading shall be restricted as follows:*

- (a) *Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of Low Clearance Truck, maximum 3.1m height. Commercial vehicles greater in size and mass than the Low Clearance Truck SRV are not permitted to enter the site.*

- (b) *All loading, unloading and transfer of goods to and from the loading bay and premises, including removalist vans, shall take place wholly within the property.*
- (c) *Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.*

*[Amendment C - 4.55(1A) amended on 11/09/2018]*

30. *Internal Height Clearance - Parking & Access*

- (a) *Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.*
- (b) *An amended Driveway Detail Section must be submitted to, and approved by, the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate demonstrating that an internal height clearance of 3.1m has been achieved within the ground floor ramp and manoeuvring areas for the Low Clearance Truck.*

*[Amendment C - 4.55(1A) amended on 11/09/2018]*

99. *Seventy-four (74) off-street car spaces, one (1) loading bay for a Low Clearance Truck, maximum 3.1m height and one (1) VAN service bay shared within a visitor parking shall be provided in accordance with the submitted plan and shall be sealed and line marked to Council's satisfaction prior to issue of the Occupation Certificate. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.*

*[Amendment C - 4.55(1A) amended on 11/09/2018]*

111. *Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater/rainwater tank facility to provide for the maintenance of the detention and treatment facility and waste removal by a private waste contractor for ongoing compliance.*

*[Amendment C - 4.55(1A) amended on 11/09/2018]*

*The following additional condition 10A shall be inserted:*

10A. *Waste & Recycling Collection / Removalist Drop-off's & Pick-ups - Operational Requirements*

- a) *Waste & recycling collection and servicing, including removalist trucks, must be carried out entirely within the approved loading bay at all times.*
- b) *Waste & recycling collection, deliveries, removalists and/or any other servicing must not, at any time, be undertaken from the Willis Street and Guess Avenue or elsewhere within the site.*
- c) *Waste and recycling shall be collected by a private waste contractor. A contract for waste and recycling collection must be entered into*

*prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected separately from waste.*

- d) *Waste & recycling collection must be undertaken during off-peak times.*
- e) *The maximum size truck permitted to access the site is a Low Clearance Truck, maximum 3.1m height.*
- f) *The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.*

*[Amendment C - 4.55(1A) amended on 11/09/2018]*

*Reason for additional condition 10A is:*

- *To ensure appropriate on going waste management by a private contractor on site.*

<b>Name</b>	<b>For</b>	<b>Against</b>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### **Reason for the Panel's Determination:**

- The Panel is satisfied that the modifications are reasonable and should be approved.

#### **6.7 SF18/1668 - DA-2013/197/4 - 40-54 Baxter Road, Mascot**

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Ben Craig, Director of Ethos Urban, spoke for the officer's recommendation and responded to the Panel's questions.

#### **Panel Determination**

That the Section 4.55(1A) application for amendments to the approved hotel development, relating to modifications of the façade, increase in the height, internal modifications and relocation of the pick-up / drop-off zone on Baxter Road at 40-54 Baxter Road, Mascot is APPROVED subject to the following:

- (a) Modify Condition 1 relating to approved plans except for the reference to the landscape plan should be 31 May 2018. The reference to the BCA Assessment Report should read 23 March 2018.
- (b) Modify Condition 7 relating to signage.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Reason for the Panel's Determination:

- The Panel is satisfied that the modifications are acceptable and will not have any adverse impact.

#### 6.8 SF18/1844 - DA-2017/1185 - 256 Coward Street, Mascot

An on-site inspection took place at the property earlier in the day.

The following person spoke:

- Mr Nick Krikis, Krikis Tayler Architects, spoke for the officer's recommendation and responded to the Panel's questions.

#### Panel Determination

- That the Bayside Local Planning Panel supports the variation to clause 4.4 relating to Floor Space Ratio in the Botany Bay Local Environmental Plan 2013 in accordance with the request under clause 4.6 submitted by the applicant.
- That Development Application No. DA-2017/1185 for the reconfiguration of the approved Building A to provide 17 additional units is APPROVED subject to recommended conditions of consent and the following changes: Condition 6(a) and 7 with the note "unless already paid under DA-2014/146" (as modified); changes to the Plan numbers referred to in condition 2 as bolded in the table below and changes to condition 3 as bolded below.

<b>Drawing / Document</b>	<b>Author</b>	<b>Received by Council</b>
A111 C / Level 9	Krikis Tayler	20/06/18
A112 C / Level 10	Krikis Tayler	20/06/18
<b>A112-01</b> C / Level 11	Krikis Tayler	20/06/18
<b>A112-02</b> C / Level 12	Krikis Tayler	20/06/18
<b>A113</b> C / Level 13	Krikis Tayler	20/06/18
A120 B / Elevations 1	Krikis Tayler	20/06/18
A124 B / Section	Krikis Tayler	20/06/18

Condition 3 is to read as follows:

*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 Certificate (**539890M-10**) for the development are fulfilled.*

<b>Name</b>	<b>For</b>	<b>Against</b>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for the Panel's Determination:**

- The Panel is satisfied that the development application to provide an additional 17 units for the building approved under DA-2014/146 will not create adverse environmental impact.

The Chairperson closed the meeting at 8:25 pm.

Jan Murrell  
**Chairperson**

**Bayside Planning Panel**

**25/09/2018**

Item No	6.1
Application Type	Development Application
Application No	SF18/1583
Lodgement Date	22/05/2018
Property	<b>DA-2018/1084 - 57 Middlemiss Street, Mascot</b>
Ward	Mascot
Owner	Ms Clancy
Applicant	Dirk Anderson
Proposal	Demolition of existing structures, Torrens title subdivision into three lots and construction of 3 x 2 storey attached dwellings.
No. of Submissions	One (1)
Cost of Development	\$1,104.879.00
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

1. That the Bayside Planning Panel support the variation to the FSR standard, as contained in Clause 4.4 – FSR of Botany Bay LEP 2013, in accordance with the request under clause 4.6 of BBLEP 2013 submitted by the applicant.
  2. That Development Application No. DA-2018/1084 for the demolition of existing structures, Torrens title subdivision into three lots and construction of 3 x 2 storey attached dwellings at 57 Middlemiss Street, Mascot be APPROVED pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  3. That the objector be notified of the Panel's determination.
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## Location Plan



## Attachments

- 1 Applicants Response to Council Issues [↓](#)
- 2 Planning Assessment Report [↓](#)
- 3 West Elevation [↓](#)
- 4 South Elevation [↓](#)
- 5 North Elevation [↓](#)
- 6 East Elevation [↓](#)
- 7 Section B-B [↓](#)
- 8 Section A-A [↓](#)
- 9 Roof Plan [↓](#)
- 10 Proposed Subdivision Plan [↓](#)
- 11 Proposed Schedule Colours & Finishes [↓](#)
- 12 Revised Photomontage [↓](#)
- 13 Revised Streetscape Elevation [↓](#)
- 14 Revised Landscape Plan [↓](#)
- 15 Winter Shadow 9AM [↓](#)
- 16 Winter Shadow 12PM [↓](#)
- 17 Winter Shadow 3PM [↓](#)
- 18 Existing & Proposed North Elevation Winter Shadow 9AM [↓](#)
- 19 Existing & Proposed North Elevation Winter Shadow 12PM [↓](#)
- 20 Existing & Proposed North Elevation Winter Shadow 3PM [↓](#)
- 21 Survey [↓](#)





10 AUGUST 2018

FIONA PRODROMOU  
SENIOR ASSESSMENT PLANNER  
BAYSIDE COUNCIL

**RE: DA 10.2018.1084.1**  
**No. 57 Middlemiss Street, Mascot NSW 2020**

Dear Fiona,

Following the issues raised by Council in your email dated 11 July 2018, we have outlined our response below to each item:

### 1. STREETSCAPE

The existing streetscape pattern along Middlemiss Street is comprised of numerous different building & roof formation types, predominantly hip roofs falling to the street, gable roofs or single pitch roofs fronting the street, or a combination of these – as evident in Figures 1.1 to 1.6 below.



Figure 1.1 – hip roofs falling to street at No. 53 & 55 Middlemiss Street

/NDRSN



Figure 1.2 – gable & combination roofs fronting the street at No. 30 - 36 Middlemiss Street



Figure 1.3 – hip roofs falling to street at No. 71 - 75 Middlemiss Street

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/NDRSN



Figure 1.4 – single pitch roofs fronting the / hip & gable roofs falling to street at No. 47 - 53 Middlemiss Street



Figure 1.5 – hip roofs falling to street at No. 18 - 24 Middlemiss Street

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/NDRSN



Figure 1.6 – hip roofs falling to street at No. 33 Tunbridge Street (as seen from Middlemiss Street)

Furthermore, as shown in Figure 1.7 below, the proposed development is designed to be compatible with this streetscape pattern. This is achieved through the single pitch roof of No. 57B Middlemiss Street, which falls to the street and is situated between the single pitch roofs of No. 57A & 57C Middlemiss Street, which are fronting the street.



Figure 1.7 – combination of differing roof formations for the proposed development

The combination of these prevalent roof forms, as proposed, are not drawing together to avoid the appearance of one larger building, effectively reducing the apparent bulk & scale. Having the separate roof forms increases articulation to the front of the building, appearing as separate dwellings when viewed from the street, whilst maintaining the existing streetscape pattern in accordance with Council's requirements.



## 2. PRIVACY

The first floor rear balconies have been designed with consideration to the below, so as to minimise any overlooking or privacy impacts:

- As measured in the plans, the rear setback of the balconies is 6.9 – 8.5 M, this is a significantly greater setback than the minimum 4.0 M rear setback as prescribed in Table 1, Part 4A.2.8 of Botany Bay DCP 2013 (BBDCP 2013).
- The balcony to No. 57B Middlemiss Street has been amended, with a reduction in depth from previously 2.1 M to 1.6 M – this 0.5 M reduction represents a 24% reduction in the overall balcony depth.
- The balconies to No. 57A & 57B Middlemiss Street are fitted with privacy screening to no less than 50% of the balcony's elevational length.
- These balconies are accessed via private bedrooms, not living areas.

## 3. ACID SULFATE SOILS

Excluding stormwater works, there is no proposed excavation. In this case, we have consulted Kozarovski & Partners, the Stormwater Engineers working on this project, regarding the depth of excavation required. They have advised that the maximum depth proposed is 1.35 M for the absorption pit, which does not exceed the 2.0 M depth and hence does not require an Acid Sulfate Soils Management Plan.

## 4. DEVELOPMENT ENGINEER

- (a) The driveways to 57A & 57B Middlemiss Street have been combined and designed in such a way that provides an additional 2 on street car parking spaces.
- (b) We have consulted Kozarovski & Partners, the Stormwater Engineers working on this project, who have amended the stormwater design in accordance with the issues raised by Council's Development Engineer. As shown in the revised stormwater drawings attached with this submission, the amendments made include:
  - Redistributing the absorption area across three pits – two 2 X 2 M pits, to No. 57A & 57 B Middlemiss Street, and one 3 X 1.3 M pit to No. 57C Middlemiss Street – which are covered with a removable filter fabric. These have an identical area as a 2 M long jumbo trench, however are better suited to this project as they are easier to access for maintenance than a jumbo trench. The Engineer has advised that this proposed system will sufficiently disperse stormwater to the base of the absorption carpet during all storm events, including the 100-year storm.
  - Incorporating safe overflow to the street's kerb & gutter in the drainage plan. However, the Engineer has advised that this amendment is less efficient than the previously proposed system, as in a case of insufficient maintenance and subsequent clogging of the removable filter fabric, the excess runoff would be disposed to the street without the occupiers noticing the overflow. Moreover, in the previous design without the piped overflow, the excess runoff in the same case of insufficient maintenance would become visible when surcharging through the grated trenches at the front boundary.
  - Employing 3,000 L rainwater tanks, in accordance with Section 4, Part 10 of BBDCP 2013.

## 5. LANDSCAPE ARCHITECT

- (a) We have consulted Zenith Landscape Designs, who are qualified Landscape Architects and have prepared the landscape plan attached with this submission, in accordance with Control 3 Part 3L.1.2 of BBDCP 2013.



- (b) We have consulted Seasoned Tree Consulting, who are qualified Arborists & have completed the arborist report attached with this submission. This report identifies the street tree as having average health & condition, and affirms how, after discussion with Council's Tree Management Officer, this tree is recommended for removal and replacement. Moreover, the amended drawings show this replacement tree to be situated with adequate clearance from the proposed driveways, in accordance with the issues raised by Council's Landscape Architect.
- (c) The attached amended landscape plan, prepared by Zenith Landscape Designs, proposes planting numerous replacement trees, including one watergum species tree to replace the existing street tree and three trees of varying species to replace the existing trees within the site.
- (d) The amended landscape plan, prepared by Zenith Landscape Designs, proposes adequate streetscape planting to the front setback of each proposed dwelling, not only through planting replacement trees but also by retaining the existing pine tree at the front of the site.
- (e) The amended stormwater design, prepared by Stormwater Engineers Kozarovski & Partners, has located the stormwater system components underneath the driveways and paved areas, enabling adequate deep soil planting within the front setback area of the proposed dwellings to support one canopy tree. Furthermore, this maximises the area available for deep soil, effective and site-responsive tree planting & landscaping.
- (f) The amended landscape plan, prepared by Zenith Landscape Designs, proposes adequate streetscape planting to the rear setback of each proposed dwelling, achieved by planting both one replacement tree and two additional trees to the rear of the site.
- (g) The amended landscape plan, prepared by Zenith Landscape Designs, proposes a minimum of 80% planting to be native and indigenous species, in accordance with Condition 2, Part3L.3 of BBDGP 2013.

#### SUMMARY

In conclusion, based on the advice received from the consulting Stormwater Engineer, Landscape Architect and Arborist, we believe the proposed development in DA issue B at No. 57 Middlemiss Street, Mascot has sufficiently addressed all issues initially raised in the previously submitted proposal.

Please do not hesitate to contact us if you require any further information.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Dirk Anderson'.

DIRK ANDERSON  
DIRECTOR  
NDRSN ARCHITECTURE

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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**Application Number:****Date of Receipt:** 22 May 2018**Property:** 57 Middlemiss Street, Mascot**Owners:** Ms Clancy**Applicant:** Dirk Anderson**Proposal:** Demolition of existing structures, Torrens title subdivision into three lots and construction of 3 x 2 storey attached dwellings**Recommendation:** Approval**Value:** \$1,104,879.00**No. of submissions:** One (1)**Author:** Fiona Prodromou - Senior Assessment Planner**Date of Report:** August 2018

### Key Issues

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The proposal seeks to modify the maximum 0.5:1 FSR standard permitted for the subject site. The proposal seeks an FSR of 0.68:1, this represents a variation of 34.5% and a surplus floor area of 103.5sq/m. The applicant has submitted a Clause 4.6 – Exception to Development Standard, key arguments for the proposed variation have been detailed within this report. The FSR variation is supported in this instance for the reasons outlined within this report.

The proposal was publicly notified from 29 May to 14 June 2018. One (1) submission was received during this time, issues raised relate to privacy and overlooking of this neighbour to the rear and their private open space and pool. The objectors concerns have been addressed further in this report and the proposal conditioned to require the deletion of first floor east / rear facing bedroom balconies.

The proposed development is recommended for Approval subject to the conditions of consent attached to this planning report.

### Recommendation

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1. That the Bayside Planning Panel support the variation to the FSR standard, as contained in Clause 4.4 – FSR of Botany Bay LEP 2013, in accordance with the request under clause 4.6 of BBLEP 2013 submitted by the applicant.
2. That the development application DA-2018/1084 for the demolition of existing structures, Torrens title subdivision into three lots and construction of 3 x 2 storey attached dwellings at 57 Middlemiss Street, Mascot be APPROVED pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

3. That the objector be notified of the Panel's determination.

## Background

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### History

21 May 2018  
DA submitted to Council

29 May – 14 June 2018  
Public notification of proposal

July 2018  
14 day letter to applicant requesting amended plans in order to resolve, landscape, engineering, streetscape and privacy concerns.

16 August 2018  
Amended plans submitted to Council.

### Proposal

The proposal seeks to undertake the demolition of the existing dwelling house and associated structures on site and the removal of two trees, in order to facilitate the subdivision of the site into three lots, each with a 6.050m or 6.145m frontage and 200sq/m site area.

The proposal further seeks to undertake the construction of three attached dwelling houses with vehicular access from Middlemiss Street via a single driveway to proposed dwelling 57C and a shared double driveway to proposed dwellings 57A & 57B. Associated stormwater works and landscaping on each proposed new lot.



*Photomontage of proposed development*

In more detail, each dwelling house as proposed, comprises as follows;



### *Ground Floor*

Single garage with tandem car space within front setback, front door, laundry, storage cupboard, bin store within garage, toilet and open plan kitchen, dining and living room. Adjoining and directly accessible from the living areas to the east is a covered deck with bbq facility and rear private open space area. 1.8m high colourbond fencing is proposed to separate the newly proposed rear private open space areas on site between dwellings.

The dwelling known as 57B Middlemiss Street comprises an internal courtyard which is open to the sky and is to be planted with groundcovers and shrubs. The courtyard functions as a light well and is accessible from the kitchen and circulation space within this dwelling via bifold doors.

The front setback of the site comprises vehicular and pedestrian access and a range of landscaping including groundcovers, shrubs up to 1.5m in height and a tree (Lilly Pilly – Rain Cherry) with a mature height of 10m within each new lot. One tree is proposed to be planted within the rear yard of each new lot. Trees will comprise a mature height of 6m – 8m and are either a Tuckeroo or Yellow Bloodwood.

### *First Floor*

Four (4) bedrooms, one with an ensuite, circulation space and a separate bathroom are provided at first floor level. Each dwelling comprises a balcony fronting Middlemiss Street and balcony to the rear of the site. All dwellings comprise skylights at rooftop level and incorporate pergolas to first floor balconies. Balconies to dwellings 57A & 57B are provided with a full height privacy screen to half the length of the balcony, to obscure sightlines to rear neighbouring properties.

The proposal incorporates both flat and skillion roof forms to the streetscape. Proposed materials and finishes include charcoal metal balustrades, white stucco render, timber privacy louvres, dark face brick and grooved charcoal cladding.

### **Site Location & Context**

The subject site (Lot 3 DP 136923) is a rectangular shaped allotment, comprising a frontage of 18.25m and overall site area of 600sq/m via survey. The site is relatively flat and comprises a single storey detached dwelling house with associated double garage and outbuildings to the side and rear of the property. The site comprises vehicular access from Middlemiss Street, and a number of trees, including 2 larger species are scattered across the site.



*Subject site*

The site adjoins single storey detached dwelling houses with associated garaging and outbuildings to both the north and south, at 55 and 59 Middlemiss Street. To the rear the site shares a common boundary with 56 Wellington Street, which is occupied by a single storey detached dwelling with associated outbuildings and 58 Wellington Street which is a new two storey detached dwelling with pool within the rear of the site.

Opposite the subject site are 18, 20, 22 and 24 Middlemiss Street, which are 2 x two storey attached dwelling houses in a modern contemporary form, one of which comprises a flat roof.



*Attached dwellings opposite the site*

Further to the north of the site is 49, 49A and 51 Middlemiss Street, this is a recently completed development comprising three x two storey attached dwelling forms.



*49, 49A & 51 Middlemiss Street further to the north*

The immediately surrounding area is characterised by a diverse and eclectic mix and style of low to medium density residential dwelling housing of various periods.

The subject site is located within close proximity to a heritage item at 64-66 Wellington Street and the property is subject to aircraft noise and class 4 acid sulfate soils. Along the frontage of the site is an existing street tree and a Telstra pit close to the northern side boundary,

## Statutory Considerations

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### 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.4.15(1) Matters for Consideration General

##### S.4.15(1)(a)(i) Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

##### State Environmental Planning Policy (BASIX) 2004

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 926078M\_02. The commitments made result in reductions in energy and water consumption. The proposal satisfies the requirements of the SEPP.

##### State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The provisions of the SEPP apply to the proposal. The proposal seeks to remove the following existing vegetation from within the front setback of the site;

- a) One (1) Cypresses sempervirens
- b) One (1) Phoenix canariensis.

Council's Tree Management Officer has reviewed the proposal and does not object to the removal of the aforementioned trees, subject to the recommended appropriate conditions and suitable replacement trees being planted in appropriate locations on site.

Subject to compliance with conditions of consent, the proposal is satisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017.

##### 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 extremely low given:

- i) The site has been continuously used for residential purposes for a significant period of time.
- ii) The adjoining and adjacent properties are currently used for residential purposes.

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 necessary.

**Botany Bay Local Environmental Plan 2013**

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

Clause	Requirement	Proposal	Compliance
2.3 – Zone	R2 – Low Density Residential	Attached dwellings (a form of residential accommodation)	Yes
2.6 – Subdivision	Consent required	Consent sought	Yes
2.7 – Demolition	Requires consent	Demolition sought	Yes
4.3 – Height of Buildings	9m	7.11m to ridge	Yes
4.4 – FSR	0.5:1 (Area 3)	57A - 0.680:1 57B - 0.681:1 57C - 0.657:1	<b>No</b>
4.6 – Exception to Development Standards	(a) compliance is unreasonable or unnecessary in the circumstances of the case, and; (b) there are sufficient environmental planning grounds to justify contravening the standard.	Refer to discussion below	Yes – see discussion below
5.10 – Heritage Conservation	Land within the vicinity of a heritage item	Site is positioned close to 64-66 Wellington Street	Yes – see discussion below.
6.1 – Acid Sulfate Soils	Class 4 - ASS Works > 2m below natural ground surface. Works by which the watertable is likely to be lowered >2m below the natural ground surface.	Excavation proposed is not greater than 1.35m in depth and as such works are unlikely to expose or disturb acid sulfate soils	Yes
6.2 – Earthworks	Earthworks not to have detrimental impact	Appropriate conditions imposed to minimise adverse impact of earthworks	Yes
6.3 – Stormwater Management	Minimise impacts of urban stormwater	Conditions to be imposed to ensure appropriately designed stormwater system	Yes – as conditioned
6.9 – Development in areas subject to aircraft noise	20-25 ANEF Contour	Nil acoustic report submitted, yet proposal has been conditioned accordingly	Yes – as conditioned

**Clause 4.6 – Exception to Development Standards**

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and  
 (3)(b) that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, 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 of the relevant zone.*
- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*
- 5(b) the public benefit of maintaining the development standard.*

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. Consideration has been given to the aforementioned.

Consideration has also been given to the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90 where it was established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the proposal.

#### Variation Sought

As previously discussed within this report, the subject site comprises an FSR of 0.5:1 given its location in Area 3, which is equivalent to a maximum gross floor area of 300sq/m. The table below illustrates the FSR and gross floor area of the development as proposed;

Dwelling	GFA	FSR
57A Middlemiss	136sq/m	0.68:1
57B Middlemiss	136sq/m	0.68:1
57C Middlemiss	131.5sq/m	0.65:1

Based on the above, the proposal has a total gross floor area of 403.5sq/m. This is a surplus of 103.5sq/m across the entire site and represents a variation of 34.5%.

#### Applicants Justification

A summary of the applicants key arguments supporting the additional FSR are as follows:

- a) *The proposed variation to the FSR control does not result in any unreasonable environmental impacts, including overshadowing, privacy or visual bulk impact onto the neighbouring properties.*
- b) *Based on clause 4.4A of the BBLEP, an FSR of 0.8:1 applies for dwelling houses on sites between 200 - 250sq/m. Since the proposed attached dwellings include an FSR of 0.672:1 with no additional bulk as opposed to a single dwelling, the proposed FSR is acceptable.*
- c) *The variation to the FSR control is consistent with the recent approvals in the immediate context, which demonstrates there is a precedent for higher density and that the proposed FSR is compatible with the character of the locality i.e. 79 Middlemiss Street 2 x semi-detached dwellings FSR 0.67:1 & 49 Middlemiss Street 3 x attached dwellings FSR 0.84:1*
- d) *The proposal complies with all built form requirements, including height limit, site coverage and landscaped area.*
- e) *The proposed dwellings achieve good residential amenity.*

- f) *The proposed FSR does not raise inconsistencies with the objectives of the R2 zoning as it provides for the housing needs of the community with a density envisaged under the zoning and as recently approved by Bayside Council.*

#### Discussion

Following a review of the application, the FSR variation as revised is deemed appropriate for the following reasons:

- a) The FSR provisions of Clause 4.4A(3)(a) permit an FSR of 0.8:1 for dwelling houses on lots, within Area 3, with a site area of 200sq/m post subdivision. Based on a 200sq/m lot size, this equates to a GFA of 160sq/m.

The proposal is for attached dwelling forms, whilst these are residential in nature, they are categorised as '*residential accommodation*' via the definitions of BBLEP 2013.

In essence the proposed attached dwellings are a type of dwelling house as they are capable of being occupied and owned independently of each other.

The overall bulk, scale, density and building typology proposed is akin to that which could otherwise be achieved via a proposed dwelling house form, which, simply by means of definition, would be eligible for a greater FSR than an '*attached dwelling*'.

Given the above, the FSR proposed is appropriate to the size of the proposed lot and the proposed variation is not unreasonable.

- b) Whilst the proposal exceeds the maximum density permitted on the subject site the resulting bulk, scale, setbacks, rhythm, mass and form of the development are entirely consistent with the future desired character of the area and typology of building forms which could otherwise be achieved within Area 3.

The development will retain an appropriate visual relationship with the surrounding area, which is undergoing transformation to incorporate a greater diversity of housing forms and types.

- c) The scale and extent of the proposed additional density is not inconsistent with previous approvals within the context of the subject site. The FSR standard for attached dwelling forms within the locality has been consistently varied.
- d) The proposal is consistent with the objectives of Clause 4.4 FSR, and does not result in adverse environmental effects upon the use or enjoyment of adjoining properties.
- e) The proposal is consistent with the objectives of the R2 – Low Density Residential zone.
- f) The layout of dwellings as designed ensures that solar access and natural ventilation is maximised and that internal amenity for future occupants is optimised.
- g) The development is located in an accessible location, with access to public transport, public amenities including Mascot Library and several public open spaces and schools nearby. The proposal is therefore in the public interest.



Given the above, the Clause 4.6 is deemed to be well founded. The FSR standard in the circumstances of this case is considered to be unreasonable and unnecessary and the variation is supported.

#### 5.10 - Heritage Conservation

The subject site is located within close proximity of a heritage item at 64-66 Wellington Street Mascot. This heritage listed property is located to the south east of the site, and fronting Wellington Street, which runs parallel to Middlemiss Street to the rear of the property.



*Heritage dwelling and shed*

66 Wellington Street Mascot comprises a locally listed heritage item, being a dwelling house which is a representative example of the Victorian Period Italianate Style, built in the 1890s. 64 Wellington Street, has since been demolished and a dwelling is being constructed in its place.

The single-storey rendered brick residence located on the site was constructed in the c1880s-1890s in the Victorian period Italianate style. Some modifications have been carried out on the building, with major internal modifications, and side and rear extensions carried out around the 1970s. The two former brick factory buildings located on the site were constructed in the 1930s. These buildings have also undergone modifications throughout their lifespan, with major modifications carried out in the 1970s.

The subject site does not directly adjoin the heritage listed property, the rear south eastern corner of the site is located in excess of 24m away. Given the distance of the subject site from the heritage item, its location on a different street and the nature of the proposed development, it is not considered that the proposal will have an adverse impact upon the nature, significance or setting on the item.

In this regard the proposed development is satisfactory with the provisions of this clause.

#### **S.4.15(1)(a)(ii) - Provisions of any Draft EPI's**

There are no current Draft EPIs applicable to this development

#### **S.4.15(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**

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

<b>Part 3A – Parking &amp; Access</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3A.2 – Parking Provision	C2 – Semi-detached / Attached dwellings = 1 space per dwelling	1 garage space and 1 hardstand	Yes
3A.3.1 – Car Park Design	C26 - Min driveway width 3m	3m wide min driveway width	Yes
<b>Part 3B – Heritage</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3B.7.1 – general Requirements	C1 - New development in the vicinity, of Heritage Item must maintain the setting & character of the street in which it is located.	Satisfactory as discussed in 5.10 above.	Yes
<b>Part 3E- Subdivision &amp; Amalgamation</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3E.2.2 - Residential Torrens Title	C1 - Proposed subdivision shall be consistent with the Desired Future Character of the area	Satisfactory	Yes – refer to discussion below
	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 all comprise a minimum site area of 200sq/m. Sites will comprise an east west orientation, are rectangular in shape and have a minimum 6m frontage to Middlemiss Street. The area and dimensions of the proposed lots are similar to other examples approved and existing within Middlemiss Street.	Yes – refer to discussion below.
	C3– Must be accompanied by conceptual building plan that demonstrates compliance with relevant building controls.	Building Plans for the new lots are proposed and have been submitted to Council.	Yes
	C5 – Proposed lots must be of a size / dimension to enable siting / construction of dwelling & ancillary structures that: i) Acknowledge site constraints ii) Address the street iii) Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views	The proposed allotments are capable of accommodating dwellings & ancillary structures which acknowledge the requirements & constraints referred to in C5.	Yes



	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.		
	C7 - All lots created shall have at least one (1) frontage to the street.	All proposed lots have a frontage to Middlemiss Street	Yes
<b>3G – Stormwater Management</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3G.2 – Stormwater Management	C2 Stormwater runoff generated from the development shall be collected & discharged in accordance with Council's Stormwater Management Technical Guidelines.	Council's Development Engineer has imposed conditions of consent to ensure the appropriate management of stormwater on site in accordance with Council's Stormwater Management Technical Guidelines.	Yes – as conditioned.
<b>Part 3K – Contamination</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3K.2.1 Site Investigation	Sites must be evaluated to determine if the proposal is on land suspected to have been used for a potentially contaminating activity or is potentially contaminated.	Refer to SEPP 55 section of this report	Yes
<b>Part 3N – Waste Minimisation &amp; Management</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3N.2 – Demolition and Construction	C1 – Site waste management plan to be submitted	A WMP prepared by NDRSN Architecture was provided to Council, which details construction waste to be generated. Conditions of consent are imposed to ensure waste generated during construction is stockpiled, managed and disposed of appropriately.	Yes
3N.3(3.2) – Residential Development	C2 - Waste / recycling areas must be located in a position convenient for users & waste collection personnel	Appropriate bin storage areas provided on site in convenient location with access close to the street	Yes

Part 4A – Dwelling Houses			
Part	Control	Proposed	Complies
4A.2.3 – Local Character	C2 Development must comply with the relevant Desired Future Character Statements in Part 8 - Character Precincts.	Refer to Part 8 – Mascot Character Precinct discussion below.	Yes
4A.2.4 – Streetscape Presentation	C3 - Dwellings must reflect dominant roof lines and patterns of the existing streetscape. C4 - Buildings must address the street. C6 - Dwellings front door is to be readily apparent from the street.	See discussion below.	Yes
4A.2.7 – Site Coverage	C2 - 65% maximum site coverage	47.2% - 52.6% site coverage	Yes
4A.2.8 – Building Setbacks	C1 – <u>Front</u> – min 6m or as per prevailing street setback <u>Side</u> – Merit assessment <u>Rear</u> – 4m	Front - 5.48m setback consistent with prevailing on eastern side of Middlemiss Street Side – Nil to 1m (single storey) & 0.9m to 1m at first floor Rear – 5.9m to 7.6m	Yes Yes Yes
4A.2.9 – Landscaped Area	C2 – 15% (30sq/m) site area of each lot to be provided as landscaped area C8 - The front setback is to be 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. C9 – 1 x 45L tree in front setback of each lot	57A – 65.1sq/m (32.6%) 57B – 63.7sq/m (31.9%) 57C – 69.3sq/m (34.7%) Landscaping maximised in front setback of site, tree planting proposed. Paving in front setback minimised. 1 tree within front and rear yards of each proposed new lot.	Yes
4A.3.3. – Front / Side / Rear Fencing	C1 - Front fences are to compliment the period or architectural style of the existing dwelling house. C11 - Fencing >1m in height must consider sightlines C19 - Maximum height of side / rear fences not to exceed 1.8 metres.	1m high slatted timber front fencing charcoal colour  1.8m side / rear boundary fencing.	Yes
4A.3.5 – Voids	C2 - Voids shall only be supported where increase amenity to primary living areas or circulation areas, and not unreasonably impact upon the amenity of adjoining properties. C3 - Voids are to connect related uses and spaces, and should not	Voids are appropriately designed and located so as to maximise amenity to proposed dwellings and not adversely impact neighbours.	Yes

	compromise the useability of spaces.		
4A.4.1 – Visual Privacy	C2 - Visual privacy for adjoining properties must be retained.	Privacy screens to 50% of length of first floor rear facing bedroom balconies.	Yes
4A.4.2 – Acoustic Privacy	New dwellings on land within the ANEF Contour 20 or higher shall be designed and constructed in accordance with AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).	Proposal has been conditioned to require the preparation and implementation of an Acoustic Report prior to the issue of a Construction Certificate.  Proposed party walls will be constructed with cavity brick to minimise noise impact between dwellings.	Yes
4A.4.3 – Solar Access	C1 - Maintain 2 hours of solar access between 9am - 3pm on 21 June to habitable rooms & POS areas on site and to adjoining neighbours	Refer to Discussion below	No
4A.4.4 – Private Open Space	C1 - Each dwelling to comprise; (i) POS min area 36m <sup>2</sup> ; (ii) At ground level with direct access to living areas (iii) Maximises solar access; (iv) Is visible from a living room door or window (v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented appropriately (viii) Is landscaped; (ix) Is located / screened to ensure privacy.	All dwellings comprise rear, east facing private open space areas of suitable area and dimension, adjoining primary living areas.  Private open space areas receive sufficient sunlight in midwinter between 9am – 12pm, are level and appropriately landscaped and screened.  57A – 65.1sq/m 57B – 63.7sq/m 57C – 69.3sq/m	Yes
4A.4.5 – Safety & Security	Maximise passive surveillance of the street	First floor balconies fronting the street and bedroom windows	Yes
4A.4.8 – Car Parking	C1 - Must comply with Part 3A Car Parking  C10 – Garages & driveways not to dominate the street.	Appropriate car parking provided on site.  Landscaping provided in front setback	Yes  Yes

### 3E.2.2 (C2) - Residential Torrens Title

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 three (3) individual allotments as follows:

Proposed Lot	Frontage	Area
57A Middlemiss Street	6.055m	200sq/m
57B Middlemiss Street	6.145m	200sq/m
57C Middlemiss Street	6.050m	200sq/m

An assessment of the existing / approved subdivision pattern has been undertaken below:

Address	Frontage	Area	Address	Frontage	Area
43 Middlemiss Street	6m	197.4sq/m	67 Middlemiss Street	12m	387.5sq/m
45 Middlemiss Street	6m	193.9sq/m	69 Middlemiss Street	12m	391.6sq/m
47 Middlemiss Street	12m	381.5sq/m	71 Middlemiss Street	9m	296.3sq/m
49 Middlemiss Street	6m	192.3sq/m	73 Middlemiss Street	9m	283.1sq/m
49A Middlemiss Street	6m	192.3sq/m	75 Middlemiss Street	9m	294.6sq/m
51 Middlemiss Street	6m	192.3sq/m	77 Middlemiss Street	9m	280.7sq/m
53 Middlemiss Street	12m	384.3sq/m	79 Middlemiss Street	6.1m	195sq/m
55 Middlemiss Street	12m	392sq/m	79A Middlemiss Street	6.1m	195sq/m
59 Middlemiss Street	12m	388.4sq/m	18 Middlemiss Street	9m	312sq/m
61 Middlemiss Street	12m	390sq/m	20 Middlemiss Street	9m	314.1sq/m
63 Middlemiss Street	12m	387.4sq/m	22 Middlemiss Street	9m	310sq/m
65 Middlemiss Street	12m	390sq/m	24 Middlemiss Street	9m	313.3sq/m

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 proposed development.

This is demonstrated by properties at 77, 79, 81 and 42 – 46 Middlemiss Street. Most recently a two storey boarding house development was approved at 40 Middlemiss Street (DA-2016/55/1), this development comprises an FSR of 0.80:1. The three attached dwellings at 49-51 Middlemiss Street were approved with an FSR of 0.76:1. Additionally, 2 x 2 storey semi detached dwellings at 40 Rawson Street Mascot, within 100m of the subject site, were approved in March of 2017 with an FSR of 0.79:1.

The proposed subdivision pattern is not dissimilar to lots which exist and have been previously subdivided with approval within Middlemiss Street. The table above identifies lots which are smaller than those proposed by the subdivision.

Overall, the proposal is compatible with surrounding properties, the emerging 2-storey built form streetscape and the desired future character of the area.

Given the above, the resultant subdivision is considered satisfactory with respect to the provisions and objectives of Botany Bay Local Environmental 2013 and Part 3E- Subdivision & Amalgamation of Botany Bay Development Control Plan 2013.

#### 4A.2.4 – Streetscape Presentation

The proposed development comprises a modern contemporary style of housing within an area which is in transition from older more traditional style homes to newer contemporary dwelling forms.

The proposed mix of roof forms are not inconsistent with emerging contemporary roof lines in vicinity of subject site and provide visual interest when viewed from the street.

The proposed dwellings address the street, yet in the assessing officers view could be improved as follows in order to provide increased passive surveillance to the public domain and a front door which is readily apparent from the street;

- a) Front entries to dwellings should be pushed further forward. This will result in a minor increase in the overall gross floor area of the development, however the modification as suggested would improve the streetscape response of the development to Middlemiss street and the minor additional resultant GFA is therefore supported in this regard.
- b) The proposal as designed would benefit from the provision of a full sized window opening to the streetscape façade of 57B (centre dwelling) Middlemiss Street, in order to avoid a blank wall and increase passive surveillance of the street.

As conditioned the proposal will maintain an appropriate visual relationship between existing building forms and development which is emerging in the locality in the form of the proposed development.



*Photomontage of development as proposed.*

#### 4A.4.3 – Solar Access

Part 4A.4.3 of Botany Bay DCP 2013 states that a minimum of 2 hours of solar access should be achieved to habitable rooms and private open spaces of adjoining dwellings in midwinter.

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 adjoining properties located directly to the south. I.e. 59 Middlemiss Street.

The application was accompanied by shadow diagrams and elevational shadows, which illustrate the impact of the proposed development onto the northern windows and private open space of 59 Middlemiss Street. It is noted that the dwelling upon 59 Middlemiss Street, adjoining the site to the south, is setback from the common boundary with the subject site by 2.3m as a result of an existing driveway.

Plans illustrate as follows onto 59 Middlemiss Street directly to the south;

i) 9am Midwinter

Sunlight is achieved to 50% of east facing openings along rear façade of dwelling at 59 Middlemiss street. Additionally, 1/3 of the rear yard of this property is in sun.

The north, south and west facing windows of this dwelling are in shadow.

ii) 12pm Midwinter

Sunlight is achieved to all west facing openings fronting Middlemiss Street. Additionally, 1/3 of the rear yard of this property is in sun.

The north, south and east facing windows of this dwelling are in shadow.

iii) 3pm Midwinter

Sunlight is achieved to all west facing openings fronting Middlemiss Street. Additionally, 1/4 of the rear yard of this property is in sun.

The north, south and east facing windows of this dwelling are in shadow.

As is evident above, solar access to the directly adjoining southern neighbour is limited as a result of the proposed development in Midwinter. This however is a worst case scenario, 1 day of the year, and shadow diagrams have been submitted which indicate appropriate levels of sunlight, greater than the minimum 2 hours are achieved to the northern windows and rear private open space of this dwelling at the equinox.

The proposed development complies with the height limit for the subject site and the side setback requirements of Botany DCP 2013 and incorporates a first floor southern boundary setback of 0.9m with no eave overhang, and a skillion roof with a fall to the south.

Given the existing subdivision pattern and orientation of the neighbouring property to the south, a reduction in height or increase in the southern setback of the proposed development, albeit to modifying the development to single storey dwellings would unlikely generate additional substantial levels of solar access to this neighbour.

Given the above, a variation is not deemed to be unreasonable in this instance and is supported on the basis of the above.

#### 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. 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.4.15(1)(a)(iv) - Provisions of regulations**

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

#### **S.4.15(1)(b) - Likely Impacts of Development**

##### Construction

Construction of the proposed development includes excavation and the construction of the development. Impacts can be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression traffic management and the like.

#### **S.4.15(1)(c) - Suitability of the site**

The subject site is of appropriate zoning, overall area, dimensions, topography and location so as to facilitate the proposed subdivision and redevelopment of the site as sought by the applicant.

The subject site is affected by 20 – 25 ANEF contour and further investigation of aircraft noise will be required via appropriate conditions of consent. On the basis of the aforementioned, the site is suitable for the proposed development.

#### **S.4.15(1)(d) - Public Submissions**

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was publicly notified from 29 May to 14 June 2018. A total of one (1) submission was received during this period, the issues raised are detailed below;

##### *Overlooking to 56 Wellington Street from second storey eastern windows of proposed 57A Middlemiss Street*

Comment: The objector's property comprises a pool in the rear private open space of their site. As proposed the eastern first floor façade of 57A Middlemiss Street comprises a 3.5sq/m balcony off a bedroom. No further windows or openings are proposed in this location. The balcony is positioned 6.9m from the rear boundary of the subject site.

Proposed dwelling 57B further comprises an 8.4sq/m first floor balcony to the eastern façade, this balcony is positioned 7m from the rear boundary.

Proposed balconies referred to above, comprise full height screen louvres to 50% of their length.

Whilst balconies are proposed off bedrooms and notwithstanding the provision of the louvres, balconies are deemed to be of sufficient dimensions to be useable.

Balconies in this location, irrespective of the provision of louvres are unnecessary and have the potential, albeit at an oblique angle, to result in overlooking of the objectors pool. As such the proposal has been conditioned to require the deletion of balconies at first floor facing east to the rear of the site. This condition will also require the deletion of the first garden bed to dwelling 57B.

Doors to these bedrooms are further conditioned to require the provision of east facing windows with a sill height of 1.5m in lieu of sliding doors as illustrated on current plans.



*Is fencing proposed along rear boundary / Objector seeks to retain their rear fence as they have attached landscaping to their side.*

Comment: The DA includes the proposed replacement of the existing side boundary fencing on both the northern and southern sides of the site, with colourbond fencing. The applicant has advised that existing rear fencing is in a relatively good condition and will be retained.

#### **S.4.15(1)(e) - Public interest**

The proposal is deemed to be in the public interest for the reasons previously discussed within this report.

#### **Section 7.11 Contributions**

The proposal has been conditioned to require the payment of 7.11 Contributions for the resultant increase in density on site. A total of \$40,000.00 is payable.

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## Schedule 1 – Conditions of Consent

### GENERAL CONDITIONS

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. 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 No.	Author	Dated	Date Received
Subdivision Plan DA 02_03 Issue B	NDRSN	15/08/2018	17/08/2018
Ground Floor Plan DA 03_01 Issue B	NDRSN	15/08/2018	17/08/2018
First Floor Plan DA 03_02 Issue B	NDRSN	15/08/2018	17/08/2018
Roof Plan DA 03_03 Issue B	NDRSN	15/08/2018	17/08/2018
West Elevation DA 04_01 Issue B	NDRSN	15/08/2018	17/08/2018
North Elevation DA 04_02 Issue B	NDRSN	15/08/2018	17/08/2018
East Elevation DA 04_03 Issue B	NDRSN	15/08/2018	17/08/2018
South Elevation DA 04_04 Issue B	NDRSN	15/08/2018	17/08/2018
Section AA DA 05_01 Issue B	NDRSN	15/08/2018	17/08/2018
Section BB DA 05_02 Issue B	NDRSN	15/08/2018	17/08/2018
Schedule of Colours & Finishes DA 07_01 Issue B	NDRSN	15/08/2018	17/08/2018

Reference Document(s)	Author	Date Received
Statement of Environmental Effects & Clause 4.6	Urban Future	22/05/2018
Site Waste Management Plan	NDRSN Architecture	22/05/2018
Quantity Surveyors Report	Property & Building Assessments Pty Ltd	22/05/2018
Survey	G & R Surveying Services Pty Ltd	22/05/2018
BASIX Certificate number: 926078M_02	Greenworld Architectural Drafting	22/05/2018

3. This Consent relates to land in Lot 3 in DP 136923 and as such, building works must not encroach on to adjoining lands or other public places, except as otherwise permitted by this consent.

4. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
5. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
6. This approval is not to be construed as permission to erect any structure on or near boundary contrary to the provisions of the Dividing Fences Act.
7. Balconies shall not be enclosed at any future time without prior development consent.
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.
9. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
10. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 926078M\_02 other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

- (al) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 1548(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

*Note: For further information please see <http://www.basix.nsw.gov.au>.*

11. This consent given does not imply that works can commence until such time that: -
  - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by: -
    - i) The consent authority; or,
    - ii) An accredited certifier; and,
  - b) The person having the benefit of the development consent: -
    - i) Has appointed a principal certifying authority; and,
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - iii) The person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence the erection of the building.

**DEVELOPMENT SPECIFIC / ONGOING CONDITIONS**

12. 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. The water from the rainwater tanks shall not be used for drinking, the rainwater tanks shall be routinely desludged and all contents from the desludging process disposed. Solids shall be disposed to the waste disposal and desludged liquid shall be disposed to the sewer.
13. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) or the like, shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy - 2000.
14. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
15. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
16. All proposed lights shall comply with the Australian Standard AS4282 – 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
17. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
18. Landscaping
  - a) All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.
  - b) Capture of rainwater for irrigation purposes as a sustainability measure shall be provided. Irrigation system shall be connected to rainwater tank as a WSUD principle.
  - c) A Landscape Maintenance Schedule is required. Maintenance schedule shall cover a 12 month period and provides a guide to the landowner or occupier on how to best maintain the constructed landscaped areas; and include the following information:
    - i) Shrub pruning/trimming (frequency, plant requirements);

- ii) Fertilising and pest control (soil testing, types, rate, frequency);]
  - iii) Mulching, weeding and soil improvement (frequency, materials);
  - iv) Irrigation (checks, adjustments);
  - v) Adjustment of tree stakes and ties;
  - vi) Tree maintenance (fertilising, mulching, special tree requirements, stakes and ties replacements);
  - vii) Maintenance of hard landscape elements (paving, edges, walls, pergolas, seats, planter box walls etc).
  - viii) Replacement of failed, damaged or stolen trees, shrubs and groundcovers throughout the planting establishment period.
- d) Public Domain Landscape Improvements to Middlemiss Street (LGA managed road).
- i) Two (2) *Tristanopsis laurina* (Water Gum) as per Botany Bay Street Tree Master Plan shall be planted in the nature strip in the front of the site.
  - ii) *Tristanopsis laurina* (Water Gum) pot size supplied shall be not less than 100 Litre.
  - iii) Pit size to be 1.5 m long by the space between kerb and footpath. Interface with turf to be defined with hardwood 50mm x 150mm, edging set flush with adjoining kerb and path, provide pegs at both ends and centre of timber edge.
  - iv) Tree shall be planted 3 meters away from any driveway, and 900mm from kerb.
  - v) Height above container 2.4 meters, calliper at 300mm greater than 50mm, with a clear trunk height of 1.5 meters.
  - vi) Trees supplied shall be healthy and vigorous, free of pest and disease, free from injuries and shall conform to NATSPEC guide.
  - vii) New street trees shall be maintained by the Owner for the duration of the first 52 weeks from final completion of landscaping works. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstance.

The approved completed landscape works shall be maintained for a period not less than 12 months.

On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

19. 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.

**PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

The following conditions must be completed prior to the issue of the Construction Certificate.

20. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 131 441.
21. Prior to the issue of any Construction Certificate, the following fees shall be paid:

Footpath Crossing Deposit	\$7,686.00 (see below)
Development Control	\$3,000.00
Footpath Inspection Fee	\$150.00
Section 7.11 Contributions (refer below)	\$40,000.00 (see below)
Street Tree Maintenance Bond	\$2,000.00 (see below)

22. Council being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with the *City of Botany Bay Section 94 Contributions Plan 2016*, a contribution of **\$40,000.00** is to be paid to Council prior to the issue of the first Construction Certificate.

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

23. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$7,686.00 (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.
24. Prior to the issue of any Construction Certificate, an Acoustic Report shall be prepared by a qualified acoustic consultant and shall detail acoustic amelioration measures to be incorporated within the development during construction to ensure compliance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).

The Acoustic Report shall be approved by the PCA and amelioration measures illustrated upon construction certificate plans, prior to the issue of the Construction Certificate.

25. Prior to the issue of a Construction Certificate for the development, an application for Property Address Allocation and associated fee is required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy. The form is available for download at:

<https://www.bayside.nsw.gov.au/services/developmentconstruction/buildingoralteringproperty/commonlyusedforms>

Derivation and production of address data components are governed by the NSW Addressing User Manual to ensure consistency of application.

[http://www.gnb.nsw.gov.au/data/assets/pdf\\_file/0007/199411/NSW\\_AUM\\_July2018\\_Final.pdf](http://www.gnb.nsw.gov.au/data/assets/pdf_file/0007/199411/NSW_AUM_July2018_Final.pdf)

26. Plans submitted with the Construction Certificate shall demonstrate compliance with the following and shall be approved by Council, prior to the issue of the Construction Certificate:
- a) First floor east facing balconies off bedrooms to all dwellings shall be deleted, including the garden planter to 57B.  
  
Sliding doors shall be replaced with windows with a minimum sill height of 1.5m above finished floor level.
  - b) All vertical / horizontal plumbing, other than roof water heads and down pipes, shall be concealed within the brickwork of the building.
  - c) All hot water and air conditioning systems/units located on the balcony of a dwelling shall be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed and utilities shall comply with relevant Australian Standards.
  - d) Acoustic amelioration measures as required by the conditions of this consent.
  - e) Front entries to dwellings should be pushed further forward and align with the front wall of each garage.
  - f) A full sized window opening must be provided to the streetscape façade of 57B (centre dwelling) Middlemiss Street.
27. 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.
28. Prior to the issue of any 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.
- All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
29. The applicant shall confer with Ausgrid to determine if:
- installation of electricity conduits in the footway is required.

- satisfactory clearances to any existing overhead High Voltage mains will be affected.
- an electricity distribution substation is required.

Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

30. The approved plans must be submitted to Sydney Water to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifying Authority must ensure that Sydney Water has approved the plans before issue of any Construction Certificate. For more information, visit [www.sydneywater.com.au](http://www.sydneywater.com.au).
31. A Waste Management Plan prepared in accordance with Part 3N of Council's DCP 2013 shall be prepared and submitted to the satisfaction of the PCA, 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.
32. The applicant is to submit payment of a Street Tree Maintenance Bond of \$2,000.00. The duration of the Bond shall be limited to a period of 12 months after the issue of the Final Occupation Certificate, and a satisfactory inspection from Council. At the completion of the Bond period the Bond shall be refunded pending an inspection of the trees by Council. If a tree is found to be dead, pruned or dying and will not recover Council will forfeit all or part of the bond to replace or maintain the tree/s, unless the Applicant undertakes this work under instruction from Council.
33. Details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. The report must:
  - a) identify each item of plant and equipment;
  - b) the following additional criteria adopted by City of Botany Bay Council:
    - i) The operation of all plant and equipment shall not give rise to an equivalent continuous ( $L_{Aeq}$ ) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background  $L_{A90}$  level (in the absence of the noise under consideration).
    - ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds  $L_{Aeq}$  50dB(A) day time and  $L_{Aeq}$  40 dB(A) night time.
    - iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds  $L_{Aeq}$  65dB(A) day time/night time.
    - iv) For assessment purposes, the above  $L_{Aeq}$  sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

**Note** "sensitive" positions should be selected to reflect the typical use of a property (i.e. any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.



34. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits and road carriageway pavements in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.
35. A Construction Management Plan shall be submitted to, and approved by the Private Certifying Authority prior to the commencement of works. The Plan shall address, but not be limited to the following matters:
- a) Proposed protection for Council and adjoining properties,
  - b) Proposed phases and order of construction works, expected method and duration of each construction phase,
  - c) Hours of work,
  - d) Contact details of site manager,
  - e) Proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
  - f) Traffic management, method of access, routes through Council area.
  - g) Proposed method of loading / unloading, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site.
  - h) Noise and vibration management,
  - i) Waste management,
  - j) Erosion and sediment control,
  - k) Protection of trees to be retained.

A copy of the approved Construction Management Plan shall be submitted to Council.

36. A Traffic and Pedestrian Management Plan prepared by an RMS accredited consultant, shall be submitted to and approved by the Private Certifying Authority. The Plan shall nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and address, but not be limited to, the following matters:
- a. Ingress and egress of construction vehicles to the site,
  - b. routing and control of construction vehicles,
  - c. parking of employees vehicles,
  - d. loading and unloading, including construction zones, for all construction vehicles,
  - e. predicted traffic volumes, types and routes,
  - f. pedestrian and traffic management methods,
  - g. the hours of operation of the construction site,
  - h. holding areas for demolition/excavation/construction delivery vehicles wanting to access the site'
  - i. means of ensuring vehicular and pedestrian access to adjoining resident's properties and existing residents and visitors for the duration of the works.

The plan may need to be prepared in consultation with Council's Traffic Management section. A copy of the approved Plan shall be submitted to Council.



*Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*

37. Prior to the issue of any Construction Certificate, a geotechnical engineer shall determine the soil absorption rate (in litres / second / m2 base area) and the depth of the water table in accordance with the requirements of the Botany Bay DCP Stormwater Management Technical Guideline section 5.2 prior to design of the drainage system. A copy of the report shall be forwarded to Bayside Council prior to the issue of the Construction Certificate.
38. 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. A copy of the detailed design plans shall be provided to Bayside Council where Bayside Council is not the Principal Certifying Authority. The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Botany Bay Council Development Control Plan 'Stormwater Management Technical Guidelines', AS/NZS 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.

The plans shall incorporate measures such as:

- a) the provision for three (3) separate Onsite Stormwater Infiltration Systems designed to retain all 1 in 100 year storm events. The systems shall be designed in accordance with Botany Bay Stormwater Management Technical Guidelines section 5 and Australian Standards,
- b) the maximum infiltration rate that can be used for the design of infiltration systems is 1.0 litres / second / m2 base area,
- c) rainwater tank systems shall be provided with a minimum capacity of 2000L for each proposed lot. The rainwater tanks shall service the toilets, clothes washers and any landscaping in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. First flush device shall also be incorporated into the tank systems. Overflow from the rainwater tank shall connect to the proposed site drainage system.
- d) Suitably sized sealed access grates for maintenance access shall be supplied for any underground rainwater tanks,
- e) Detailed calculations supporting the proposal.

All plans and documentation shall be certified by a suitably qualified engineer as specified in Botany DCP Part 10 Section 2.1(i).

39. Prior to the issue of any Construction Certificate, any part of the proposed building within 3m of the proposed underground rainwater tanks or absorption trenches shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
40. Prior to the issue of any Construction Certificate, any part of the proposed driveway over the absorption trenches or underground rainwater tanks shall be either constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the trench base or constructed as a structural slab so that no load

is transferred to the plastic trench. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

41. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall be designed to conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E01, E04, E07 and E16.

As part of this development, a new concrete driveway shall be constructed. A new three (3.0) metre wide driveway layback and a new six (6.0) metre wide driveway layback shall be constructed as part of the new driveways. 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.

All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross section. If any applicant wants to retain an existing vehicular crossing an application still has to be submitted with the matter highlighted. The design should be submitted to the PCA for approval. The approved design form part of the future road opening permit application.

#### **PRIOR TO THE COMMENCEMENT OF WORKS**

The following conditions must be completed prior to the commencement of works.

42. Dewatering is not permitted on this site without NSW EPA approval.
43. 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, and
  - 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;
  - iv) the name of the Principal Certifying Authority including an after hours contact telephone number; and
  - v) Any such sign is to be removed when the work has been completed.
44. Where demolition is proposed, the following shall be provided to Council at least forty-eight (48) hours prior to the commencement of demolition:
- 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.
45. Prior to the commencement of works, a plan (written and/or diagrammatic) shall be submitted and approved by the 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.
46. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- a) Must preserve and protect the building/ fence from damage; and,

- b) If necessary, underpin and support such building in an approved manner;
  - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - d) 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, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - e) If the soil conditions required it:
    - i) Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and
    - ii) Adequate provision must be made for drainage.
47. The PCA must be satisfied that: -
- a) In the case of work to be done by a licensee under the Home Building Act: -
    - i) Has been informed in writing of the licensee name and contractor licence number, and;
    - ii) Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
  - b) In the case of work to be done by any other person: -
    - i) Has been informed in writing of the person's name and owner-builder permit number, or;
    - ii) Has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of *owner builder work* in Section 29 the Home Building Act 1989.
  - c) And is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
48. 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.
- 49. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points. Such fencing or other measures must be in place before the approved activity commences.
- 50. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.
- 51. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 52. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.
- 53. Erosion and sediment control devices shall be installed and in function 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 public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 54. 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.
- 55. 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: -  
 Note - 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
  - g) Permit to use any part of Council's road reserve or other Council lands
- 56. 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.
57. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government Act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
58. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
59. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
- i. where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
  - ii. where the erection of gates or fences has restricted access to metering equipment.
60. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the electrical network in question. These works shall be at the applicant's expense. Ausgrid's requirements under Section 49 Part 1 of the Electricity Supply Act 1995 shall be met prior to commencement of works or as agreed with Ausgrid.
61. Prior to the commencement of any demolition work, a licensed demolisher who is registered with WorkCover NSW must prepare a Safe Work Method Statement to the satisfaction of the nominated Certifying Authority and a copy shall be sent to Bayside Council (if Council is not the Certifier). A copy of the SWMS shall be submitted to WorkCover NSW also.

The SWMS must be in compliance with AS2601:1991 – "Demolition of Structures" with 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 2011)";
- 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 site;
- e) Disconnection of gas and electrical supply;
  - f) Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services within the street must not be obstructed;
  - g) No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
  - h) Water.

#### **DURING DEMOLITION / EXCAVATION / CONSTRUCTION**

The following conditions must be complied with during demolition, excavation and or construction.

- 62. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
- 63. Hours of construction shall be confined to between 7.00am to 5.00pm Mondays to Fridays, inclusive, and between 8.00am to 1.00pm Saturdays with no work being carried out on Sundays and all public holidays. All possible steps should be taken to silence construction site equipment.
- 64. Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.
- 65. 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.
- 66. 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 made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, subcontractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUSSPEC at no cost to Council.
- 67. The maxi mesh screens and removable geotextile are to be installed in the absorption systems prior to connection of the downpipes to ensure the effective performance of the system during construction and the long term viability of the system.
- 68. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system. The demolisher shall comply with the Australian Standard AS 2601-

2001 "Demolition of Structures" and the requirements of the NSW WorkCover Authority.

No demolition materials shall be burnt or buried on the site.

69. All waste generated on site shall be disposed of in accordance with the approved Waste Management Plan.
70. 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).
71. During demolition and construction works, the applicant/builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
72. Stockpiles are not permitted to be stored on Council property (including the nature strip) unless prior approval has been granted. In addition, stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
73. Building and demolition operations such as brick cutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
74. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
75. 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.
76. 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).
77. 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.

An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos.

78. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

Note: The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.

79. All services (Utility, Council, etc.) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.

To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -

- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
- b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -
  - i. The additional load on the system; and
  - ii. The relocation and/or adjustment of the services affected by the construction.

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.

80. All excavation 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;
- a) 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 de-stabilize any adjacent structures.



- b) Where the development involves 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.
  - iii. Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

Any retained 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, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or de-stabilize any adjacent structures.

Where soil conditions require:

- a) Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided, and
  - b) Adequate provision must be made for drainage.
81. 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).
82. 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 Centres.

83. 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.
84. 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.
85. The Applicant has permission to remove *all trees* on the property, excluding the Bhutan Cypress (*Cupressus torulosa*) which is located in the northwest corner of the front setback and must be retained. The trees may only be removed after a Construction Certificate has been issued and removal shall be undertaken by the Applicant at their own expense.
- a) A qualified Arborist with their own public liability insurance must be engaged.
  - b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit.
  - c) A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.
- Council will take no responsibility for any damage incurred to persons, property or services during the tree removal works.
86. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

87. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
88. 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.
89. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
- a) On Middlemiss Street, adjacent to development, reconstruct existing Kerb and Gutter for the full length property in accordance with Council Infrastructure Specifications, and

- b) On Middlemiss Street, adjacent to development, reconstruct existing Footpath for the full length of the property in accordance with Council Infrastructure Specifications.
90. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act, 1993, shall be completed and accepted by Council.
- 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.
91. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
92. All landscape works are to be carried out in accordance with the approved landscape plans. The landscaping is to be maintained to the approved standard at all times.
93. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
- The overflow from the rainwater tank shall be directed to the storm water system.
  - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
  - A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
94. Prior to the issue of any Occupation Certificate(s), certification from a licensed plumber shall be provided certifying the installation of the required minimum capacity 2000L rainwater tank(s) in each lot in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. The rainwater tanks shall be certified as servicing the toilets, clothes washers and all landscaping on the site. First flush device shall be installed & overflow from the rainwater tank shall connect to the proposed site drainage system.
95. All absorption trenches or modular drainage cell installations must be inspected prior to back filling and proceeding to subsequent stages of construction to the satisfaction of principal Certifying Authority. Supporting evidence shall be issued by a professional Civil Engineer experienced in storm water system design and construction.
96. Prior to the issue of any Occupation Certificates(s), documentation from a practicing civil engineer shall be submitted to the Principal Certifying Authority certifying that the storm water drainage system has been constructed generally in accordance with the approved storm water management construction plan(s) and all relevant standards. A works as executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works as executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

97. Prior to the issue of any Occupation Certificate, a restriction on Use of Land and Positive Covenant shall be imposed upon each lot of the development. The following covenant shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:

- a) Positive Covenant and Restriction on Use of Land for On Site Infiltration System. Refer to Appendix A of the Storm water Management Technical Guidelines for suggested wording.

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

Application must be made through an authorized Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

99. Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority prior to use or occupation of the premises. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.

100. A full width vehicular entry is to be constructed to service the properties. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or private contractor. There are specific requirements for approval of private contractors.

101. The developer must submit to the PCA 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).

102. Landscaping

- a) An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements.
- b) All landscape works are to be carried out in accordance with the approved landscape plans. The landscaping is to be maintained to the approved standard at all times.
- c) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating

that the landscape works have been carried out in accordance with the approved plans and documentation.

103. A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 – Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
104. 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.
105. Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval.
106. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.

#### **PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE**

107. 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 shall be made to Bayside Council and accompanied by a linen plan with six (6) copies and appropriate fees.
108. Prior to the issue of the Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorized Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://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 Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and including the building, driveway and/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.
109. Prior to the issue of the Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the satisfaction of Bayside Council showing all structures are wholly located within the property boundary.

#### **EXTERNAL AUTHORITIES**

110. The following conditions imposed by **Ausgrid** are as follows:

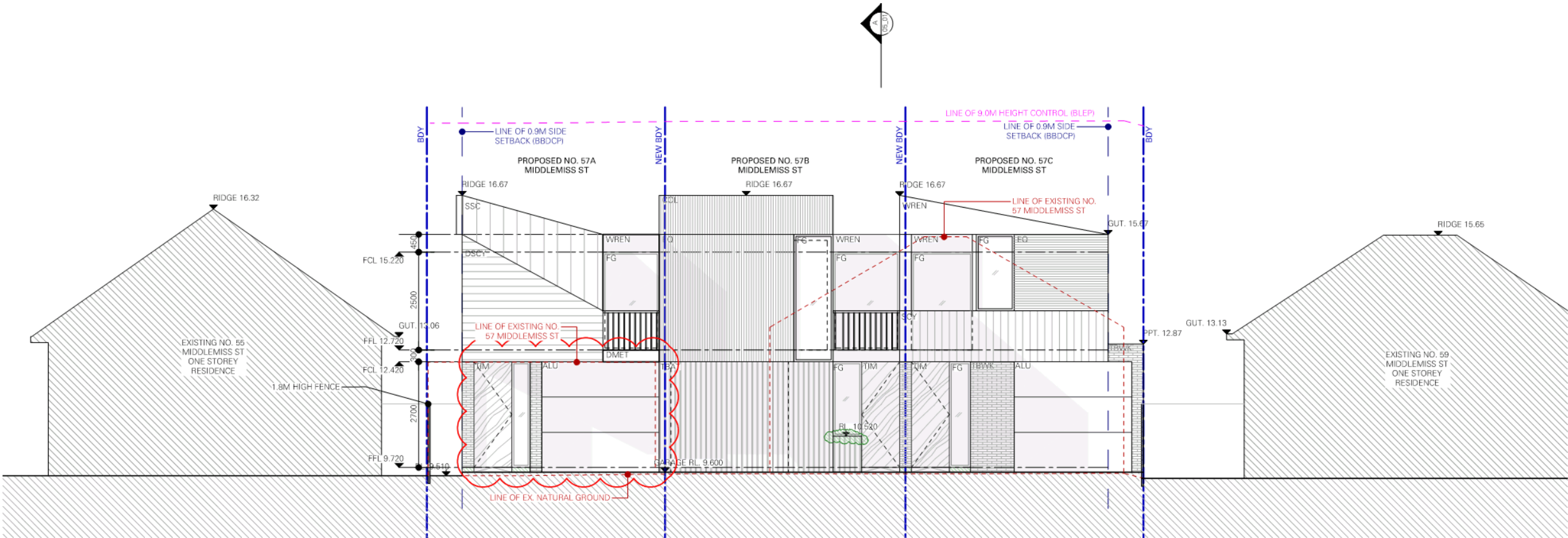
- a) The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (eg. whether a substation is required on site).
- b) In general, works to be considered by Ausgrid include, but are not limited to, the following:
  - i. Changes in electrical load requirements
  - ii. Changes to Ausgrids infrastructure (ie. asset relocations, decommissioning substations etc.)
  - iii. Works affecting Ausgrids easements, leases and/ or right of ways
  - iv. Changing the gradients of any roads or paths
  - v. Changing the level of roads or foot paths
  - vi. Widening or narrowing of roads
  - vii. Closing roads or laneways to vehicles
  - viii. In all cases Ausgrid is to have 24 hour access to all its assets
- c) Any work undertaken near overhead power lines needs to be done in accordance with:
  - i. Workcover Document ISSC 23 "Working Near Overhead Power Lines"
  - ii. Ausgrids Network Standard
  - iii. Ausgrids Electrical Safety Rules
- d) The developer is to ensure that the proposed works do not contravene Ausgrids technical standards and statutory requirements, in regards to the safe and reliable operation and maintenance of Ausgrid's network.

111. The following conditions imposed by **Sydney Water** are as follows:

- a) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
- b) *The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.*
- c) The [Tap in™](#) service provides 24/7 access to a range of services, including:
  - i. building plan approvals
  - ii. connection and disconnection approvals
  - iii. diagrams
  - iv. trade waste approvals
  - v. pressure information
  - vi. water meter installations
  - vii. pressure boosting and pump approvals
  - viii. changes to an existing service or asset, e.g. relocating or moving an asset.
- d) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take

some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.





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LEGEND  
C - LINE OF EXISTING BUILDING  
OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
LVR - GLASS LOUVRES  
SHH - BEHIND  
MET - CHARCOAL METAL BALUSTRADE  
DSCY - CHARCOAL SCYON CLADDING  
TBAT - TIMBER BATTENS

TBWK - THIN PROFILE BRICKWORK WALL (VARYING COLOURS)  
RENDW - WHITE STUCCO RENDER  
TLVR - TIMBER PRIVACY LOUVRES  
ALUW - CHARCOAL ALUMINIUM LOUVRES  
EQD - EQUATORIAL  
SCY - GREY SCYON AXON CLADDING  
ALU - ALUCABOND  
COL - COLORBOND

ISSUE 8 AMENDMENTS

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE  
PROPOSED WEST ELEVATION  
(MIDDLEMISS STREET)

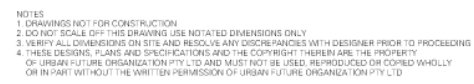
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DRAWING NO.  
DA\_04\_01

DRAWN  
GB / DM / FS  
ISSUE  
B  
DATE  
15-Aug-18



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TEL: +61 2 9331 7000





LEGEND  
 LINE OF EXISTING BUILDING  
 OPERABLE GLAZING  
 FG - FIXED GLAZING  
 LVH - GLASS LOUVRES  
 (SH) - BEHIND  
 MET - CHARCOAL METAL BALUSTRADE  
 DSCY - CHARCOAL SCYON CLADDING  
 TBAT - TIMBER BATTENS

TBWK - THIN PROFILE BRICKWORK WALL (VARYING COLOURS)  
RENW - WHITE STUCCO RENDER  
TLVR - TIMBER PRIVACY LOUVRES  
ALVR - CHARCOAL ALUMINIUM LOUVRES  
EQ - EQUITONE  
SCY - GREY SCYON AXON CLADDING  
ALU - ALUCABOND  
COL - COLORBOND

 ISSUE B AMENDMENTS

TITLE  
PROPOSED SOUTH ELEVATION

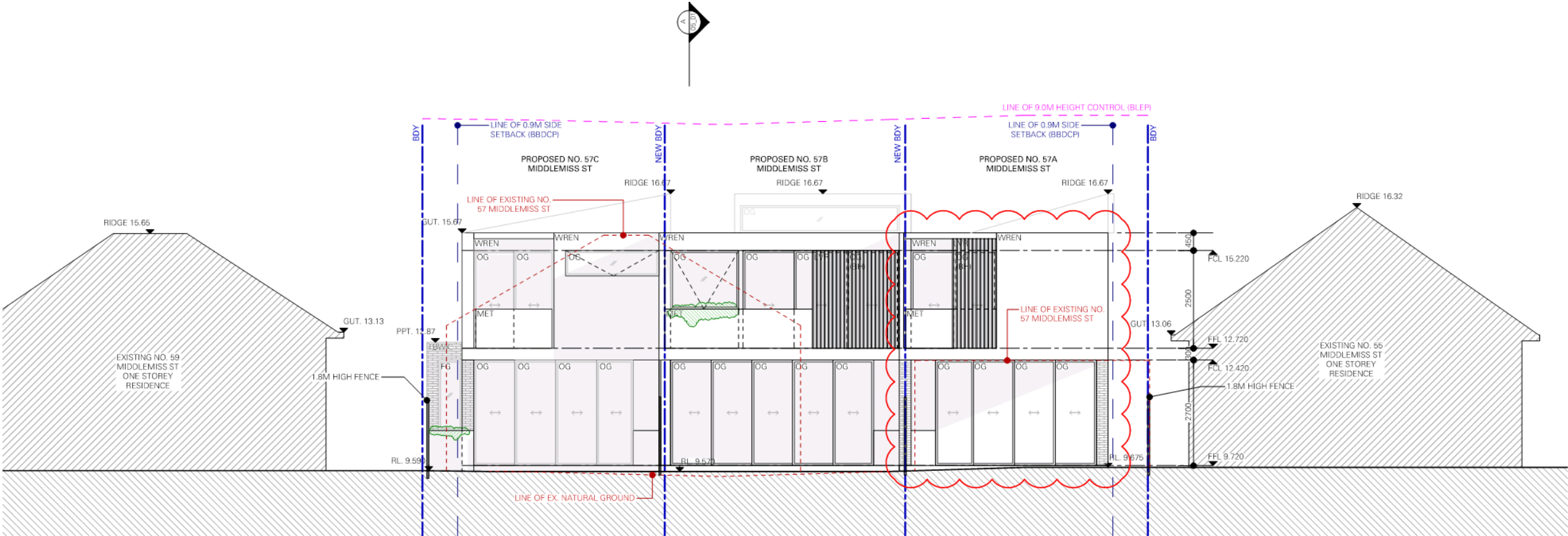
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DA 04\_04

DRAWN  
GB / DM / FS  
ISSUE DATE  
B 15-Aug-18

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LEGEND:  
C - LINE OF EXISTING BUILDING  
OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
LVR - GLASS LOUVRES  
SHH - BEHIND  
MET - CHARCOAL METAL BALUSTRADE  
DISC - CHARCOAL SCYON CLADDING  
TBAT - TIMBER BATTENS

TBWK - THIN PROFILE BRICKWORK WALL (VARYING COLOURS)  
RENVH - WHITE STUCCO RENDER  
TLVR - TIMBER PRIVACY LOUVRES  
ALVR - CHARCOAL ALUMINIUM LOUVRES  
EQ - EQUATORIAL  
SDY - GREY SCYON AXON CLADDING  
ALU - ALUCABOND  
COL - COLORBOND

ISSUE 8 AMENDMENTS

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

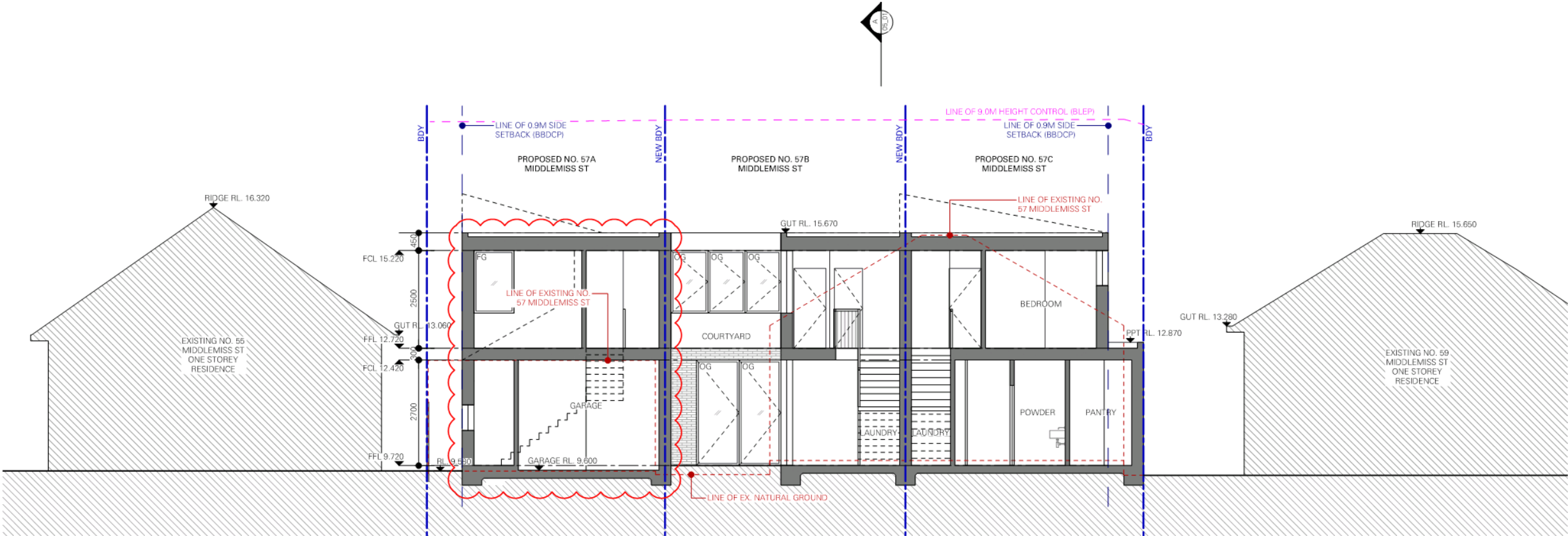
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PROPOSED EAST ELEVATION

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DRAWING NO.  
DA\_04\_03

DRAWN  
GB / DM / FS  
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B  
DATE  
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LEGEND:  
C - LINE OF EXISTING BUILDING  
OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
LVR - GLASS LOUVRES  
SHH - BEHIND MET - CHARCOAL ALUMINIUM LOUVRES  
DISC - CHARCOAL SCYON CLADDING  
TBAT - TIMBER BATTENS

TBWK - THIN PROFILE BRICKWORK WALL (VARYING COLOURS)  
RENVH - WHITE STUCCO RENDER  
TLVR - TIMBER PRIVACY LOUVRES  
ALVR - CHARCOAL ALUMINIUM LOUVRES  
EQ - EQUATORIAL  
SCY - GREY SCYON AXON CLADDING  
ALU - ALUCABOND  
COL - COLORBOND

ISSUE 8 AMENDMENTS

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

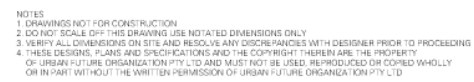
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DA\_05\_02

DRAWN  
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ISSUE  
B  
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LEGEND  
 LINE OF EXISTING BUILDING  
 OPERABLE GLAZING  
 FG - FIXED GLAZING  
 LVH - GLASS LOUVRES  
 SHI - BEHIND  
 MET - CHARCOAL METAL BALUSTRADE  
 DSCY - CHARCOAL SCYON CLADDING  
 TBAT - TIMBER BATTENS

TBWK - THIN PROFILE BRICKWORK WALL (VARYING COLOURS)  
 RENIW - WHITE STUCCO RENDER  
 TLVR - TIMBER PRIVACY LOUVRES  
 ALVR - CHARCOAL ALUMINIUM LOUVRES  
 EQ - EQUITONE  
 SCY - GREY SCYON AXON CLADDING  
 ALU - ALUCABOND  
 COL - COLORBOND

 ISSUE B AMENDMENTS

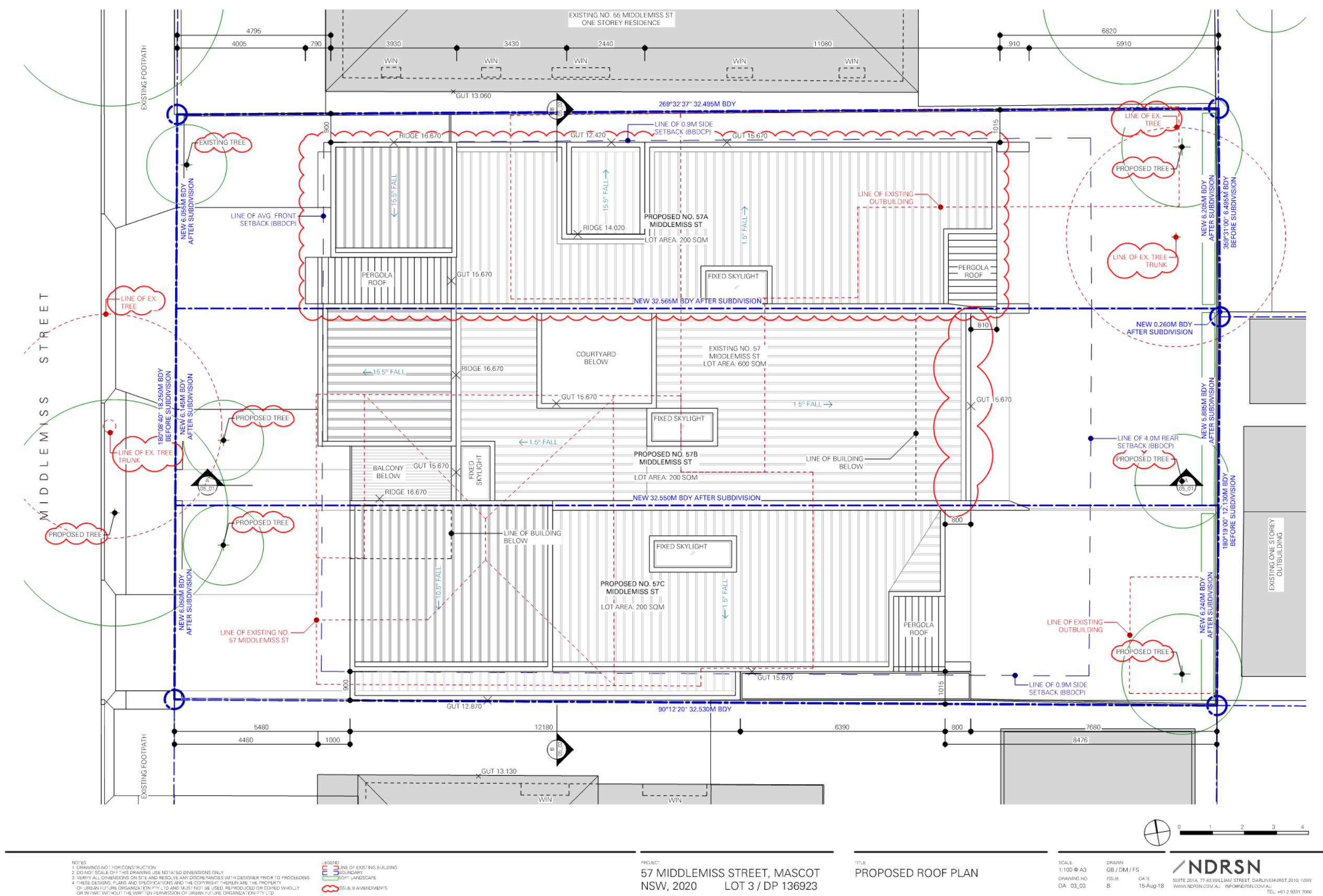
PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE  
PROPOSED SECTION A-A

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DRAWING NO.  
DA 05\_01

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LEGEND:  
--- PROPOSED BOUNDARY AFTER SUBDIVISION  
--- EXISTING LOT BOUNDARY

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE  
PROPOSED TORRENS TITLE  
SUBDIVISION PLAN

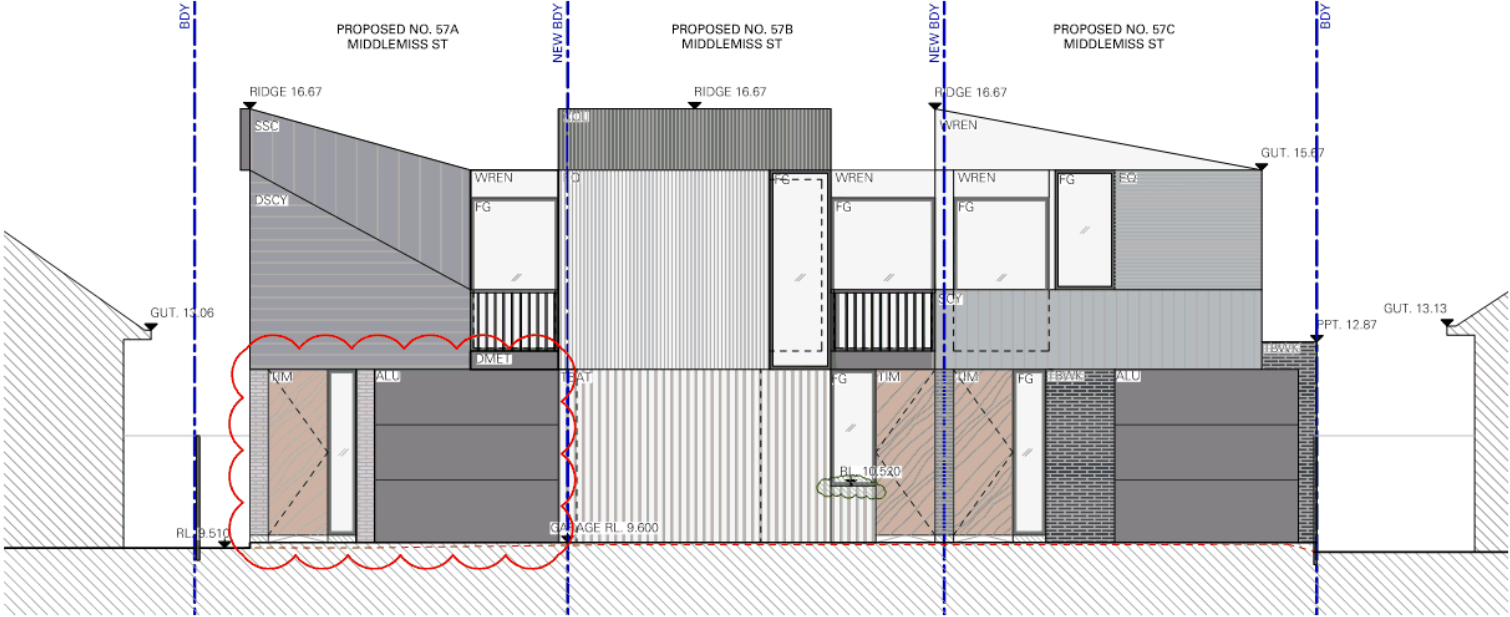
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DA\_02\_03

DRAWN  
GB / DM / FS  
ISSUE  
B  
DATE  
15-Aug-18

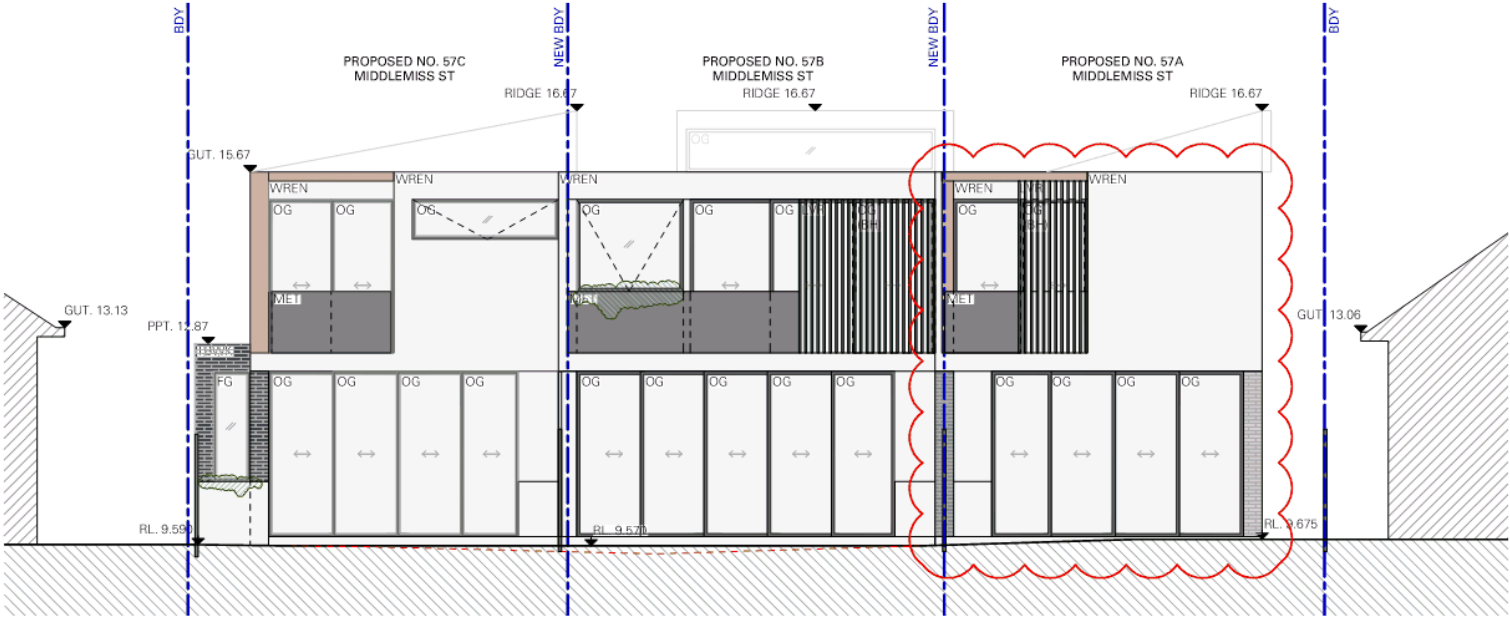


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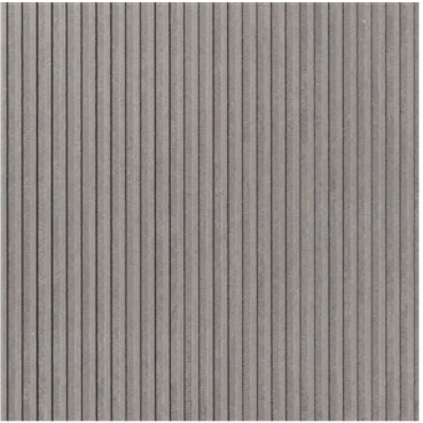
PROPOSED WEST ELEVATION  
1:100 @ A3



PROPOSED EAST ELEVATION  
1:100 @ A3



DSCY: DARK SCYON



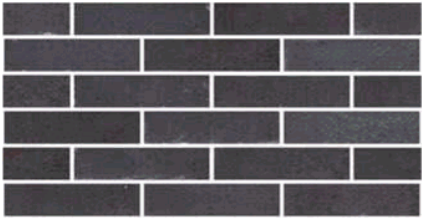
EQ: EQUITON (GROOVED)



MET: METAL BALUSTRADE  
(WEST ELEVATION)



TLVR: TIMBER LOUVRES



TBWK: THIN PROFILE BRICK  
(VARYING COLOURS)

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LEGEND:  
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OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
LVR - GLASS LOUVRES  
SH - SHED  
MET - CHARCOAL METAL BALUSTRADE  
DSCY - CHARCOAL SCYON CLADDING  
TBAT - TIMBER BATTENS

TBWK - THIN PROFILE BRICKWORK WALL (VARYING COLOURS)  
WREN - WHITE STUCCO RENDER  
TLVR - TIMBER PRIVACY LOUVRES  
ALVR - CHARCOAL ALUMINIUM LOUVRES  
EQ - EQUITON  
SCY - GREY SCYON AXON CLADDING  
ALU - ALUCABOND  
COL - COLORBOND

ISSUE 8 AMENDMENTS

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE  
EXTERNAL FINISHES SCHEDULE &  
MATERIAL SAMPLE BOARD

SCALE  
1:100 @ A3  
DRAWING NO.  
DA\_07\_01

DRAWN  
GB / DM / FS  
ISSUE  
B  
DATE  
15-Aug-18



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BAYSIDE COUNCIL  
DEVELOPMENT APPLICATION SUBMISSION  
PROPOSED 3 X TWO STOREY ATTACHED DWELLINGS WITH  
TORRENS TITLE SUBDIVISION TO:  
NO. 57 MIDDLEMISS STREET, MASCOT, NSW, 2020      LOT 3 / DP 136923



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LEGEND:

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020      LOT 3 / DP 136923

TITLE  
PROPOSED VISUALISATION

SCALE  
NOT TO SCALE  
DRAWING NO.  
DA\_00\_02  
ISSUE  
B  
DATE  
20-Aug-18

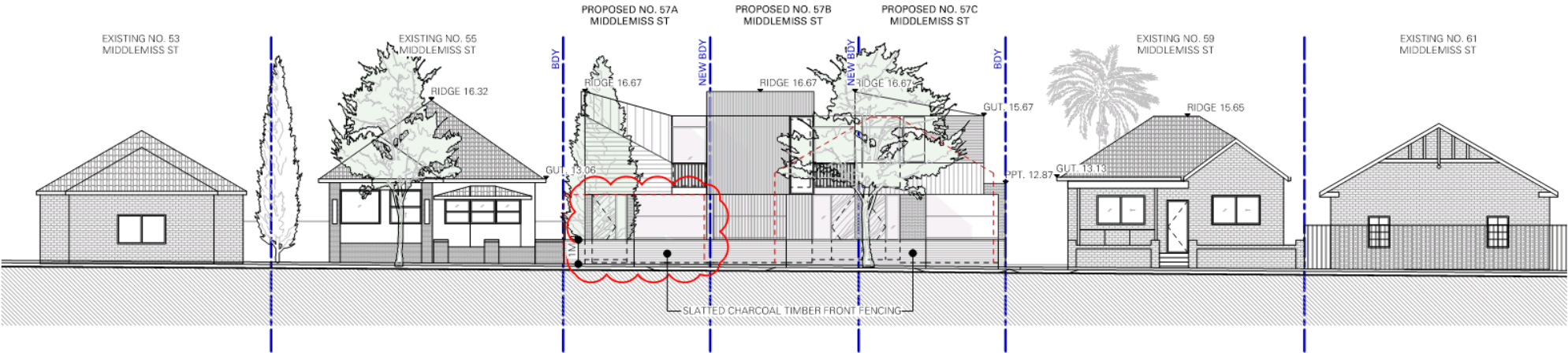
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GB / DM / FS

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EXISTING MIDDLEMISS STREET ELEVATION  
1:200 @ A3



PROPOSED MIDDLEMISS STREET ELEVATION  
1:200 @ A3



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LEGEND  
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OG - OPERABLE GLAZING  
FG - FIXED GLAZING  
LVR - GLASS LOUVRES  
BHT - BEHIND  
MET - CHARCOAL METAL BALUSTRADE  
DSOY - CHARCOAL SCYON CLADDING  
TBAT - TIMBER BATTERS

TBWK - THIN PROFILE BRICKWORK WALL (VARYING COLOURS)  
RENDWH - WHITE STUCCO RENDER  
TLVR - TIMBER PRIVACY LOUVRES  
ALVR - CHARCOAL ALUMINIUM LOUVRES  
SD - EQUATORIAL  
SOY - GREY SCYON AXON CLADDING  
ALU - ALUCABOND  
COL - COLOURBOND

ISSUE 8 AMENDMENTS

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

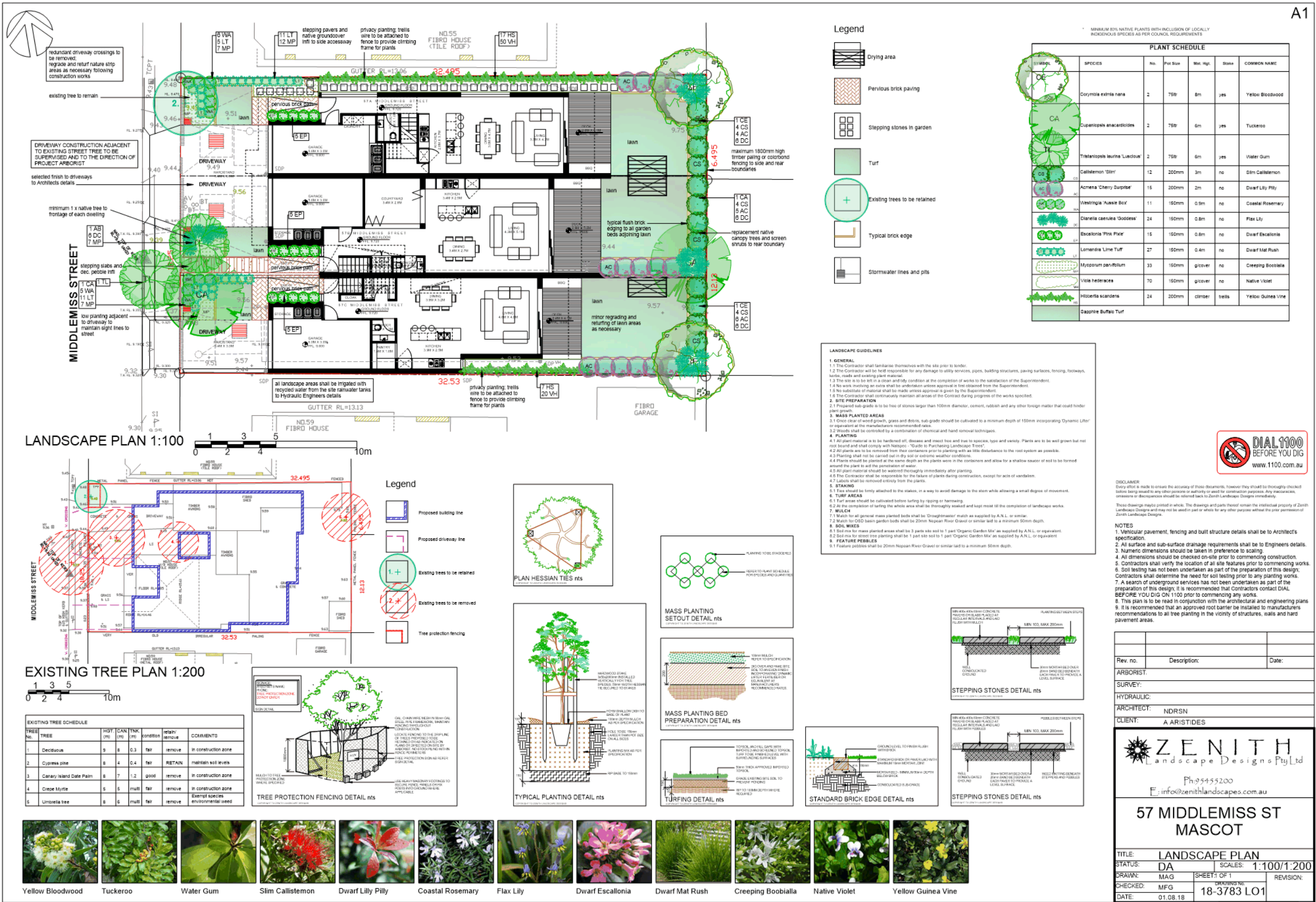
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EXISTING & PROPOSED MIDDLEMISS  
STREET ELEVATIONS

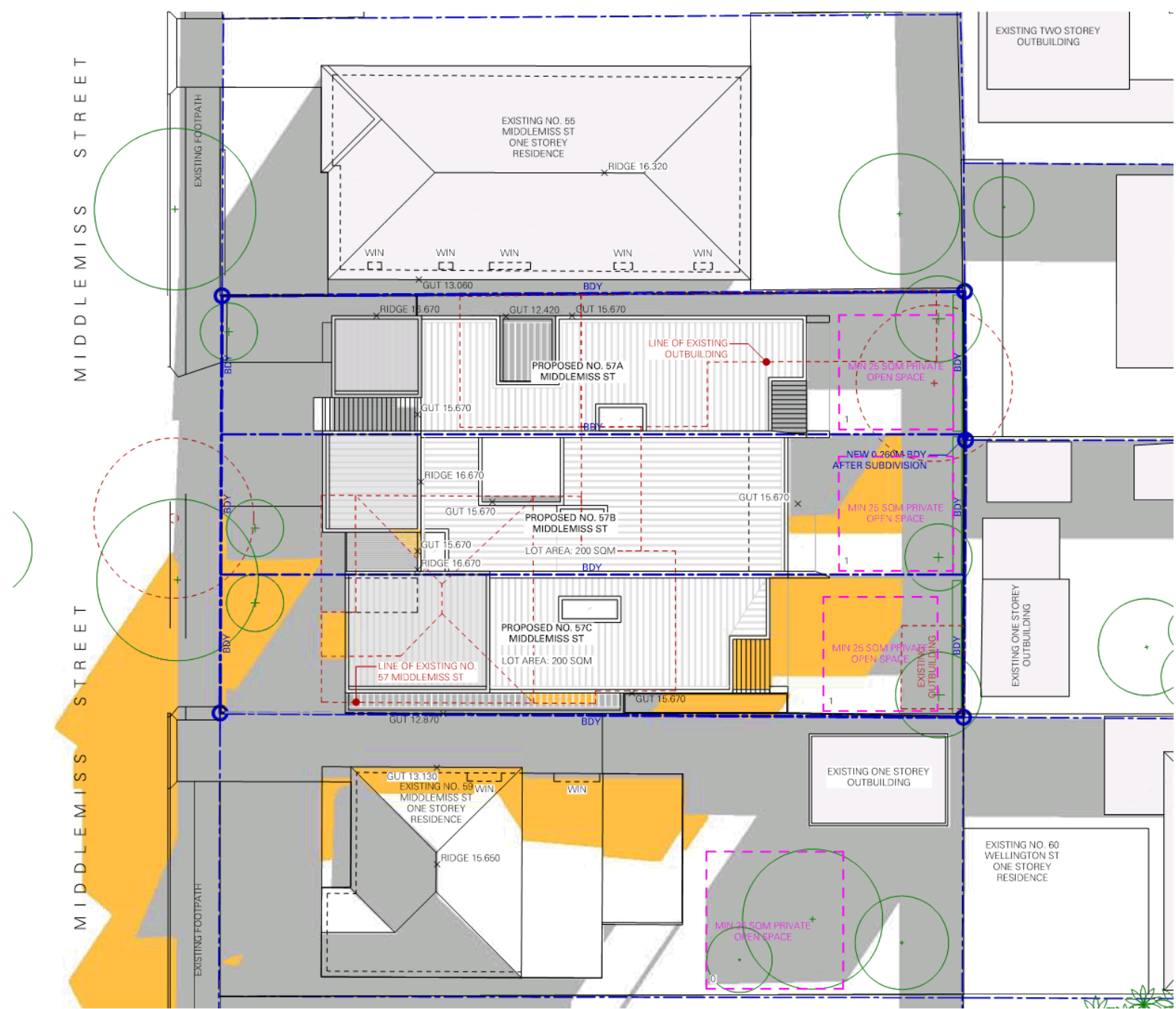
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DA\_02\_05

DRAWN  
GB / DM / FS  
ISSUE  
B1  
DATE  
20-Aug-18

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LEGEND:  
SHADOW OF NEIGHBOURS  
SHADOW OF EXISTING 57 MIDDLEMISS STREET  
ADDITIONAL SHADOW BY PROPOSED 57 MIDDLEMISS STREET  
MIN REQUIRED PRIVATE OPEN SPACE

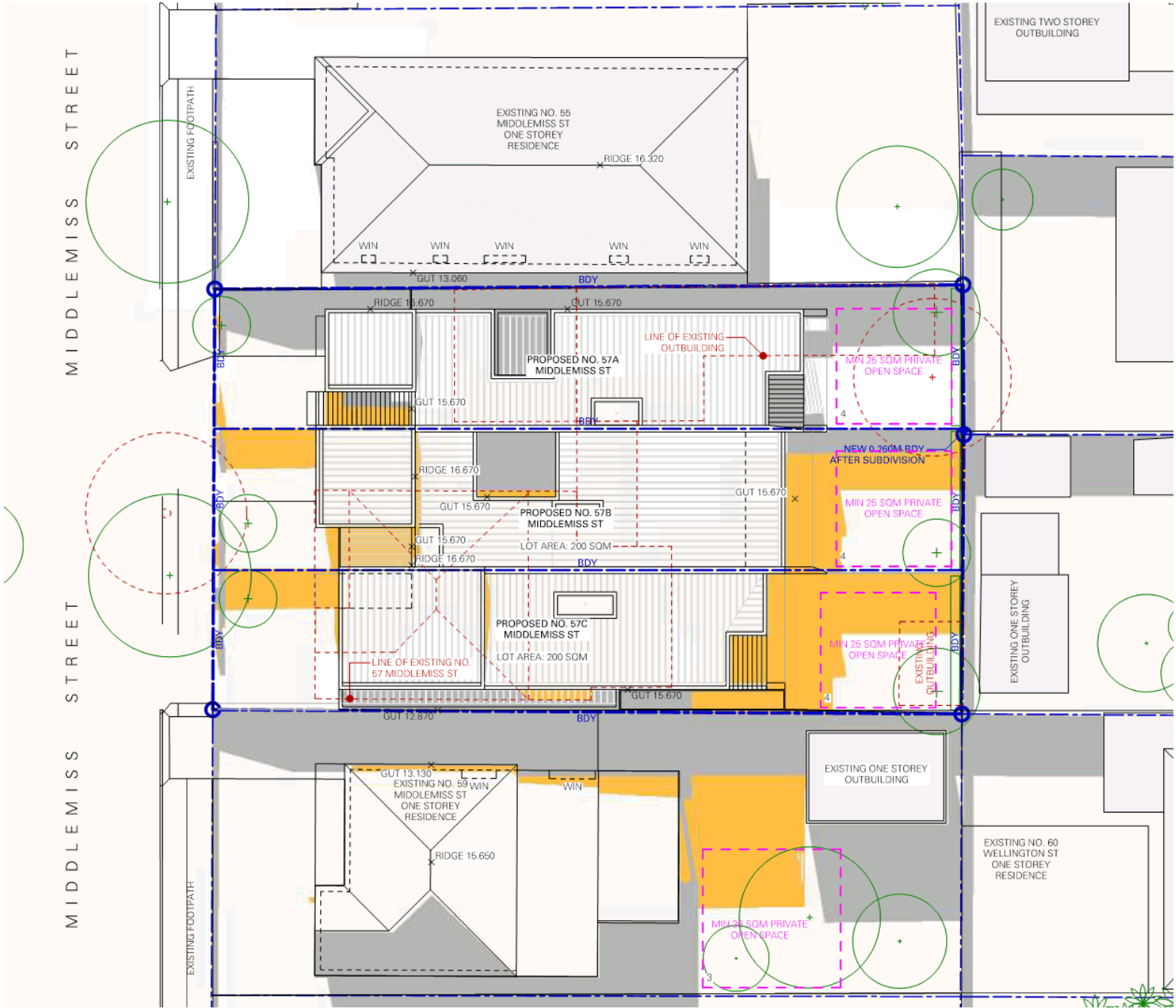
PROJECT:  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE:  
WINTER SOLSTICE  
SHADOW DIAGRAM  
JUNE 22 - 09:00 AM

SCALE:  
1:200 @ A3  
DRAWING NO:  
DA\_06\_01

DRAWN:  
GB / DM / FS  
ISSUE:  
B  
DATE:  
15-Aug-18

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LEGEND:  
SHADOW OF NEIGHBOURS  
SHADOW OF EXISTING 57 MIDDLEMISS STREET  
ADDITIONAL SHADOW BY PROPOSED 57 MIDDLEMISS STREET  
MIN REQUIRED PRIVATE OPEN SPACE

PROJECT:  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

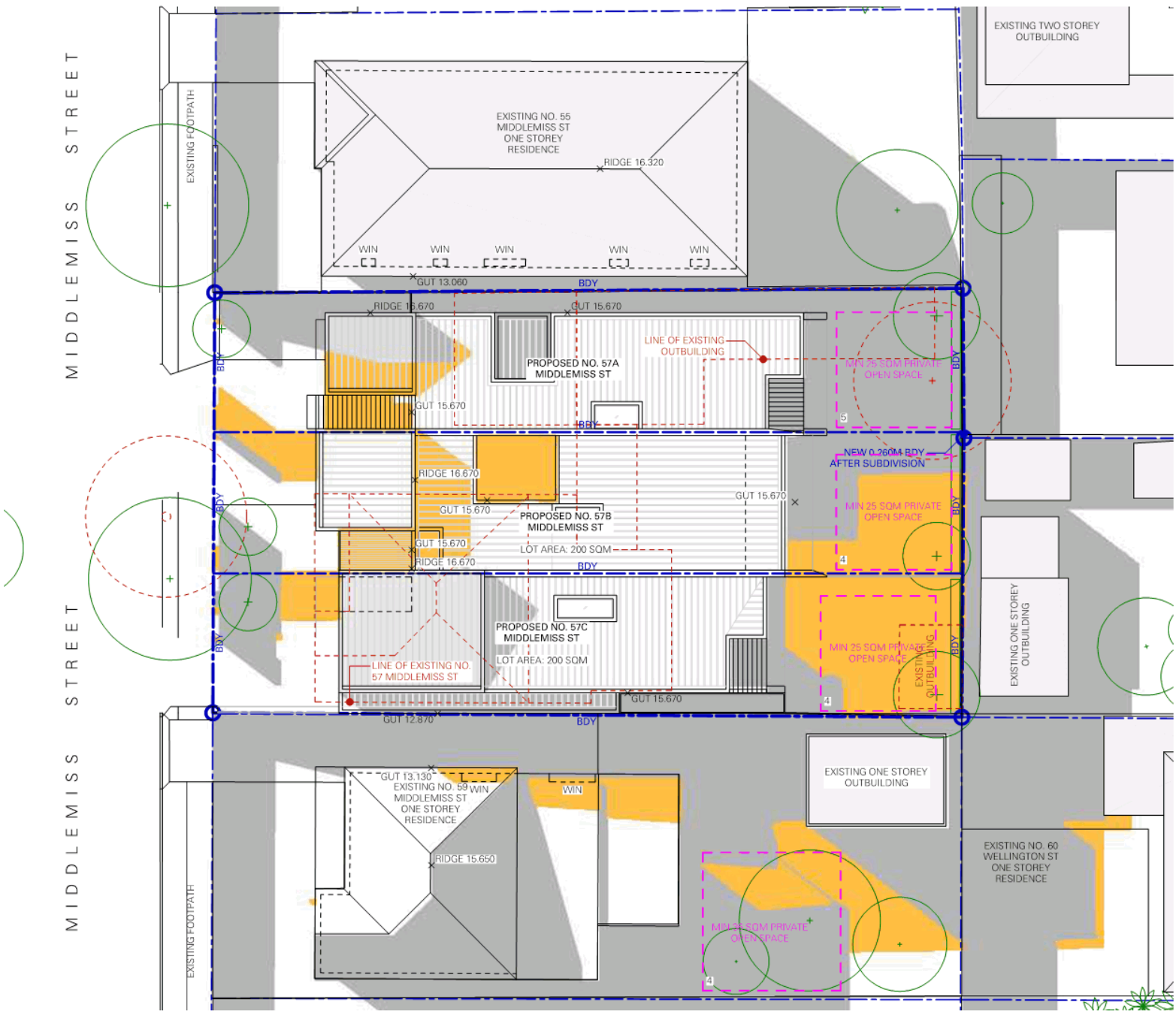
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WINTER SOLSTICE  
SHADOW DIAGRAM  
JUNE 22 - 12:00 PM

SCALE:  
1:200 @ A3  
DRAWING NO:  
DA\_06\_02

DRAWN:  
GB / DM / FS  
ISSUE:  
B  
DATE:  
15-Aug-18

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LEGEND:  
SHADOW OF NEIGHBOURS  
SHADOW OF EXISTING 57 MIDDLEMISS STREET  
ADDITIONAL SHADOW BY PROPOSED 57 MIDDLEMISS STREET  
MIN REQUIRED PRIVATE OPEN SPACE

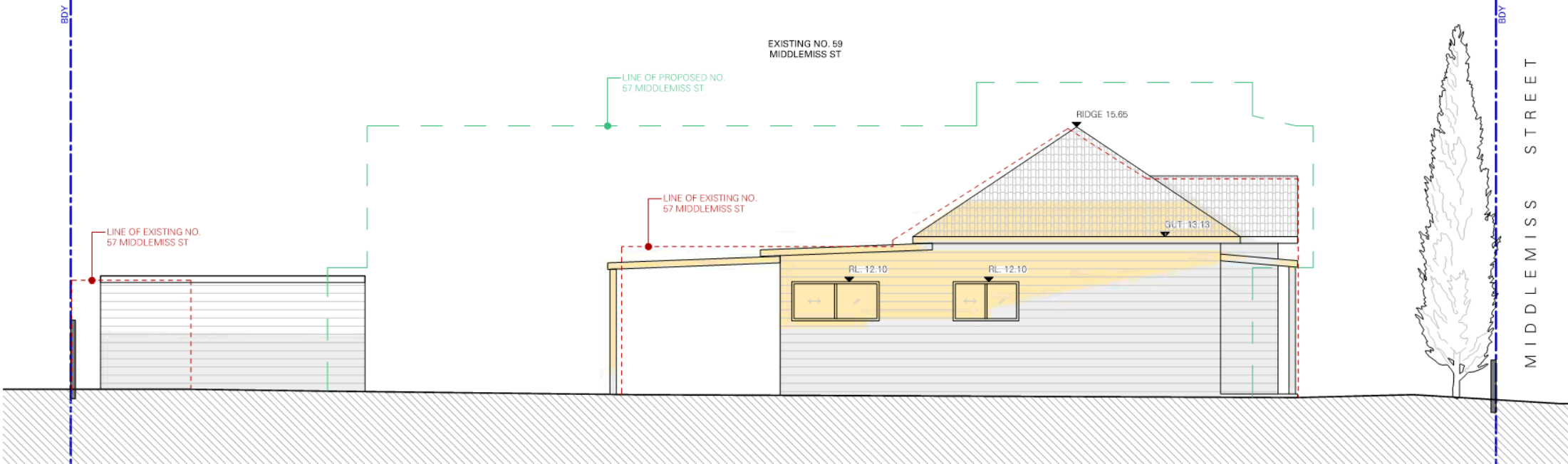
PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE  
WINTER SOLSTICE  
SHADOW DIAGRAM  
JUNE 22 - 03:00 PM

SCALE  
1:200 @ A3  
DRAWING NO  
DA\_06\_03

DRAWN  
GB / DM / FS  
ISSUE  
B  
DATE  
15-Aug-18

**NDRSN**  
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WWW.NDRSN.COM.AU INFO@NDRSN.COM.AU  
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LEGEND:  
SHADOW OF NEIGHBOURS  
SHADOW OF EXISTING 57 MIDDLEMISS STREET  
ADDITIONAL SHADOW BY PROPOSED 57 MIDDLEMISS STREET  
MIN REQUIRED PRIVATE OPEN SPACE

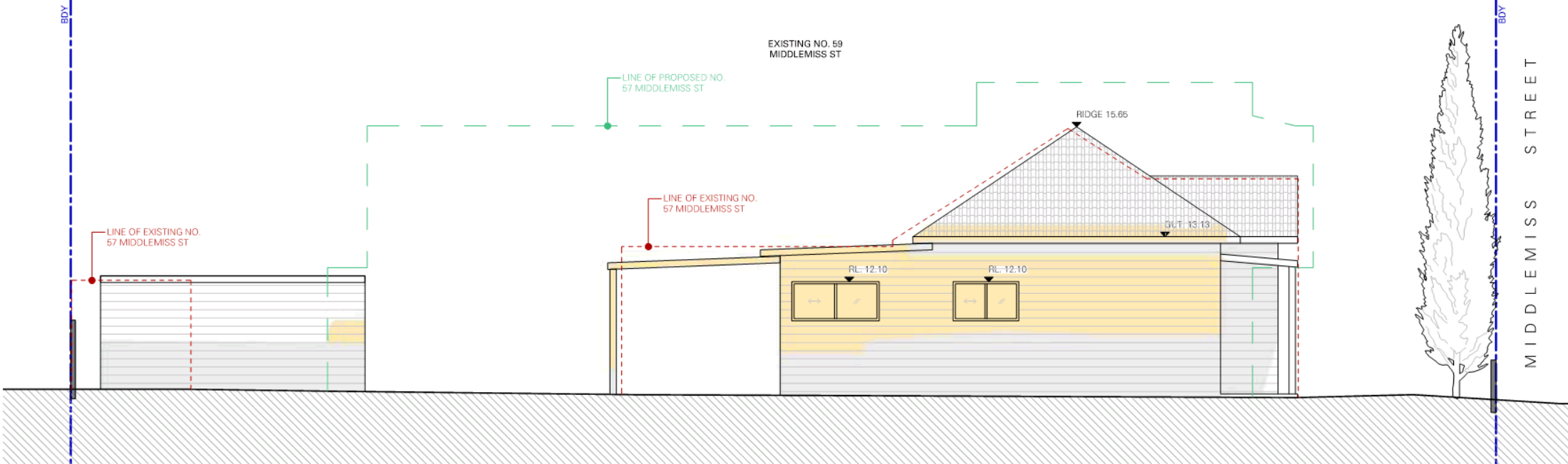
PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE  
EXISTING NORTH ELEVATION  
(59 MIDDLEMISS ST)  
WINTER SOLSTICE JUNE 22 - 09:00 AM

SCALE  
1:100 @ A3  
DRAWING NO.  
DA\_06\_07

DRAWN  
GB / DM / FS  
ISSUE  
B  
DATE  
15-Aug-18

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LEGEND:  
SHADOW OF NEIGHBOURS  
SHADOW OF EXISTING 57 MIDDLEMISS STREET  
ADDITIONAL SHADOW BY PROPOSED 57 MIDDLEMISS STREET  
MIN REQUIRED PRIVATE OPEN SPACE

PROJECT:  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

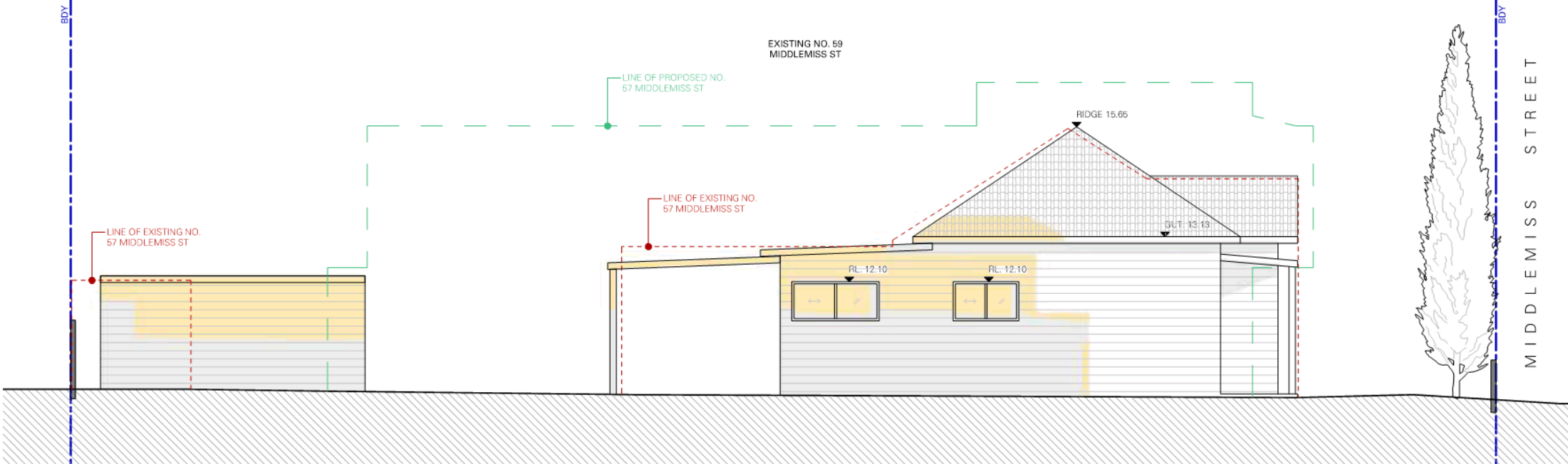
TITLE:  
EXISTING NORTH ELEVATION  
(59 MIDDLEMISS ST)  
WINTER SOLSTICE JUNE 22 - 12:00 PM

SCALE:  
1:100 @ A3  
DRAWING NO:  
DA\_06\_08

DRAWN:  
GB / DM / FS  
ISSUE:  
B  
DATE:  
15-Aug-18

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LEGEND  
SHADOW OF NEIGHBOURS  
SHADOW OF EXISTING 57 MIDDLEMISS STREET  
ADDITIONAL SHADOW BY PROPOSED 57 MIDDLEMISS STREET  
MIN REQUIRED PRIVATE OPEN SPACE

PROJECT  
57 MIDDLEMISS STREET, MASCOT  
NSW, 2020 LOT 3 / DP 136923

TITLE  
EXISTING NORTH ELEVATION  
(59 MIDDLEMISS ST)  
WINTER SOLSTICE JUNE 22 - 03:00 PM

SCALE  
1:100 @ A3  
DRAWING NO  
DA\_06\_09

DRAWN  
GB / DM / FS  
ISSUE  
B  
DATE  
15-Aug-18

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## Bayside Planning Panel

25/09/2018

Item No	6.2
Application Type	Development Application
Application No	S82-2018/2
Lodgement Date	27/06/2018
Property	<b>S82-2018/2 - 111 Villiers Street, Rockdale</b>
Ward	Rockdale
Owner	Mrs N Knanafer
Applicant	ZTA Group
Proposal	Review of Determination of DA-2017/586 - Demolition of existing dwelling, construction of new dual occupancy with basement carparking, inground swimming pool and Torrens Title Subdivision.
No. of Submissions	Nil
Cost of Development	\$994,563.24
Report by	Michael McCabe, Director City Futures

## Officer Recommendation

That the Review of Determination No. S82-2018/2 for the demolition of the existing dwelling, construction of new dual occupancy with basement car parking, in ground swimming pool and torrens title subdivision at 111 Villiers Street, Rockdale, be REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

- 1 The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is inconsistent with State Environmental Planning Policy - BASIX, as a valid BASIX certificate did not accompany the application.
- 2 Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the objectives of the R3 - Medium Density Residential zone as per Rockdale Local Environmental Plan 2011, specifically *"To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area"*.
- 3 Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.1 (3B) - Minimum Subdivision Lot Size of Rockdale Local Environmental Plan 2011.
- 4 Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.4 - Floor Space Ratio of Rockdale Local Environmental Plan 2011.
- 5 Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.4 - Airspace Operations of Rockdale Local Environmental Plan 2011.

- 
- 6 Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.6 - Flood Planning Land of Rockdale Local Environmental Plan 2011.
  - 7 Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.7 - Stormwater of Rockdale Local Environmental Plan 2011.
  - 8 Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements and objectives of Rockdale Development Control Plan 2011:
    - (a) Part 4.1.6 - Development on Sloping Sites
    - (b) Part 4.1.9 - Lot Size and Site Consolidation
    - (c) Part 4.2 - Streetscape and Site Context
    - (d) Part 4.4.2 - Solar Access - Low and medium density residential
    - (e) Part 4.4.3 - Natural Lighting and Ventilation - Residential
    - (f) Part 4.4.5 - Visual Privacy
    - (g) Part 5.1 - Low and Medium Density Residential
  - 9 Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development does not appropriately respond to the topography of the site, is excessive in terms of its bulk, scale and density and as a result adversely impacts upon the streetscape and amenity of the locality.
  - 10 Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development results in adverse overlooking and privacy impacts to surrounding residential properties.
  - 11 Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient stormwater information has been provided by the applicant in order to enable a thorough assessment of the potential stormwater impacts of the proposed development.
  - 12 Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development in its current form and design is not suitable for the subject site and the proposal would adversely impact upon the existing and future desired character of the locality.
  - 13 Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest and is likely to set an undesirable precedent within the Local Government Area.
  - 14 Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
-

## Location Plan



## Attachments

- 1 S8.2 Review Planning Assessment Report [↓](#)
- 2 Original Assessment Report for Refusal - DA-2017/586 [↓](#)
- 3 Applicants Compliance Report [↓](#)
- 4 Statement of Environmental Effects [↓](#)
- 5 Cover Plan [↓](#)
- 6 Subdivision Plan [↓](#)
- 7 Finishes Schedule [↓](#)
- 8 Shadow Diagrams Winter [↓](#)
- 9 Streetscape & Front Fence Elevation [↓](#)
- 10 Site & Analysis Plan [↓](#)
- 11 Sections [↓](#)
- 12 Northern & Southern Elevations [↓](#)
- 13 Western & Eastern Elevations [↓](#)
- 14 Roof Plan [↓](#)
- 15 Landscape Plan [↓](#)
- 16 Clause 4.6 Statement Lot Size [↓](#)
- 17 Original DA-2017/586 Notice of Refusal [↓](#)
- 18 Refused Sections DA-2017/586 [↓](#)
- 19 Refused North / South Elevations DA-2017/586 [↓](#)
- 20 Refused West & East Elevations DA-2017/586 [↓](#)
- 21 Refused Subdivision Plan DA-2017/586 [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	S82-2018/2
<b>Date of Receipt:</b>	27 June 2018
<b>Property:</b>	111 Villiers Street, ROCKDALE (Lot 5 DP 5940), (Lot 6 DP 455435)
<b>Owner:</b>	Mrs Nivine Knanafer
<b>Applicant:</b>	ZTA Group
<b>Proposal:</b>	Review of Determination of DA-2017/586 - Demolition of existing dwelling, construction of new dual occupancy with basement carparking, inground swimming pool and Torrens Title Subdivision
<b>Recommendation:</b>	Refused
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Fiona Prodromou
<b>Date of Report:</b>	17 September 2018

### Key Issues

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The subject site is significantly constrained as a result of the irregularity of the site and its natural topography. The site falls up to 4.2m from the front to the rear. A 0.6m diameter Council stormwater pipe also runs through the property, parallel to the northern common side boundary.

The proposal as designed exceeds the 0.6:1 FSR standard applying to the site by 31% (128.7sq/m). A Clause 4.6 - Exception to Development Standards was not submitted in relation to FSR. The applicant contests the aforementioned and is of the view that the proposal complies with the FSR standard.

The subject site is of insufficient overall site area i.e. 684sq/m to facilitate redevelopment for a dual occupancy development. Rockdale DCP requires a site area of 700sq/m. As a consequence, the resulting proposed post subdivision lot size for dwelling A is inconsistent with the development standard i.e. 350sq/m per lot, specified within Clause 4.1(3B) of Rockdale LEP 2011. A Clause 4.6 - Exception to Development Standards was submitted by the applicant in relation to this matter. This is discussed within this report.

Submitted plans and information are inaccurate and misleading. Plans do not reflect the existing stormwater pipe on site, levels are inconsistent between drawings and it is unclear whether or not a lift is or is not proposed within Dwelling A as the lift does not align between floor levels. Further details are provided in this report.

Shadow diagrams and elevations do not appear to be accurate this is discussed further within this report. Additionally, site & landscape plans are inconsistent with the proposed subdivision plan for the



site.

The proposed development is unnecessarily and excessively raised above existing natural ground levels and has not been designed to the natural site constraints in order to minimise the visual bulk and mass of the development and avoid overlooking impacts of neighbouring properties.

The site is not deemed to be suitable for the proposal as designed.

## Recommendation

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That Development Application S82-2018/2 for the demolition of the existing dwelling, construction of new dual occupancy with basement car parking, in ground swimming pool and torrens title subdivision at 111 Villiers Street, Rockdale, be REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

(1) The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is inconsistent with State Environmental Planning Policy - BASIX, as a valid BASIX certificate did not accompany the application.

(2) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the objectives of the R3 - Medium Density Residential zone as per Rockdale Local Environmental Plan 2011, specifically "To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area".

(3) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.1 (3B) - Minimum Subdivision Lot Size of Rockdale Local Environmental Plan 2011.

(4) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.4 - Floor Space Ratio of Rockdale Local Environmental Plan 2011.

(5) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.4 - Airspace Operations of Rockdale Local Environmental Plan 2011.

(6) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.6 - Flood Planning Land of Rockdale Local Environmental Plan 2011.

(7) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.7 - Stormwater of Rockdale Local Environmental Plan 2011.

(8) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements and objectives of Rockdale Development Control Plan 2011;

- (a) Part 4.1.6 - Development on Sloping Sites
- (b) Part 4.1.9 - Lot Size and Site Consolidation
- (c) Part 4.2 - Streetscape and Site Context
- (d) Part 4.4.2 - Solar Access - Low and medium density residential
- (e) Part 4.4.3 - Natural Lighting and Ventilation - Residential
- (f) Part 4.4.5 - Visual Privacy
- (g) Part 5.1 - Low and Medium Density Residential

(9) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development does not appropriately respond to the topography of the site, is excessive in terms of its bulk, scale and density and as a result adversely impacts upon the streetscape and amenity of the locality.

(10) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development results in adverse overlooking and privacy impacts to surrounding residential properties.

(11) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient stormwater information has been provided by the applicant in order to enable a thorough assessment of the potential stormwater impacts of the proposed development.

(12) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development in its current form and design is not suitable for the subject site and the proposal would adversely impact upon the existing and future desired character of the locality.

(13) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest and is likely to set an undesirable precedent within the Local Government Area.

(14) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.

## Background

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### History

DA-2017/586      Refused 24 May 2018

Demolition of existing residential dwelling, construction of new dual occupancy with basement carpark, in ground swimming pool and Torrens Title Subdivision.

S82-2018/2      Submitted to Council 27 June 2018

Review of Determination of DA-2017/586 - Demolition of existing dwelling, construction of new dual occupancy with basement carparking, inground swimming pool and Torrens Title Subdivision.

5-20 July 2018



## Public Notification of Proposal

**Proposal**

The proposal seeks to demolish all existing structures onsite and construct a two storey attached dual occupancy development, including amalgamation of existing lots and subdivision into two allotments, being Lot A (northern side) - 334.15sq/m & Lot B (southern side) - 350.17sq/m.

In more detail the proposal comprises as follows:

Ground Level

Double wide driveway from Villiers Street to double garage (45.71RL) for each proposed dwelling. Landscaping within front yard (fill up to 0.38m) with stepping stones to raised front porch of each dwelling (49.51RL) (1.425m maximum above existing ground level). Stepping stone pathway proposed along both side boundaries to rear of site.

A bathroom is proposed at a lower level than the garage along with a swimming pool at 44.5RL. A 3000L rainwater tank is proposed within the northern side boundary along with pool pump / filters in an acoustic enclosure for dwelling A.

An extensive patio area is proposed to adjoin the pool areas this is also at 44.5RL. Steps are proposed down from the patio to the rear yard, the rear yard comprises landscaping along the rear boundary and a clothes line on the northern and southern boundary for each proposed dwelling. A total of 16-20 steps are proposed from the patio up to the proposed terraces at level 1 which are at 48.64RL. The proposed level 1 terrace is raised 2.64m - 2.89m above existing natural ground level.

1.2m high rendered front boundary fencing is proposed with aluminium powder coated vehicular and pedestrian gates & infill.

Level 1

Dwelling A - Raised front entry porch, entry, lounge, bathroom, laundry, storage and kitchen (49.51RL), living & dining room (47.45RL). Rear terrace 48.64RL.

Dwelling B - Raised front entry porch, entry, lounge, office (49.51RL), bathroom & laundry (48.65RL), kitchen, living & dining room (47.45RL). Rear terrace 48.64RL.

Level 2

Dwelling A - 2 bedrooms & 1 bathroom at 52.41RL, 2 bedrooms, one with WIR and ensuite at 51.89RL. Corridor and skylight above.

Dwelling B - 2 bedrooms & 1 bathroom at 52.41RL, 2 bedrooms, one with WIR, study nook and ensuite at 51.89RL. Corridor with bar and skylight above. A rear facing balcony is proposed to adjoin the master bedroom, the balcony is at 51.8RL.

A skillion roof form is proposed with colourbond roof sheeting. The proposed colours, finishes and materials include face brick, render, timber cladding, sandstone and glass balustrades. Associated landscaping and stormwater works are proposed on site.



### Site location and context

The subject site comprises two lots, known as Lot 5 DP 5940 & Lot 6 DP 455435. The site is irregular in shape with a front boundary width of 17.62m and rear boundary of 7.75m. The northern side boundary has a depth of 55.2m, and the southern boundary depth is 53.97m. The site has an overall area of 684sq.m and is currently occupied by a single storey detached dwelling and associated garage.

The site falls up to 4.2m from the front to rear property boundary, given the natural topography of the property. Adjoining the rear boundary of the site is the side fence / rear yard of 25 Oswell Street, which comprises a single storey detached dwelling house. To the north west the site is adjoined by a single storey detached dwelling with face brick and pitched roof form. To the south east the side adjoins a two storey detached dwelling house also constructed with face brick and pitched roof form.



The immediately surrounding area is predominantly characterised by 1 - 2 storey detached dwelling houses. The majority of dwellings surrounding the site comprise single storey traditional federation style homes with face brick facades, hip and gable roof forms.

The subject site is affected by;

- 15.24m Building Height Civil Aviation Regulations

- Groundwater Protection Zone 3
- Council Pipes
- PMF Flood / Minimum Floor Levels
- Class 5 Acid Sulfate Soils
- 51 Obstacle Limitation Surface

## Statutory Considerations

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### *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*.

#### **S4.15 (1) - Matters for Consideration - General**

##### **S4.15 (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**

Nil BASIX certificate was submitted with the review of determination.

The original BASIX Certificate, number 874745S, dated 16 November 2017 was thus considered. The aforementioned BASIX certificate is invalid, as it is dated more than 3 months from the date of issue.

Additionally, whilst commitments are said to be satisfied at page 1 of the certificate, page 4, which details "Water Commitments" states that "the swimming pool must be outdoors". Plans illustrate that the pool is within the building envelope.

The proposal is therefore inconsistent with the provisions and requirements of SEPP BASIX.

##### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) applies to the proposal. The site contains trees that are subject to approval by Council under clause 4.1.7 of Rockdale Development Control Plan 2011, conferred by:

- (a) development consent, or
- (b) a permit granted by Council.

The submitted Statement of Environmental Effects states "*trees near rear boundary will also be removed*", yet the survey does not illustrate any trees on the subject site.

Council's Tree Management Officer has confirmed that there are no significant trees located on this site and that existing site trees and vegetation may be removed, subject to at least two replacement trees being planted. It was further stated that trees in properties adjoining this site are to be retained and protected.

Council's Tree Management Officer has recommended appropriate conditions that would be imposed in the event that the proposal was to be supported.

The proposal is satisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017 and Clause

4.1.7 of the Rockdale DCP 2011.

### Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R3 Medium Density Residential	No - see discussion	Yes - see discussion
2.6 Subdivision - consent requirements	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.1 Minimum subdivision lot size	No - see discussion	No - see discussion
Dual occupancy	No - see discussion	No - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	No - see discussion	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	No - see discussion	No - see discussion
6.6 Flood Planning Land	No - see discussion	No - see discussion
6.7 Stormwater	No - see discussion	No - see discussion
6.12 Essential services	Yes	Yes - see discussion

#### 2.3 Zone R3 Medium Density Residential

The subject site is zoned R3 - Medium Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a dual occupancy development, which constitutes a permissible development only with development consent.

Whilst the proposal is a permissible use, it is not considered, for the reasons detailed in this report that the proposal satisfies all the objectives of the zone. The proposal is deemed to be inconsistent with the following objective and therefore the proposal is unsatisfactory in this regard.

- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The proposed development does not entirely satisfy all the objectives of this zone.

#### 2.6 Subdivision - consent requirements

Subdivision of the site can only occur with development consent. Development consent is sought and thus the proposal complies with this clause.

#### 2.7 Demolition requires consent

Demolition of structures on the site can only occur with development consent. Development consent is sought for demolition and thus the proposal complies with this clause.

#### 4.1 Minimum subdivision lot size

As per the provisions of this clause a minimum post subdivision lot size of 350sq/m per lot is required in order to facilitate the subdivision of a dual occupancy development.

The following lot sizes are proposed;

Lot A - 334.15sq/m

Lot B - 350.17sq/m.

The above clearly illustrates that the site is of insufficient overall area, in order to facilitate the subdivision of the property into two lots and that Lot A is deficient in site area by 15.85sq/m.

The applicant has submitted a Clause 4.6 - Exception to Development Standards arguing that the proposed lot sizes are satisfactory. The assessing officer does not concur with the applicants view, this is discussed further in this report.

The proposal does not satisfy the requirements and objectives of this clause.

#### Dual occupancy

As per Part 4.1.9 - Lot size & Minimum frontage of Rockdale DCP 2011, a minimum site area of 700sq/m is required for dual occupancy development. Each resultant lot post subdivision shall be 350sq/m as per the provisions of Clause 4.1 of Rockdale LEP 2011.

The site comprises an area of 684sq/m, illustrating a shortfall of 16sq/m in order to facilitate redevelopment for a dual occupancy.

The proposed resultant lot sizes are also deficient of the minimum required 350sq/m, as earlier discussed in this report.

The proposal does not satisfy the provisions of this clause.

#### 4.3 Height of buildings

A maximum height of 8.5m applies to the subject site. The proposal indicates a height of 7.81m - 8.29m on site and complies with the development standard.

#### 4.4 Floor space ratio - Residential zones

As per the provisions of this clause a maximum 0.6:1 FSR applies to the subject site. This equates to a maximum gross floor area of 410.4sq/m across the property. A manual calculation of plans indicates a proposed gross floor area of 320.7sq/m for Dwelling A and 218.4sq/m for Dwelling B. Combined this is a total gross floor area of 539.1sq/m across the site, illustrating an FSR of 0.78:1.

The proposal comprises a surplus floor area of 128.7sq/m and FSR variation of 31%.

The above calculations include the area of both dwellings which incorporates the swimming pool, bathroom and entertainment area, as these areas are deemed to fall within the definition of gross floor area as per Rockdale LEP 2011, comprise external walls higher than 1.4m and there is a floor above.

The proposal was not accompanied by a Clause 4.6 - Exception to Development Standards in relation to FSR. The is inconsistent with the requirements and objectives of this clause.

#### 4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*  
*(3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, 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 of the relevant zone.*  
*5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*  
*5(b) the public benefit of maintaining the development standard.*

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. Consideration has been given to the aforementioned.

Consideration has also been given to the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90 where it was established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the proposal.

#### Variation Sought

As previously discussed within this report, the provisions of Clause 4.1(3B)(a) require a minimum post subdivision lot size of 350sq/m per lot in order to facilitate the subdivision of a dual occupancy development.

The following lot sizes are proposed;

Lot A - 334.15sq/m  
Lot B - 350.17sq/m.

The above clearly illustrates that the site is of insufficient overall area, in order to facilitate the subdivision of the property into two lots and that Lot A is deficient in site area by 15.85sq/m.

#### Applicants Justification

A summary of the applicants key arguments supporting the lot size variation are as follows:

- *The subject site has a total site area of 684sqm. The variation sought will be for 1 of the subdivided lots - dwelling A, which is proposed to have a finished area of 334sqm which is quite minor and does not lead to a compromised or non compliant development with respect to DCP controls.*
- *The departure does not result in any additional impact on neighbouring properties or the*

streetscape.

- The short site area will represent a 3.1% departure to the control.
- Dwelling B is located on a lot in excess of the 350sqm control and complies.
- A survey of the site is provided with the development application as well as detailed architectural plans showing the setbacks FSR heights and compliance with the RDCP.
- The density achieved on the site is in fact pro rata to the site area meaning that the smaller the site the smaller the built form and density. The variation has not provided an opportunity to exceed the desired density of the built form.
- The density is appropriate on this site because the site is of sufficient width and depth to achieve a built form and density that is compatible with the surrounding residential area.
- The scale and density of the proposed building is compatible with residential dwelling forms which are also limited to the FSR controls.
- The site offers a much wider frontage than the dominant form of properties in the locality. The dominant width of lots is in the order of 12m whereas the subject site has a frontage of 17.60m. The proposal has side setbacks ranging from 900mm to 1.915m on the northern side on the ground floor & first floor. The design also achieves compliance with the rear setback notwithstanding the irregular angled rear boundary which provides an additional constraint which has been overcome with the proposed design. The site therefore offers much greater potential to provide side setbacks and minimise as far as possible shadowing impacts to neighbours.
- The proposal satisfies the objectives of the standard by providing a density that is very close to the minimum level of density anticipated in the zone. The minor shortfall in site area for one of the two lots created by the subdivision would not result in any perceivable change to the overall density on the site.
- The site will provide for the housing needs of the community within a medium density residential environment. The dual occupancy form offers two dwellings on a single parcel of land with direct access to Villiers Street and associated off street parking.
- The proposal has an acceptable visual fit having regard to the surrounding built form and the likely future development achieved under the RDCP
- Strict compliance with the development standard in this case would not result in a better planning outcome. Compliance would not achieve any material benefit to the site, neighbours or the broader streetscape amenity and therefore sufficient grounds exist to justify the minor variation.
- Without the variation the site will not contribute to its full potential given that it can be demonstrated that the site can provide a dual occupancy development which fulfills the housing demand in the area without compromising intra and external site amenity
- Further the sterilisation of the site for single dwelling development would not achieve the zone objectives to the extent of a dual occupancy development.
- The additional site width offers opportunities to buffer and step in the development from side boundaries that would not otherwise be available on a 15m site with an additional 16sqm of site area. Essentially the additional 16sqm does not provide any material benefit to the planning outcome whereas the additional site width of 5m provides greater benefit and therefore strict application of both controls on this particular site serves no planning purpose.
- Given the above, it is considered that there is no direct measurable private or public benefit in maintaining strict compliance with the development standard

#### Discussion

Following a review of the application, the minimum lot size variation is not supported for the following reasons;

i) The proposed development fails to satisfy the following objectives of Clause 4.1 - Minimum Subdivision Lot Size;

*(a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area.  
(b) to minimise any likely impact of subdivision, and development on subdivided land and on the amenity of neighbouring properties  
(c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

b) The proposed subdivision is inconsistent with the following objective of the R3 - Medium Density Residential Zone;

*(i) To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

c) The proposed subdivision will result in an extremely irregular lot, which is constrained in its overall area, lot width & dimensions and position of boundaries.

d) The level of adverse amenity impact to the rear private open space of the proposed dwelling on Lot A, is a direct result of the design of the proposed development and proposed subdivision boundaries within the rear of the site.

e) The proposed subdivision and site layout does not take into account the existing constraints of the site and its surroundings, including Councils existing stormwater pipeline traversing the property.

f) The proposed subdivision is inconsistent with the requirements of Clause 4.1.9 - Lot Size & Site Consolidation subclause (1)(b) of Rockdale DCP 2011, which required a minimum lot size of 700sq/m for dual occupancy development.

g) There are no site or development specific circumstances in this case in which it is considered appropriate in which to warrant a variation to the minimum subdivision lot size.

h) There is no public benefit to be gained by the proposed subdivision in its current form and compliance with the 350sq/m standard in this instance is deemed to be reasonable and necessary given the numerous unresolved issues forming part of this application.

Given the above, the proposed variation is not supported in this instance.

## 6.2 Earthworks

The proposal involves extensive excavation within the site in order to accommodate the proposed basement levels and facilitate the construction of the proposed pool on site. The impacts of the proposed earthworks have been considered in the assessment of this proposal. Should the proposal have been supported, conditions would be imposed to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal potentially meets the objectives of this clause.



#### 6.4 Airspace operations

The proposed development is affected by the 51AHD Obstacle Limitation Surface (OLS). The maximum building height as illustrated on plans is 55.91RL to the parapet and 55.16RL to the rooftop and therefore will penetrate the OLS.

Given the aforementioned, approval is required under the Airports (Protection of Airspace) Regulations 1996, for the intrusion of the proposed development into the airspace, which under the regulations, is prescribed airspace for Sydney Airport.

The proposal was referred to Sydney Airports for comment, given the protrusion into the airspace by the height of the development, the proposal was referred to the Civil Aviation Safety Authority (CASA). At the time of finalising this assessment, nil response had been received from CASA. As such it cannot be stated that the proposal satisfies this clause.

#### 6.6 Flood Planning Land

The subject site is affected by the PMF flood event. A flood advice letter was issued for the property, and a minimum floor level as follows applies;

- a) Minimum habitable floor level is to be 300mm above the existing natural ground level.
- b) Minimum non habitable floor level is to be 100mm above the existing natural ground level.

Plans indicate that the proposed garage and attached entertainment area/pool are well below the existing natural ground level of the site and as such will be affected by the PMF floodwaters.

The access driveway ramp to the proposed garage requires significant amendment, in order to protect the garage and any future items within from inundation.

Adjoining the garage is a proposed pool, entertainment area and toilet. This area is non habitable and is therefore also subject to the minimum floor levels stated above.

Finally, the development is required to comprise flow through fencing, this has not been proposed, yet could be conditioned if the proposal was supported for approval.

Overall the proposal does not comply with the requirements of this clause, as the basement garage is not adequately protected as required by the Flood Advice Letter.

#### 6.7 Stormwater

Councils Development Engineer considered the proposal and raised the following concerns.

*(A) Plans & information prepared by the consulting Engineer for the proposed development do not identify an existing 600mm diameter Council owned pipe within the site. The pipe is located along the site boundary between 111 and 113 Villiers Street, approx. 1.8m - 2m away from the boundary line. This Council pipe is required to be physically located by a plumber and a service protection report is required. The exact depth and alignment of the pipe is required to be clearly shown on plans. Requirements for construction in relation to the pipe are contained within the Rockdale Technical Specification Stormwater management section 8.8.3.*

*The 600mm pipe will have a easement of width 1.6m covering its location and no structures can be built within this easement. The proposed development encroaches onto this area.*



*Existing Council Pipe on site*

Given the inaccuracy of stormwater plans, lack of consideration given to locating or designing a development clear of existing Council infrastructure traversing the site, it cannot be stated that the proposal satisfies the requirements and objectives of this clause.

#### 6.12 Essential services

Services will generally be available on the site.

#### **S4.15(1)(a)(ii) - Provisions of any Draft EPI's**

No relevant proposed instruments are applicable to this proposal.

#### **S4.15 (1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.3 Groundwater Protection	Yes	Yes
4.1.4 Soil Management	Yes	Yes
4.1.6 Development on Sloping Sites	No - see discussion	No - see discussion
4.1.9 Lot size and Site Consolidation - Dual Occupancy	No - see discussion	Yes - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.2 Streetscape and Site Context - Fencing	Yes	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	No - see discussion	No - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	No - see discussion	No - see discussion
4.4.5 Visual privacy	No - see discussion	No - see discussion
4.6 Parking Rates - Dwelling House	Yes	Yes - see discussion
5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling	No - see discussion	No - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
5.1 Residential Subdivision	Yes	Yes - see discussion

#### 4.1.6 Development on Sloping Sites

The provisions of this clause seek to limit cut and fill on site and require that where the topography requires, development be stepped to align with natural ground levels, in order to minimise adverse impacts on site and to neighbouring properties.

The subject site falls dramatically up to 4.2m from the front to the rear, with a cross fall across the site also.

Whilst the proposed development incorporates a stepped floor plate to all levels, the design and extent of the proposed development does not appropriately respond to fall or natural topography on the site.

Plans illustrate as follows;

- a) Fill up to 0.38m within the front yard of Dwelling B.
- b) Front porch of each dwelling raised 1.425m above existing ground level
- c) Proposed level 1 terrace is raised 2.64m - 2.89m above existing natural ground level.
- d) Rear first floor balcony of Dwelling B raised 5.8m above existing natural ground level.

As designed the proposal does not appropriately step the proposed building mass down to align with the natural fall of the site. This results in the proposal generating adverse privacy and overlooking impacts to neighbouring properties and comprising an unsympathetic, three storey building form on site, which is inconsistent with building forms in context of the subject site and within the residential area. Raising the development to the level as proposed in the current design is unwarranted and unnecessary.

The proposal as designed is inconsistent with the objectives and requirements of this clause.

#### 4.1.9 Lot size and Site Consolidation - Dual Occupancy

As per the provisions of this clause, a minimum site area of 700sq/m and minimum site frontage of 15m is required for dual occupancy development. The subject site comprises a frontage of 17.6m yet has an insufficient overall site area and therefore does not entirely satisfy the provisions of this clause.

#### 4.2 Streetscape and Site Context - General

The provisions of this clause seek to ensure that new development responds to predominant streetscape qualities and provides for a cohesive streetscape. As previously discussed in this report, the subject site is located in an area of low density residential dwelling forms, primarily comprising low scale single and two storey detached dwellings with pitched roof forms.

The proposed development seeks to provide an attached dual occupancy which is raised excessively and unnecessarily above existing ground levels, comprises a reduced front setback, dual x double garages, minimal windows to the street elevation, proposes fill within the front yard unnecessarily and presents as a three storey building form from neighbouring properties. Given the natural contours of the site, both dwellings, given their excessive floor levels would be visually intrusive & dominant when viewed from neighbouring properties.

Minimal openings are proposed to the front façade of the development at ground level and therefore passive surveillance of the public domain is minimised.

By virtue of aforementioned and as a consequence of the design of the proposal, including but not limited to its overall height, width, scale, bulk and mass, the proposal does not provide an appropriate streetscape response and is inconsistent with the provisions & objectives of this clause.

#### 4.2 Streetscape and Site Context - Fencing

Fencing as proposed incorporating a maximum height of 1.2m with aluminium infill, vehicular and pedestrian gates is deemed to be satisfactory.

#### 4.3.1 Open Space & Landscape Design - Low & medium density residential

A minimum of 25% (171sq/m) of the site area shall be retained as landscaped open space. The proposal illustrates a total of 200sq/m of the site as landscaped area and thus the proposal satisfies the provisions of this clause.

#### 4.4.2 Solar Access - Low and medium density residential

An accurate assessment of shadows was unable to be undertaken, given;

- a) Elevational shadows indicate that the proposed development is lower than the adjoining building at 113 Villiers Street, while the architectural elevations indicate the opposite.
- b) The shadow diagrams do not appear to take into account the natural fall of the site to the rear.

#### 4.4.3 Natural Lighting and Ventilation - Residential

The provisions of this clause require a minimum 2.7m floor to ceiling height for habitable rooms within residential development. Plans illustrate the provision of 2.4m floor to ceiling heights for bedrooms within level 1 of the development. The proposal is inconsistent with the provisions of this clause.

#### 4.4.5 Visual privacy

The development proposes level 1 rear facing terraces and a rear facing balcony at level 2 to Dwelling B which are raised substantially above existing ground level.

Whilst these areas comprise privacy screens to the sides, overlooking of neighbouring properties remains, given the overall area of these spaces, their location and elevated level.

The proposed development has the potential to overlook into the rear private open space areas of numerous properties and Dwelling B further overlooks into the rear private open space of Dwelling A given the design of the dwelling and proposed subdivision of the property.

The proposal is unsatisfactory in this regard.

#### 4.6 Parking Rates - Dwelling House

Two car parking spaces per dwelling are required as per the provisions of this clause. The proposal provides for two car spaces for each proposed dwelling on site and complies with the requirements of this clause.

#### 5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling

As per the provisions of this clause, dual occupancy development shall comprise two storeys maximum, provide front setbacks which are consistent with the prevailing (otherwise 6m), provide 0.9m ground

level side setbacks and 1.5m first floor setbacks. A minimum 6m rear setback is also required.

It is noted that the average of front setbacks for dwellings fronting Villiers Street is 11m.

The proposal as designed is three storeys in some parts, comprises a front setback of 7.488m, ground level side setbacks of 0.9m - 1.185m, first floor side setbacks 1.5m and a rear setback of 14.4m.

Whilst the side and rear setbacks of the proposal comply, as designed the front setback and number of storeys are inconsistent with the provisions of this clause and are not deemed to be reasonable given the resultant streetscape, built form and amenity impacts arising from the proposal.

The proposal is therefore not considered to be satisfactory with the provisions and objectives of this clause.

#### 5.1 Residential Subdivision

A 15m wide site frontage is required for dual occupancy development. The subject site comprises a frontage of 17.62m and satisfies this clause. Notwithstanding the aforementioned the overall site area required for the redevelopment of a site for the purposes of a dual occupancy development is deficient as previously discussed in this report.

#### **S4.15(1)(a)(iv) - Provisions of regulations**

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

#### **4.15(1)(b) - Likely Impacts of Development**

##### Miscellaneous

Submitted plans comprise numerous drafting errors and inconsistencies. These include but are not limited to the level 1 floor to floor height to southern and northern elevations, the location of lift which does not align within dwelling A and level 1 living areas which are 1.2m lower than proposed balcony spaces to this level. It is further reiterated that stormwater plans and the submitted survey do not illustrate the Council pipeline which burdens the site and site / landscape plans are inconsistent with the proposed subdivision plan for the site.

Should a further application be sought in future, a thorough and comprehensive review and analysis of the site is required and accurate plans are to be submitted.

#### **S4.15(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal.

The site is deficient in overall area for a proposed dual occupancy development and the site is severely constrained given its natural topography.

The subject site is not deemed to be suitable for the proposed development in its current form.

#### **S4.15(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council

did not receive any submissions on this proposal.

**S4.15(1)(e) - Public interest**

The proposal is not in the public interest for the reasons previously detailed within this report.

**S7.11 Contribution towards provision or improvement of amenities or services**

Should the proposal have been supported, appropriate 7.11 contributions would be levied via conditions of consent.

*Civil Aviation Act, 1988*

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

**Civil Aviation (Building Control) Regulations 1988**

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

Section 5 Prohibition of the construction of buildings of more than 50 feet in height in specified areas

The proposed development is affected by the 51 OLS and 15.24AHD Building Height Civil Aviation Regulations.

The proposed building height protrudes into the prescribed airspace and therefore the proposal was referred to Sydney Airports and the Civil Aviation Safety Authority for comment.

Nil response has been received at the time of finalising this report.

**Schedule 1 - Draft Conditions of consent**

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# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2017/586
<b>Date of Receipt:</b>	28 November 2017
<b>Property:</b>	111 Villiers Street, ROCKDALE (Lot 5 DP 5940), (Lot 6 DP 455435)
<b>Owner:</b>	Mrs Nivine Knanafer
<b>Applicant:</b>	ZTA Pty Ltd
<b>Proposal:</b>	Demolition of existing residential dwelling, construction of new dual occupancy with basement carpark, inground swimming pool and Torrens Title Subdivision
<b>Recommendation:</b>	Refused
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Stephen McDiarmid
<b>Date of Report:</b>	

### Key Issues

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The key issues related to this application are:

- the proposed building's bulky, three-storey appearance.
- exceeding the R3 zone's maximum FSR of 0.6:1.
- impact of the proposed building on the existing streetscape.

### Recommendation

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That the development application DA-2017/586 for the demolition of existing structures, construction of an attached dual occupancy proposal and Torrens Title subdivision at No.111 Villiers Street, Rockdale, be **REFUSED** pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*, for the following reasons: -

1. Pursuant to the provisions of Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the numerical provisions of Clause 4.1 - *Minimum subdivision lot size* under *Rockdale Local Environmental Plan 2011*, as the site containing "Dwelling A" is less than 350m<sup>2</sup> in area;
2. Pursuant to the provisions of Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed Floor Space fails to satisfy the controls contained in Clause 4.4 under the *Rockdale Local Environmental Plan 2011*, to achieve an FSR not exceeding 0.6:1;
3. Pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and*

*Assessment Act 1979*, the proposed development does not comply with the minimum lot size of 700m<sup>2</sup> for a dual occupancy development as required by Part 4.1.9 (*Lot size and minimum frontage*) of the *Rockdale Development Control Plan 2011*;

4. Pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to comply with Part 5, Section 5.11(1) (*Storey Height and Setbacks*) of the *Rockdale Development Control Plan 2011* due to the proposed front building line being inconsistent with the other average front setback distances which prevail along the eastern side of Villiers Street;
5. Pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to comply with Part 5, Section 5.11(10) (*Storey Height and Setbacks*) of the *Rockdale Development Control Plan 2011* due to the proposed building's bulky three (3) storey appearance which is considered to be unsympathetic with the natural form and topographical features of the site.
6. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the numerical controls and/or specifications contained in Part 4, Section 4.6 (*Car Parking, Access and Movement*) of the *Rockdale Development Control Plan 2011*.
7. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the risk mitigation and flood management requirements contained in Part 4, Section 4.1.3 (*Flood Risk Management*) of the *Rockdale Development Control Plan 2011*.
8. Pursuant to the provisions of Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the 'public interest'.

## Background

### History

Council's records show that there are no other recent application/s which have been previously lodged for this property.

### Proposal

Council is in receipt of a development application DA-2017/586 at No.111 Villiers Street, Rockdale, which seeks consent to demolish all existing structure on-site, the construction of an attached dual occupancy development and Torrens Title subdivision which proposes a 307.15msq site area for "Dwelling A" and 377.17sqm for "Dwelling B".

### Site location and context

The subject site is known as Lot 9 DP 11732, No. 111 Villiers Street, Rockdale. The site is irregular in shape with respective front and rear boundary widths of 17.62 and 7.75 metres. The northern side boundary is 55.2m deep while the southern boundary is 53.97m long. The total site area is 684sq.m. The topography of the site falls approximately 4 metres from the site's frontage to the rear boundary.

The subject site presently contains a one-storey dwelling house and detached garage. The site is located on the north-eastern side of Villiers Street between Forest Road and Arlington Street. Adjoining



development includes a single-storey dwelling, on the northern side, and a two-storey residence on the southern side. A two-storey dwelling (No.19 Carlton Street) is situated on the rear property. There is a mix of one and two-storey residential buildings within close proximity to the subject development site.

A number of trees are to be removed however, if approved, appropriate conditions would have been included in the consent regarding protection of the ones to remain.

## 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*.

### **S4.15 (1) - Matters for Consideration - General**

#### **S4.15 (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**

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 874745S, dated 16 November 2017.

#### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) applies to the proposal. The site contains trees that are subject to approval by Council under clause 4.1.7 of Rockdale Development Control Plan 2011, conferred by:

- (a) development consent, or
- (b) a permit granted by Council.

At least four (4) locally indigenous native trees are proposed for removal which were to be replaced with trees of at least 45 litre pot size and capable of growing to a minimum height of five (5) metres which would be planted in suitable locations, within the property, on completion of the building works and prior to the final inspection.

Council's Tree Management Officer recommended appropriate conditions regarding the protection and retention of existing trees and the removal of site trees subject to suitable replacement trees being planted in appropriate locations.

Subject to compliance with the conditions of consent, the proposal was considered satisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017 and Clause 4.1.7 of the Rockdale DCP2011.

### **Rockdale Local Environmental Plan 2011**

Relevant clauses	Compliance with objectives	Compliance with standard/provision
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2.3 Zone R3 Medium Density Residential	No - see discussion	No - see discussion
2.7 Demolition requires consent	Yes - see discussion	Yes - see discussion
4.1 Minimum subdivision lot size	No - see discussion	No - see discussion
Dual occupancy	No - see discussion	No - see discussion
4.3 Height of buildings	No - see discussion	Yes - see discussion
4.4 Floor space ratio - Residential zones	No - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes - see discussion	Yes - see discussion
6.4 Airspace operations	Yes	Yes
6.7 Stormwater	Yes - see discussion	Yes - see discussion
6.12 Essential services	Yes - see discussion	Yes - see discussion

### 2.3 Zone R3 Medium Density Residential

The subject site is zoned *R3 - Medium Density Residential* under the provisions of *Rockdale Local Environmental Plan 2011* (RLEP 2011). The proposal is defined as a detached Dual Occupancy proposal which constitutes a permissible development only with development consent. The objectives of this zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- ***To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.***

The proposed Dual Occupancy development appears to be inconsistent with the final stated '*Objective*' of the R3 zone due to the proposed building's bulky three (3) storey appearance which is considered to be out of context with the natural form and steep topography of the site. It is also envisaged that the subject proposal would detrimentally impact the character and amenity of the existing one and two-storey residential developments, located in the immediate vicinity of No.111 Villiers Street.

It is now considered that this matter form a reason to determine DA-2017/586 by 'refusal', as the proposed dual occupancy development fails to meet demonstrated compliance with: -

The final (4th) stated '*Objective*' of the RLEP's R3 - *Medium Density Residential* zone due to the proposed building's bulky three (3) storey appearance which is considered to be out of context in a manner that will detrimentally impact the existing one and two-storey dwelling house setting, located in the immediate vicinity of No.111 Villiers Street.

### 2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing dwelling house on-site and, hence, satisfies the provisions of this Clause.

### 4.1 Minimum subdivision lot size

Clause 3B, contained in Part 4.1 (*Minimum subdivision lot size*) of *Rockdale Local Environmental Plan 2011* (RLEP), states that: -

"development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed, if

- (a) the area of each lot resulting from the subdivision is equal to or greater than 350 square metres (m<sup>2</sup>), and
- (b) each of the lots will have one of the dwellings on it."

The initial subdivision plan identified one site (Dwelling A) as having a total area of 307.15m<sup>2</sup> while the other (Dwelling B) was 377.17m<sup>2</sup>. As a result, compliance was not met with the minimum 350m<sup>2</sup> requirement for "Dwelling A".

In a letter dated 21 December 2017, Council had previously advised the applicant that the "Dwelling A" site failed to meet compliance with the minimum 350m<sup>2</sup> requirement and would not be supported. Despite highlighting this issue, the revised plans submitted to Council reiterated their intention to continue pursuing a deficient site area of 307.15m<sup>2</sup> for "Dwelling A".

It is now considered that this matter form a reason to determine DA-2017/586 by 'refusal', as: -

The proposed dual occupancy development fails to meet compliance with Clause 3B, Part 4.1 (*Minimum subdivision lot size*) of the RLEP due to the "Dwelling A" site proposing a maximum area of 307.15m<sup>2</sup> which deficient by 42.85m<sup>2</sup> in terms of meeting the minimum 350m<sup>2</sup> statutory requirement.

#### Dual occupancy

In accordance with Clause 4.1.9 (*Lot size and minimum frontage*) of the *Rockdale Development Control Plan 2011*, the subject development site is 684m<sup>2</sup> in area which is deficient by 16m<sup>2</sup> in meeting the minimum 700m<sup>2</sup> statutory requirement.

The application also proposed a Torrens Title Subdivision into two lots with one dwelling on each lot. Section 4.1 (3B) of the RLEP states that consent may be granted for subdivision of a lot on which a dual occupancy is proposed if the area of each resulting lot is equal to or greater than 350m<sup>2</sup>, in addition to having a single dwelling on each lot.

The sizes of the proposed subdivided lots are 307.15m<sup>2</sup> (Dwelling A) and 377.17m<sup>2</sup> (Dwelling B) with one dwelling on each new lot. Therefore, the proposal also **fails to satisfy** the minimum subdivision lot size requirement of 350m<sup>2</sup> for "Dwelling A" which is only 307.15m<sup>2</sup> in area.

#### 4.3 Height of buildings

Even though the proposed 8.2m height of the subject building will not exceed the maximum 8.5m height limit, Clause 5.1.1 (*Storey Height and Setbacks*) of *Rockdale Development Control Plan 2011* (RDCP) limits all dual occupancy development to a maximum of 2-storeys.

In a letter to the applicant dated 21 December 2017, Council highlighted this area of non-compliance and requested revised plans which limited the proposed dual occupancy development to no more than two-storeys in height. In response, the applicant submitted amended elevations on 20 February 2018 which still give the appearance that a 3-storey building is being proposed on-site. The revised plans also compromise Clause 5.11.10 (*Storey Height and Setbacks*) of RDCP in terms of the latest

design continuing to be unsympathetic with the "*natural form and topographical features of the site*" in addition to being out of character with the existing one and two storey dwelling houses, located in the immediate vicinity of Villiers Street.

It is now considered that this matter form a reason to determine DA-2017/586 by 'refusal', as: -

The proposed dual occupancy development fails to meet compliance with Clause 5.11.10 (*Storey Height and Setbacks*) of RDCP due to its bulky three (3) storey appearance which is considered to be unsympathetic with the natural form and topographical features of the site in addition to being out of character with the existing one and two-storey dwelling houses, located in the immediate vicinity of Villiers Street.

#### 4.4 Floor space ratio - Residential zones

The Gross floor area of the proposed development has been calculated as 466m<sup>2</sup> over a site area of 684m<sup>2</sup>. In this regard, the proposed floor space ratio (FSR) for the building is 0.68:1 and, therefore, exceeds the maximum 0.6:1 (410.4m<sup>2</sup>) FSR for the land, as shown on the Floor Space Ratio Map.

As a result, the proposed density is considered to be incompatible with the desired future character of Rockdale and will have an adverse environmental effect on the use or enjoyment of adjoining properties, in addition to creating a detrimental relationship between new development and the existing character of this area.

Accordingly, the proposed FSR for this development fails to meets the specified R3 zoning objectives and exceeds the maximum FSR, permitted in Clause 4.4 of the RLEP, by approximately 56m<sup>2</sup>.

It is now considered that this matter form a reason to determine DA-2017/586 by 'refusal', as: -

The proposed dual occupancy development fails to meet compliance with Clause 4.4 (*Floor Space Ratio*) of the RLEP due to the proposed Floor Space totally 466.5m<sup>2</sup> which equates to an FSR of 0.68:1 that exceeds the maximum allowable ratio of 0.6:1 by approximately 56m<sup>2</sup>.

#### 6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affects the property. However, development consent is not required as the site was not within 500 metres of adjacent Class 1, 2, 3 or 4 that is below 5 AHD.

#### 6.2 Earthworks

The proposal involves extensive excavation within the site to accommodate the dual occupancy's basement levels. The impacts of the proposed earthworks have been considered in the assessment of this proposal. If approved, conditions of consent would have been imposed in the consent to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal potentially meets the objectives of this clause.

#### 6.7 Stormwater

As advised in the following referral response from Council's Development Engineer (TRIM: 18/1453), the submitted S/W concept plan meets satisfactory compliance with the "*Rockdale Technical Specification – Stormwater Management*" for the proposed dual occupancy development.

*"This site does not lie within an absorption area and is affected by surface drainage but no low level properties checklist is required as the Council pipe runs through the property which the applicant can*

connect to for stormwater discharge. The applicant is proposing separate OSD systems at the rear of both properties which complies. Overflow from the OSD systems is then directed to Councils Stormwater pipe to the rear. A RWT also collects roof water from the property for reuse within the dwellings as specified in the BASIX.

A pump pit is required for basement garages but however due to the slope of this site (falling heavily to the rear) this is not required as flows can be adequately transferred further downstream to the OSD system at the rear. 300mm wide drainage grates will be conditioned for the property though."

Due to the number of identified LEP and DCP non-compliances, which resulted in the recommended 'refusal' of this proposal, the applicant was not requested to further address this issue. Regardless, it is considered highly unlikely that any necessary changes to the submitted concept plan could be executed due to the constraints of the site.

#### 6.12 Essential services

Services were generally be available on the site. If approved, additional conditions would have been incorporated in the draft 'Notice of Determination' requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

#### **S4.15(1)(a)(ii) - Provisions of any Draft EPI's**

No Draft Environmental Planning Instruments apply to this proposal.

#### **S4.15 (1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

##### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.3 Flood Risk Management	No - see discussion	No - see discussion
4.1.3 Groundwater Protection	Yes - see discussion	Yes - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.6 Development on Sloping Sites	No - see discussion	No - see discussion
4.1.7 Tree Preservation	Yes - see discussion	Yes - see discussion
4.1.9 Lot size and Site Consolidation - Dual Occupancy	No - see discussion	No - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.2 Streetscape and Site Context - Fencing	Yes - see discussion	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes - see discussion	Yes - see discussion
4.3.2 Private Open Space - Low density residential	No - see discussion	No - see discussion
4.4.1 Energy Efficiency - Residential	Yes - see discussion	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes - see discussion	Yes - see discussion
4.6 Parking Rates - Dual Occupancy	Yes - see discussion	No - see discussion
4.6 Car Park Location and Design	No - see discussion	No - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes

#### 4.1.3 Flood Risk Management

Council's Development Engineer provided the following comments in response to the issues associated with constructing the subject dual occupancy buildings in accordance with Council's "flood advice" letter, dated 12 October 2017, and Part 4.1.3 (Flood Risk Management) of the Rockdale Development Control Plan 2011.

*"The site is marked as being affected by the PMF flood event on Intramaps and a flood advice letter was provided for the property. This flood advice letter stipulates the following:*

*Minimum habitable floor level is to be 300mm above the existing NGL.*

*Minimum non-habitable floor level is to be 100mm above the existing NGL.*

*The proposed ground floor of the building is heavily raised and is well above the natural ground level (NGL) of the site so it complies but the garage and attached entertainment area/pool are well below the NGL of the site. The garage will have to have its access driveway ramp significantly altered (along with the required changes mentioned in Parking & Access) in order to protect the garage from inundation. Behind the basement garage, there is a proposed patio, pool, entertainment area and enclosed toilet (of which I will just call the entertainment area). The entertainment is non-habitable and subject to the minimum floor level of 100mm above NGL requirement. This proposal fails to uphold this requirement by proposing levels well below the NGL. However, despite this, they are proposing fill at the end of the entertainment area where it connects to the rear yard. This fill will raise the floor level of the entertainment area at the rear by at least 200mm above the NGL which goes above the 100mm requirement and shall suffice at protecting the entertainment area. There are no other flood related development controls that affect this property other than flow through fencing which can be conditioned.*

*Overall currently the development doesn't comply as the basement garage isn't adequately protected up to the minimum habitable floor level as required by the Flood advice letter.*

*There is a Council owned 600mm diameter pipe that runs through this property. The pipe is located approximately 1.82m away from the property boundary that adjoins 113 Villiers Street. The flood advice letter states that the pipe is to be physically located by a surveyor. The depth of the pipe along with the alignment should be clearly shown. The provided DA plans do not depict the location and depth of Council's pipe in accordance with the flood advice letter and the technical guidelines for stormwater management part 8.8. The 600mm pipe will have a easement of width 1.6m covering its location and no structures can really be built within this easement whatsoever which will significantly impact the proposed development.*

*This non-compliance will need to be rectified before this DA can progress any further and may require further correspondence down the track in regards to supplying council with CCTV footage of the pipes condition."*

Due to the number of identified LEP and DCP non-compliances which resulted in the recommended 'refusal' of this proposal, the applicant was not requested to further address this issue. Regardless, it is considered highly unlikely that any necessary changes to the submitted concept plan could be executed due to the steep topography which constrains the site.

#### 4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone 3 and, if the proposed development had of been approved, an appropriate condition would have been included in the consent to ensure the provisions of this Clause were satisfied.

#### 4.1.4 Soil Management

A Soil & Water Management Plan was submitted with general erosion and sediment controls which proposed relevant strategies that ensured any potential impact on adjoining land and surrounding waterways would be minimised.

#### 4.1.6 Development on Sloping Sites

The objectives of this clause are to limit site excavation and minimise cut and fill by allowing the building mass to step in accordance with the slope of the land; and to protect the amenity of adjoining properties. In this regard, the topography of the site is unique, such that the site falls steeply away from the street frontage.

It is considered that the design elements, incorporated in the proposed development, fail to respond to the natural sloping topography of the land in terms of not stepping the proposed building mass down relative to the fall of the site.

Taking this into consideration, the proposed development fails to appropriately respond to the slope of the land due to its bulky three (3) storey appearance which is considered to be unsympathetic with the natural form and topographical features of the site in addition to being out of character with the existing one and two-storey dwelling houses, located in the immediate vicinity of No.111 Villiers Street.

It is now considered that this matter form a reason to determine DA-2017/586 by 'refusal', as: -

Part 5.11.10 (*Storey Height and Setbacks*) of the *Rockdale Development Control Plan 2011* (RDCP) due to the proposed building's bulky three (3) storey appearance which is considered to be unsympathetic with the natural form and topographical features of the site in addition to being out of character with the existing one and two-storey dwelling houses, located in the immediate vicinity of No.111 Villiers Street.

#### 4.1.7 Tree Preservation

The development proposal involved the removal of four trees from the subject site. Council's Tree Management Officer recommended a number of appropriate conditions that would have been imposed in the draft Notice of Determination, regarding the removal of site trees subject to suitable replacement trees being planted in appropriate locations.

#### 4.1.9 Lot size and Site Consolidation - Dual Occupancy

Even though the subject site has a frontage width exceeding 15m (17.62m), it fails to meet compliance with the minimum 700m<sup>2</sup> site area requirement for a dual occupancy proposal. The site has a total area of 684m<sup>2</sup> which is deficient by 16m<sup>2</sup> in terms of meeting compliance with Part 4.1.9 (1.b)(*Lot size and minimum frontage*) of the *Rockdale Development Control Plan 2011*).

#### 4.2 Streetscape and Site Context - General

The existing streetscape and site context is relatively low scale predominately consisting of single and double storey dwelling houses. The proposed dual occupancy development appears as a bulky, three-storey building with minimal articulation/modulation applied to all facades which detrimentally impacts the amenity of the Villiers Street precinct, particularly when viewed from the public domain.



The proposed 7.488m front setback is also inconsistent with the average 11.7m setback(s) of surrounding dwellings and, in this regard, the residential streetscape would also have been rendered out of context with other completed developments, located in close proximity to the subject site.

#### 4.2 Streetscape and Site Context - Fencing

The application proposes a 1.2m high "open construction" front fence which meets satisfactory compliance with Part 4.2.18 (*Streetscape and Site Context*)(*Fencing*) of the RDCP.

#### 4.3.1 Open Space & Landscape Design - Low & medium density residential

The proposed dual occupancy development provides approximately 87m<sup>2</sup> of landscaped area for "Dwelling A" and 239m<sup>2</sup> for "Dwelling B" which satisfies Clause 4.3.2 (Private Open Space) of RDCP which requires 80m<sup>2</sup> per dwelling.

#### 4.3.2 Private Open Space - Low density residential

Part 4.3.2 (*Private Open Space*) of the RDCP requires a total of 80m<sup>2</sup> private open space to be provided, at ground level, for each dwelling with a floor space exceeding 125m<sup>2</sup>.

The subject application fails to meet compliance with this requirement as the POS for "Dwelling A" proposed a deficient area of 33m<sup>2</sup> while amount intended for "Dwelling B" was 134m<sup>2</sup>.

Due to the number of identified LEP and DCP non-compliances, which resulted in the recommended 'refusal' of this proposal, the applicant was not requested to further address this issue. Future compliance with this aspect is contingent upon revised plans being prepared which satisfy **all** the relevant planning guidelines associated with dual occupancy development.

#### 4.4.1 Energy Efficiency - Residential

As previously discussed, the applicant has submitted a BASIX Certificate (No. 874745C), dated 16 November 2017, for the proposed development. The commitments made result in reductions in energy and water consumption, and will achieve the efficiency target set under SEPP BASIX.

#### 4.4.3 Natural Lighting and Ventilation - Residential

The BASIX Certificate (No.874745S) issued for this proposal demonstrates that the subject dual occupancy development was designed to achieve a satisfactory level of natural ventilation and internal lighting.

#### 4.6 Parking Rates - Dual Occupancy

Each dwelling proposes a double garage containing 2 spaces and, therefore, meets compliance with the RDCP's car parking requirements. Even though this provision meets the numerical requirements on-site for a dual occupancy, Council's Development Engineer has determined that accessing these garages would be difficult due to the excessively steep nature of the proposed driveway. Further details of this issue have been explained in the DE's referral response contained in TRIM: 18/1453.

#### 4.6 Car Park Location and Design

As advised in the following referral response from Council's Development Engineer (TRIM: 18/1453), the submitted site plan fails to meet satisfactory compliance with the specified car parking and vehicular access requirements, detailed "*Rockdale Technical Specification – Traffic, Parking and*

Access", for the proposed dual occupancy development.

*"This proposal involves the creation of a dual occupancy of which both dwellings are proposed to have 3+ bedrooms, which requires two (2) off street car parking spaces for each lot.*

*Two double garages are proposed to facilitate both lots with the required off street car parking. Lot B provides sufficient garage space to adequately hold two (2) off street car parking spaces with dimensions of 2.5 x 5.5m. However, due to the unusual pentagonal shape of the garage on lot A they are unable to provide the required parking dimensions for two (2) off street car parking spaces, one space can be sufficiently sized within the garage but the angle of the northern wall impedes the second car space from being adequately sized. No car parking spaces will be accepted on the driveway as the gradient is far too steep. Therefore the development has a shortfall of one (1) off street car parking space and does not meet the minimum requirements for a dual occupancy of four (4) off street car parking spaces.*

*The proposed driveway ramp to facilitate access to the garages has been designed with the absolute maximum gradient allowed for a domestic driveway. The gradients proposed are 12.5% transitioning into 25% and then back to 12.5% prior to entering the garage. The driveway length is also quite long with over 13m in length before reaching the boundary of the property. The design of this driveway provides an unsafe situation for pedestrians who walk upon the footpath on the road reserve as the driver will not be able to see the pedestrian when reversing. The applicant will have to provide 4m internally with a gradient no larger than 5% or provide a redesign driveway/garage layout and swept path analysis that depicts vehicles being able to exit in a forward direction. Gutter flow analysis will not be needed as the flooding requirements require the low level driveway to have a crest level of at least 300mm above the boundary level (however after discussing this application with Vladimir Stojnic, 150mm crest level will suffice as this property will no longer be marked for flooding in the future and gutter flow analysis will not be necessary).*

*There is approximately 7m+ of overhang of the ground floor over the proposed low level driveway. This requires a wall down the middle of the driveway which negatively impacts vehicle manoeuvring upon enter and exiting the site as the driveway narrows to 2.7m and curves in a gun barrel shape. The driveway shall be widened internally so that the curve is removed.*

*Overall my judgement is that this site will be unable to make the required changes necessary to comply."*

Due to the number of identified LEP and DCP non-compliances, which resulted in the recommended 'refusal' of this proposal, the applicant was not requested to further address these issues. Future compliance with these matters is contingent upon revised plans being prepared which satisfy **all** the relevant planning guidelines associated with dual occupancy development. It is envisaged that the steep nature of the site may constrain it from being developed for the intended purpose.

#### **S4.15(1)(a)(iv) - Provisions of regulations**

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - *Demolition of Structures* when demolition of a building is involved. If approved, the associated consent would have been included as a condition of consent to ensure compliance with the standard.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

#### **4.15(1)(b) - Likely Impacts of Development**

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

##### **Construction**

The residential building is to be constructed in brick and roof tiles with concrete/timber floors. There are no specific issues relating to the BCA in the proposed design. **IF** approved, site and safety measures to be implemented in accordance with conditions of consent and Workcover Authority guidelines/requirements.

##### **Swimming Pool**

The proposed swimming pools were assessed against relevant controls in regard to potential impacts on the environment and neighbouring properties. The proposed swimming pools are satisfactory, however, **IF** the DA had of been approved - appropriate conditions of consent would have been included in the consent to further minimise any resultant impacts.

#### **S4.15(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. As the subject site has an area of 684m<sup>2</sup> and Part 4, Clause 3B of RLEP requires a minimum lot size of 700m<sup>2</sup> for any dual occupancy proposal, No.111 Villiers Street is considered to be an unsuitable site for this type of development.

It is now considered that this matter form a reason to determine DA-2017/586 by 'refusal'.

#### **S4.15(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

#### **S4.15(1)(e) - Public interest**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of this development application, the current proposal is considered to be an overdevelopment of the site in accordance with its environmental capacity. The proposed building design is also deficient in terms of contributing any architectural value to the existing streetscape.

Furthermore, it has also been determined that the subject proposal will create unreasonable impacts on surrounding properties in terms of excessive bulk and scale.

As a result of this determination, it is considered that the subject development application will **not** be in the 'public interest'.

## **Schedule 1 - Draft Conditions of consent**

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## Compliance report: 111 VILLIERS STREET ROCKDALE

Attention: Assessment Officer/planner

This report has been prepared in response to a council email (letter) which we have received, in response to the assessment undertaken by Fiona Prodromou regarding the Section 82-A we have made for this address, and the plans and consultant work lodged.

The letter we have obtained from Fiona has advised us of the 'council's intention to refuse the S82-A' on the basis of:

- Insufficient overall site area
- FSR
- Bulk and scale
- Inappropriate design for the constraints of the site
- Inaccuracies in submitted plans and information

We have detailed each of the above points, and responded to them in our below report:

- Overall site area:

We held 2 meetings with Marta Gonzalez (senior planner/team leader) about this project, during the DA and after its subsequent refusal. We were advised that although the site area is not sufficient, that all we had to do was produce a comprehensive clause 4.6 report, justifying the reasons why our shortfall should be, and can be supported. We followed this request and prepared the subject report accordingly, and lodged it in with the 82-A review. Please confirm if it was received by council and if so, has it been assessed and reviewed?

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- FSR:

Fiona's letter mentions "concerns with FSR" yet doesn't expand on this aspect. We are assuming that council is requesting clarification on FSR and if compliance has been achieved: in which case, it has. Please refer to the calculations provided below

Total Site Area = 684sqm

Total Building Area = 319sqm

319sqm divide 684 = 0.46

0.46 x 100 = **46%**

Considering the allowable FSR is 0.6:1 it results in our proposed development being **91 sqm BELOW the maximum allowable floor area**. The effect of this outcome is one of a reduction in bulk and scale of our development, as well as positive impacts on building footprint; minimisation of overshadowing as well as allowing our development to be highly compatible with all adjoining properties and the desirable outcomes for the suburb.

We have previously made these calculations clear on the plans, and can be found on DA 01 from the S82-A architectural package. Note: most developments seek a variation to FSR and it can be assumed unprecedented, to requested close to 100sqm lower than an allowable gross floor area.

- Bulk and Scale:

Fiona's letter/email mentions 'bulk and scale' yet, again doesn't elaborate on this point. Nevertheless, as read in the above "FSR" component, it must be made clear that we have a smaller bulk than what is permissible in this part of Bayside council, and we are in fact at least 20% *smaller* in overall building footprint, then a number of dwellings along our same street, and adjoining streets - namely Oswald Street. Some addresses of dwellings which will be larger in bulk/scale/building footprint once our development is complete are:



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- 123 Villiers street
- 127 Villiers street
- 29 Oswell Street
- 19 Oswell Street

Furthermore, in relation to “bulk and scale” our development will present Villiers Street, as a 2 storey dwelling, due to the articulation of the façade and the asymmetrical design we have adopted. This is further enforced, by the basement being sunk low – below the street RL levels and in fact, more than 2.5 meters lower! This means that our basement is impossible to be viewed from street level, as it is extremely well concealed, ensuring maximum streetscape compatibility and constancy. (Refer to DA 10)

In addition to this, it must be noted that we are also well below the maximum allowable height for this zone and area, being 8.5 meters (refer to DA 06/07/08) and that on average, all components of our elevations and sections and roof, we are at least 800mm BELOW the maximum allowable height.

From the perspective of building footprint: our proposed building footprint is 225 sqm which equates to 33% of the site. This is quite miniscule and extremely small, in terms of permissible or ‘desired’ footprint, being at least 20% less, and therefore, have a very low impact on our overall site.

All the above reinforce the notion that in fact, contrary to council’s opinion, we are well and truly setting a *desirable* outcome for all future development along this street in regards to bulk and scale, as we have a much smaller footprint and shorter wall heights as well as minimum floor areas, compared to what the maximum allowable is for this area. It must be made clear that all of the above points and aspects were undertaken, via the coordination between my design team and Marta and Stephen McDiarmid feedback during the DA refusal stage and during the preparation of the 82-A plans.

- Inappropriate design for the constraints of the site:

We take it that the above statement was prepared in council letter, in ‘summary’ of their earlier points, and is more of an overall statement. However, in light of all of the above information and clarity we have shed, we naturally expect this statement/aspect to be withdrawn, as it has been proven that our site and proposed development fits comfortably within the parameters and that we have either full compliance or over-compliance with all council restrictions and regulations/controls.

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- Inaccuracies in submitted plans and information:

If there are any inaccuracies or minor details which need to be addressed, we will happily amend these for this application, or can accept a conditional approval so that they can be done prior to the CC stage of the design.

We strongly believe (and have proven above) that we have now successfully met all reasons for the original DA refusal and our application is successful through maximum compliance with the LEP and the DCP. We have also comprehensive responded to each of the points mentioned in Fiona's email to us, to the best of our ability, as some assumptions had to be made with what the underlying argument was for each one.

We will happily provide more details and/or information if requested, via re-working of the architectural plans where necessary, however, we have already provided a comprehensive and refined package via the lodgement of the 82-A

Please do not hesitate to contact us if there is anything that may be minor in nature, so that we can address it accordingly.

Thank you

Rod zoabi

Director

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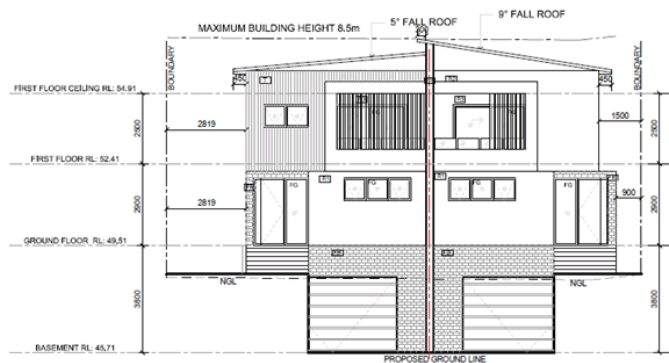
## STATEMENT OF ENVIRONMENTAL EFFECTS

21/06/2018

### DEVELOPMENT APPLICATION PROPOSED ATTACHED DUAL OCCUPANCY

**111 VILLIERS ST,  
ROCKDALE**

LOT 5 DP 5940



**Image 1 – Proposed Front Elevation**

## 1. INTRODUCTION

This environmental effects statement is submitted to Bayside Council in support of a development application 111 Villiers St, Rockdale. The DA seeks approval for demolition of existing; removal of selected trees; proposed attached dual occupancy construction; proposed terrace for each dwelling; proposed front fence and subdivision respectively.

Application for the construction certificate will be sought separately.

This planning report has been prepared by ZTA Architects on behalf of the landowner and based on the plans and information supplied as part of this application.

The purpose of this document is to describe the existing improvements on the site, detail the proposed development and review the applicable planning regime relating to the proposal. It assesses the degree of compliance and examines the environmental effects of the development when measured against the Evaluation Criteria prescribed under Section 79C (1) of the Environmental Planning and Assessment Act, 1979.

In respect of the assessment of the proposal, where impacts are identified environmental amenity has been addressed in this report.

## 2. PROPOSAL

This application seeks consent for the following works at 111 Villiers St, Rockdale (Refer to the proposed architectural plans);

### Demolition

In order to facilitate the development is necessary to demolish the existing dwelling and all associated structures as identified on the architectural plans. The trees near rear boundary will also be removed.

### Basement Floor (per dwelling)

- Provide 2 off street parking

- Provide storage
- Swimming pool

Ground floor (per dwelling)

- Provide living, sitting, bathroom, laundry, pantry, dining and kitchen.
- Provide covered outdoor living space BBQ area.

First floor (per dwelling)

- Provide 4 bedrooms.
- Provide balconies in the front and rear.
- Provide 1 ensuite and 1 main bathroom

Landscape (per dwelling)

- Provide driveway to each dwellings garage
- Provide grass entry pathway along with stepping stones above
- Provide Vegetation/Plants soft landscaping in the side of the drive way.
- Provide new front boundary fence

Generally

Present a variety of contemporary architectural dwellings within the guidelines of the RDCP 2011, offering a unique precedence to the changing surrounding modern streetscape.

### 3. SITE DESCRIPTION

RLEP 2011 – R3 Medium Density Residential

The site is referred to as 111 Villiers St, Rockdale and overlooks Villiers Street at the front. The site is also known as Lot 5 in DP 5940 with a site area of 684m<sup>2</sup> and a frontage of 17.62m. There is a gradually slope from east boundary to west boundary, of approximately 700mm.



Image 2 – Aerial Location Map

Currently on site is one single storey fibro cottage with a detached garage. All of which are proposed to be demolished.



**Image 3 – Existing House Streetscape**

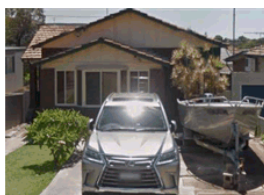
Adjoining sites

The Eastern property No.109 is a double brick storey home with a tilted roof also with an attached garage.



**Image 4 – No. 109 Villiers Street**

The Western property No.113 is a single storey double brick home with a tiled roof.



**Image 5 – No.113 Villiers Street**

#### **4. SITE HISTORY**

There is no relevant property history pertaining to this application.

#### **5. ASSESSMENT**

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning & Assessment Act 1979.

##### **(a)(i) Environmental Planning Instruments**

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- \* Rockdale Local Environmental Plan 2011 (RLEP 2011).
- \* Rockdale Development Control Plan 2011 (BDCP 2011)

##### **DCP/LEP COMPLIANCE:**

The proposed attached dwelling is compliant with council's regulations and requirements on all regards and aspects, as well as the building code of Australia. The following aspects have been covered throughout the design, and are associated with the calculation/compliance information submitted with this DA:

- Site coverage and landscaping requirements
- Overall building heights and aesthetic appearance/materials proposed
- Private open space and soft landscape
- Car parking
- Storage facilities and space
- front, side and rear setback
- Overshadowing and privacy

#### COMPLIANCE TABLE -DWELLING A

CONTROL	REQUIRED	PROPOSED	COMPLIANCE
SITE AREA		334.15 sqm.	YES
FLOOR SPACE RATIO (0.6)	184.29 sqm.	182.15 sqm.	YES
STREET FRONTAGE SETBACK	13.246 m (average of adjoining building)	GROUND = 7.488 m FIRST = 7.984 m	NO
SIDE SETBACK	GROUND 0.9m FIRST 1.5m	GROUND 0.9m FIRST 1.5m	YES
BUILDING HEIGHTS	MAXIMUM 2 STOREYS 8.5m OVERALL	MAXIMUM 2 STOREYS 9.2m OVERALL	NO
LANDSCAPE PRIMARY SETBACK	25%	67.75%	YES
PRIVATE OPEN SPACE	MINIMUM 80.00sqm.	82.31 sqm. (min width 3m)	YES

#### COMPLIANCE TABLE -DWELLING B

CONTROL	REQUIRED	PROPOSED	COMPLIANCE
SITE AREA		350.17 sqm.	YES
FLOOR SPACE RATIO (0.6)	226.3 sqm.	225.118sqm.	YES
STREET FRONTAGE SETBACK	13.246 m (average of adjoining building)	GROUND = 7.488 m FIRST = 7.984 m	NO
SIDE SETBACK	GROUND 0.9m FIRST 1.5m	GROUND 0.9m FIRST 1.5m	YES
BUILDING HEIGHTS	MAXIMUM 2 STOREYS 8.5m OVERALL	MAXIMUM 2 STOREYS 9.2m OVERALL	NO
LANDSCAPE PRIMARY SETBACK	25%	58.29%	YES
PRIVATE OPEN SPACE	MINIMUM 80.00sqm.	222.02 sqm. (min width 3m)	YES

The application satisfies the provisions of the above Environmental Planning Instruments.



**Building Density (per dwelling)**

The proposed gross floor area of the proposed building is collectively 334.15sqm for dwelling 1, Dwelling 2 has a Floor Space Ratio of 350.17sqm. Given that the site area is known to be 648m<sup>2</sup>, the allowable Floor space area for Dwelling 1 182.15sqm, Floor Space Ratio for Dwelling 2 is 225.118sqm. The overall proposed Floor Space Ratio (FSR) of the dwellings is rounded up to 0.6:1 against the development standard of 0.6:1.

The subdivision is regular in shape and evenly subdivided. Overall the proposed duplex at 111 Villiers St, Rockdale is under the allowable ratio of 0.6:1, and therefore is in compliance with the RLEP2011.

**Solar Access**

The proposed dual occupancy is designed so that reliance on artificial light sources is minimised via the orientation; and sizes and positions of windows and skylight.

The proposed development will provide a minimum of 3hrs of solar access to adjoining private open spaces and not result overshadowing of adjoining dwelling living areas and solar collectors, solar access to private outdoor recreation areas are maintained. The proposed POS also received minimum of 3 hours solar access. The site is orientated favourably with private open spaces to the North. Solar access is provided to living rooms, dining rooms, bedrooms and the kitchen, with high-light window to living rooms. The roof for terrace of dwelling B is brought in to provide sufficient daylight. The skylight is also introduced to first floor of Dwelling B for additional solar access. The articulated design of the dwellings minimise overall height of the development which aids in further reduction of shadow impacts from the first floor to any future neighbouring development.

**Privacy & Views**

The proposed development satisfies Council's objectives in that it maintains the acoustic and visual privacy of occupants within all built development and in private open spaces.

It ensures that new development incorporates architectural and building elements that contribute to guarding the acoustic and visual privacy of any adjoining residents via the use of privacy screen and louvres at front and rear balconies.

The proposed development minimises direct overlooking of windows and private open spaces so that the amenity of neighbours and intended occupants is maximised.

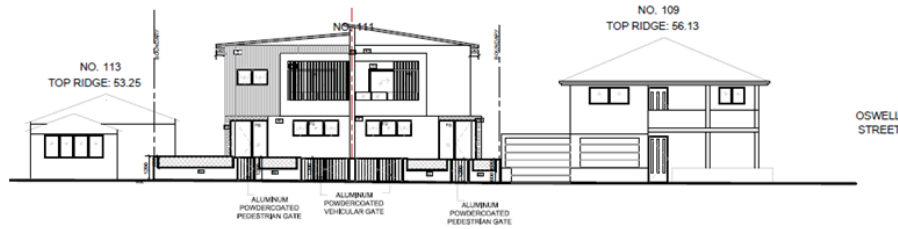
**Streetscape and Building Form**

The proposed development will satisfy the Council objectives in that all elements of development remain visible from the street and public domain.

The proposed development ensures that it is compatible with the scale, character and landscape setting of the adjoining streetscape, natural setting and scenic quality.

The proposed development ensures the dual occupancy design responds to the opportunities and constraints of the site, delivering optimal solar orientation for both dwellings.

The Development is designed and sited so that it addresses the primary street frontage ensuring all main entries are clearly identifiable from the street, using good landscape design and feature gates and front fence that reflect the contemporary theme of the design.



**Image 6 – Front Streetscape**

The proposed development is designed to enhance the front entrance to each dwelling and is the dominant element in each dwelling frontage. In this instance our proposal uses layers of elements towards the building entries (Unique Entry, landscaping, landings, patios etc) and the interest of the façade design to accomplish this.

The proposed development colour schemes and materials are harmonious with the natural attributes of the area and are integrated with the external design of the building.

The design of dual occupancy reduces the apparent bulk and scale of development such that it is not dominant in the streetscape. Articulation of facades and massing of elements are employed to reduce apparent bulk and scale from the street. Architecturally the design can read as a horizontal and vertical break-up of masses that draws an interest in its entirety, yet interprets each dwelling with its own individual identity.

#### **Parking, General Accessibility**

2 off street car parking space per dwelling is proposed which satisfy the parking controls for dual occupancy. The garages are behind the building line and go unnoticed due to building articulations, elements, overhangs, material finishes and well-considered landscape.

#### **Fences & Gates**

A new front boundary fence is proposed. The new front fence will add security while harmonising with the architecture of the proposed dwellings. The use of low fence will ensure streetscape visibility to the dwelling is maintained while remaining unintrusive. The openings and material finishes correlate with each dwelling respectively.

#### **Energy Efficiency**

A BASIX certificate has been prepared for each dwelling, the certificates confirms that the project achieves the minimum required scores and or pass for Water Use, Thermal Comfort and Energy Consumption.

#### **Waste management**

A waste management plan has been prepared for the demolition, construction and ongoing waste of the proposed development. This plan identifies the method of demolition and disposal or method of

recycling for the materials generated by the development of the site. Waste Management Plan is submitted with this application.

#### **Sediment Controls**

A Sediment Control plan has been provided as part of the drainage plans.

#### **Colours & Materials**

The external colours & finishes are design to harmonise with the landscape and surrounding streetscape. The colours to the existing building are to remain. Refer to the separate colour finishes specification A3 sheet.

#### **Waste & recycling**

The existing waste and recycling program through the use of recycling, organic and general waste will continue. Garbage bins are able to be stored on site, with the occupier of the house being able to bring their own bins out on each scheduled evening. Appropriate locations exist on the footpath to allow bins to be placed for collection by Council on the allocated days for collection

#### **Utilities**

The utility services currently available on or to the site include electricity, telecommunications, sewer & stormwater. It is anticipated that the proposed works will not have any adverse impact on the provision of the available services.

#### **Stormwater Pipe**

We have been advised by council that there may be a stormwater pipe along the side boundary of 600mm in diameter. The following extract has been taken from the flood report issued to us from

Council:

- ‘E The Council's records indicate a Council owned 600mm diameter pipe located generally along the site boundary between Nos 111 and 113, Villiers Street, approx. 1.8-2.0 m away from the boundary line. This pipe should be physically located by a surveyor. The depth of the pipe along with the alignment of the pipe should clearly be shown on the plans submitted for the application for planning consent (DA). Requirements for construction in relation to the pipe are contained with the Rockdale Technical Specification Stormwater Management (2011), Part 8.8.3 (see attached).

Since commissioning a surveyor and having extensive discussions with the project engineer, we come to the conclusion that there is no active pipe within this vicinity, nor are there any visible stormwater pits/drains or outlets located within its estimated/approximate location along the immediate kerb and gutter or pathway along the property boundary. Nor are there any such features located at the opposite side of the road, along its path or kerb and gutter, directly outside number 2 Lydham Streets' side boundary.

#### **DCP non-compliances**

There are a 2 non-compliances with the above subject development, listed below in detail, with clear reasoning for each item:

- Height: 90% of the proposed development has been designed in accordance with the height restrictions, as per outlined in the Rockdale DCP. However, towards the rear portion of the site, there is an encroachment of the maximum height, purely due to the fact that the site suffers from a sharp slope from the front right through to the rear boundary. This slope causes a steep descent, and impacts the building at the rear, creating a dramatic appearance, hence, our roof along the rear of the building encroaches the maximum height line by nearly 400mm at its highest tip, of the north and south elevation.  
In relation with this, the DCP of Rockdale requires a 2.7 Floor to ceiling height, however, we have proposed a 2.5m ceiling heights in elected spaces, which allows us not to encroach the maximum building height consistently throughout the roof. However, a 2.5 meter ceiling height is still within the requirements of the BCA.
- The Setback Line of the front of the building has been pushed forward (when compared to the average as per the requirements) due to irregular shape in subdivision line, by pushing the front setback forward this allowed for a bigger building space for dwelling A, because the front portion of our site is the widest and therefore, most usable space. When the immediate neighbours to both boundaries are compared with (109 and 113) we are slightly in front of them in setback, however there are ample examples immediately after these properties, where the front setback is similar to our proposal.

#### **Conclusion**

The proposed dual occupancy development at 111 Villiers St, Rockdale will result in the following;

- The subject land is located within R3 – Medium density Residential pursuant to the provisions of Rockdale Local Environmental Plan 2011. The proposed development, being a dual Occupancy is a permissible land use within the zone with development consent.
- The siting, design and external appearance of the proposed development are considered to be appropriate and to relate sympathetically to the intended scale and character of development in the locality.
- The proposal is considered not to reduce or negatively impact upon the visual or acoustic privacy to adjoining or nearby properties. Shadows cast by the proposed development are not likely to affect the amenity of surrounding residences.
- It will provide high quality architectural design & construction
- The proposal generally compiles with the regulations, controls, codes and objectives by the Council.

- The proposal will not result in any adverse environmental impacts to adjoining properties and the surrounding public domain, particularly in relation to overshadowing, privacy and overlooking.
- The proposal will maintain and improve natural light and natural ventilation.
- The proposal is consistent and matches the proportions of neighbouring development with the varying scale, density, streetscape, height, form of the adjoining properties, and will have minimal impacts to the amenity of neighbouring residents.
- The proposal to the property will improve the habitant's residential accommodation and amenity through practical use of space.

Overall it is considered that the proposed works are compatible with appropriate development within the area and should be considered to be given development consent subject to appropriate conditions.

## RESIDENTIAL DEVELOPMENT

DA - FOR SUBMISSION

111 VILLIERS STREET, ROCKDALE

PROJECT NO. : 17234

DRAWING NO.	DRAWING NAME
DA00	COVER PAGE
DA01	SITE & SITE ANALYSIS PLAN
DA02	BASEMENT FLOOR PLAN
DA03	GROUND FLOOR PLAN
DA04	FIRST FLOOR PLAN
DA05	ROOF PLAN
DA06	ELEVATION1
DA07	ELEVATION2
DA08	SECTIONS
DA09	SOIL WATER MANAGEMENT AND DEMOLITION PLAN
DA10	STREETSCAPE & FRONT FENCE ELEVATION
DA11	SHADOW DIAGRAMS - WINTER
DA12	SHADOW DIAGRAMS - EQUINOX
DA13	FINISHES SCHEDULE
DA14	SUBDIVISION PLAN
DA15	NEIGHBOUR NOTIFICATION
DA16	PRIVATE OPEN SPACE CALCULATION

## DESIGN STANDARDS

SMOKE DETECTORS & HEAT DETECTORS	SPECS. E2.2(a) BCA, AS 1670.1-1995, AS 3786-1993
PROTECTION OF BUILDINGS FROM SUBTERRANEAN TERMITES	AS 3660.1-2000
THE DEMOLITION OF STRUCTURES	AS 2601

BASIX COMMITMENTS NOTES				
*REFER TO APPROVED BASIX REPORT*				
WATER	All Shower Heads	All toilet flushing systems	All kitchen taps	All bathroom taps
Fixtures	3 star (> 6 but ≤ 7.5 L/min)	4 star	4 star	4 star
Alternative water source	All dwellings: Individual rainwater tank to collect run off from at least 55 m <sup>2</sup> of roof area - Tank size min 3000 litres			
	The applicant must connect the rainwater tank to:			
	Landscape connection	Toilet connection	Laundry connection	Pool top up
	Yes	Yes	Yes	-
	Swimming pool: • The swimming pool must not have a volume greater than: - Dwelling A: 22.5 kilolitres - Dwelling B: 40.5 kilolitres • The swimming pool must be outdoors. • The swimming pool must be shaded.			
ENERGY	Hot water system: Gas instantaneous with a performance of 5 stars			
	Bathroom ventilation system: Individual fan, ducted to façade or roof; manual switch on/off			
	Kitchen ventilation system: Individual fan, ducted to façade or roof; manual switch on/off			
	Laundry ventilation system: Natural ventilation only			
	Cooling system: 1 Phase air-conditioning EER 2.5 - 3.0 in at least 1 living/bed area (zoned)			
	Heating system: 1 Phase air-conditioning EER 2.5 - 3.0 in at least 1 living/bed area (zoned)			
	Natural lighting: As per BASIX			
	Artificial lighting: As per BASIX			
	Alternative energy (All dwellings): Must install a photovoltaic system with the capacity to generate at least 1.0 peak kilowatts of electricity.			
	Swimming pool: • The development must not incorporate any heating for the swimming pool. • Must install a timer for the swimming pool pump in the development. Must install a gas cooktop and electric oven. Must install a fixed outdoor clothes drying line as part of the development.			

Building Elements	Material	Detail
External walls	Cavity Brick	Foil sided bubble wrap (Aircell permicav / Polyair Performa 4 or the like) total system R value Rt1.7 (excluding garage) – to Dwelling B only
Internal walls	Single Skin Brick	R1.5 bulk insulation between garage and basement stairs
Common walls between dwellings	Cavity Brick	–
Ceiling	Plasterboard	R4.1 bulk insulation to ceilings with metal roof above
Floors	Concrete – all levels	R1.5 bulk insulation: - between garage and ground floor & - to all suspended concrete floors to external environment
Roof	Metal Roof	Foil (sisalation) to underside of roof
	Concrete	R1.5 bulk insulation (excluding garage)
Skylights	Double glazed clear	–
Windows/Doors	<u>Awning windows &amp; bi-fold doors:</u>	
	Aluminium frame, single glazed clear	U value 6.70 or less and SHGC 0.57 +/- 5%
	<u>Sliding windows/doors &amp; fixed windows:</u>	
	Aluminium frame, single glazed clear	U value 6.70 or less and SHGC 0.70 +/- 5%
<u>Lighting: This dwelling have been rated with non-ventilated LED downlights as per NatHERS Certificate.</u>		
<u>Note: Insulation specified must be installed in accordance with Part 3.12.1.1 of the BCA.</u>		
<u>Note: Self-closing damper to all exhaust fans to Dwelling B only.</u>		

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NOTE

ISSUE DATE PURPOSE OF ISSUE


PROJECT  
111 Villiers Street, Rockdale  
NSW 2216

RESIDENTIAL DEVELOPMENT

CLIENT  
-

STATUS  
DA SUBMISSION

STAGE  
DEVELOPMENT  
APPLICATION



DRAWING NO.  
**DA00**

ISSUE  
**A**

JOB NO.  
17234


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AA

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RZ

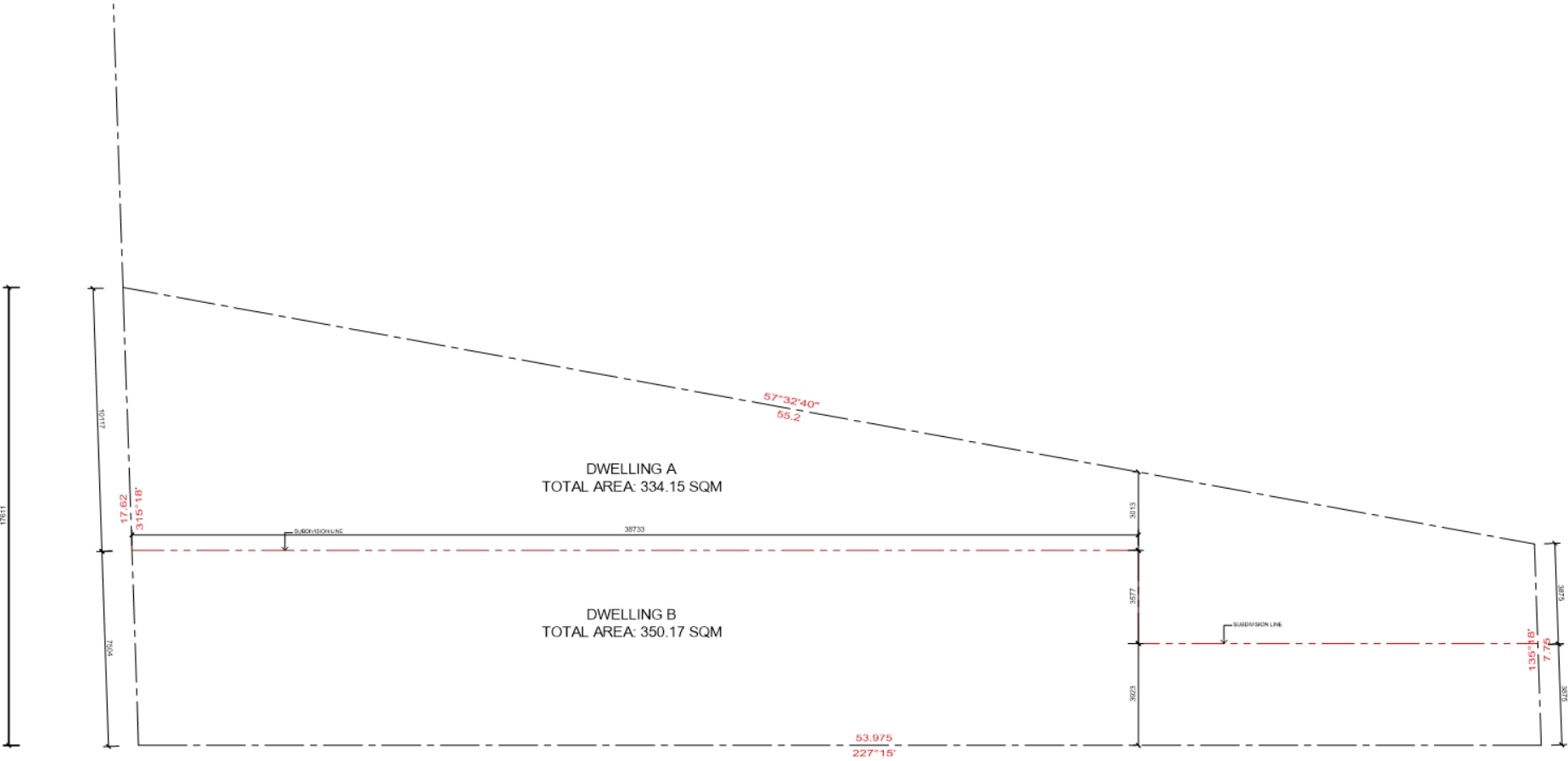
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DATE  
6 NOV 2017

DRAWING TITLE  
COVER PAGE







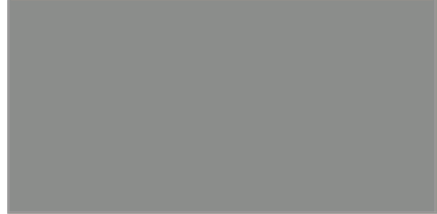
<div><div>zta</div><div>zta architects</div><div>architecture   urban design   interior design</div></div> <div>3/08, 55 miller street pyrmont, nsw 2009 ph: +61 2 8098 7886 fx: +61 2 8098 7886 e: admin@zta.net.au ABN 56 164 632 517</div>	CONSULTANTS	NOTE	ISSUE	DATE	PURPOSE OF ISSUE	PROJECT 111 Villiers Street, Rockdale NSW 2216  RESIDENTIAL DEVELOPMENT  CLIENT -	STATUS DA SUBMISSION  STAGE DEVELOPMENT APPLICATION <div><div>N</div></div>	DRAWING NO. DA14	ISSUE A	JOB NO. 17234

PAINT & RENDER (R1)



VIVID WHITE  
by: DULUX

PAINT & RENDER (R2)



STEPNEY  
by: DULUX

PAINT & RENDER (R3)



WINNOW  
by: DULUX

FACE BRICK (FB)



BLUE RIO  
by: BORAL

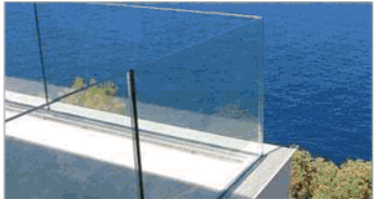
SANDSTONE (SS)



COLORBOND ROOFING



FRAMELESS GLASS BALUSTRADE



ALUMINUM POWDER  
COATED FENCE GATE



GARAGE DOOR

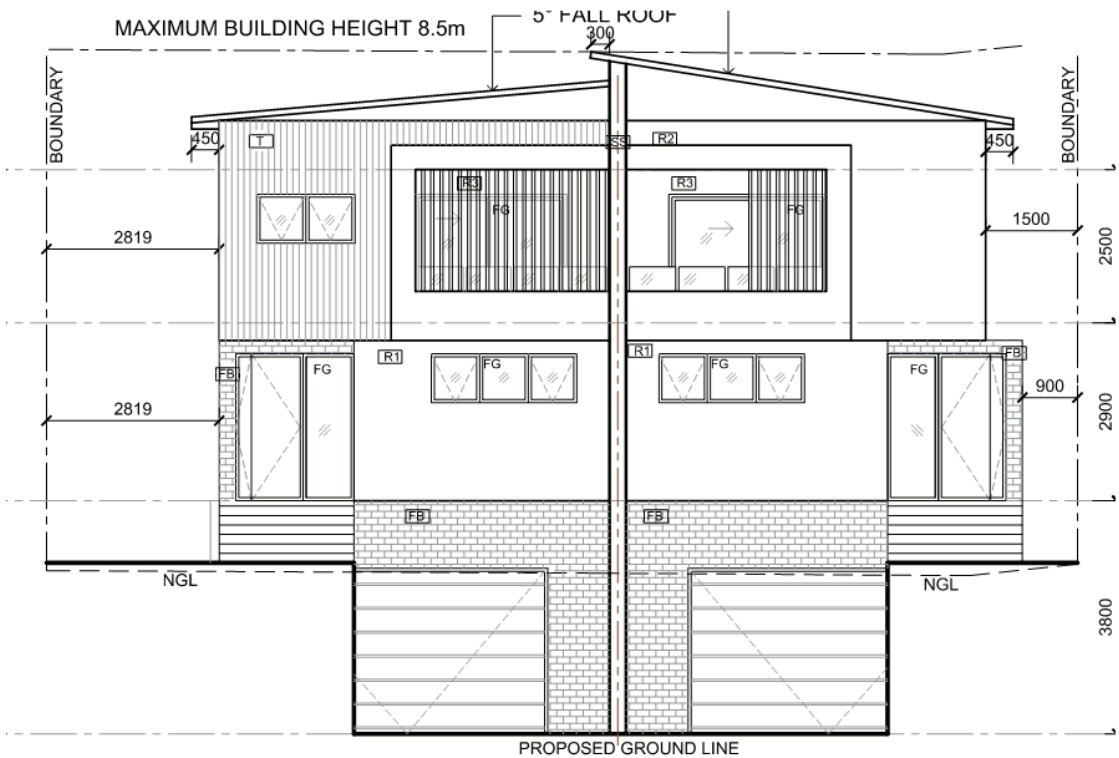



CHAMPAGNE METALLIC

ALUMINUM BLACK  
FRAME GLAZING



TIMBER CLADDING (T1)





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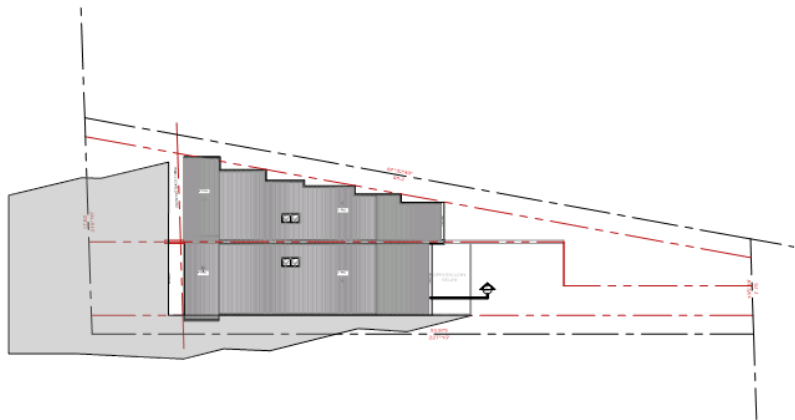
ISSUE DATE PURPOSE OF ISSUE

PROJECT  
111 Villiers Street, Rockdale  
NSW 2216  
  
RESIDENTIAL DEVELOPMENT  
  
CLIENT  
-

STATUS  
DA SUBMISSION  
  
STAGE  
DEVELOPMENT  
APPLICATION

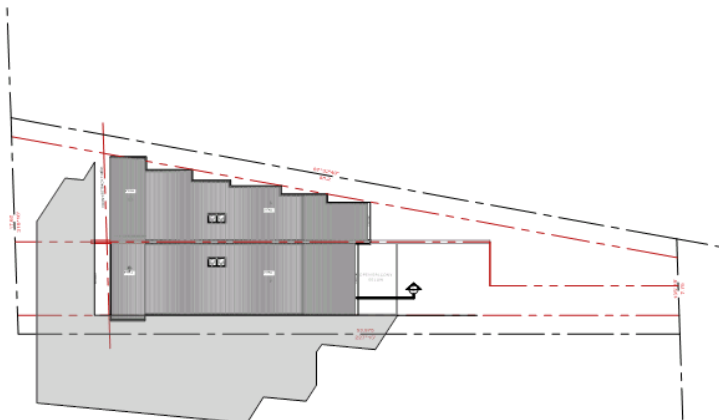
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DRAWING TITLE		DATE
FINISHES SCHEDULE		6 NOV 2017



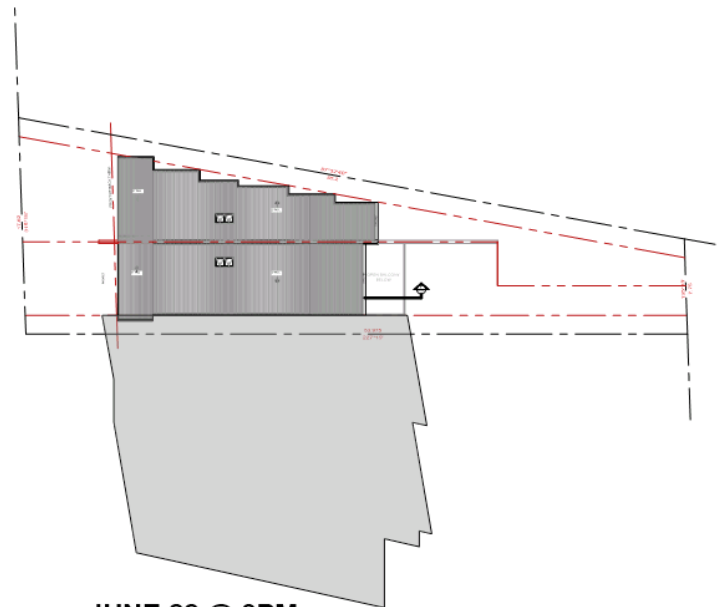


BUILDING SHADOW DIAGRAM

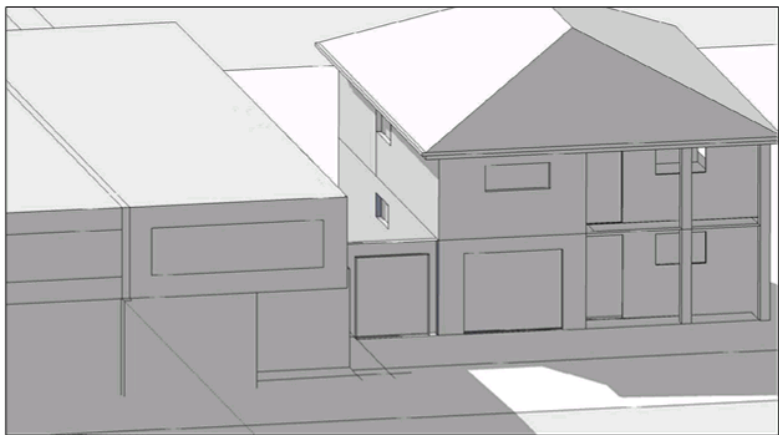
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JUNE 22 @ 12PM

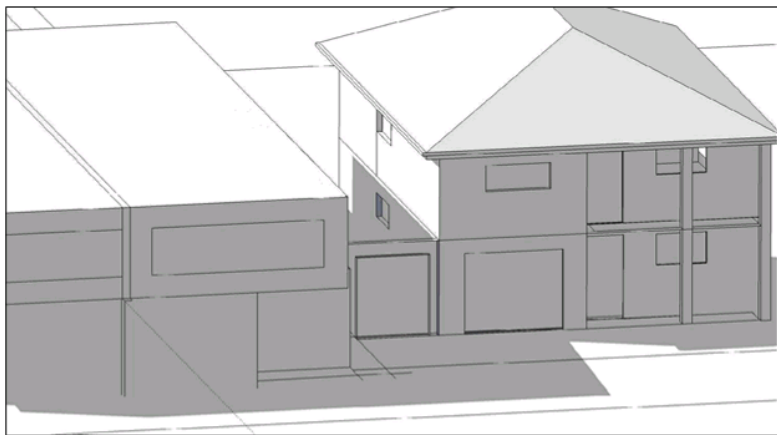


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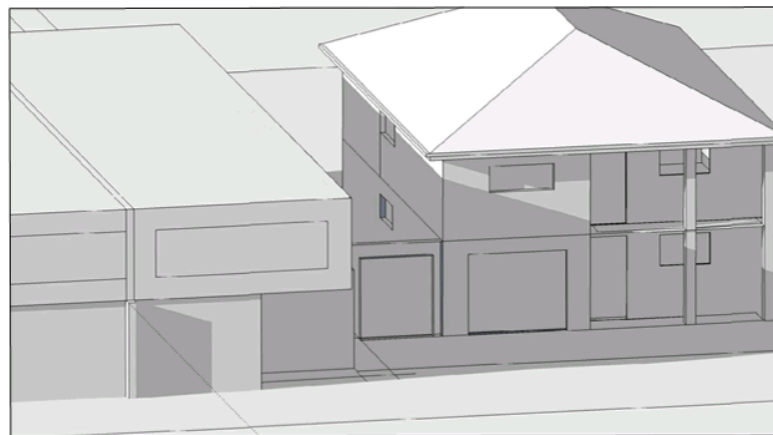


ELEVATIONAL SHADOW DIAGRAM

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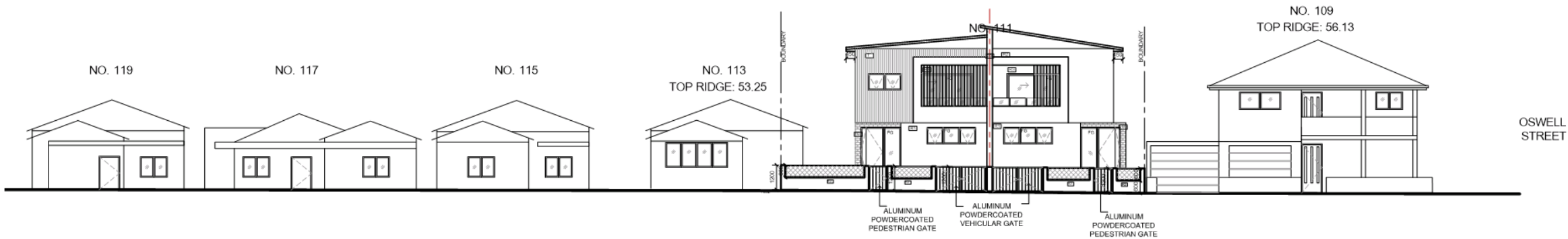


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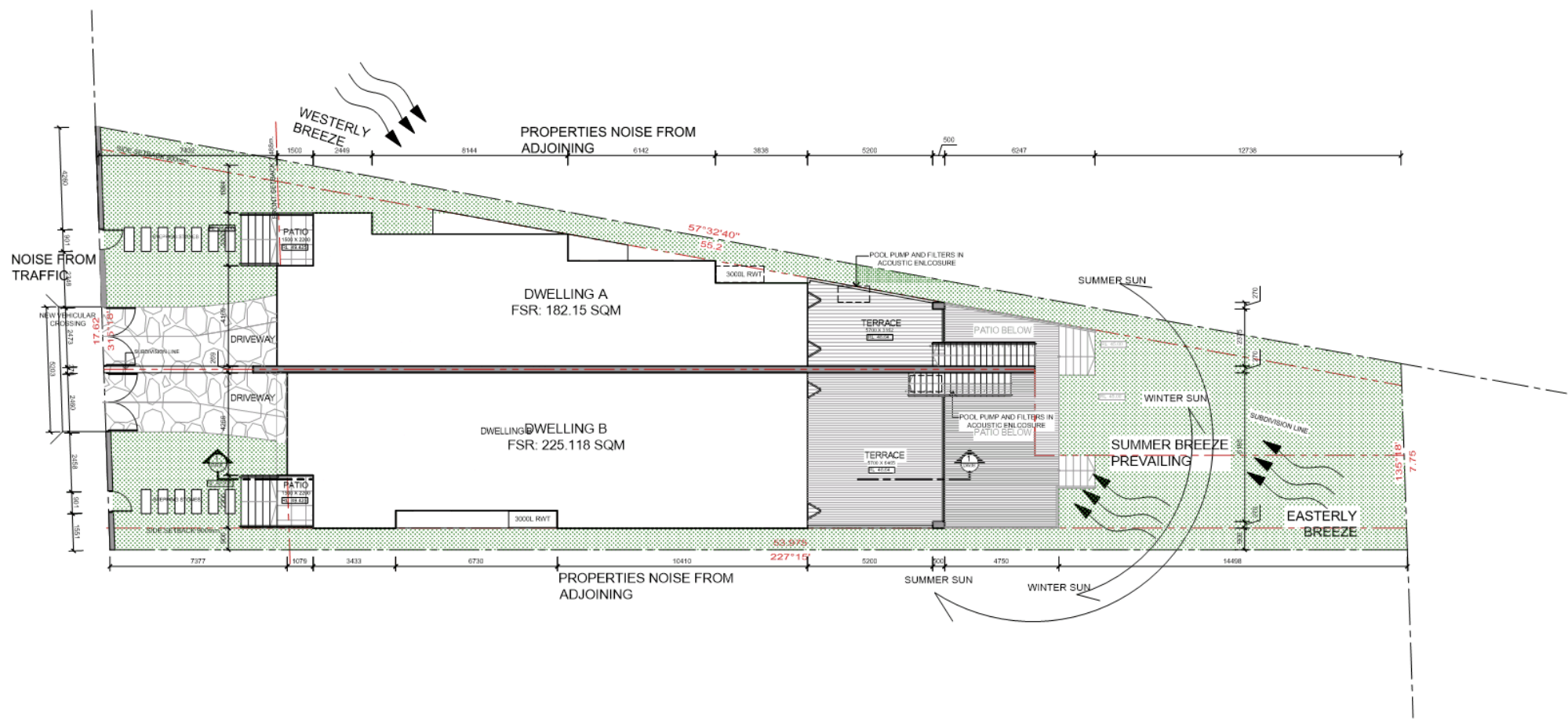


JUNE 22 @ 3PM

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								RESIDENTIAL DEVELOPMENT	STAGE DEVELOPMENT APPLICATION				
								CLIENT		DRAWN BY	CHECKED BY	SCALE	DATE
								-		AA	RZ	1:100@A3	6 NOV 2017
DRAWING TITLE STREETSCAPE AND FRONT FENCE ELEVATION												<div><div>0</div><div>1</div><div>2</div><div>3</div><div>4</div><div>5m</div></div>	



COMPLIANCE TABLE -DWELLING A

CONTROL	REQUIRED	PROPOSED	COMPLIANCE
SITE AREA		334.15 sqm.	YES
FLOOR SPACE RATIO (0.6)	184.29 sqm.	182.15 sqm.	YES
STREET FRONTAGE SETBACK	13.246 m (average of adjoining building)	GROUND = 7.488 m FIRST = 7.984 m	NO
SIDE SETBACK	GROUND 0.9m FIRST 1.5m	GROUND 0.9m FIRST 1.5m	YES
BUILDING HEIGHTS	MAXIMUM 2 STOREYS 8.5m OVERALL	MAXIMUM 2 STOREYS 9.2m OVERALL	NO
LANDSCAPE PRIMARY SETBACK	25%	67.75%	YES
PRIVATE OPEN SPACE	MINIMUM 80.00sqm.	82.31 sqm. (min width 3m)	YES

COMPLIANCE TABLE -DWELLING B

CONTROL	REQUIRED	PROPOSED	COMPLIANCE
SITE AREA		350.17 sqm.	YES
FLOOR SPACE RATIO (0.6)	226.3 sqm.	225.118sqm.	YES
STREET FRONTAGE SETBACK	13.246 m (average of adjoining building)	GROUND = 7.488 m FIRST = 7.984 m	NO
SIDE SETBACK	GROUND 0.9m FIRST 1.5m	GROUND 0.9m FIRST 1.5m	YES
BUILDING HEIGHTS	MAXIMUM 2 STOREYS 8.5m OVERALL	MAXIMUM 2 STOREYS 9.2m OVERALL	NO
LANDSCAPE PRIMARY SETBACK	25%	58.29%	YES
PRIVATE OPEN SPACE	MINIMUM 80.00sqm.	222.02 sqm. (min width 3m)	YES

PRIVATE OPEN SPACE CALCULATION

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DA SUBMISSION  
STAGE DEVELOPMENT APPLICATION

DRAWING NO.  
**DA01**

ISSUE  
**A**

JOB NO.  
17234

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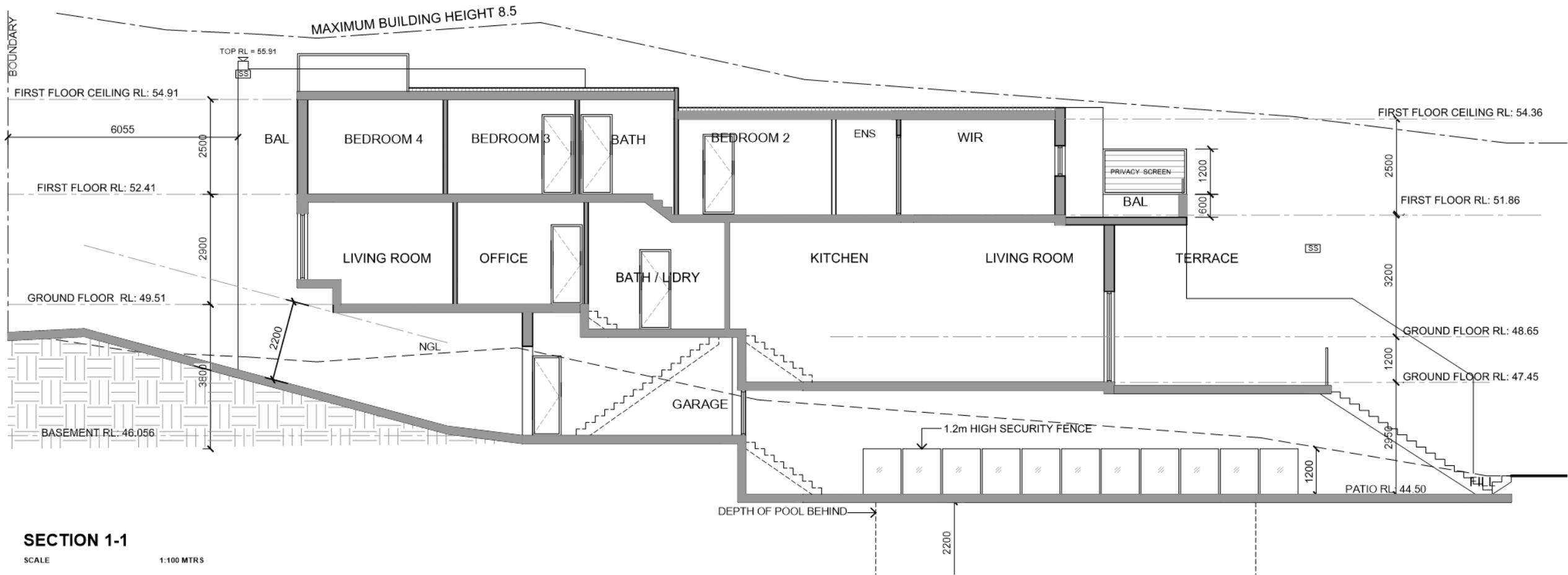
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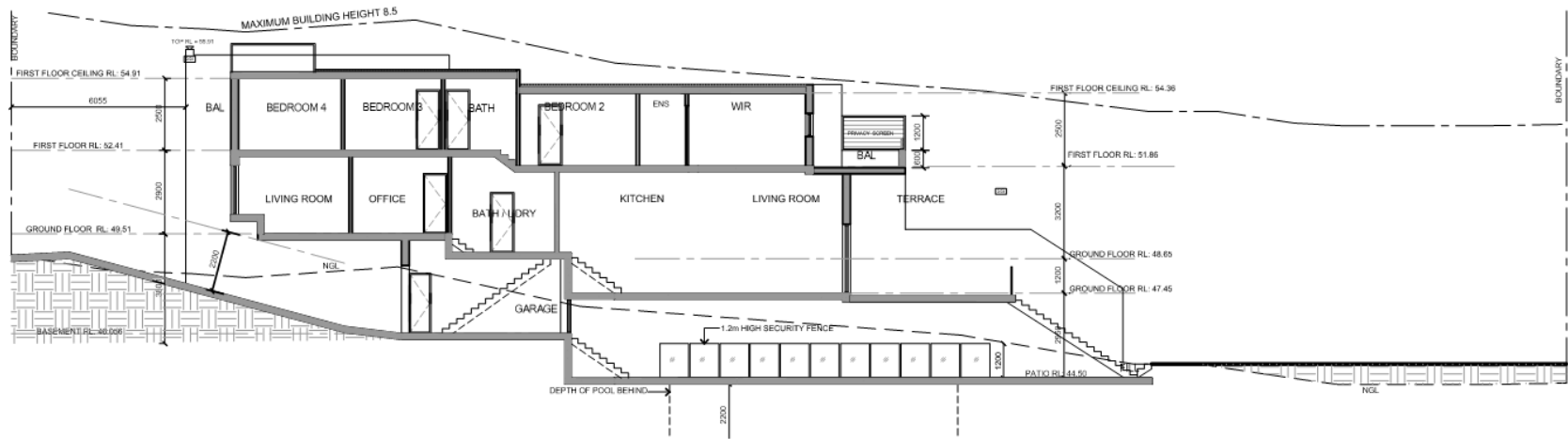
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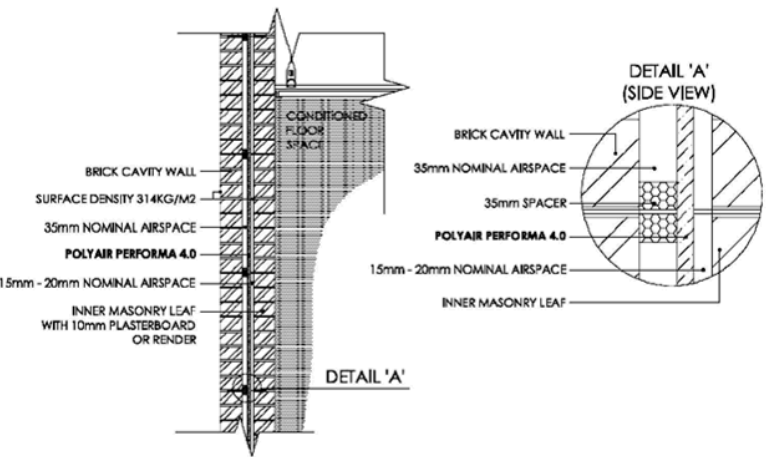





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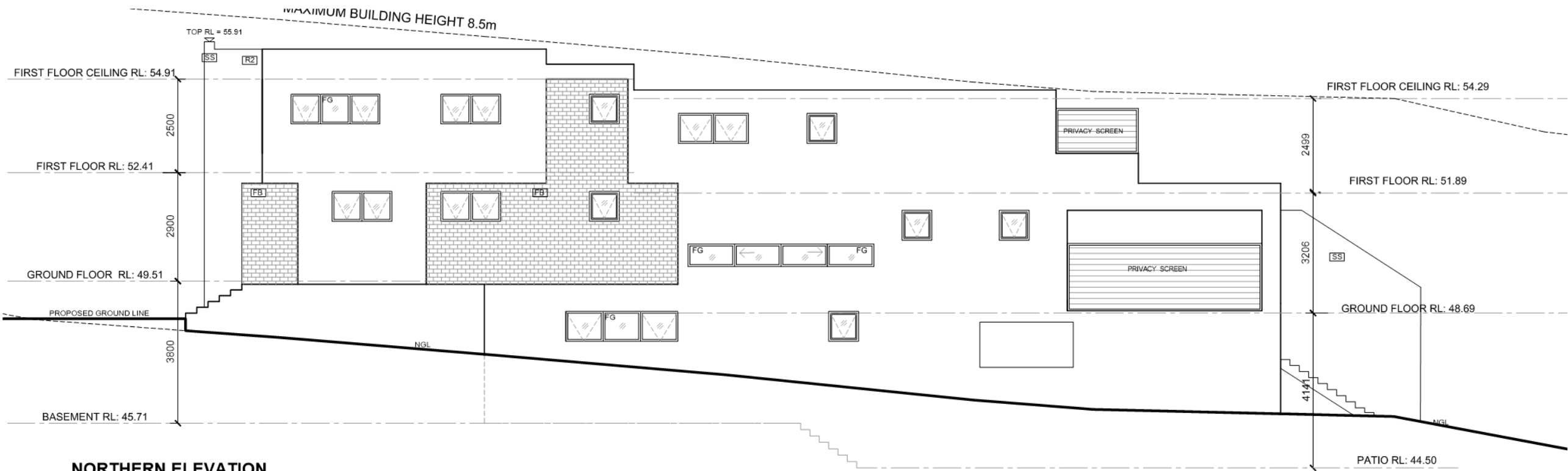
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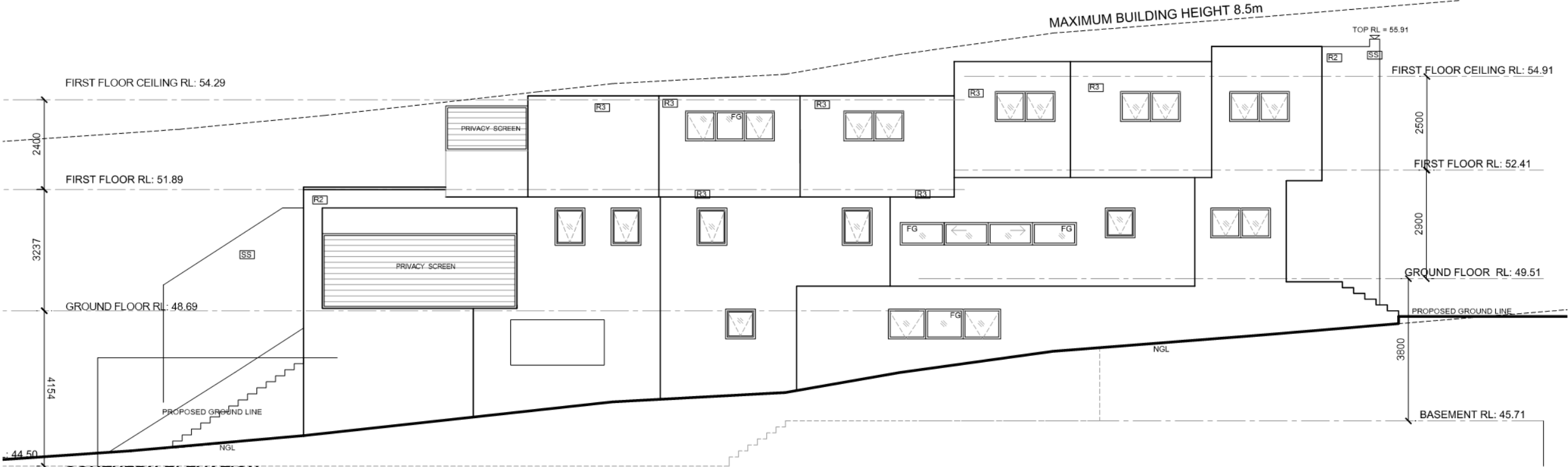
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NORTHERN ELEVATION



SOUTHERN ELEVATION



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DA SUBMISSION  
STAGE  
DEVELOPMENT  
APPLICATION

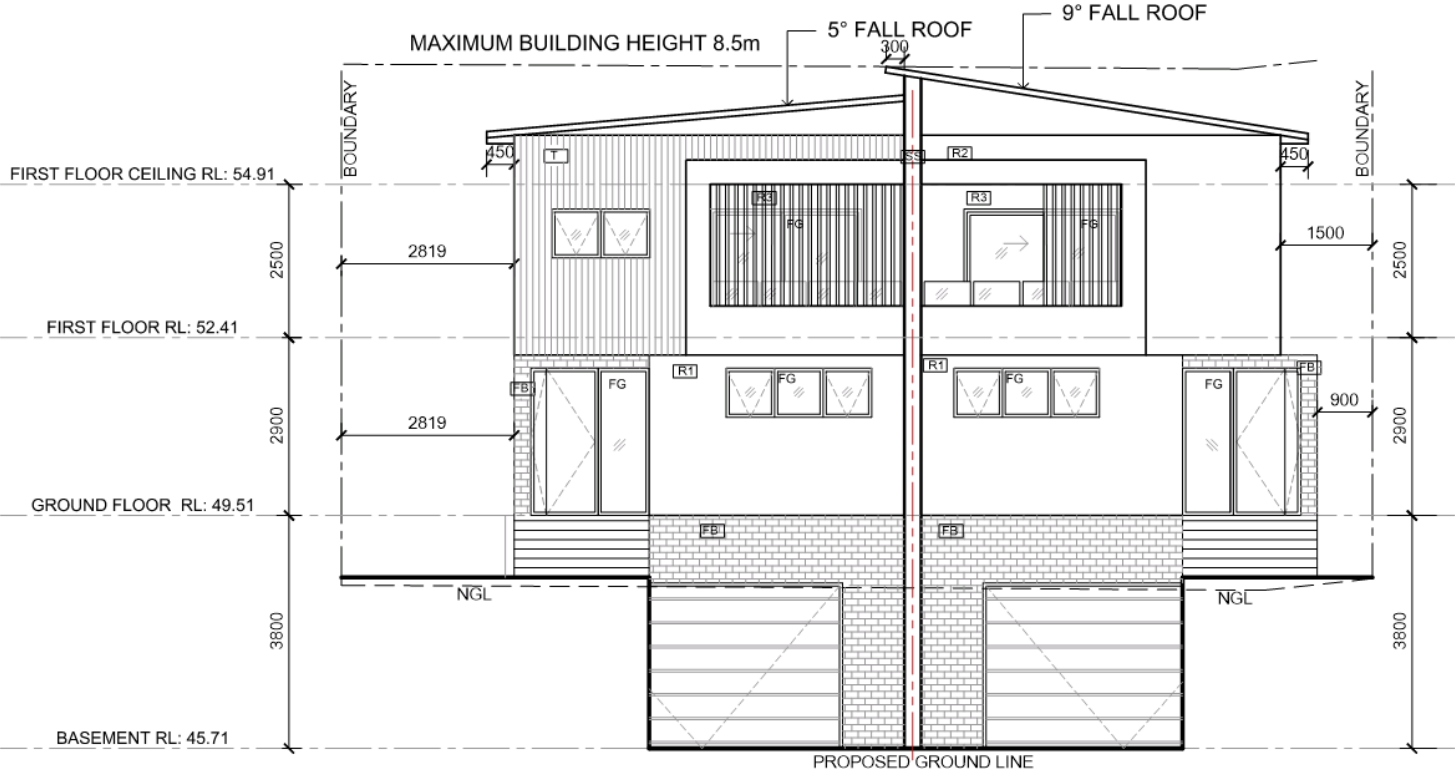
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6 NOV 2017  
DRAWING TITLE  
ELEVATIONS 2

JOB NO.  
17234

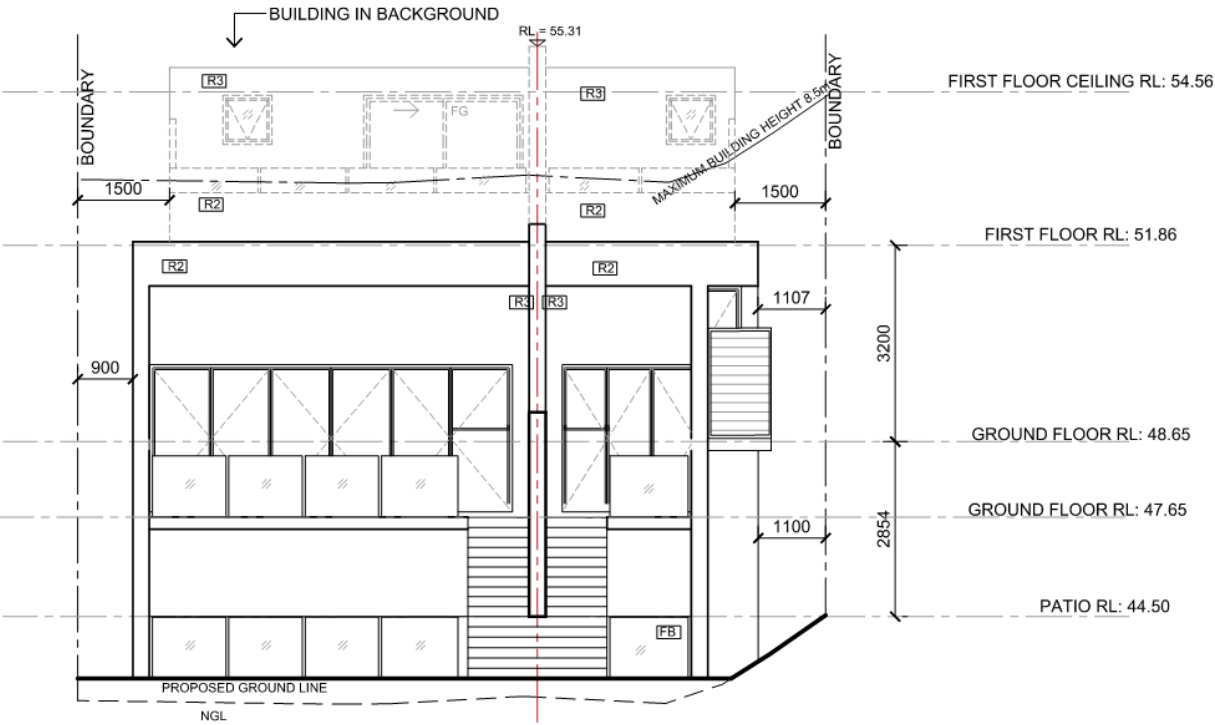
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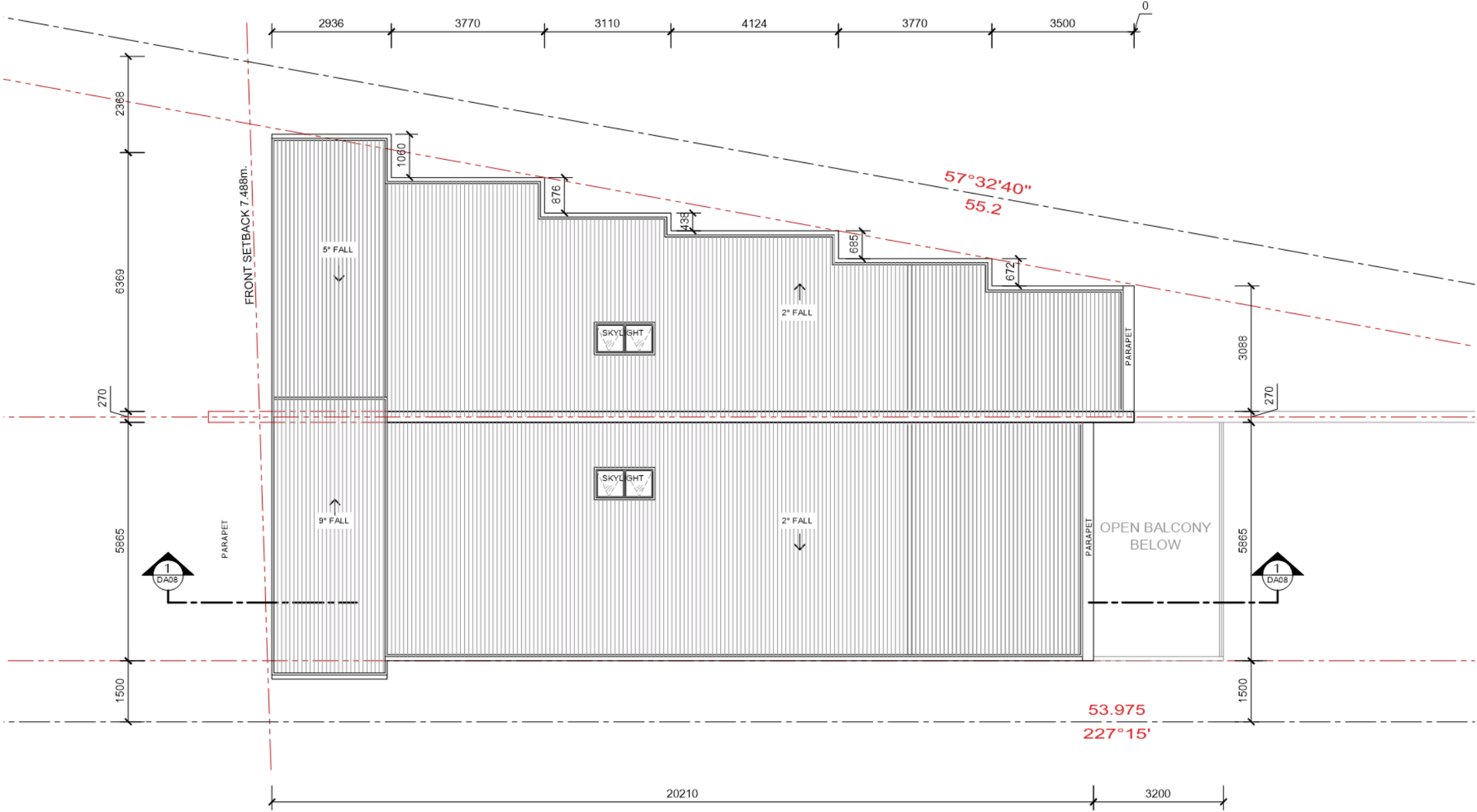
WESTERN ELEVATION





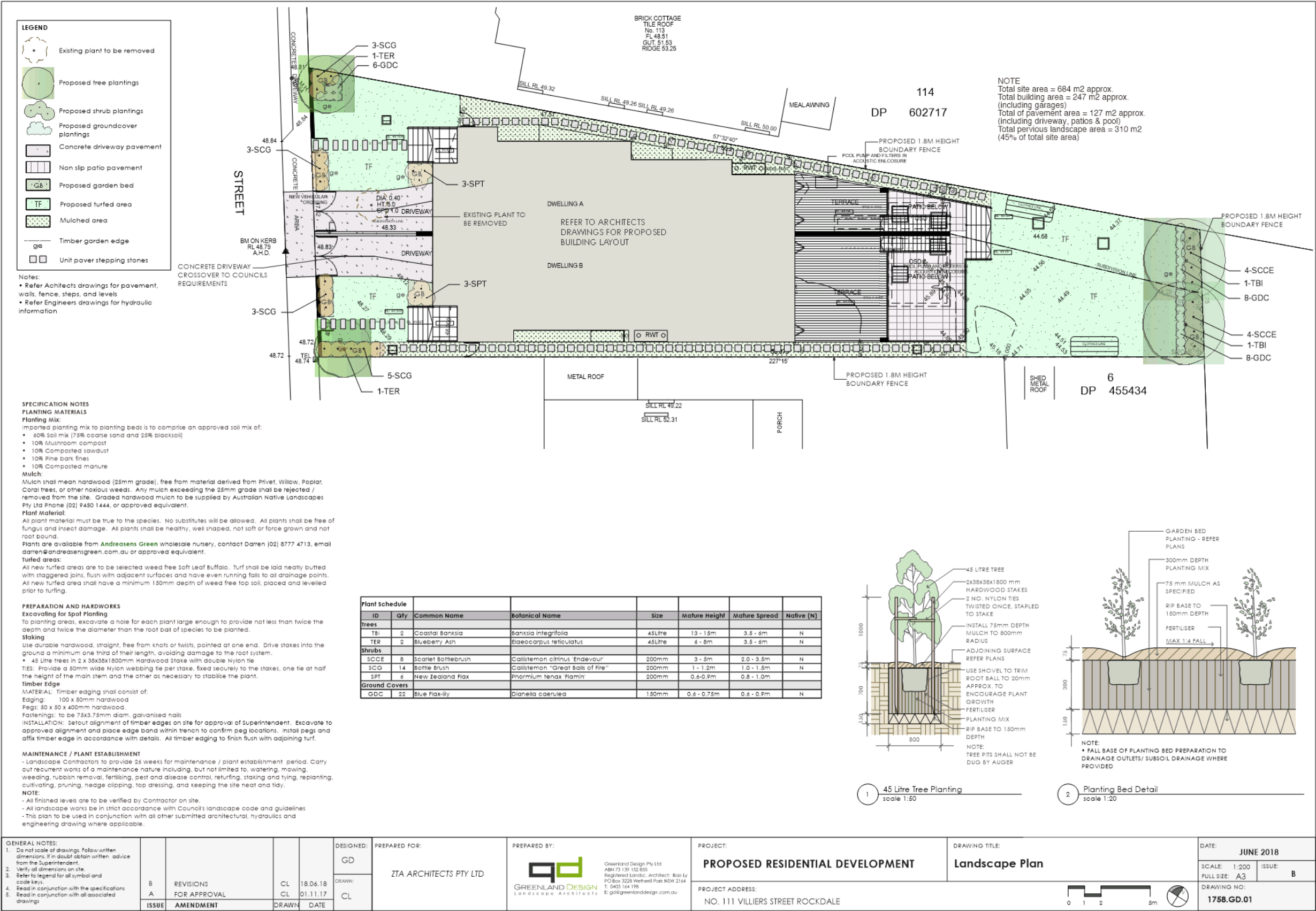
EASTERN ELEVATION



 3/08, 55 miller street pyrmont, nsw 2009 ph: +61 2 8098 7886 fx: +61 2 8098 7886 e: admin@zta.net.au ABN 56 164 632 517 <b>zta architects</b> architecture   urban design   interior design	CONSULTANTS	NOTE	ISSUE	DATE	PURPOSE OF ISSUE	PROJECT 111 Villiers Street, Rockdale NSW 2216  RESIDENTIAL DEVELOPMENT  CLIENT	STATUS DA SUBMISSION  STAGE DEVELOPMENT APPLICATION 	DRAWING NO. <b>DA06</b>  DRAWN BY AA  DRAWING TITLE ELEVATIONS 1	ISSUE <b>A</b>  CHECKED BY RZ	JOB NO. 17234  SCALE 1:100@ A3 	DATE 6 NOV 2017



 3/08, 55 miller street pyrmont, nsw 2009 ph: +61 2 8098 7886 fx: +61 2 8098 7886 e: admin@zta.net.au ABN 56 164 632 517 <b>zta architects</b> architecture   urban design   interior design	CONSULTANTS	NOTE	ISSUE	DATE	PURPOSE OF ISSUE	PROJECT 111 Villiers Street, Rockdale NSW 2216 RESIDENTIAL DEVELOPMENT CLIENT	STATUS DA SUBMISSION STAGE DEVELOPMENT APPLICATION 	DRAWING NO. <b>DA05</b> DRAWN BY AA DRAWING TITLE ROOF PLAN	ISSUE <b>A</b> CHECKED BY RZ SCALE 1:100@ A3	JOB NO. 17234 DATE 6 NOV 2017





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**Clause 4.6 Objection to  
Clause 4.1 (3B) (a) of  
Rockdale LEP 2011**

**111 Villiers Street  
Rockdale**



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## 1.0 Introduction

- 1.1 This Clause 4.6 variation request has been prepared to support the development application for an attached dual occupancy at 111 Villiers Street Rockdale. The subject clause 4.6 relates to the minimum 350sqm subdivided lot control.
- 1.2 This Clause 4.6 reflects the Court decisions in *Four2Five Pty Ltd v Ashfield Council*. Further to *Four2Five Pty Ltd* are two more recent cases *Moskovich v Waverley Council* and *Randwick City Council v Micaul Holdings Pty Ltd*. These more recent decisions confirm that there is no specific limitation on the consent authority's discretion under clause 4.6(4) and the threshold may vary from case to case, depending on the views of the consent authority.
- 1.2 In *Moskovich* it was submitted that compliance with the FSR standard was unreasonable and unnecessary because the design achieved the objectives of the standard and the R3 zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. *Moskovich* further submitted that there were "sufficient environmental planning grounds" to justify the contravention because the proposal would replace two aging poorly designed residential flat buildings with a high quality RFB with exceptional internal and external amenity outcomes. Ultimately the decision was made to uphold the Appeal and hence a more merit based clause 4.6 application was now identified in the Court.
- 1.3 A recent decision in the Court in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 confirmed once again that flexibility can be applied to allow variations of numerical development standards and the consent authority (Council in the case of the subject application) has the power and discretion to allow a variation of one or all standards if it so wishes. *Micaul* is a decision of the Chief Judge of the Land and Environment Court in an appeal against a decision of Commissioner Morris to uphold a request under clause 4.6 of the Randwick LEP 2012 (RLEP 2012) to vary development standards relating to the height and FSR of a building. Council contended that the Commissioner failed to be satisfied about the requirements in clause 4.6(4), or alternatively failed to give adequate reasons. The Council also claimed that the Commissioner failed to consider a requirement of a Development Control Plan. Council's position was that the bar had been set too low for the clause 4.6 variation request. The Court dismissed the Appeal as it held that the Commissioner had set out an appropriate test under clause 4.6. The Commissioner stated that she was satisfied that the proposal satisfied those tests.
- 1.4 What is clear from the decisions is that the degree of satisfaction required under clause 4.6(4) is a matter for the Commissioner (and in this case Bayside Council) and on this basis it is open to the consent authority to satisfy itself. It is our submission that Council is able to be satisfied that the development is in the public interest because it achieves the zone objectives and minimum lot size objectives. Further it provides a building that achieves the required urban design outcomes for the site and one which complies with the RDCP controls with respect to front setbacks, FSR, frontage (well in excess of required frontage), side setbacks, max height, number of storeys, car parking, deep soil areas, outdoor open space and private open space. The proposal also replaces what is an architecturally benign dwelling with an architecturally designed dual occupancy which adopts high quality materials and finishes. The proposal has an appropriate visual fit even though it





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offers a modern design response. As established in Project Ventures Constructions v Pittwater Council the proposed infill built form is not required to be the same in order to be compatible. Strict application of the 350sqm minimum subdivision control would not serve any planning purpose given that the development performs very well when tested against the LEP and DCP controls and maintains amenity and enhances the residential streetscape. The breach is quite minor at 334sqm for one of the two lots created by the dual occupancy application, whereas the other lot will have a site area of 350sqm. The minor departure to the lot size control does not compromise the design outcome in any way. The permissible bulk and scale is a function of the site area therefore a slightly smaller site results in a slightly smaller GFA. The intent of the control to achieve *appropriate minimum lot sizes* (i.e. density driven control) is satisfied given that the density is compatible with the likely future density in the local area. As explained the overall density is slightly less than would be achieved on a 350sqm site and represents a variation of 3.1% holistically.

- 1.5 This is an objection under Clause 4.6 of Rockdale LEP 2011 to Clause 4.1B (3) (a) relating to the 350sqm minimum lot size required per site for a dual occupancy. An applicant is able to submit a written request as part of a development application demonstrating why strict application of the standard is unreasonable and unnecessary in the circumstances of the case.
- 1.6 This 4.6 objection demonstrates that despite the breach of the relevant development standard the proposal is in the public interest within the meaning of Cl 4.6(4) (a)(ii) as it is consistent with the objectives of the particular standard and the objectives for development within the zone. Having considered the justification provided herein it would be unreasonable and unnecessary for Council to strictly apply the minimum lot size for dual occupancy development standard. There is no specific benefit or planning purpose served by strict compliance with the control particularly where all other standards in the LEP and DCP can be achieved. The proposal complies with the FSR control, provides sufficient onsite landscaping and provides all the required intra site amenity in terms of private open space.

## 2.0 Clauses Subject to the Variation

The subject clause 4.6 variation relates to the following clauses of the RLEP 2011:

Note: specific reference in the RLEP for this chapter is only in relation to development in zones R2, however, due to a lack of reference to subdivision/minimum lot sizes in zone R3 (such as is with our subject site) then it will be assumed that restrictions as per the R2 subdivision will apply.

### 4.2A Minimum lot sizes for dual occupancies and dwelling houses in certain residential zones

- (1) The objective of this clause is to ensure that the size of lots for attached dwellings or semi-detached dwellings on land in Zone R2 Low Density Residential is consistent with the zoning objective of providing for the housing needs of the community within a low density residential environment.
- (2) Development consent must not be granted to the erection of an attached dwelling or a semi-detached dwelling on a lot comprising land in Zone R2 Low Density Residential unless the area of the lot is at least 350 square metres.



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#### **4.2A Minimum subdivision lot size for dual occupancies**

- (1) The objectives of this clause are as follows:
- (a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,
  - (b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,
  - (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.
- (2) This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.
- (3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).
- (3B) Despite subclause (3), development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed, if:
- (a) the area of each lot resulting from the subdivision is equal to or greater than 350 square metres, and ...

### **3.0 Extent of the Minimum Lot Size Departure**

#### **3.1 Minimum 350sqm Lot Control**

The subject site has a total site area of 684sqm. The variation sought will be for 1 of the subdivided lots - dwelling A, which is proposed to have a finished area of 334 sqm which is quite minor and does not lead to a compromised or non compliant development with respect to DCP controls. The departure does not result in any additional impact on neighbouring properties or the streetscape.

The short site area will represent a 3.1% departure to the control. Dwelling B is located on a lot in excess of the 350sqm control and complies. A survey of the site is provided with the development application as well as detailed architectural plans showing the setbacks FSR heights and compliance with the RDCP.

### **4.0 Clause 4.6 of Rockdale LEP 2011**

- 4.1 A Clause 4.6 variation is justified in this particular instance as provided below. Clause 4.6 of RLEP relevantly provides:

#### **4.6 Exceptions to development standards**

- (1) The objectives of this clause are as follows:
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a



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development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

**Note.** When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4.

Clause 4.6, like SEPP 1 is a mechanism which allows Councils to provide a degree of flexibility in varying particular development standards contained in the Standard Instrument LEP including height, FSR and minimum lot size. The subject development seeks to apply for a variation under Clause 4.6 to the minimum 350sqm lot size for a dual occupancy lot within the R3 Medium Density Residential Zone. Clause 4.6 is available to an applicant to vary numerical lot size controls.



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The aims of Clause 4.6 of the RLEP 2013 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.*

Application of Clause 4.6 is sought to vary the minimum 334sqm lot size for dual occupancy lot (the 334sqm control is a *development standard* as defined under the Act).

Cl. 4.6(3)(a) and (b) contain the relevant provisions an applicant is required to address:

*"(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."*

#### **Minimum lot size for dual occupancy**

The relevant questions in relation to minimum lot size for dual occupancy are addressed below:

*3(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

The objectives of the Clause 4.1A (3) is as follows:

- (1) The objective of this clause is to achieve planned residential density in certain residential zones.*

The proposal with its 3.10% departure to the standard is capable of achieving the stated objective given that:

- The density achieved on the site is in fact pro rata to the site area meaning that the smaller the site the smaller the built form and density. The variation has not provided an opportunity to exceed the desired density of the built form.
- The density is appropriate on this site because the site is of sufficient width and depth to achieve a built form and density that is compatible with the surrounding residential area. The scale and density of the proposed building is compatible with residential dwelling forms which are also limited to the FSR controls.



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- The site offers a much wider frontage than the dominant form of properties in the locality. The dominant width of lots is in the order of 12m whereas the subject site has a frontage of 17.60m. The proposal has side setbacks ranging from 900mm to 1.915m on the northern side on the ground floor & first floor. The design also achieves compliance with the rear setback notwithstanding the irregular angled rear boundary which provides an additional constraint which has been overcome with the proposed design. The site therefore offers much greater potential to provide side setbacks and minimise as far as possible shadowing impacts to neighbours.

Based on the above and justification in this objection the proposal is consistent with the planned residential density in the locality.

The objectives of Clause 4.1 (3) (B) (a) is as follows:

*the area of each lot resulting from the subdivision is equal to or greater than 350 square metres...*

Strict compliance with Clause 4.1 (3) (B) (a) is considered unreasonable and unnecessary in the circumstances for the following reasons:

1. The proposal satisfies the objectives of the standard by providing a density that is very close to the minimum level of density anticipated in the zone. The minor shortfall in site area for one of the two lots created by the subdivision would not result in any perceivable change to the overall density on the site. The density is determined by a pro rata application of the GFA to site area and height. As demonstrated in the plans by ZTA Architects the built form is comparable to the built form that would be achieved on a 350sqm site. The built form complies with the height control being a control that determines the overall density of the site.
2. The proposal satisfies the objectives of the zone given that:
  - the site will provide for the housing needs of the community within a medium density residential environment. The dual occupancy form offers two dwellings on a single parcel of land with direct access to Villiers Street and associated off street parking. The site subject of the variation at 307sqm is of sufficient size to support a dwelling and the associated services and facilities whilst complying with side setbacks to the northern boundary. The upper level setbacks of up to 1.8m to the northern boundary are in excess of the controls. There is no lessening of amenity as a result of the minor shortfall in site area to one of the two sites created as part of the dual occupancy application.
  - provides a dual occupancy format within a medium density residential environment. Dual occupancies provide housing options over single dwellings and multi unit development.
3. The non-compliance with the control is minor. The departure does not cause any other aspect of the development to breach a standard or a DCP control. Therefore the slight reduction in site area for one of the two sites does not result in any additional impacts or design response that would ordinarily be achieved on a 350sqm site. As identified above the additional site width over and above the 15m control enables the design to provide additional setbacks and buffering to adjoining sites without compromising the design outcome. Front and rear





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setbacks are more than compliant with the control which confirms that the minor reduction in site area for subdivision does not cause any additional departures to setback controls.

4. The bulk and scale is marginally less than would be expected on a 350sqm site given that FSR is a ratio of the floor area to site area. The smaller the site the less the GFA.
5. The proposal has an acceptable visual fit having regard to the surrounding built form and the likely future development achieved under the RDCP.

Having regard to the above the proposed lot size is deemed to be appropriate because the site regardless of its minor variation allows development to occur in alignment with the RDCP and without any significant adverse impacts to neighbours or the streetscape. The shape of the site also results in a requirement to lessen Dwelling B to accommodate the angled northern boundary which dictates the size of Dwelling A.

*3(b) - There are sufficient environmental planning grounds to justify contravening the development standard*

Strict compliance with the development standard in this case would not result in a better planning outcome. Compliance would not achieve any material benefit to the site, neighbours or the broader streetscape amenity and therefore sufficient grounds exist to justify the minor variation. The planning grounds justifying the departure are further emphasised by the ability of the development to achieve the objectives of the Act. The proposal with one of the two lots marginally under the control allows for the orderly and economic use of the land. The site is well suited to a dual occupancy form and as such would make a positive contribution to residential housing in the local area. Compliance with other standards is achieved in terms of LEP and DCP controls.

### **R3 Zone objectives**

The objectives of the R3 zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As addressed above the development satisfies the objectives of the R3 zone. The scale, bulk and height of the development is acceptable and will make a positive contribution to the residential character. The density of development is marginally lower than the expected density from a compliant 350sqm site. The site is generally level with minor cross fall and compliant frontages can be achieved for both new lots giving each dual occupancy dwelling a street address. As stated there are no compromised design outcomes which flow directly from the minor departure to the lot size control for a dual occupancy dwelling.

Variation of the 350sqm control does not hinder the attainment of the stated R3 zone objectives. The site will achieve the stated objectives regardless of the minor





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variation. Without the variation the site will not contribute to its full potential given that it can be demonstrated that the site can provide a dual occupancy development which fulfills the housing demand in the area without compromising intra and external site amenity.

**Sufficient Environmental Planning Grounds to Support the Variation:**

The variation to the development standard is justified as demonstrated above and on this basis strict compliance is unreasonable and unnecessary in the circumstances of the case. Strict compliance with the control would not lead to any material benefit to the streetscape, neighbouring amenity or strategic housing outcomes in the area. Further the sterilisation of the site for single dwelling development would not achieve the zone objectives to the extent of a dual occupancy development. A compliant development can be achieved in terms of the RDCP controls for dual occupancies as demonstrated in the plans prepared by ZTA Architects. The additional site width offers opportunities to buffer and step in the development from side boundaries that would not otherwise be available on a 15m site with an additional 16sqm of site area. Essentially the additional 16sqm does not provide any material benefit to the planning outcome whereas the additional site width of 5m provides greater benefit and therefore strict application of both controls on this particular site serves no planning purpose.

Given the above, it is considered that there is no direct measurable private or public benefit in maintaining strict compliance with the development standard.

On this basis we request that Council supports the Clause 4.6 variation to the minimum subdivision area for a dual occupancy being 350sqm.

22 May 2018

Our Ref: DA-2017/586  
 Contact: Stephen McDiarmid 9562 1666



ZTA Pty Ltd  
 Suite 3.08, Level 3, 55 Miller St  
 PYRMONT NSW 2009

## NOTICE OF DETERMINATION

Issued in accordance with section 81(1a) of the *Environmental Planning and Assessment Act, 1979*

<b>Application Number:</b>	DA-2017/586
<b>Property:</b>	111 Villiers Street, ROCKDALE (Lot 5 DP 5940), (Lot 6 DP 455435)
<b>Proposal:</b>	Demolition of existing residential dwelling, construction of new dual occupancy with basement carpark, inground swimming pool and Torrens Title Subdivision
<b>Authority:</b>	Delegated to Council Staff
<b>Determination:</b>	Refused
<b>Date of determination:</b>	22 May 2018

That the development application DA-2017/586 for the demolition of existing structures, construction of an attached dual occupancy proposal and Torrens Title subdivision at No.111 Villiers Street, Rockdale, be **REFUSED** pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*, for the following reasons: -

1. Pursuant to the provisions of Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the numerical provisions of Clause 4.1 - *Minimum subdivision lot size* under *Rockdale Local Environmental Plan 2011*, as the site containing "Dwelling A" is less than 350m<sup>2</sup> in area;
2. Pursuant to the provisions of Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed Floor Space fails to satisfy the controls contained in Clause 4.4 under the *Rockdale Local Environmental Plan 2011*, to achieve an FSR not exceeding 0.6:1;
3. Pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with the minimum lot size of 700m<sup>2</sup> for a dual occupancy development as required by Part 4.1.9 (*Lot size and minimum frontage*) of the *Rockdale Development Control Plan 2011*;

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Postal address: PO Box 21, Rockdale NSW 2216



Telephone Interpreter Services - 131 450

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1 of 2

4. Pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to comply with Part 5, Section 5.11(1)(*Storey Height and Setbacks*) of the *Rockdale Development Control Plan 2011* due to the proposed front building line being inconsistent with the other average front setback distances which prevail along the eastern side of Villiers Street;
5. Pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to comply with Part 5, Section 5.11(10)(*Storey Height and Setbacks*) of the *Rockdale Development Control Plan 2011* due to the proposed building's bulky three (3) storey appearance which is considered to be unsympathetic with the natural form and topographical features of the site.
6. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the numerical controls and/or specifications contained in Part 4, Section 4.6 (*Car Parking, Access and Movement*) of the *Rockdale Development Control Plan 2011*.
7. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the risk mitigation and flood management requirements contained in Part 4, Section 4.1.3 (*Flood Risk Management*) of the *Rockdale Development Control Plan 2011*.
8. Pursuant to the provisions of Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the 'public interest'.

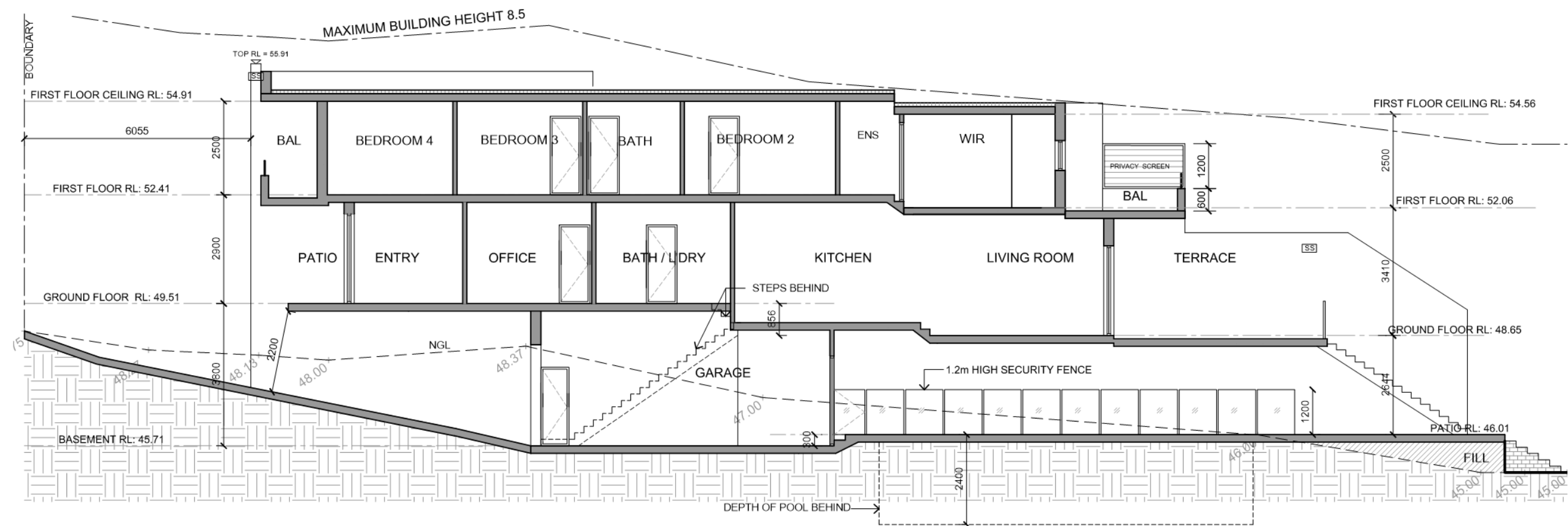
#### Additional Information

- Section 82A allows Council to reconsider your proposal. Should you wish to have the matter reconsidered you should make an application under that section with the appropriate fee.
- Under Section 97 of the Act applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice. The Court's Office is situated at Level 1, 225 Macquarie Street, Sydney (Telephone 9228 8388), and the appropriate form of appeal is available from the Clerk of your Local Court.

Should you have any further queries please contact Stephen McDiarmid on 9562 1666

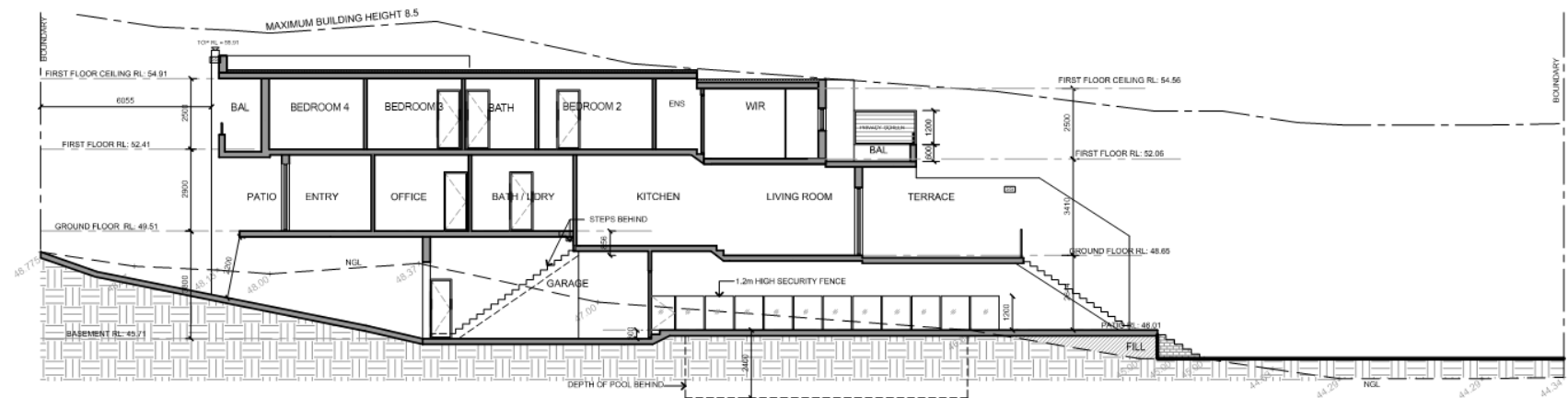


Luis Melim  
Manager - Development Services



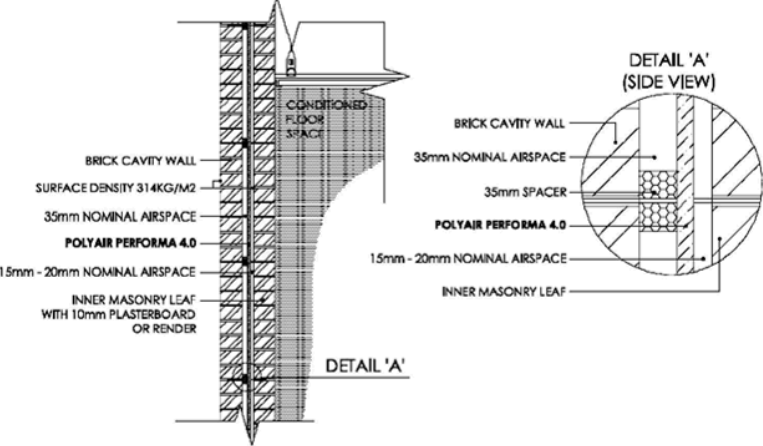
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SCALE 1:100 MTRS




LAND PROFILE SECTION 1-1

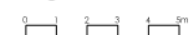
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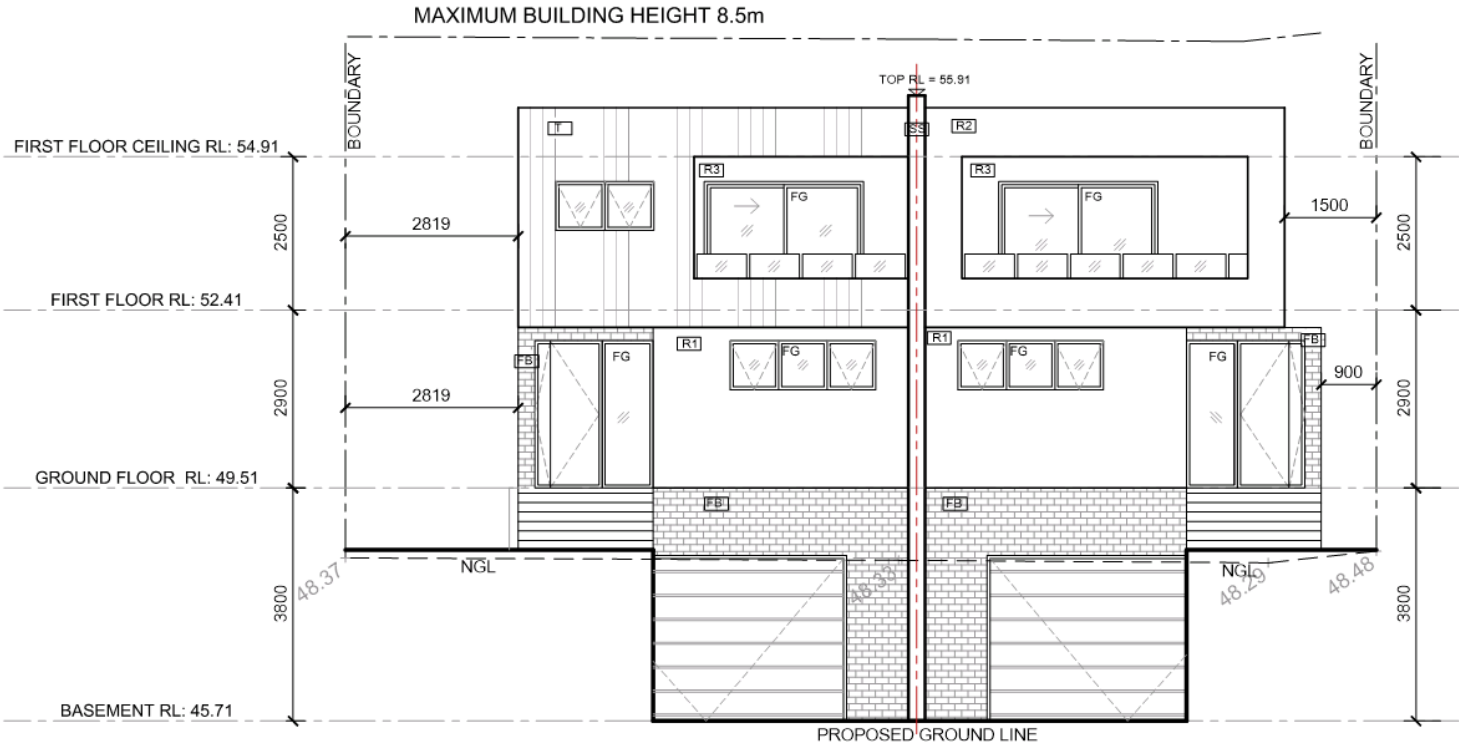
SECTION OF WALL

SCALE NOT TO SCALE

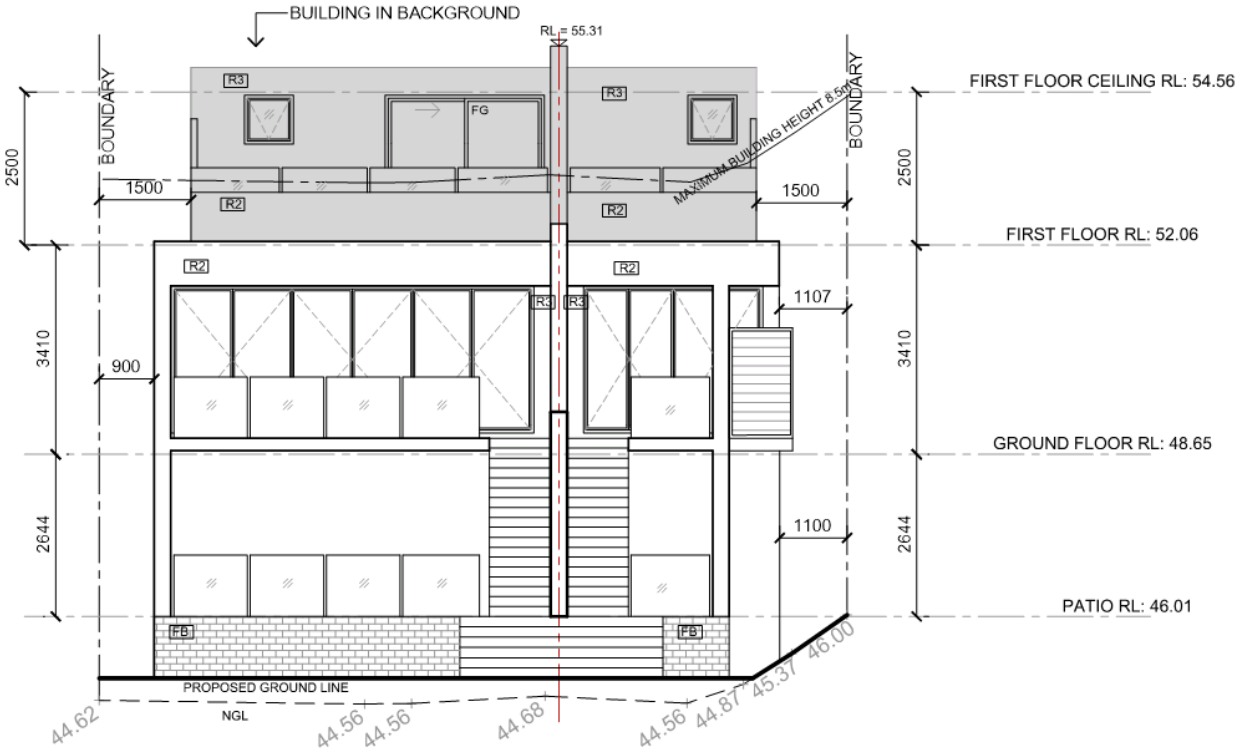
 3/08, 55 miller street pyrmont, nsw 2009 ph: +61 2 8098 7886 fx: +61 2 8098 7886 e: admin@zta.net.au ABN 56 164 632 517  zta architects architecture   urban design   interior design	CONSULTANTS	NOTE	ISSUE	DATE	PURPOSE OF ISSUE	PROJECT 111 Villiers Street, Rockdale NSW 2216  RESIDENTIAL DEVELOPMENT  CLIENT	STATUS DA SUBMISSION  STAGE DEVELOPMENT APPLICATION	DRAWING NO. <b>DA08</b>  DRAWN BY AA  DRAWING TITLE SECTIONS	ISSUE <b>A</b>  CHECKED BY RZ	JOB NO. 17234  SCALE 1:100@ A3  DATE 6 NOV 2017



WESTERN ELEVATION

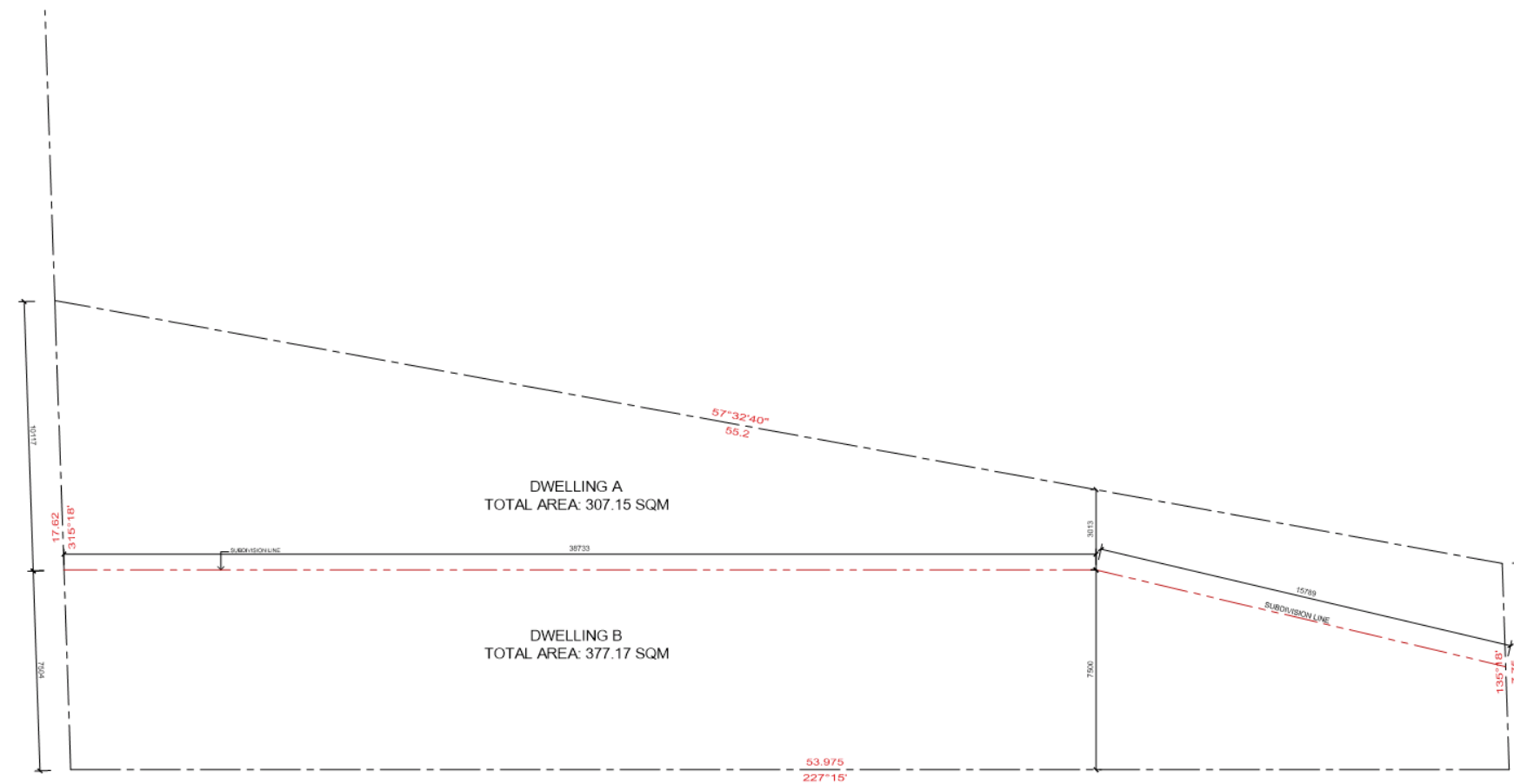





EASTERN ELEVATION



 <p>3.08, 55 miller street pyrmont, nsw 2009 ph: +61 2 8098 7886 fx: +61 2 8098 7886 e: admin@zta.net.au ABN 56 164 632 517</p> <p><b>zta architects</b> architecture   urban design   interior design</p>	CONSULTANTS	NOTE	ISSUE    DATE    PURPOSE OF ISSUE	PROJECT 111 Villiers Street, Rockdale NSW 2216  RESIDENTIAL DEVELOPMENT  CLIENT	STATUS DA SUBMISSION  STAGE DEVELOPMENT APPLICATION 	DRAWING NO. <b>DA06</b>  DRAWN BY AA  DRAWING TITLE ELEVATIONS 1  ISSUE <b>A</b>  CHECKED BY RZ  SCALE 1:100@ A3  DATE 6 NOV 2017 
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 <p>3.08, 55 miller street pyrmont, nsw 2009 ph: +61 2 8098 7886 fx: +61 2 8098 7886 e: admin@zta.net.au ABN 56 164 632 517</p>	CONSULTANTS	NOTE	ISSUE DATE PURPOSE OF ISSUE	PROJECT 111 Villiers Street, Rockdale NSW 2216  RESIDENTIAL DEVELOPMENT	STATUS DA SUBMISSION  STAGE DEVELOPMENT APPLICATION	DRAWING NO. DA14 ISSUE A JOB NO. 17234 DRAWN BY AA CHECKED BY RZ SCALE 1:200@ A3 DATE 6 NOV 2017 DRAWING TITLE SUBDIVISION PLAN  
<p>zta architects</p>			CLIENT			
<p>architecture   urban design   interior design</p>						

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## **Bayside Planning Panel**

**25/09/2018**

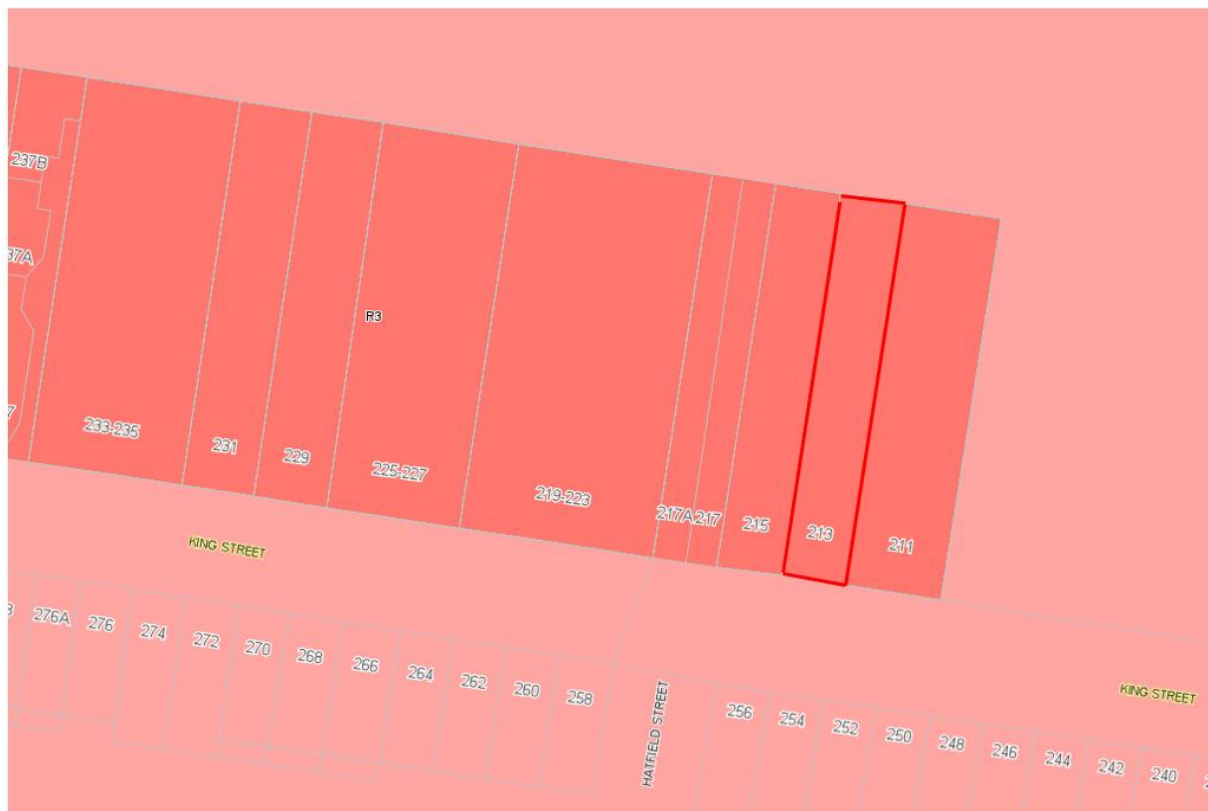
Item No	6.3
Application Type	Development Application
Application No	SF18/1954
Lodgement Date	24/04/2017
Property	<b>DA-2017/1060 - 213 King Street, Mascot</b>
Ward	Mascot
Owner	George Christofi
Applicant	Arkhaus
Proposal	Integrated Development for the demolition of the existing dwelling and construction of a new residential flat building containing 12 units and basement parking.
No. of Submissions	Original proposal – 12 submissions Amended proposal – 8 submissions
Cost of Development	3,371,756.00
Report by	Michael McCabe, Director City Futures

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## **Officer Recommendation**

- 1 That the Bayside Planning Panel supports the variation to Clause 4.3 – Building Height of Botany Local Environmental Plan 2013 in accordance with the Clause 4.6 justification provided by the applicant;
  - 2 That Development Application No. 2017/1060 for the demolition of the existing dwelling and construction of a residential flat building containing 12 units and basement parking at 213 King Street, Mascot, be APPROVED subject to the conditions attached to this report; and
  - 3 That the objectors be advised of the Bayside Planning Panel's decision.
-

## Location Plan



## Attachments

- 1 Supplementary Planning Assessment Report [↓](#)
- 2 Original Assessment Report [↓](#)
- 3 Amended Site Plan [↓](#)
- 4 Amended Elevations [↓](#)
- 5 Revised Clause 4.6 Building Height [↓](#)

## BAYSIDE COUNCIL

### Supplementary Planning Assessment Report

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#### Application Details

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<b>Application Number:</b>	DA-2017/1060
<b>Date of Receipt:</b>	24 April 2017
<b>Property:</b>	213 King Street, Mascot Lot 4 DP 10538
<b>Owner:</b>	George Christofi
<b>Applicant:</b>	Arkhaus
<b>Proposal:</b>	Integrated Development for the demolition of the existing dwelling and construction of a residential flat building containing 12 units and basement parking.
<b>Recommendation:</b>	Approval subject to conditions
<b>Value:</b>	\$3,371,756.00
<b>Author:</b>	Patrick Nash - Senior Development Assessment Officer
<b>Date of Report:</b>	30 August 2018

#### Key Issues

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The development application the subject of this report was referred to the Bayside Planning Panel (BPP) on 24 July 2018 with a recommendation for deferred commencement approval.

At the meeting the BPP resolved:

- 1. The Bayside Planning Panel has decided that the matter be deferred to allow the applicant the opportunity to submit: amended plans which incorporate the deletion of the upper storey units on King Street in accordance with the Officer's recommendation; and as a consequence a new Clause 4.6 request for variation for the height exceedance is required. The amended plans should also address: the interface of the wall facing the units to the east in terms of materials and treatment and an appropriate landscape buffer; and the upper deck screens are to be relocated from the edge of the building to minimize visual bulk.*
- 2. That the objectors be notified of the Bayside Planning Panel's decision.*

In response to the above, the applicant submitted amended documentation on 3 August 2018 which includes: Amended architectural plans making the required design changes, an updated clause 4.6 exception and an updated BASIX Certificate. The submitted documentation has adequately addressed the concerns raised by the BPP as well as the recommended deferred commencement condition.

## Recommendation

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It is RECOMMENDED:

1. That the Bayside Planning Panel supports the variation to Clause 4.3 – Building Height of Botany Bay Local Environmental Plan 2013 in accordance with the Clause 4.6 justification provided by the applicant;
2. That the Development Application No. 2017/1060 for the demolition of the existing dwelling and construction of a residential flat building containing 12 units and basement parking at 213 King Street, Botany, be APPROVED subject to the conditions attached to this report; and
3. That the objectors be advised of the Bayside Planning Panel's decision.

## Background

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### History

The history of the subject development application is summarised as follows:

- **24 April 2017** – DA2017/1060 was submitted to Council.
- **17 May 2017 – 26 June 2017** – The application was placed on neighbour notification in accordance with BBDCP 2013. 12 submissions were received.
- **23 November 2017** – The application was reviewed by the Design Review Panel (DRP).
- **19 December 2017** – An additional information letter was sent to the applicant. This correspondence detailed concerns raised by the DRP alongside additional concerns with respect to ADG compliance, the extent of the building height non-compliance and various non-compliances with BBDCP 2013.
- **23 January 2018** – Council sent a further additional information letter to the applicant raising parking and flood planning concerns.
- **21 February 2018** – The applicant submitted amended plans addressing the concerns raised by Council. The assessment in this report is based on these plans.
- **21 March 2018** – The applicant submitted an Economic Report in support of the unit mix proposed in the subject application.
- **16 May 2018 to 15 June 2017** – The amended plans were re-notified. 6 submissions were received.
- **24 July 2018** – The applicant was considered at the Bayside Planning Panel meeting. The application was deferred.
- **3 August 2018** – The applicant submitted amended plans addressing the deferred commencement condition and the deferral reasons.

### **Modifications made to the proposed development**

The changes made in the amended architectural plans submitted to Council are summarised as follows:

#### Basement Level

- No change

#### Ground Floor Plan

- Increase in the floor to floor height from 3.0m to 3.1m.

#### First Floor Plan

- Increase in the floor to floor height from 3.0m to 3.1m; and
- The privacy screen along the eastern elevation of unit 208 has been setback an additional 300mm from the eastern side boundary.

#### Second Floor Plan

- Increase in the floor to floor height from 3.0m to 3.1m;
- The privacy screen along the eastern boundary of unit 312 has been setback an additional 300mm from the eastern side boundary; and
- Render and paint finish has been substituted with a lightweight cladding finish on the external eastern wall of unit 312.

#### Third Floor Plan

- Unit 413 at the southern (front) end of the site has been deleted; and
- The planter box and privacy screen around the communal open space has been setback an additional 1.1m from the edge of the eastern façade. The size of the communal terrace area has subsequently reduced from 57.7m<sup>2</sup> to 44.99m<sup>2</sup>.

The amended proposed development contains a total of 12 apartments comprised of 10 x 1 bed and 2 x 2 bed.



### Assessment of the Panel's deferment

1. The Bayside Planning Panel has decided that the matter be deferred to allow the applicant the opportunity to submit: amended plans which incorporate the deletion of the upper storey units on King Street in accordance with the Officer's recommendation; and as a consequence a new Clause 4.6 request for variation for the height exceedance is required. The amended plans should also address: the interface of the wall facing the units to the east in terms of materials and treatment and an appropriate landscape buffer; and the upper deck screens are to be relocated from the edge of the building to minimize visual bulk.

#### **Deferral Reason**

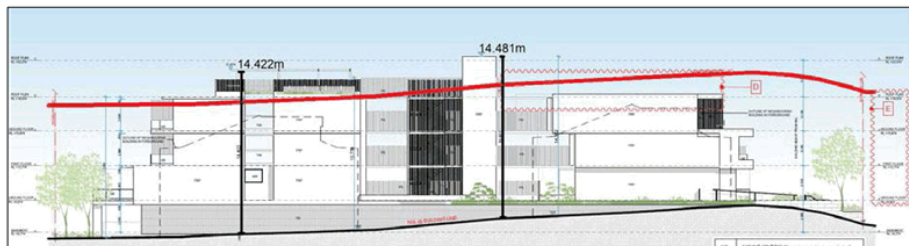
***Deletion of the upper storey units on King Street in accordance with the Officer's recommendation and as a consequence a new Clause 4.6 request for variation for height exceedance is required.***

The applicant has submitted amended plans deleting unit 413 at the southern (King Street) end of the site. An updated Clause 4.6 exception has been submitted which is examined below.

#### **BBLEP 2013: Clause 4.3 – Height of Buildings and Clause 4.6 – Exceptions to development standards**

The subject site has a maximum allowable building height of 12m. The proposed amended development has a maximum height of 14.48m measured to the top of the lift overrun. This represents a breach of 2.28m or 20.7%. The pergola structure over the rooftop communal open space, privacy screen adjacent to the common walkway, privacy screen surrounding the rooftop communal area and a minor portion of the upper storey of the rear building also exceed the maximum allowable building height to a lesser extent.

The extent of the building height non-compliance across the entire site has been reduced by virtue of the deletion of the dwelling on the 4<sup>th</sup> storey at the front of the site, as recommended by the deferred commencement condition. Refer to plan extract below:



**Figure 1: Plan extract – 12 metre height limit across the site shown in red**

As requested by the Bayside Planning Panel, the applicant has submitted an updated clause 4.6 exception which is based on the amended design. The applicant's justification for the proposed height breach is summarised provided below:

*The overall height of the development is exacerbated by: The sloping topography resulting in the southern wing being substantially below the height limit and a minor portion of the northern wing exceeding the height limit and mitigation of flood impacts requiring flood freeboard level of RL7.9 metres.*

*Non-compliant components:*

*Include the development's primary communal open space (64% of total communal open space within the subject site located on roof) and enable equitable access to that communal open space (lift);*

*Are not visible from public domain, ensuring built form outcome consistent with streetscape character comprising mix of 1-2 storey dwelling houses and 2-3 storey multi dwelling housing development; and*

*Do not result in any adverse external amenity impacts in regard to loss of view, overshadowing or privacy to neighbouring properties, beyond that of a compliant building. As illustrated on the accompanying shadow diagrams, the shadows continue to allow for compliance of solar access to the eastern and western neighbours, whilst the southern neighbours also receive a compliant degree of solar access.*

*In the case of: The rooftop communal open space: enforcing the development standard would deny the primary communal open space to future residents of the proposed development (64% of total communal open space within the subject site located on roof). Requiring removal of the pergola structure over the rooftop communal open space would deny shading and detract from its useability and high level of amenity derived from northerly aspect and range of facilities including BBQ, lounge seating, raised timber decking with integrated landscaping (see Landscape Plan forming part of the application), without improving amenity to neighbouring dwellings.*

*In the case of: The lift overrun: enforcing the development standard would preclude equitable access to the rooftop communal open space without tangible improvement in amenity to neighbouring dwellings.*

*There are sufficient environmental planning grounds to justify contravening the development standard on the grounds that the components of the proposed development exceeding the maximum permissible height:*

- Will not result in greater bulk and scale, loss of views or visual or acoustic privacy impacts than would a compliant development;*
- Will have acceptable overshadowing impacts (at least 2 hours solar access to east, west and southern neighbours retained); and*
- Will not be visible from the public domain and therefore will not result in the development appearing inconsistent with existing streetscape character.*

*There are also no internal amenity grounds that would determine that the additional height should not be granted. This is demonstrated by the compliant degree of communal open space, private open space, natural ventilation, solar access, apartment sizes, layouts and separation distances. The combination of the internal and external factors demonstrates that there are sufficient environmental grounds to permit the height variation in this instance.*

*The proposed development is consistent with the desired future character of the area, the R3 – Medium Density Residential zone and the objectives of clause 4.3 – Height of buildings within BBLEP 2013.*

Comment

The proposed height breach is supported. The following comments are made in addition to the justification substantiated in the applicant's clause 4.6 exception:

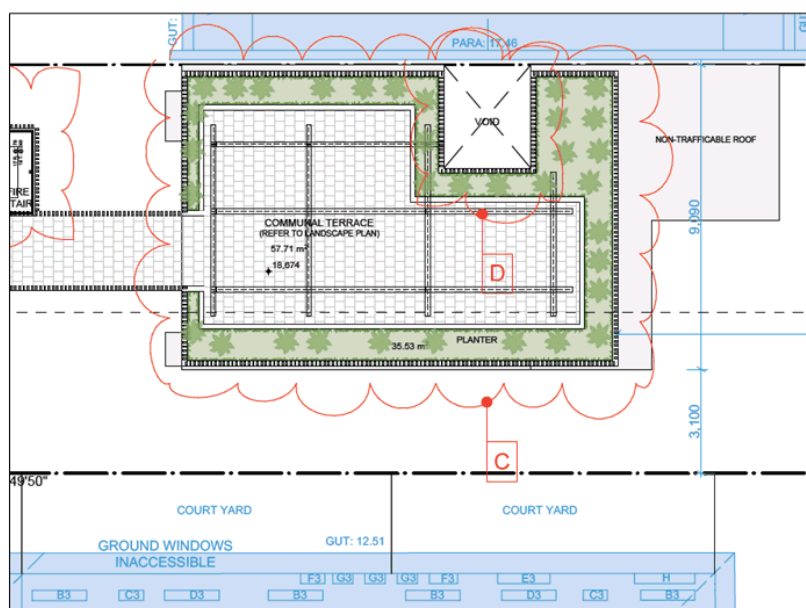
- The proposed building, as amended, is well under the LEP height limit at the front of the site;
- The design of the rear building has been altered to minimise visual dominance, particularly as viewed from the existing residential building adjoining to the east;
- The proposed development is compliant with the floor space ratio development standard within BBLEP 2013. The building height breach is not caused, or contributed by additional gross floor area;
- The building elements in breach of the 12m height limit are well setback rearward into the site and therefore would not have any significant streetscape presence;
- The rear of the site is flood affected and has a varied topography. There are therefore inherent site characteristics to justify the variation. It is conceivable that the proposed development would not rely on a building height breach if the site was not flood affected because it would enable the finished floor levels of the ground floor to be sited in a different manner;
- The proposed development is an acceptable response to an infill site that is adjoined by two (2) established residential buildings;
- The proposal is consistent with the objectives of the building height development standard and the objectives of the R3 – Medium Density Residential zone. The applicant has satisfactorily established that the proposed variation is appropriate and enforcing strict compliance would be unreasonable and unnecessary in the specific site circumstances; and
- The clause 4.6 request is well-founded and the departure to the building height development standard is not contrary to the public interest.

Deferral Reason

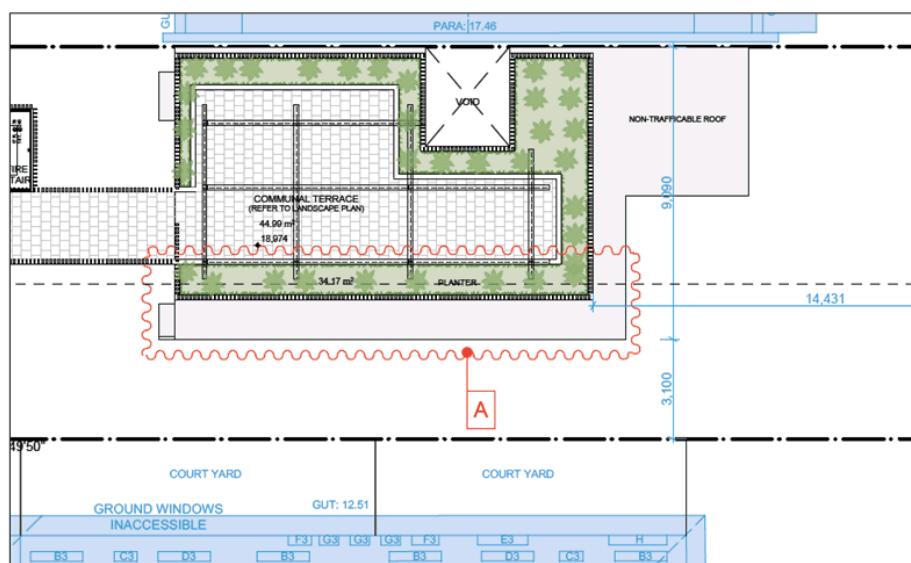
***The amended plans should also address: the interface of the wall facing the units to the east in terms of materials and treatment and an appropriate landscape buffer; and the upper deck screens are to be relocated from the edge of the building to minimize visual bulk.***

The following design changes have been made in response to the above deferral reason:

- First floor plan – the privacy screen along the eastern elevation of unit 208 has been setback an additional 300mm from the eastern side boundary.
- Second floor plan – The privacy screen along the eastern boundary of unit 312 has been setback an additional 300mm from the eastern side boundary. Render and paint finish has been substituted with a lightweight cladding finish on the external eastern wall of unit 312.
- Third floor plan – The planter box and privacy screen around the communal open space has been setback an additional 1.1m from the edge of the eastern façade. The size of the communal terrace area has subsequently reduced from 57.7m<sup>2</sup> to 44.99m<sup>2</sup>. The changes made in this respect are demonstrated in the plan extracts below:



**Figure 2: Rear communal terrace as originally proposed**



**Figure 3: Amended rear communal terrace design with increased setback from the eastern side boundary**

The design changes made are considered to be an acceptable response to the deferral reasons. It is noted that the external privacy screen remains around the outer perimeter of the communal terrace (i.e. – the planter beds are internal to the screen, not external). On balance,

this is supported given that the increased setbacks proposed from the eastern side boundary. Additionally, the design as proposed enables more practical access (and therefore ongoing maintenance) to the landscaped planter beds which will provide screen planting to restrict overlooking of adjoining properties.

**Deferred commencement condition**

Recommended design change (ii) within the deferred commencement condition stated the following:

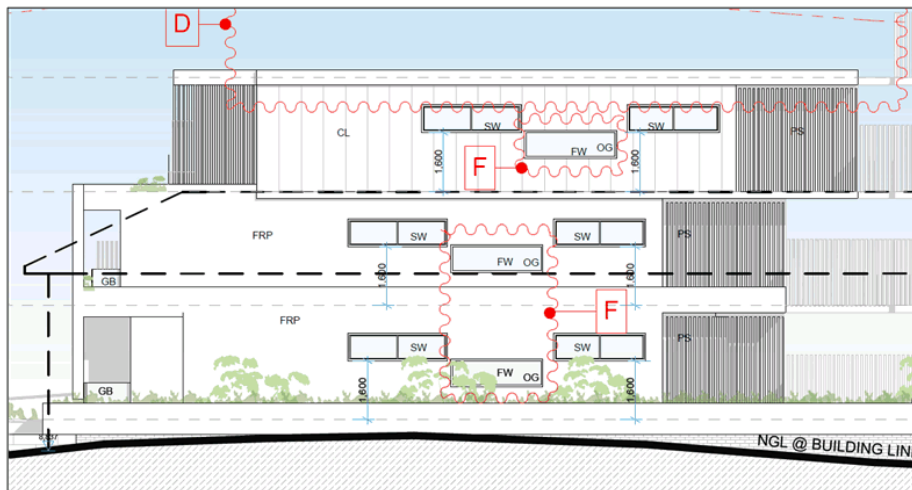
- ii) *The floor to floor height of the ground floor, first floor and second floor in the entire development shall be 3.1 metres.*

Part 4C of the Apartment Design Guide requires minimum 2.7m floor to ceiling heights to be provided in all habitable rooms. Figure 4C.5 in the ADG indicates that 3.1m floor to floor heights are required to ensure that the 2.7m can be achieved once the required services, ceilings and floor coverings are provided. The design of the development has been amended to provide 3.1m floor to floor heights, consistent with the ADG guidelines.

Recommended design change (iii) within the deferred commencement condition stated the following:

- iii) *All windows proposed on the east elevation shall have a minimum sill height of 1.6 metres above the finished floor level or be fitted with obscure glazing.*

The amended plans satisfy the above requirement (see plan extracts below). All windows on the eastern elevation have a sill height of 1.6 metres with the exception of the kitchen windows which are proposed to obscure glazing, consistent with the requirements of the condition.



**Figure 2: Amended East elevation plan extract – front building**

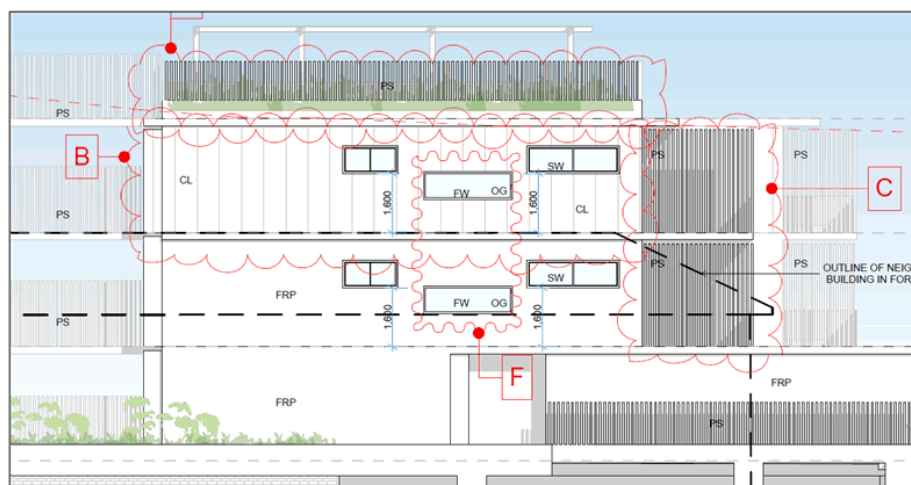


Figure 3: Amended East elevation plan extract – rear building

## Conclusion

The issues raised by the Bayside Planning Panel at their meeting of 24 July 2018 have been addressed by way of amended plan submission alongside the submission of an updated clause 4.6 exception. The amended plans submitted to Council are considered to be an improved outcome for the site, the adjoining properties and the streetscape along King Street. Therefore, it is recommended that the Panel determine the application in accordance with the recommendation provided.

## Attachment

### Schedule 1 – Conditions of Consent

Premises: 213 King Street, Mascot

DA No: DA-2017/1060

### GENERAL CONDITIONS

- 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
DA 02 – Site Plan Issue C		Dated 27/07/2018 Received 28/08/2018
DA 03 – Basement Plan Issue C		Dated 27/07/2018 Received 28/08/2018



DA 04 – Ground Floor Plan Issue C	Arkhaus	Dated 27/07/2018 Received 28/08/2018
DA 05 – Ground Floor Plan A Issue C		Dated 27/07/2018 Received 28/08/2018
DA 06 – Ground Floor Plan B Issue C		Dated 27/07/2018 Received 28/08/2018
DA 07 – First Floor Plan Issue C		Dated 27/07/2018 Received 28/08/2018
DA 08 – First Floor Plan A Issue C		Dated 27/07/2018 Received 28/08/2018
DA 09 – First Floor Plan B Issue C		Dated 27/07/2018 Received 28/08/2018
DA 10 – Second Floor Plan Issue C		Dated 27/07/2018 Received 28/08/2018
DA 11 – Second Floor Plan A Issue C		Dated 27/07/2018 Received 28/08/2018
DA 12 – Second Floor Plan B Issue C		Dated 27/07/2018 Received 28/08/2018
DA 13 – Third Floor Plan Issue C		Dated 27/07/2018 Received 28/08/2018
DA 14 – North Elevation Issue C		Dated 27/07/2018 Received 28/08/2018
DA 15 – South Elevation Issue C		Dated 27/07/2018 Received 28/08/2018
DA 16 – Elevations West & East Issue C		Dated 27/07/2018 Received 28/08/2018
DA 17 – Sections Issue C		Dated 27/07/2018 Received 28/08/2018
DA 26 – Colours & Finishes Schedule Issue C		Dated 27/07/2018 Received 28/08/2018
DA 31 – BASIX Commitments Issue C		Dated 27/07/2018 Received 28/08/2018
DA 34 – BASIX Window Schedule Issue C		Dated 27/07/2018 Received 28/08/2018
DA 35 – BASIX Door Schedule Issue C		Dated 27/07/2018 Received 28/08/2018
DA 36 – BASIX Door Schedule Issue C		Dated 27/07/2018 Received 28/08/2018
DA 29 – Demolition Plan Issue C		Dated 27/07/2018 Received 03/08/2018
LP 01 of 05 Cover Sheet & Site Plan	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018

Rev E		
LP 02 of 05 Basement Plan & Ground Floor Plan Rev E	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
LP 03 of 05 First Floor, Second Floor and Roof Plan	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
LP 04 of 05 Plant Schedule & Plant Palette	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
LP 05 of 05 Specification & Details	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
Stormwater Drawings Dwg No's D00, D01, D02, D03, D04, D05, D08, D09 and D10. Revision A.	Australian Consulting Engineers	Dated March 2017 Received 21/02/2018
BASIX Certificate number: 800408M_02	Certified Energy	Dated 15/08/2018 Received 28/08/2018

2. The landscape plans listed in condition 1 (prepared by Affordable Design Studio) shall be amended to be consistent with the approved architectural drawings.
3. This Consent relates to land in Lot 4 DP 10538 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
4. 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) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2. If they are located on balconies or in public, they are to be appropriately screened;
  - c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans;
  - d) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004;
  - e) Bicycle parking facilities shall be designed in accordance with AS2890.3:1993; and
  - f) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004.

5. 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*.
6. 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 IMPOSED BY EXTERNAL AUTHORITIES**

7. The following conditions imposed by **SACL** are as follows:
- a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
  - b) The application sought approval for the PROPERTY DEVELOPMENT to a height of 23.00 metres Australian Height Datum (AHD).
  - c) In his capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this

instance, Peter Bleasdale has no objection to the erection of this development to a maximum height of 23.0 metres AHD.

- d) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
  - e) Should you wish to exceed this height a new application must be submitted.
  - f) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
  - g) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
  - h) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.
  - i) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
  - j) The height of the prescribed airspace at this location is 51 metres above AHD.
  - k) Planning for Aircraft Noise and Public Safety Zones
  - l) Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).
  - m) Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.
8. The following conditions imposed by **Sydney Water** are as follows:
- a) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
  - b) The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.

The [Tap in™](#) service provides 24/7 access to a range of services, including:

- i) building plan approvals
- ii) connection and disconnection approvals
- iii) diagrams
- iv) trade waste approvals

- v) pressure information
  - vi) water meter installations
  - vii) pressure boosting and pump approvals
  - viii) changes to an existing service or asset, e.g. relocating or moving an asset.
- c) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.
9. The following conditions imposed by **Water NSW** are as follows:

#### General Terms of Agreement

- a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
- c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- d) WaterNSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- e) If the basement is not "tanked", the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

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

10.
  - a) Prior to the commencement of work, a suitably qualified project arborist (AQF level 5 or greater) is to be engaged to advise relating to the protection of street trees and to supervise the installation and maintenance of tree protection measures. Tree Protection Zones shall be established in accordance with AS4970-2009 (Protection of trees on Development Sites) with protective fences at least 1.8 metres high erected outside the drip lines where possible around each of the two street trees located on the nature strip at the front of the site which are required to be retained. The protective fences shall consist of chain wire mesh temporary fence panels securely mounted and braced to prevent movement, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds, vehicle access or cleaning of tools and equipment are not permitted within the Tree Protection Zones at any time.
  - b) The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction.
  - c) Fencing shall be erected to ensure the public footway is unobstructed.
  - d) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
  - e) Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.
  - f) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
11. An Erosion and Sediment Control Plan (ESCP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004). All management measures recommended and contained within the Erosion and Sediment Control Plan (ESCP) shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times. A copy of the ESCP shall be kept on-site at all times and made available to Council Officers on request.
12. Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.  
  
The controls are to be designed and installed in accordance with the Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Regional Organisation of Councils. Copies of the guidelines are available from Council.
13. A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. The Plan must include details of the proposed erosion and sediment controls to be installed

on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.

14. Erosion and sediment control devices shall be installed and functioning 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 public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines including the *Protection of the Environment Operations Act 1997*.

These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

15. The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
16. For any water from site dewatering to be permitted to go to the stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.  
All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report.

Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.

17. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
18. 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.
19. A dilapidation survey shall be undertaken of all adjoining properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected



by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.

20. 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.
21. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
22. 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.
23. Dewatering is not permitted on this site without NSW-EPA approval.
24. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
  - a) Must preserve and protect the building/ fence from damage; and,
  - b) If necessary, underpin and support such building in an approved manner;
  - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - d) 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, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - e) If the soil conditions required it:
    - i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
    - ii. Adequate provision must be made for drainage.
25. 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
  - g) Permit to use any part of Council's road reserve or other Council lands
26. 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 ad08.

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

27. Prior to the issue of a Construction Certificate, an amended landscape plan shall be submitted to Council for approval addressing the following:
- (a) The planter boxes on the roof terrace shall include screen plants along boundaries with small leaves in order to achieve visual and acoustic privacy.
  - (b) Tree planting-front yard. Proposed two (2) *Corymbia citriodora* ‘Scentuous’ will only grow 5 to 6 meters high. One (1) Australian native tree with a minimum pot size supplied at 75 litre, to be planted in the frontage garden, to reach a minimum mature height of 12 meters to minimise the bulk of proposed built form. Details are to be submitted to and approved by Council prior to the issue of a Construction Certificate. Recommended species are: *Eucalyptus haemastoma*, *Angophora floribunda*, *Lophostemon confertus*
28. Prior to the issue of a Construction Certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
29. An Acid Sulfate Soils Management Plan, that has been prepared by a suitably qualified and experienced environmental/geotechnical consultant, shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority) prior to the issue of any Construction Certificate. This plan shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:
- a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
  - b) Management of acid sulfate affected excavated material;
  - c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
  - d) Run-off control measures for the acid sulfate affected soil.

This report shall be provided prior to the issue of any construction certificate and all recommendations of the report shall be implemented during works on site.

30. Stormwater management requirements for the development site, including the final discharge / end connection point, must comply with Botany DCP Part 10 – Stormwater Management.
31. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Council or an Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany DCP Part 10 sets out the minimum documentation requirements for detailed design plans.
32. A dedicated car wash bay is required. A tap shall be provided. A sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Botany DCP Part 3A. Details shall be provided with the plans accompanying the Construction Certificate.
33. 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.
34. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
  - a) Footpath Crossing Deposit \$37,484.25 (See below)
  - b) Development Control \$3,000.00
  - c) Section 7.11 Contributions (Section 94) \$220,000.00 (See below)
35. The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2016. This result is a total contribution of **\$220,000.00**, to be paid to Council prior to the issue of the Construction Certificate.  
 The contribution is broken down as follows:
  - a) Community Facilities: \$17,600.00
  - b) Open Space: \$184,800.00
  - c) Administration: \$2,200.00
  - d) Transport: \$15,400.00

Note: The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time. The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.
36. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$37,484.25 (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.

37. 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.
38. 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.
39. Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:
  - a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
  - b) The proposed phases of construction works on the site and the expected duration of each construction phase,
  - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
  - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
  - e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
  - f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
  - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
  - h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
  - i) Proposed protection for Council and adjoining properties, and
  - j) The location and operation of any onsite crane. Please note that a crane may require prior approval from Sydney Airports Corporation.

- k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
  - l) A plan (written and/or diagrammatic) showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
40. Prior to the issue of a Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:
- a) be prepared by a RMS accredited consultant,
  - b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
  - c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

*Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*

41. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
  - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council),
  - c) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
  - d) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the Construction Certificate.

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

42. 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 and,
- d) External door specification,
- e) Acoustically treated mechanical ventilation.

#### **DURING WORKS**

43. The following conditions must be complied with during demolition, excavation or construction:
  - a) Existing street tree located at the front of the property shall not to be removed or pruned, including root pruning, without the written consent of Council.
  - b) Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer (or the consulting Arborist) after a site inspection so as not to unduly impact or stress the tree.
  - c) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council will invoice the Applicant for costs associated with remedial pruning work or tree replacement. For trees on private property, the Applicant will be required to undertake tree maintenance/replacement work, as specified by Council.
44. All contractors shall comply with the following during all stages of demolition and construction:
  - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and



- penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
45. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
46. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
47. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
48. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
- Note:** The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.
49. The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soil Management Plan required to be submitted prior to any construction certificate including:
- a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil; and
  - b) Management of acid sulfate affected excavated material;
  - c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
  - d) Run-off control measures for the acid sulfate affected soil.
50. For any water from site dewatering to be permitted to go to the stormwater system, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's

stormwater shall be provided in this report. Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.

51. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
52. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
53. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
  - a) The Erosion and Sediment Control Plan;
  - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
  - c) Protection of the Environment Operations Act 1997.
54. During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.
55. 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 afterhour's contact telephone number.
  - b) Any such sign is to be removed when the work has been completed.
56. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
57. 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.
58. 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.
59. 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).
60. 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.
  - e) No demolition materials shall be burnt or buried on the site.
61. 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
62. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
63. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
64. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
- a) Office of Environment and Heritage (OEH) approved guidelines; and

- Protection of the Environment Operations Act 1997; and  
Protection of the Environment Operations (Waste) Regulation 2014.  
All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
65. Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
66. No demolition materials shall be burnt or buried on the site.
- 67.
- 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 Ausgrid, 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.
68. 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 Councils road reserve must also have prior approval of Council.
69. 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.
70. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
71. 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.
- 72.
- 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, piercing, 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.
73. 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 Environmental Noise Manual – Chapter 171 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.
74. 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.
- 75.

- 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.
76. 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.
77. 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.
78. Construction Operations:

- a) the applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
  - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
  - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (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.
79. During Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.
80. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
81. 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.

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

82. The following conditions must be complied with prior to the issue of any Occupation Certificate:
- i) All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
  - ii) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
83. Prior to the issue of any Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.



84. 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.
85. Prior to release of any Occupation Certificate the developer must submit to the Principal Certifying 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).
86. Prior to the issue of any Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.
87. 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 the issue of any Occupation Certificate of the development and release of damage deposit.
88. 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.
89. The Council nature strip in King 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.
90. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
91. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Botany DCP Part 10 - Stormwater Management. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
92. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
93. 17 off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.

94. Construction related activities must not take place on the roadway without Council approval. Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit. Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RTA. Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.
95. The following works will be required to be undertaken in the road reserve at the applicant's expense:
  - i) Construction of a new fully constructed concrete vehicular entrance/s; and
  - ii) Removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required.
96. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council on 9562 1670. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
97. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
98. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
99. The overflow from the rainwater tank shall be directed to the storm water system.
100. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Council's DCP 78 - Stormwater Management. The certificate shall be in the form specified in DCP 78 and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
101. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
102. A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
103. A Restrictions on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure the following:-

*On-site detention system* - A Restriction on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure that there are no alterations made to the on-site detention system which is, or shall be, constructed on the lot(s) burdened. The expression '*on-site stormwater detention system*' shall include all ancillary gutters, pipes, drains, orifice plate, walls, kerbs, pits, grates, tanks, chambers, basins, rainwater tanks (if an airspace "credit" is claimed against the storage volumes) and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to the temporary storage. The on-site detention system is detailed on the approved plans prepared by ACOR Consultants dated Aug 2017. Any on-site detention system constructed on the lot(s) burdened is hereafter referred to as '*the on-site detention system*'.

*Pump-Out Facilities* - A Restriction on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure that there are no alterations made to any pump out facilities. The expression '*pump-out system*' shall include all ancillary pipes, drains, kerbs, pits, grates, tanks, chambers, and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to the temporary storage. The pump-out system is detailed on the approved plans prepared by ACOR Consultants dated Aug 2017. Any pump-out system constructed on the lot(s) burdened is hereafter referred to as '*the pump-out system*'.

*Stormwater Quality Improvement Device* - A Restriction on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure that there are no alterations made to the stormwater quality improvement device (SQID) which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of the Council. The expression '*Stormwater Quality Improvement Device (SQID)*' shall include all devices and mediums that are designed to treat stormwater as well as all ancillary pipes, drains, kerbs, pits, grates, chambers, basins and surfaces that direct stormwater to the SQID. The SQID is detailed on the approved plans prepared by ACOR Consultants dated Aug 2017. Any Stormwater Quality Improvement Device (SQID) constructed on the lot(s) burdened is hereafter referred to as '*the device*'.

The Bayside Council is to be nominated as the Authority to release, vary or modify these restrictions on the use of land. The Restriction/s are to be submitted to Council for approval prior to lodgement with NSW Land and Property Information. Proof of registration shall be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Standard wording of these can be found in Botany DCP Part 10 Appendix B, C & E.

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

104. Ongoing maintenance of the road verges and footpaths in King Street shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.
105. The overflow from the rainwater tank shall be directed to the storm water system.
106. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.

107. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

- a) permit stormwater to be temporarily detained and pumped by the system;
- b) keep the system clean and free of silt, rubbish and debris;
- c) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- d) carry out the matters referred to in paragraphs (b) and (c) at the proprietor's expense;
- e) not make alterations to the system or elements thereof without prior consent in writing of the Council.
- f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
- g) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

108. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.

The Registered Proprietor will:

- i) permit stormwater to be temporarily detained by the system;
- ii) keep the system clean and free of silt, rubbish and debris;
- iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- v) not make alterations to the system or elements thereof without prior consent in writing of the Council.
- vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
- viii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

109. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.

110.

- a) Each residential dwelling (apartment) is approved as a single dwelling. They 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;
- b) The adaptable apartments approved under this development consent is to remain unaltered at all times; and
  - c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces shall be monitored by CCTV cameras at all times.
111. The communal outdoor roof terrace area shall not be used between the hours of 10:00pm – 7:00am each day.
112. 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*.
113. A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
- a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
  - b) Before 7 am or after 10 pm on any other day.
114. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
- The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
- The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
- For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 114.
- a) A notice of requirement shall be obtained from the Water Board;
  - b) A Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.

Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.

**ADVISORY NOTES**

The following recommendations are made from NSW Police:

- Installation of CCTV cameras within and around the development.
- Improved lighting around the footpaths and car park areas within the development
- Ensuring the building design minimises the potential for climbing onto balconies
- Landscaping that promotes natural surveillance of common areas
- Underground car park that does not have hidden areas or dark spots. Main entry and exit points to car park to have CCTV installed.
- It is NOT advised to install storage cages or similar for the residents in the underground car park. If it is required, consider that they should NOT be constructed in an isolated area. The cages are easy targets when they have little supervision. CCTV cameras must cover this area if they are constructed. Solid steel housing and quality key locks should be used to prevent access. All cages to be at least 8ft in height with adequate roofing, cages below this allow people access over the top
- Security measures in place for entry doors and lifts (security passes)
- Strongly recommended all letter boxes and any form of mail ports be built internal of the building. No letter boxes be available/accessible to the public without security swipe passes.
- CCTV to be installed in this vicinity.

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	DA-2017/1060
<b>Date of Receipt:</b>	24 April 2017
<b>Property:</b>	213 King Street, Mascot Lot 4 DP 10538
<b>Owner:</b>	George Christofi
<b>Applicant:</b>	Arkhaus
<b>Proposal:</b>	Integrated Development for the demolition of the existing dwelling and construction of a part three part four storey residential flat building containing 13 units and basement parking.
<b>Recommendation:</b>	Deferred Commencement
<b>Value:</b>	\$3,371,756.00
<b>No. of submissions:</b>	Original proposal - 12 submissions Amended proposal - 8 submissions
<b>Author:</b>	Patrick Nash- Senior Development Assessment Officer
<b>Date of Report:</b>	3 July 2018

### Key Issues

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Bayside Council received Development Application No. 2017/1060 on 24 April 2017 seeking consent for demolition of the existing dwelling and construction of a part three part four storey residential flat building containing 13 units and basement parking at 213 King Street, Mascot.

The proposed development was amended during the assessment of the application to address concerns raised by Council, neighbouring properties and the Design Review Panel. The amended plans are considered to satisfactorily resolve the issues raised, with the exception of the extent of the building height non-compliance proposed.

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 12 metres pursuant under Clause 4.3 of the Botany Bay LEP 2013. The proposed building height ranges from approximately 12.8 up to 14.89 metres. The departure is therefore 0.8m up to 2.89m. This maximum extent of the height breach represents a variation of 24%. The Clause 4.6 variation is not supported. The proposed development presents a 4 storey form to King Street which is inconsistent with the scale of buildings in its surroundings. As such, the 4<sup>th</sup> storey at the front of the side (comprising 1x3 bed dwelling) is not supported and recommended to be deleted.

The proposed development does not comply with the applicable car parking rates with a shortfall of 2 spaces, noting that the development cannot rely upon the RMS car parking rates in the Guide to Traffic Generating Developments because the site is not within 800m of Mascot Railway Station. Nevertheless, the deletion of the 3 bedroom dwelling on the upper-most



storey would result in a development that complies with the applicable off-street car parking rates in Botany Bay DCP 2013.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979 (EPA Act)* and is recommended for approval, subject to conditions of consent including a condition to remove the 4<sup>th</sup> storey at the front of the site.

## Recommendation

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It is RECOMMENDED:

1. That the Bayside Planning Panel supports the variation to Clause 4.3 – Building Height in accordance with the Clause 4.6 justification provided by the applicant, in so far as it relates to the height breach in the middle and rear of the site; and
2. That the Development Application No. 2017/1060 for the demolition of the existing dwelling and construction of a part three part four storey residential flat building and basement parking at 213 King Street, Botany, be granted deferred commencement approval subject to the conditions attached to this report. The deferred commencement condition is as follows:

*The Consent given does not operate until the following condition is satisfied:*

*DC1 Amended plans being submitted to Council's satisfaction making the following design changes:*

- i) *Unit 413 on the third floor shall be deleted and the design of the common lobby area re-designed accordingly;*
  - ii) *The floor to floor height of the ground floor, first floor and second floor in the entire development shall be 3.1 metres; and*
  - iii) *All windows proposed on the east elevation shall have a minimum sill height of 1.6 metres above the finished floor level or be fitted with obscure glazing.*
3. That the objectors be notified of the Bayside Planning Panel's decision.

## Background

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### History

The history of the subject development application is summarised as follows:

- **24 April 2017** – DA2017/1060 was submitted to Council.
- **17 May 2017 – 26 June 2017** – The application was placed on neighbour notification in accordance with BBDCP 2013. 12 submissions were received.
- **23 November 2017** – The application was reviewed by the Design Review Panel (DRP).
- **19 December 2017** – An additional information letter was sent to the applicant. This correspondence detailed concerns raised by the DRP alongside additional concerns

with respect to ADG compliance, the extent of the building height non-compliance and various non-compliances with BBDCP 2013.

- **23 January 2018** – Council sent a further additional information letter to the applicant raising parking and flood planning concerns.
- **21 February 2018** – The applicant submitted amended plans addressing the concerns raised by Council. The assessment in this report is based on these plans.
- **21 March 2018** – The applicant submitted an Economic Report in support of the unit mix proposed in the subject application.
- **16 May 2018 to 15 June 2017** – The amended plans were re-notified. 8 submissions were received.

### **Proposal**

The development application seeks consent for demolition of the existing dwelling and construction of a part three part four storey residential flat building containing 13 units and basement parking. The proposed development, in its amended form, is further described as follows:

#### Basement Level

- 17 car parking spaces;
- Lift;
- Fire stairs;
- Storage facilities;
- Garbage room; and
- Communal open space within the rear setback area.

#### Ground Floor Plan

- 4 apartments, comprised of 2 x 1 bed and 2 x 2 bed;
- Communal open space area adjacent to the eastern boundary;
- Pedestrian access to the building off King Street at the front of the site;
- New landscaping throughout various parts of the site; and
- Centrally located lobby, lift and fire stairs.

#### First Floor Plan

- 4 apartments, comprised of 4 x 1 bed; and
- Centrally located lobby, lift and fire stairs.

#### Second Floor Plan

- 4 apartments, comprised of 4 x 1 bed; and
- Centrally located lobby, lift and fire stairs.

#### Third Floor Plan

- 1 x 3 bedroom dwelling at the southern (front) end of the site;
- Outdoor communal open space area at the rear (northern) end of the site;
- Centrally located lobby, lift and fire stairs.

The proposal is essentially comprised of two built forms attached by a central lobby/walkway. The proposed development contains a total of 13 apartments comprised of 10 x 1 bed, 2 x 2

bed and 1 x 3 bed. Three (3) adaptable apartments are proposed, those being units 102, 206 and 310.

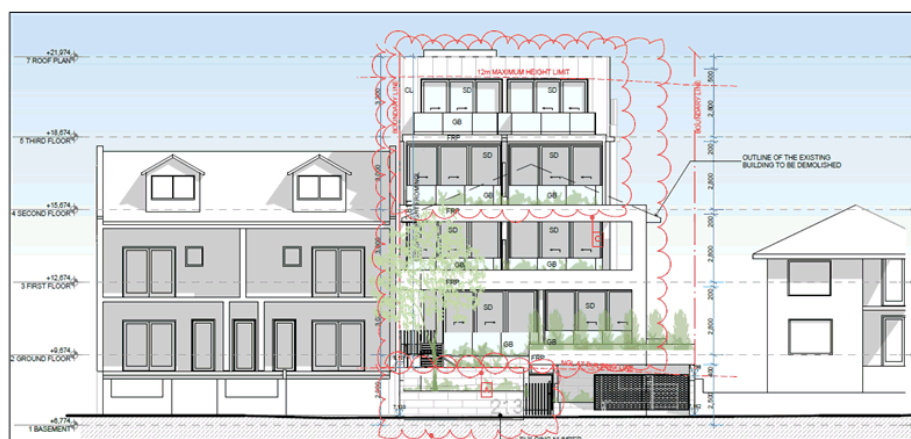
The proposed residential flat building has a contemporary appearance and incorporates a flat roof form. The external materials and finishes proposed include sandstone, colorbond cladding, rendered and paint finish and glass balustrades.

The rear of the site is flood affected, hence the elevated ground floor level in that location.

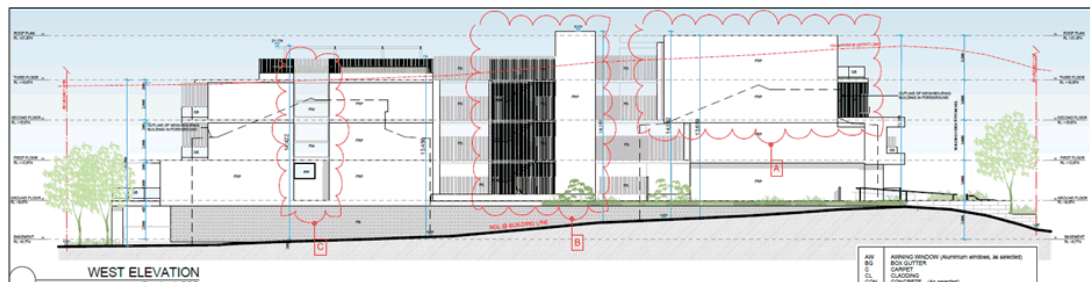
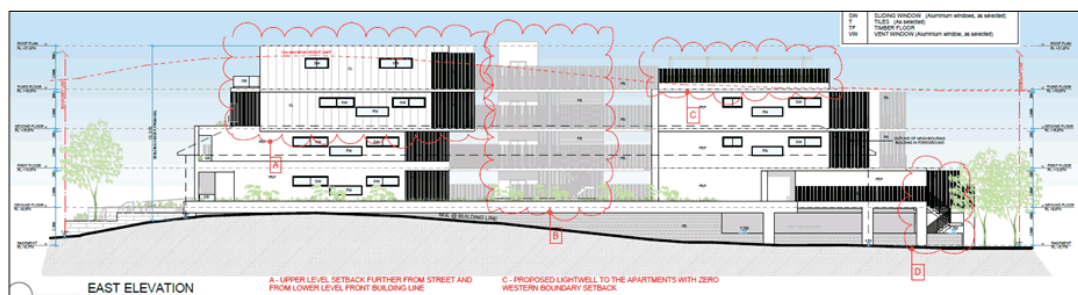
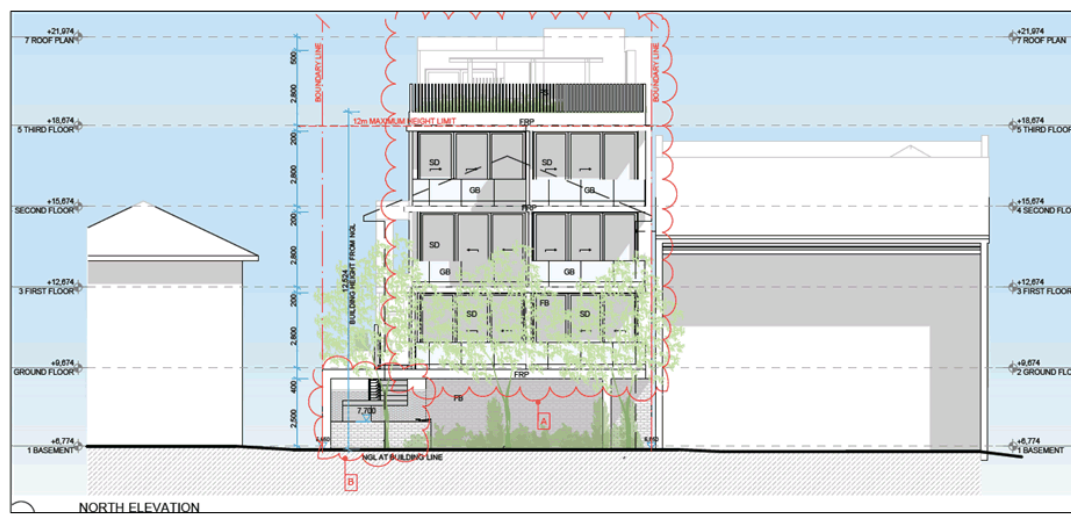
The amended elevations and perspective of the proposed development are re-produced below:



**Figure 1 – Visual perspective: Front elevation of the proposed development**



**Figure 2 – Front (King Street) Elevation**

**Figure 3 – West Elevation****Figure 4 – East Elevation****Figure 5 – North Elevation**

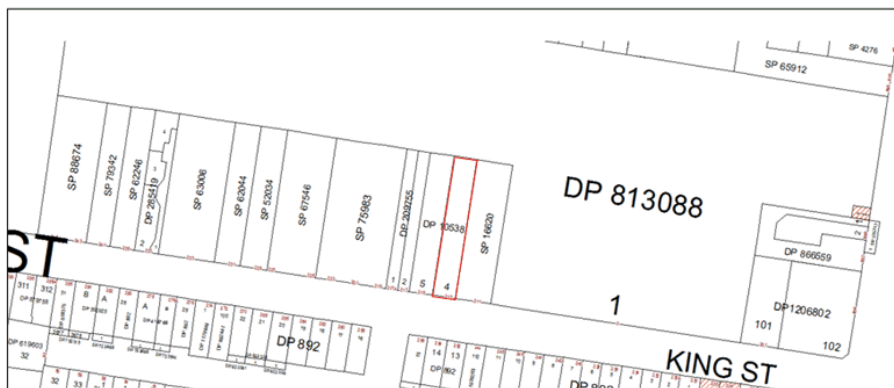
### Site Description

The subject site is 213 King Street, Mascot and is legally described as Lot 4 in DP 10538. The site has a frontage to King Street of 12.19m and an overall site area of 884m<sup>2</sup>. The subject site has varying topography which includes a 2m incline within the front 20m of the subject site, increasing from RL7.29 at the sites southern / King Street frontage, ascending to RL9.24m at approximately 20m within the depth of the site, before descending to RL6.67 at the sites northern boundary. The site does not contain any significant landscaping. The site currently accommodates an existing two (2) storey dwelling with detached metal garage at the rear.

Immediately adjoining the site to the west is No.215 King Street which contains 3 storey multi dwelling housing development which contains two built forms attached by a central walkway. To the east is No.211 King Street which is a 2 storey residential flat building. Adjoining the site at the rear is the sports oval component of Mascot Public School which is identified as a heritage item of local significance within Schedule 5 of Botany Bay Local Environmental Plan 2013. The remainder of development in the vicinity of the site on the northern side of King Street is characterised by multi-dwelling housing developments and detached single dwellings. Development on the opposite (southern) side of King Street is predominately single storey dwellings, all being within the R2 – Low Density Residential zone.

The site is located within walking distance (1.1km) of the Mascot train station and adjoins the Mascot Public School sports oval to the north of the site. The site is also located 700m north east of the Sydney Domestic Airport, 200m west of the local shops situated along Botany Road whilst also being 500m east of the light industries located to the west of O'Riordan Street.

The site location is illustrated in **Figure 6**. An aerial photo of the site and the existing development on the site are illustrated in **Figures 7 and 8**.



**Figure 6- Cadastre of Locality**





**Figure 7 - Aerial photo of the site and surrounds**



**Figure 8 - Development site as viewed from King Street**

## Referrals

### Internal

The development application was referred to Council's development engineer, landscape architect, environmental scientist, heritage planner and traffic engineer. Appropriate conditions have been recommended in the consent.

### External

The development application was referred to Ausgrid, Sydney Water, SACL, NSW Police and Water NSW for comments. Appropriate conditions have been recommended in the consent.

## Statutory Considerations

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

### **Environmental Planning and Assessment Act 1979 – Part 4, Division 4.8 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development**

The relevant requirements under Division 4.8 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development applications.

The development application is Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity. In this regard, the development application was referred to Water NSW. In a letter dated 29 June 2017, Water NSW provided its General Terms of Approval (GTA) for the proposed development. This development application has been recommended for approval subject to GTAs from Water NSW.

### **S.4.15(1) - Matters for Consideration – General**

#### **S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The development application was accompanied by a compliant BASIX Certificate.

#### **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 site currently contains a residential dwelling. Council's records indicate that historically, the site has been used for residential purposes. 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 and the application satisfies clause 7 of SEPP 55.

**State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building**

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Development Application.

During the development application process, the applicant submitted the proposal to the DRP for consideration. The meeting was held on 23 November 2017. The key items which the Design Review Panel requested to be addressed are identified below:

*The proposed development provides, at pedestrian level, a poor streetscape outcome with an excess of structure and walling out of context with the surrounding developments.*

Officer's Comments: The streetscape entry has been consolidated to a single entry point that provides access to the apartments and to the basement. The extent of walling has been reduced and soft landscaping has been increased within the front setback area to be consistent with the existing local context.

*While the building form reflects a contemporary architectural response, the proposed development would be dominant. It would be preferable for the upper two storeys to be recessed from the King Street frontage and the applicable building height limits respected. The Panel did not support any exceedance of the building height limits.*

Officer's Comments: The upper two levels at the front of the site have been setback further from the front boundary so as to emphasise the lower levels. The upper levels are simplified with dark colour finishes which contrast and are recessive from the lower levels. Further, the deferred commencement condition recommends removal of the fourth storey (unit 413) at the front of the site, thereby addressing the concerns with the building height exceedance.

*The Panel would support a zero offset on the western boundary to reflect the adjacent sheer walls and lack of windows on the adjoining building. The proposed non-trafficable roof areas between the sites are not supported.*

Officer's Comments: The amended design incorporates a zero setback to the western boundary. This subsequently increased the setbacks to the eastern boundary, enables additional landscaping and removes the non-trafficable roof.

*The lift overrun and the bulk and scale of the fire stairs are not clearly demonstrated on the provided documentation and cannot be supported in its current form. The applicant needs to provide better integration of the lift tower into the development and appropriate placement of the access and egress points in terms of its relationship to site access from the streetscape. The large fire stair structure and associated walkway results in a significant bulk and building scale related to the adjoining sites.*

Officer's Comments: The lift overrun and fire stairs are clearly shown on the amended plans.. The proposed walkway is not considered to contain significant bulk. The structure is setback from both of the side boundaries, is un-roofed and incorporates relatively lightweight privacy screening along the eastern and western side elevations.

*The Panel considered the density to acceptable.*

Officer's Comments: No further comment required.

*The Panel considered the development should include rainwater harvesting, photovoltaic panels and broader sustainability initiatives beyond the minimum.*

Officer's Comments: Photovoltaic panels have been added. The proposal complies with the BASIX requirements which is acceptable.

*The ground floor communal open space area and interface with the communal access path should be redesigned to provide a better design response and use of the podium landscaped area. The ground floor planting design does not provide suitable or adequate screening to the adjoining site eastern with the majority of plant species under 1.5 m in height. Review the proposed grades and levels to the pedestrian pathway and vehicular entry from the streetscape.*

Officer's Comments: The ground floor podium and rooftop communal open spaces are amended to further improve amenity and use by the occupants and visitors. Additional planting suitable for screening are proposed and this will assist in maintaining privacy between neighbouring properties. The streetscape entry is consolidated to a single entry point that provides access to the apartments and to the basement. Landscaping is increased within the front setback area to reflect the existing local context.

*There is a need to provide fire stairs from the basement carpark which will impact on the basement layout. The interface of the rooftop communal open space, walkway and lift tower, which currently dominates the adjoining development, provides little in the way of visual screening and privacy.*

Officer's Comments: A privacy screen have been incorporated around the perimeter of the rear communal open space terrace area. Further, a condition of consent has been included requiring the landscape plan to be updated so as to provide planting suitable for screening around the perimeter of the communal open space area. Fire stairs have been added to the rear of the basement, providing a second egress point.

*The current location of the accessible parking spaces which are not limited to the location of the lift facilities.*

Officer's Comments: The accessible parking spaces have been re-positioned so that they are adjacent to the lift.

*Interface between the vehicular ramp and the pedestrian ramped pathway with differences in landing pads areas and basement grades.*

Officer's Comments: The design of the pedestrian access at the front of the site has been re-worked to ensure no conflicts existing with the vehicular access to the site. The pedestrian path and driveway ramp are clearly separated with screening and a gate.

*The Panel generally supported the aesthetics of the proposed building form that provides for a contemporary architectural response with a robust mix of materials and finishes, subject to addressing the following:*

- *Limiting exceedance of the height limit*
- *Limit the over scale presentation to the street frontage*

- *Enhancement of the poor entry relationship at streetscape level and access to the building lobby Accessible entry integration*
- *The bulk and scale of the fire stairs and walkways which are not clearly documented*

Officer's Comments: The design matters relating to accessible and entry integration have been addressed. The amended scheme sufficiently documents the bulk and scale of the fire stairs and walkways. The exceedance of the height limit and over scaled presentation to the street frontage is addressed through the recommended deferred commencement condition which requires the removal of the fourth storey (unit 413) at the front of the site.

#### Design Quality Principles and Apartment Design Guide

Clause 28(2) stipulates that development consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the design quality principles and the objectives specified in the Apartment Design Guide for the relevant design criteria.

A Design Verification Statement has been prepared by Arkhaus and was submitted with the development application. This statement was accepted.

Clause 30(1) of SEPP 65 states that if a development application satisfies the following design criteria, the consent authority cannot refuse an application because of those matters. These are car parking, deep soil, ceiling heights and building separation. An assessment of the key controls within the ADG are as follows:

SEPP 65 – ADG			
<b>Dwelling Size</b>	Minimum internal areas as follows: Studio: 35sqm 1 bed unit: 50sqm 2 bed unit: 70sqm 3 bed unit: 90sqm	1 bed units: 50sqm 2 bed units: 75sqm 3 bed unit: 100sqm	Yes Yes Yes
<b>Ceiling Height</b>	Habitable Rooms: 2.7m Non-habitable: 2.4m 2 storey apartments: 2.7m for main living area floor; 2.4m for second floor Mixed Use: 3.3m for ground and first floor	Habitable rooms: 2.8m (per submitted plans)	No, does not include required services, ceilings and floor coverings <b>Refer to Note 1</b>
<b>Deep Soil</b>	Objective 3E-1 requires 7% of the site (for sites between 650sqm and 1,500sqm) as deep soil area with min. dimensions of 6m (requires 115.8sqm)	93m <sup>2</sup> (10.6%)	Yes

<b>Communal Open Space</b>	25% of site (221m <sup>2</sup> )	296m <sup>2</sup> (33%)	Yes
<b>Solar Access</b>	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter Note: Part 4C requires that COS receives 3 hours in winter.	More than 50% of COS receives greater than 2 hours of sun due to its location of the rooftop terrace.	Yes
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm	70% (9/13) of apartments will receive at least two hours of sunlight during June 21 <sup>st</sup> No adjoining residential properties will be adversely impacted by the proposed development.	Yes
<b>Building Depth</b>	Use a range of appropriate maximum apartment depths of 12-18 metres	The apartments do not exceed 18 metres in depth.	Yes
<b>Building Separation</b>	Up to 4 storeys (approx. 12m): 3m from non-habitable rooms to site boundary 6m from habitable rooms/balconies to site boundary	<b>Western Boundary:</b> zero side setback <b>Eastern Boundary:</b> <u>Ground Level:</u> 2m to 3.3m <u>First Floor and Second Floor:</u> 3.2m to 3.5m <u>Third Floor:</u> 3.1m to 3.8m <b>Northern Boundary:</b> <u>Ground Level:</u> 6m <u>First Floor and Second Floor:</u> 10.4m <u>Level 3 to 4:</u> 6m  Building Separation between two residential components within the site is a minimum distance of 14m .	Acceptable due to surrounding built forms, <b>Refer to Note 2</b>
<b>Balcony Sizes</b>	1 bed: 8sqm 2 bed: 10sqm 3 bed: 12sqm Ground Floor: 15sqm	1 bed: 8m <sup>2</sup> - 13m <sup>2</sup> 2 bed: 15m <sup>2</sup> 3 bed: 16m <sup>2</sup>	Yes Yes Yes

		Ground Floor: 15m <sup>2</sup> , unit's 101 and 102 have 10.6m <sup>2</sup> front balconies and additional 9m <sup>2</sup> rear balconies	Yes
<b>Cross Ventilation</b>	60%	100% (13/13 units)	Yes
<b>Storage</b>	1 bed: 6m <sup>3</sup> 2 bed: 8m <sup>3</sup> 3 bed: 10m <sup>3</sup>	The combined unit and basement storage complies. Storage within the basement has been allocated to individual units.	Yes

**Note 1 – Ceiling Heights**

Part 4C of the ADG requires minimum 2.7m floor to ceiling heights to be provided in all habitable rooms. Figure 4C.5 in the ADG indicates that 3.1m floor to floor heights are required to ensure that the 2.7m can be achieved once the required services, ceilings and floor coverings are provided. The proposed apartments on the ground floor, first floor and second floor contain 3m floor to floor heights. A condition has been incorporated into recommendation requiring 3.1m floor to floor heights to be provided to ensure consistency with the ADG guidelines.

**Note 2 – Building Separation**

The proposed setbacks to the eastern side boundary are as follows:

Ground Level: 2m to 3.3m

First Floor and Second Floor: 3.2m to 3.5m

Third Floor: 3.1m to 3.8m

The eastern elevation contains a number of window openings. There are various existing window openings on the western elevation of the adjacent residential flat building at No.211 King Street.

The visual privacy outcomes are acceptable. The majority of the windows on the eastern elevation contain a high sill height with the exception of the kitchen splashback windows. A condition of consent has been included stating that all windows proposed along the eastern elevation must contain a minimum sill height of 1.6m or be fitted with obscure glazing to ensure that overlooking opportunities to the adjacent residential building are minimised.

Compliance is often difficult for new infill development, particularly under circumstances wherein the existing built form on the adjacent site does not provide equitable building separation, as is the case in this instance. Insisting on full 6m side setbacks to the eastern boundary would sterilise approximately half of the site (given the 12m allotment width) and result in a dis-jointed building composition which would not represent the orderly development of land.

The separation distances provided are satisfactory for the abovementioned reasons.

**Botany Bay Local Environmental Plan 2013 (BBLEP 2013)**

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

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned R3 Medium Density Residential zone under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed residential flat building is permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the objectives of the R3 zone which are: <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>To encourage development that promotes walking and cycling.</li> </ul>
What is the height of the building?	-	A maximum height of 12 metres applies to the subject site.
Does the height of the building comply with the maximum building height?	<b>No – Refer to Note 1</b>	The proposed development has a maximum height of approximately 14.89 metres. This does not comply with the provisions of the BBLEP 2013. A clause 4.6 variation has been provided with the application.
What is the proposed Floor Space Ratio?	Yes	The maximum Floor Space Ratio requirement is 0.85:1. The proposed development has a compliant FSR of 0.85:1. It is noted that the effect of the deferred commencement condition is such that the FSR would decrease.
Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?		
Is the site within land marked "Area 3" on the Floor Space Ratio Map?	N/A	The site is not located in an Area 3 zone.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?		
<p>Consent to development in Zone R3 and Zone R4.</p> <p>Development consent must not be granted to development on land in Zone R3 or R4 unless the consent authority is satisfied that the development will:</p> <p>Achieve acceptable amenity outcomes in relation to adjoining land.</p> <p>Provide appropriate building setback.</p> <p>Provide a transition in building scale to development on adjoining land.</p> <p>Be compatible with the character of the area in terms of building bulk and scale.</p> <p>Not impede the fulfilment of an objective of clause 4.3 or 4.4B.</p>	Yes, subject to deferred commencement conditions	<p>The proposed development in its present form is not considered to be compatible with the character of the area in terms of building bulk and scale because the development would be discordant with the scale of buildings in its surroundings. A suitable transition in building scale to development on adjoining land is not achieved. The bulk and scale of the form proposed is reliant upon a breach of the building height development standard.</p> <p>The setbacks proposed are acceptable, noting that the front setback is compliant, the nil setback proposed to the west is consistent with the development at No.215 and the setbacks to the east have been increased in the amended plans. Refer to further discussion throughout this report.</p> <p>The amenity afforded to existing development on adjoining land in respect of, but not necessarily limited to, overshadowing, visual bulk, overlooking, comparative streetscape elevation and acoustics is acceptable. Refer to further discussion throughout this report.</p> <p>Council is satisfied that the proposed development is acceptable in respect of the matters in clause 4.4C subject to a condition of consent to delete the 4<sup>th</sup> storey at the front of the site.</p>
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	Yes	<p>The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area.</p> <p>The northern (rear) boundary of the subject site adjoins a heritage item (I139), that being Mascot Public School. The application was accompanied by a Heritage Impact Statement which concludes that the proposed development will result in a negligible impact upon the adjacent heritage item, noting that the significant fabric comprised in the heritage item is not located in the vicinity of the shared</p>



Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		boundary with the subject site. Rather, the significant fabric constitutes the school building which is well separated from the subject site.  The application was reviewed by Council's Strategic Planner who confirmed that the proposed development will not result in any adverse impacts upon the nearby heritage item.
The following provisions in Part 6 of Botany Bay Local Environmental Plan apply– <ul style="list-style-type: none"> <li>6.1 – Acid Sulfate Soils</li> </ul>	Yes	The site is located in a Class 4 Acid Sulfate Soils Area. Excavation greater than 2 metres is proposed. As such, an Acid Sulfate Soils Report was submitted with the DA. Council's Environmental Scientist has recommended suitable conditions of consent in this respect.
<ul style="list-style-type: none"> <li>6.2 – Earthworks</li> </ul>	Yes	The proposal includes excavation for the proposed basement level. The application was supported by a Geotechnical Report and appropriate conditions have been imposed in the consent.
<ul style="list-style-type: none"> <li>6.3 – Stormwater Management</li> </ul>	Yes	The application was reviewed by Council's Development Engineer who has no objection to the proposal, subject to various conditions. Those conditions have been incorporated into the recommendation.
<ul style="list-style-type: none"> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>	Yes	The site falls within the 25-30 ANEF Contour. An acoustic report was provided with the application and appropriate conditions have been included within the consent.

#### Note 1 – Clause 4.6 Variation relating to Height of Building development standard

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 12 metres under Clause 4.3 of the BBLEP 2013.

The proposal has a maximum building height of approximately 14.89 metres to the top of the lift overrun (RL22.27 minus RL7.38). This represents a breach of 2.89 metres or 24% at the worst point. The remainder of the building height breach varies across the site between 0.8m – 2.89m due to the topography of the land.

Clause 4.3 of BBLEP 2013 specifies that the height of a building may not exceed the maximum height specified on the relevant Height of Buildings Map. The site is subject to a height limit of

12 metres. The proposed development exceeds the maximum height allowance when measured in accordance with the BBLEP definition of building height.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

*(2) 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...*

*(3) 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.*

The applicant has provided a Clause 4.6 variation to justify contravening the height standard. A copy of the submitted Clause 4.6 exception is provided as an attachment. The applicant's justification is summarised below:

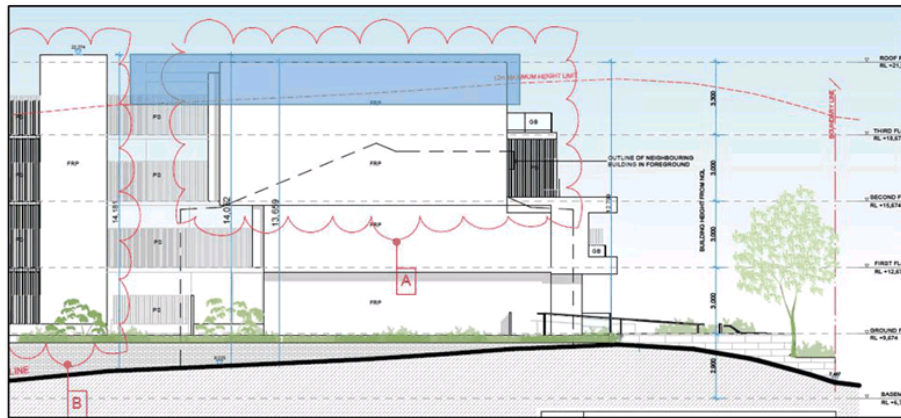
- *Compliance with the standard is unreasonable or unnecessary in the circumstances of the case because the proposal complies with the objectives of the standard and the zone. Please see the assessment under 4 – The proposed development will be in the public interest because it is consistent with the objectives for development within the zone in which the development is proposed to be carried out – clause 4.6(4)(a)(i).*
- *In addition to consistency with the objectives of the standard and the zone, the proposed development represents a compatible streetscape outcome, with the four (4) storey height of the building correlating with the 12m height limit, as permitted by the BBLEP 2013. This ensures that the proposed height can be supported on the subject site and that strict compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case.*
- *The proposed residential flat building has been designed to provide for an appropriate transition across the site, in response to the varied topography and flood affected nature, noting that the subject site rises from the King Street frontage by approximately 2m before sharply declining to a level rear yard. As a result, the proposed development provides for a 4 storey residential built form at the King Street frontage, above basement parking, whilst the northern / rear built form includes a semi-basement car park with 3 storeys of residential above a communal roof top terrace.*
- *The proposed development is generally compliant with the height limit at the King Street frontage, albeit the roof slab, with the declining topography exacerbating the exceedance along the northern / middle portion of the southern built form.*
- *The greatest exceedance being that associated with the lift overrun and pergola structure. Such elements provide for a communal benefit through the provision of equitable access to the roof communal roof top area, which has been designed in accordance with the ADG guidelines for communal open space. In this regard, the rooftop communal open space area incorporates BBQ facilities, lounge seating, a*

*pergola structure, raised timber decking with integrated planter box and a range of landscaping species, as illustrated in the landscaping excerpt below. The north facing rooftop communal area comprises 64% of the total residential communal open space area and receives full solar access which is considered to afford residents with a high quality living environment.*

- In regards to the southern / King Street portion of the building, the greatest exceedance is along the northern portion of the building which is not readily visible from the streetscape. The properties to the west have a dual orientation and it is therefore considered that their primary outlook would be to the north / rear of the property and therefore it is not considered that the bulk and scale would be visually dominating or result in a loss of amenity.*
- The height of the building is exacerbated by the nature of the topography and the requirement to provide a flood freeboard level of RL7.9 for habitable floors. It is noted that the proposed development complies with the allowable FSR of 0.85:1 and demonstrates a suitable design response to the sites infill nature, amongst two established medium density residential uses.*
- The proposed height is not responsible for any adverse external amenity impacts in regard to loss of view, overshadowing or privacy to neighbouring properties, beyond that of a compliant building. Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed height.*
- The positive streetscape outcomes associated with the provision of the additional height which provides for an appropriate transition between the neighbouring developments to the east and west, in addition to the lack of impacts to surrounding properties as demonstrated on the accompanying shadow diagrams, demonstrates that there are sufficient environmental grounds to support the additional height in this instance.*
- Given the proposed development's compatibility with the existing and desired future character, it is considered that there are is no public benefit in maintaining the development standard.*
- The proposed development supports the economic and orderly development of land, as intended by the Botany Bay LEP and DCP controls. The proposal is consistent with the intent for development on the subject site and it is considered that the proposed built form represents a suitable infill development between two established medium density residential uses.*
- The increased height on the subject site is entirely reasonable and appropriate given that the development seeks to replace the existing dwelling house with a modern and contemporary residential flat building that is suitably located in proximity to a host of services including shops, public transport and high quality recreational areas.*

Officer's Comment:

Council supports the submitted clause 4.6 exception in so far as it relates to the height breach in the middle and rear portions of the site. However, the non-compliant building height at the front of the site shown highlighted below is not supported for the following reasons:



**Figure 9 – West Elevation plan extract with area of height non-compliance not supported shown in blue**

- The extent of the building height breach has been increased in the amended plans by 300mm. The front building form in the original scheme has a top RL of 21.67, whilst the amended scheme the subject of this report has an RL of 21.97. The application was not supported by an updated clause 4.6 exception providing justification for the proposed increase in building height.

Further to the above, the proposed floor to floor heights on the ground floor, first floor and second floor are 3m and therefore do not conform to the 3.1m guideline set out within Part 4C of the ADG. Compliance with the 3.1m guideline would increase the building height by an additional 300mm, therefore exacerbating the extent of the height breach and increasing the bulk and scale of the development.

- In its current form, the proposed development is not considered to satisfy clause 4.4C – Consent to development in Zone R3 and Zone R4 in that it does not present a comparative streetscape elevation, does not provide a transition in building scale to development on adjoining and would not be compatible with the character of the area in terms of bulk and scale.
- There are no other four (4) storey forms in the vicinity of the site that have a comparable scale to what is proposed. The proposed development would be discordant with the scale of buildings in its surroundings when viewed from the streetscape, particularly in relation to the adjoining development to the west at No.215 King Street as shown on the front elevation drawing below:



**Figure 10 – Front elevation plan extract**

In view of the above, this component of the development is not considered to satisfy objective (1)(e) within clause 4.3 of BBLEP 2013 which seeks 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 non-compliant building height at the front portion of the site is not considered to represent a better planning outcome than an otherwise compliant scheme and as such does not satisfy clause 4.6(1)(b) of BBLEP 2013. Accordingly, it is recommended that Unit 413 at the front (southern end) of the third floor is removed.

The building height breach proposed in the middle and rear portions of the site are supported. The following comments are made in addition to the justification substantiated in the applicant's clause 4.6 exception:

- The proposed development is compliant with the floor space ratio development standard within BBLEP 2013. The additional building height proposed is not caused by additional gross floor area;
- The building elements above the 12m height limit relate to the lift overrun, the privacy screening adjacent to the common walkway in the centre of the site and the communal open space area at the rear. These components are well setback rearward into the site and therefore would not have any significant streetscape presence;
- The rear of the site is flood affected and has a varied topography. There are therefore inherent site characteristics to justify the variation. It is conceivable that the proposed development would not rely on a building height breach if the site was not flood affected because it would enable the finished floor levels of the ground floor to be sited in a different manner;
- The proposed development is an acceptable response to an infill site that is adjoined by two (2) established residential buildings;
- The proposal is consistent with the objectives of the building height development standard and the objectives of the R3 – Medium Density Residential zone. The applicant has satisfactorily established that the proposed variation in the centre and rear of the site is appropriate and enforcing strict compliance would be unreasonable and unnecessary in the specific site circumstances; and

- The clause 4.6 request, in so far as it relates to the building elements in the middle and rear of the site, is well-founded and the departure to the building height development standard is not contrary to the public interest.

#### S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development

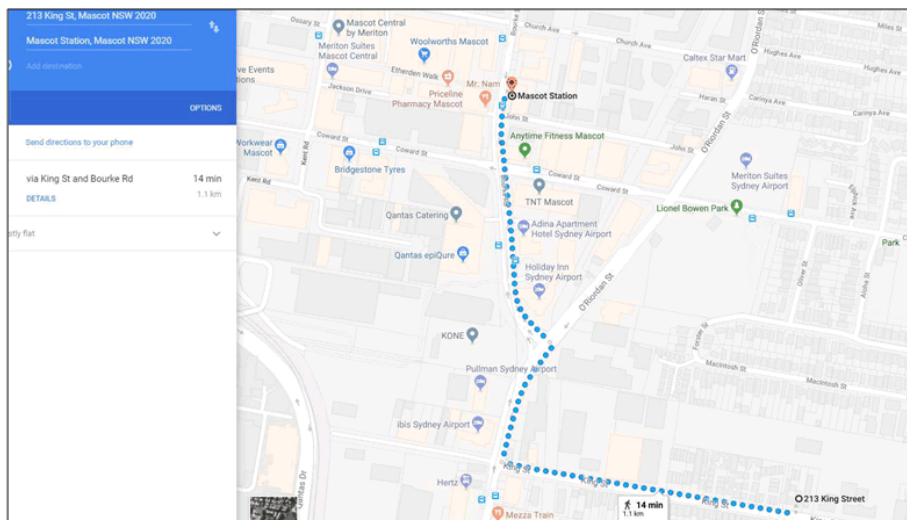
#### S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

##### Botany Bay Development Control Plan 2013

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

##### **Part 3A- Parking and Access**

The information submitted in the Statement of Environmental Effects states that the site is within 800m of Mascot train station and as such, the RMS car parking rates are applied. However, the site is located 1.1km from Mascot railway station and therefore the development cannot rely upon the RMS car parking rates in the Guide to Traffic Generating Developments. See diagram below:



As such, the DCP rates are applied per below:

Applicable rate: BBDCP 2013: Table 1 – Car Parking Provisions by Land Use	Required number of spaces	Proposed number of spaces	Compliance (Yes/No)
1 space/ studio or one (1) bedroom dwelling;  2 spaces / two (2) or more bedrooms dwelling;  1 designated visitor space / 5 dwellings	10 x 1 bed = 10 spaces  2 x 2 bed = 4 spaces  1 x 3 bed = 2 spaces  Visitor = 3  Total = 16 resident car parking spaces + 3 visitor spaces. Therefore, 19 spaces.	14 resident car parking spaces + 3 visitor car parking spaces. Therefore, 17 spaces.	No, the development is deficient by 2 spaces.

The proposed development does not provide the required amount of off-street parking. However, as previously discussed, the 3 bedroom apartments on the top floor is not supported and recommended to be removed. This apartment generates a requirement for 2 car parking spaces. As such, the proposed development would comply with the car parking requirements, should this apartment be removed as recommended.

### **Part 3B – Heritage**

Refer to previous discussion in relation to Clause 5.10 – Heritage Conservation within Botany Bay LEP 2013.

### **Part 3C – Access & Mobility**

The proposed development is accompanied by an Access Report prepared by Vista Access Architect which demonstrates that the proposed development provides for equitable access throughout all areas of the development and complies with the relevant Australian Standards.

The proposed development is required to provide a minimum of 20% of the dwellings as adaptable dwellings designed in accordance with Adaptable Housing AS 4299 Class B. The proposal provides 3 adaptable dwellings (units 102, 206 and 310) which complies. In addition, 2 accessible car parking spaces are proposed which are appropriately located adjacent to the lift.

### **Part 3E – Subdivision & Amalgamation**

The proposed development does not include subdivision or amalgamation.



**Part 3G – Stormwater Management**

The application was reviewed by Council's Development Engineer who has no objection to the proposal subject to suitable conditions of consent. Those conditions have been incorporated into the recommendation.

**Part H – Sustainable Design**

A BASIX Certificate accompanies the proposal and demonstrates a commitment to sustainability measures.

**Part I – Crime Prevention, Safety & Security**

The proposal has been designed to have casual surveillance over King Street to the south and the Mascot Public School sports oval to the north, without compromising the privacy of students. Internally, the proposed development includes secure pedestrian and vehicle access, whilst the dual aspect and internal orientation of units provides for passive surveillance over the internal communal areas of the subject site.

**Part 3J – Aircraft Noise and OLS**

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 25-30 ANEF contour. Residential development in these areas is considered unacceptable under Table 2.1 of Australian Standard AS2021-2000 unless an acoustic report is submitted to Council, which demonstrates that the proposed dwelling can achieve the requirements under Table 3.3 of AS2021-2000.

An acoustic report has been prepared to accompany the development application. The report demonstrates that the proposed development (when complete) will conform with the relevant requirements of AS2021-2000 provided the recommendations contained in the acoustic report are undertaken. Appropriate conditions have been recommended in the consent.

**Part 3K – Contamination**

Refer to SEPP No.55- Remediation of Land section of the report above. In summary, the proposal is suitable for the site due to its long standing reside

**Part 3L – Landscaping & Tree Management**

The proposed development is considered to be acceptable in respect of the applicable controls within Part 3L. The following comments are noted:

- The existing street tree at the front of the site is proposed to be protected and retained; and
- A detailed landscape plan was submitted with the application which incorporates deep soil areas adjacent to the front and rear boundaries that are proposed to be embellished with new soft landscaping, include new trees. Further landscaping is proposed throughout the ground floor plan, adjacent to the eastern boundary on the first floor and within the roof top communal open space area.

**Part 3N- Waste Minimisation and Management**

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

**Part 4C – Residential Flat Buildings**

The development application has been assessed against the controls contained in *Part 4C of the DCP – Residential Flat Buildings*. The following table compares the proposed development with the key, relevant provisions of this policy.

Part	Control	Proposed	Complies
4C.2.2 Streetscape Presentation	New development must be compatible in bulk and scale with adjoining residential developments and reflect the patterns of buildings in the streetscape.	The proposed four storey built form at the front of the site does not reflect or compliment the scale of existing buildings in the vicinity of the site. A three storey form along the front elevation is preferred. Suitable conditions of consent are recommended to remove the upper most storey at the front of the site.	Yes – subject to conditions.
4C.2.4 Landscaped Area and Deep Soil Planting	Min Landscaped Area: 35%  Max hard landscaped area: 20%  Planter beds are a minimum of 1 metre in width.	Proposed Landscaped Area = 32%  Proposed hard landscaped area = 25%  The development does not comply with the minimum landscaped area requirement and exceeds the maximum allowable hard landscaped area requirement. This is acceptable on the basis that the extent of the numerical breaches sought are not significant and the size and shape of the allotment and the requirement for compliant basement car parking makes it difficult to achieve full compliance. Further, the development complies with the ADG deep soil requirements.	No

		The planter beds proposed generally achieve the 1m minimum width requirement to ensure they are capable of supporting an appropriate soil depth and plant selection.	
4C.2.6 Setbacks	<p>All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.</p> <p>Front setback must match the setback of adjoining properties, but must be a minimum of 3m or 4m if fronting a classified road.</p>	<p>The building setbacks proposed enable the provision of deep soil zones within the front and rear setbacks. However, the basement car parking footprint precludes deep soil zones adjacent to the side boundaries. This is acceptable in the site circumstances given the relatively narrow width of the allotment.</p> <p>The proposed front setback is 12.8m which is generally consistent with the adjoining building at No.211 and No.215 King Street.</p>	<p>Yes (in-part)</p> <p>Yes</p>
4C.3.1 Building Entries	A main pedestrian entry is to be provided. The entry is to be separate from car parks or car entries. Disabled access through the primary entrance to the building must be provided.	A legible entrance is provided at the front of the site which is separated from the vehicular access point. A chair lift has been incorporated into the primary entrance to ensure that disabled access can be achieved.	Yes
4C.3.2 Fences	Fences are to: <ul style="list-style-type: none"> <li>(i) Provide privacy and security while not eliminating views, outlook, light and air</li> <li>(ii) Be visually permeable at the front of developments and designed in proportion to the height and size of the building</li> </ul>	The proposed development incorporates a new low front fence along the street boundary. The fence is proposed to be finished in sandstone which is acceptable.	Yes

	(iii) Use the designs and materials suitable for the desired future character of the area.		
4C.3.3 Materials and Finishes	A Schedule of Finishes and a detailed Colour Scheme for the building facade will accompany all Development Applications involving building works.	A colours and finishes schedule was submitted with the application. The proposal incorporates sandstone, colorbond cladding, render, aluminum doors and glass balustrades. The materials and finishes proposed are acceptable as they create a contemporary form which complements the streetscape.	Yes
4C.4.1 Dwelling Mix & layout	<p>C1 Developments with 10 or more apartments to provide a range of sizes including studio, 1, 2, 3 bedrooms</p> <p>C2 Developments with more than 10 apartments, 25% max no. of combined studio and 1bed units</p> <p>C1 Dwellings with 3 or more bedrooms are to have two separate living spaces.</p>	The development provides 10 x 1 bed, 2 x 2 bed and 1 x 3 bed. It is however noted that the conditions of consent recommend removal of the 3 bedroom apartment on the third floor. The proposal does not achieve the controls set out in Part 4C.4.1. To address this, the applicant submitted a market analysis report which demonstrates that the proposed dwelling mix is suitable for the locality.	No, acceptable on merit.
4C.4.2 Family Friendly Apartment Buildings	<p>C1 Family apartments are apartments with 2 or more bedrooms.</p> <p>C2 Family apartments are to include a study.</p> <p>C3 Bedrooms are to be large enough for a single bed, desk, and space for playing.</p> <p>C4 Floor surface of entry, dining and kitchen are to be water-resistant. No carpet.</p> <p>C5 Two bathrooms required. Bathtub to be provided in one bathroom.</p>	The development provides 2 x 2 bed apartments. The design of these apartments do not fully comply with the DCP requirements because they do not include study areas. However, these units comply with the ADG apartment layout requirements which supersede the DCP controls, noting that clause 6A of SEPP 65 states that DCP provisions in respect of apartment size and layout have no effect.	Yes

	<p>C6 Private open space to be visible from kitchen.</p> <p>C7 Entry and corridors to permit room for toys etc.</p> <p>C8 ADG sets out storage rates. Storage room is to be located near the entry.</p>		
4C.4.3 Internal Circulation	Provide multiple cores. More than 4 storeys require elevators.	The proposed development does not exceed 4 storeys and is therefore not required to provide multiple cores.	Yes
4C.4.4 Views	View sharing – Tenacity Consulting v Warringah (2004) NSWLEC 140	The proposed development would not cause any adverse view loss impacts for surrounding properties.	Yes
4C.4.5 Acoustic Privacy	To ensure that all residents are provided with a reasonable level of acoustic privacy.	The application was accompanied by an Acoustic report which examines the likely noise impacts generated by the proposed development. The dwellings will be constructed to comply with the applicable noise criteria. Council's standard conditions have been imposed in respect of noise impacts for surrounding properties.	Yes
4C.4.7 Site Facilities	<p>To ensure that adequate provision is made for site facilities, such as clotheslines and storage areas, in the design of the development.</p> <p>To ensure that site facilities are thoughtfully integrated into development and are unobtrusive.</p>	The proposed development satisfies the applicable controls within Part 4C.4.7 in that a street number is displayed on the front façade and there are sufficient opportunities for the provision of letterbox facilities. Council's standard conditions have been included in respect of air conditioners.	Yes
4C.4.8 Safety and Security	Applications must comply with Part 3I - Crime Prevention, Safety and Security. Note: Applications will be	Refer to previous discussion under Part 3I – Crime Prevention, Safety and Security. The application was referred to	Yes

	referred to the NSW Police Service for comment.	NSW Police for comment. The recommendations made by the Police have been incorporated into the recommended conditions.	
4C.4.9 Car and Bicycle Parking and Vehicle Access	Various controls relating to the design of car parking facilities, basement car parking and bicycle parking.	<p>The application was reviewed by Council's Development Engineer who has confirmed that the car parking layout is acceptable.</p> <p>The design of the basement protrudes further than 1.2m out of ground. The non-compliance is presented in the centre and rear of the site where there is a sharp drop off in the topography of the land. The design of the basement complies at the front of the building ensuring an acceptable streetscape presentation. It is further noted that the site is flood affected by dictates that the ground floor must be elevated.</p> <p>The development provides bicycle storage facilities within the basement level.</p>	<p>Yes</p> <p>No, but acceptable on merit.</p> <p>Yes</p>
4C.5.1 Adaptable Housing & 4C.5.2 Access	A statement from the architect or builder must be submitted with the development application certifying that the adaptable dwelling has been designed in accordance with the provisions of the Australian Standards AS 4299-1995 Adaptable Housing.	The application was accompanied by an access report which demonstrates compliance with the access requirements. Adaptable dwellings have been provided in accordance with Part 3C of BBDCP 2013.	Yes

#### Part 8 – Character Precincts

The subject site is located within the Mascot Character Precinct in Part 8.7 of BBDCP 2013. The proposed development is considered to satisfy the planning objectives of Part 8.7 subject to a condition of consent requiring the proposed dwelling on the third floor plan to be removed to ensure that the proposal better complements the scale of existing development in this locality and achieves a greater level of compliance with the building height development standard.

**S.4.15(1)(a)(iv) - Provisions of regulations**

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

**S.4.15(1)(b) - Likely Impacts of Development**

The proposed development will have no significant adverse environmental, social or economic impacts in the locality.

**S.4.15(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. The development is likely to encounter groundwater, is impacted by flooding and is within the 25-30 ANEF contour. These constraints are capable of being well managed through physical design mitigation measures and/or appropriate conditions of consent.

**S.4.15(1)(d) - Public Submissions**

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the development application was notified and advertised between 17 May 2017 and 26 June 2017. A total of 12 submissions were received.

The amended plans were re-notified between 16 May 2018 and 15 June 2018. A total of 8 submissions were received.

The matters raised in the submissions are addressed below:

- The development is out of character with the surrounding neighbourhood in terms of height, building style and roof form

Comment: The extent of the building height breach proposed is not supported for reasons discussed throughout this report. It is recommended that the 4<sup>th</sup> storey at the front of the site is removed to ensure that the development has a better relationship with the adjoining buildings and the streetscape. In terms of the building style and roof form, the development represents a contemporary form which is acceptable and is capable of co-existing in harmony with the character of the existing streetscape. New development on the subject site is not necessarily expected to replicate the existing built form in the streetscape, noting that a lot of the street is comprised of older housing stock.

- Noise and damage impacts during the construction phase upon adjoining properties

Comment: Council's standard conditions in respect of noise and damage to adjoining properties have been incorporated into the recommendation.

- Acoustic impacts from the rooftop communal terrace area

Comment: The applicant submitted an acoustic report which examines the likely noise impacts from the rooftop communal terrace area upon the closest residential receivers. That report concludes that the likely noise generated from the area would comply with the applicable acoustic guidelines. Further, a condition of consent has been included restricting the use of this area outside the hours of 10pm each day.



- Adverse privacy impacts towards the existing development at No.211 King Street

Comment: A condition of consent requiring all windows on the eastern elevation (facing No.211) having a minimum sill height of 1.6m or being constructed with obscure glazing.

The setback of the communal rooftop area from the eastern boundary has increased in the amended plans and contains a privacy screen around the perimeter of the structure alongside landscape screening.

The common walkway proposed in the centre of the site contains privacy screening to restrict overlooking across side boundaries.

The privacy outcomes proposed are generally well resolved.

- Overshadowing impacts

Comment: The proposed development would cause additional overshadowing impacts for the adjoining buildings at No. 211 and No.215 King Street. Notwithstanding this, both of the adjoining buildings would still have some solar access opportunities at differing times between 9am – 3pm on June 21. Further, the extent of overshadowing caused would be reduced with the recommended condition of consent to delete the dwelling on 4<sup>th</sup> storey at the front of the site.

- The development would increase the extent of dwellings in the 25-30 ANEF contour

Comment: The applicant submitted an acoustic report addressing aircraft noise. Suitable conditions of consent have been included.

- Adverse traffic impacts

Comment: The application was reviewed by Council's Development Engineer who did not raise any concerns with the proposed development on traffic grounds. The proposed development is not anticipated to cause any unreasonable traffic impacts on the local road network.

- Non-compliant dwelling mix

Comment: The matter was raised with the applicant during the assessment of the application. The applicant submitted a market demand analysis which demonstrates that the dwelling mix proposed is acceptable in this instance.

- Excavation extends too close to neighbouring properties

Comment: It is acknowledged that the proposed basement level extends to the eastern and western side boundaries. This is necessary to ensure that a compliant car parking design can be achieved. Council's standard conditions in respect of managing the excavation works have been included.

- Non-compliant building height/inappropriate built form scale

Comment: This matter has been discussed in the main body of the report.

- The application does not adequately address the Apartment Design Guide

Comment: The application has been assessed against the key design parameters within the ADG. Refer to discussion within this report. It is further noted that the submitted Statement of Environmental Effects included a SEPP 65/ADG compliance table.

- The basement entry dominates the frontage

Comment: The width of the site is relatively narrow. The amended plans incorporate as much soft landscaping adjacent to the front boundary as practically possible. The garage entry door itself has been well setback from the King Street boundary. The design outcome proposed is considered to be reasonable in the site circumstances.

- Non-compliances with the landscaped area, hard landscaped area and basement car parking controls within BBDCP 2013.

Comment: This matter has been addressed in the main body of the report.

- Overlooking from the rear balconies towards the adjacent school yard

Comment: The proposed balconies have been adequately setback from the rear boundary to be generally consistent with the ADG separation requirements.

- Inadequate waste facilities

Comment: The proposal includes a garbage room in the basement which is capable of accommodating the required number of bins on the basis of the number and type of bins required for residential development within Part 3N of BBDCP 2013.

- Visual impacts of the development as viewed from No.215 King Street

Comment: The proposed development would be visible from various points within the existing dwellings at No.215 King Street. However, the footprint of the proposed development (with the exception of the central lobby) has generally been aligned with the existing building at No.215 King Street to preserve as much outlook as possible. The recommended deletion of the upper-most storey at the front of the site would assist in minimising the visual impacts of the development.

#### **S.4.15(1)(e) - Public interest**

Granting approval to the proposed development as recommended will have no significant adverse impact on the public interest.

#### **OTHER MATTERS**

##### **Flooding**

The development complies with Council's flooding information for the site. The flood level is 7.3m AHD plus freeboard. The proposed habitable floor level is 9.67m AHD.

### Section 7.11 Contributions

The City of Botany Bay's Section 94 Development Contributions Plan 2016 became effective on 14 June 2016. Amendment 1 to that Plan came into effect on 19 June 2018. The below contribution applies to the proposed development:

#### Contribution Rates

10 x 1 bedroom dwellings = \$215,918.90

2 x 2 bedroom dwellings = \$70,944.78

As the total amount of each dwelling is over \$20,000.00, the section 7.11 contribution rates are capped accordingly (i.e. - \$20,000 per dwelling). A \$20,000 credit for the existing dwelling is applicable.

The total section 7.11 contribution payable is **\$220,000.00**. Appropriate conditions have been imposed in the consent.

*Note: The above figure is calculated on the presumption of the 3 bedroom dwelling on the upper-most level being removed as recommended.*

### Conclusion

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Development Application No. 2017/1060 seeking consent for demolition of the existing dwelling and construction of a part three part four storey residential flat building containing 13 units and basement parking at 213 King Street Mascot, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*.

The development achieves an acceptable level of compliance with the applicable planning instruments with the exception of the building height development standard in BBLEP 2013. However, a condition of consent is recommended to overcome that issue by removing the 4<sup>th</sup> storey at the front of the site. The ensuing development would be consistent with the desired future character of the area and the amenity of neighbouring development would not be unreasonably impacted upon by the proposal. Therefore, the proposal is recommended for deferred commencement approval subject to conditions of consent.

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**Attachment****Schedule 1 – Conditions of Consent****Premises: 213 King Street, Mascot****DA No: DA-2017/1060****DEFERRED COMMENCEMENT CONDITIONS**

The Consent given does not operate until the following condition is satisfied:

DC1 Amended plans being submitted to Council's satisfaction making the following design changes:

- iv) Unit 413 on the third floor shall be deleted and the design of the common lobby area re-designed accordingly;
- v) The floor to floor height of the ground floor, first floor and second floor in the entire development shall be 3.1 metres; and
- vi) All windows proposed on the east elevation shall have a minimum sill height of 1.6 metres above the finished floor level or be fitted with obscure glazing.

**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
DA 02 – Site Plan Issue B	Arkhaus	Dated 21/02/2018 Received 21/02/2018
DA 03 – Basement Plan Issue B		Dated 21/02/2018 Received 21/02/2018
DA 04 – Ground Floor Plan Issue B		Dated 21/02/2018 Received 21/02/2018
DA 05 – Ground Floor Plan A Issue B		Dated 21/02/2018 Received 21/02/2018
DA 06 – Ground Floor Plan B Issue B		Dated 21/02/2018 Received 21/02/2018
DA 07 – First Floor Plan Issue B		Dated 21/02/2018 Received 21/02/2018
DA 08 – First Floor Plan A Issue B		Dated 21/02/2018 Received 21/02/2018
DA 09 – First Floor Plan B Issue B		Dated 21/02/2018 Received 21/02/2018
DA 10 – Second Floor Plan Issue B		Dated 21/02/2018 Received 21/02/2018
DA 11 – Second Floor Plan A		Dated 21/02/2018 Received 21/02/2018

Issue B		
DA 12 – Second Floor Plan B Issue B		Dated 21/02/2018 Received 21/02/2018
DA 13 – Third Floor Plan Issue B		Dated 21/02/2018 Received 21/02/2018
DA 14 – North Elevation Issue B		Dated 21/02/2018 Received 21/02/2018
DA 15 – South Elevation Issue B		Dated 21/02/2018 Received 21/02/2018
DA 16 – Elevations West & East Issue B		Dated 21/02/2018 Received 21/02/2018
DA 17 – Sections Issue B		Dated 21/02/2018 Received 21/02/2018
DA 18 – Streetscape Issue B		Dated 21/02/2018 Received 21/02/2018
DA 19 – Perspective Issue B		Dated 21/02/2018 Received 21/02/2018
DA 26 – Colours & Finishes Schedule Issue B		Dated 21/02/2018 Received 21/02/2018
DA 28 – Waste Management Plan & Services Plan Issue B		Dated 21/02/2018 Received 21/02/2018
DA 29 – Demolition Plan Issue B		Dated 21/02/2018 Received 21/02/2018
LP 01 of 05 Cover Sheet & Site Plan Rev E	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
LP 02 of 05 Basement Plan & Ground Floor Plan Rev E	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
LP 03 of 05 First Floor, Second Floor and Roof Plan	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
LP 04 of 05 Plant Schedule & Plant Palette	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
LP 05 of 05 Specification & Details	Affordable Design Studio	Dated 19/02/2018 Received 21/02/2018
Stormwater Drawings Dwg No's D00, D01, D02, D03, D04, D05, D08, D09 and D10. Revision A.	Australian Consulting Engineers	Dated March 2017 Received 21/02/2018

Reference Document(s)	Author	Date Received
BASIX Certificate No. 800408M	Prepared by Certified Energy	Dated 11 April 2017 Received 24 April 2017

Access Compliance Report	Vista access architects	Undated Received 24 April 2017
Acid Sulphate Investigation Report	C.S.T.S	Dated 12 April 2017 Received 24 April 2017
Acoustic Report	West & Associates	Dated 29 March 2017 Received 24 April 2017
Acid Sulfate Soils Assessment and Management Plan	Environmental Investigations	Dated 4 May 2015; Received 12 January 2018

2. This Consent relates to land in Lot 4 DP 10538 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) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2. If they are located on balconies or in public, they are to be appropriately screened;
  - c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans;
  - d) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004;
  - e) Bicycle parking facilities shall be designed in accordance with AS2890.3:1993; and
  - f) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004.
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 IMPOSED BY EXTERNAL AUTHORITIES**

6. The following conditions imposed by **SACL** are as follows:
- a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
  - b) The application sought approval for the PROPERTY DEVELOPMENT to a height of 23.00 metres Australian Height Datum (AHD).
  - c) In his capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, Peter Bleasdale has no objection to the erection of this development to a maximum height of 23.0 metres AHD.
  - d) The approved height is inclusive of all lift over-runs, vents, chimneys, aerals, TV antennae, construction cranes etc.
  - e) Should you wish to exceed this height a new application must be submitted.
  - f) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
  - g) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
  - h) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.



- i) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
  - j) The height of the prescribed airspace at this location is 51 metres above AHD.
  - k) Planning for Aircraft Noise and Public Safety Zones
  - l) Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).
  - m) Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.
7. The following conditions imposed by **Sydney Water** are as follows:
- a) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
  - b) The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.
- The [Tap in™](#) service provides 24/7 access to a range of services, including:
- i) building plan approvals
  - ii) connection and disconnection approvals
  - iii) diagrams
  - iv) trade waste approvals
  - v) pressure information
  - vi) water meter installations
  - vii) pressure boosting and pump approvals
  - viii) changes to an existing service or asset, e.g. relocating or moving an asset.
- c) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.
8. The following conditions imposed by **Water NSW** are as follows:

## General Terms of Agreement

- a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
- c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- d) WaterNSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- e) If the basement is not "tanked", the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

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

9.

- a) Prior to the commencement of work, a suitably qualified project arborist (AQF level 5 or greater) is to be engaged to advise relating to the protection of street trees and to supervise the installation and maintenance of tree protection measures. Tree Protection Zones shall be established in accordance with AS4970-2009 (Protection of trees on Development Sites) with protective fences at least 1.8 metres high erected outside the drip lines where possible around each of the two street trees located on the nature strip at the front of the site which are required to be retained. The protective fences shall consist of chain wire mesh temporary fence panels securely mounted and braced to prevent movement, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds,

- vehicle access or cleaning of tools and equipment are not permitted within the Tree Protection Zones at any time.
- b) The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction.
  - c) Fencing shall be erected to ensure the public footway is unobstructed.
  - d) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
  - e) Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.
  - f) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
10. An Erosion and Sediment Control Plan (ESCP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004). All management measures recommended and contained within the Erosion and Sediment Control Plan (ESCP) shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times. A copy of the ESCP shall be kept on-site at all times and made available to Council Officers on request.
11. Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.
- The controls are to be designed and installed in accordance with the Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Regional Organisation of Councils. Copies of the guidelines are available from Council.
12. A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.
- Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.
13. Erosion and sediment control devices shall be installed and functioning 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 public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines including the *Protection of the Environment Operations Act 1997*.
- These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

14. The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
15. For any water from site dewatering to be permitted to go to the stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report.

Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.
16. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
17. 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.
18. A dilapidation survey shall be undertaken of all adjoining properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.
19. 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.
20. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
21. 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.

22. Dewatering is not permitted on this site without NSW-EPA approval.
23. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- a) Must preserve and protect the building/ fence from damage; and,
  - b) If necessary, underpin and support such building in an approved manner;
  - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - d) 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, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - e) If the soil conditions required it:
    - i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
    - ii. Adequate provision must be made for drainage.
24. 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
  - g) Permit to use any part of Council's road reserve or other Council lands

25. Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepare 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 ad08.

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

26. Prior to the issue of a Construction Certificate, an amended landscape plan shall be submitted to Council for approval addressing the following:
- (a) Roof terrace landscape proposal is limited to small shrubs and groundcovers, and some feature plants. The planter boxes on the roof terrace shall include screen plants along boundaries with small leaves in order to achieve visual and acoustic privacy.

- (b) Tree planting-front yard. Proposed two (2) *Corymbia citriodora* 'Scentuous' will only grow 5 to 6 meters high. One (1) Australian native tree with a minimum pot size supplied at 75 litre, to be planted in the frontage garden, to reach a minimum mature height of 12 meters to minimise the bulk of proposed built form. Details are to be submitted to and approved by Council prior to the issue of a Construction Certificate. Recommended species are: *Eucalyptus haemastoma*, *Angophora floribunda*, *Lophostemon confertus*
27. Prior to the issue of a Construction Certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
28. An Acid Sulfate Soils Management Plan, that has been prepared by a suitably qualified and experienced environmental/geotechnical consultant, shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority) prior to the issue of any Construction Certificate. This plan shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:
- a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
  - b) Management of acid sulfate affected excavated material;
  - c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
  - d) Run-off control measures for the acid sulfate affected soil.
- This report shall be provided prior to the issue of any construction certificate and all recommendations of the report shall be implemented during works on site.
29. Stormwater management requirements for the development site, including the final discharge / end connection point, must comply with Botany DCP Part 10 – Stormwater Management.
30. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Council or an Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany DCP Part 10 sets out the minimum documentation requirements for detailed design plans.
31. A dedicated car wash bay is required. A tap shall be provided. A sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Botany DCP Part 3A. Details shall be provided with the plans accompanying the Construction Certificate.
32. 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.
33. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-



- a) Footpath Crossing Deposit \$37,484.25 (See below)
- b) Development Control \$3,000.00
- c) Section 7.11 Contributions (Section 94) \$220,000.00 (See below)

34. The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2016. This result is a total contribution of **\$220,000.00**, to be paid to Council prior to the issue of the Construction Certificate.

The contribution is broken down as follows:

- a) Community Facilities: \$17,600.00
- b) Open Space: \$184,800.00
- c) Administration: \$2,200.00
- d) Transport: \$15,400.00

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

35. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$37,484.25 (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.
36. 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.
37. 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.
38. Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:
- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,

- b) The proposed phases of construction works on the site and the expected duration of each construction phase,
  - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
  - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
  - e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
  - f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
  - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
  - h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
  - i) Proposed protection for Council and adjoining properties, and
  - j) The location and operation of any onsite crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
  - k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
  - l) A plan (written and/or diagrammatic) showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
39. Prior to the issue of a Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:
- a) be prepared by a RMS accredited consultant,
  - b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
  - c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

*Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation*

*of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*

40. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
  - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council),
  - c) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
  - d) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the Construction Certificate.

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

41. 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 and,
- d) External door specification,
- e) Acoustically treated mechanical ventilation.

#### **DURING WORKS**

42. The following conditions must be complied with during demolition, excavation or construction:

- a) Existing street tree located at the front of the property shall not be removed or pruned, including root pruning, without the written consent of Council.
  - b) Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer (or the consulting Arborist) after a site inspection so as not to unduly impact or stress the tree.
  - c) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council will invoice the Applicant for costs associated with remedial pruning work or tree replacement. For trees on private property, the Applicant will be required to undertake tree maintenance/replacement work, as specified by Council.
43. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
44. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
45. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
46. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
47. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control

Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

**Note:** The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.

48. The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soil Management Plan required to be submitted prior to any construction certificate including:
  - a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil; and
  - b) Management of acid sulfate affected excavated material;
  - c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
  - d) Run-off control measures for the acid sulfate affected soil.
49. For any water from site dewatering to be permitted to go to the stormwater system, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report. Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.
50. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
51. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
52. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
  - a) The Erosion and Sediment Control Plan;
  - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ("The Blue Book"); and
  - c) Protection of the Environment Operations Act 1997.
53. During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be

conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.

54. 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 afterhour's contact telephone number.
  - b) Any such sign is to be removed when the work has been completed.
55. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
56. 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.
57. 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.
58. 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).
59. 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 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos;
  - b) Protection of the Environment Operations Act 1997;
  - c) Protection of the Environment Operation (Waste) Regulation;
  - d) DECC Waste Classification Guidelines 2008.
  - e) No demolition materials shall be burnt or buried on the site.
60. 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
61. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
62. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
63. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
- a) Office of Environment and Heritage (OEH) approved guidelines; and  
Protection of the Environment Operations Act 1997; and  
Protection of the Environment Operations (Waste) Regulation 2014.  
All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
64. Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
65. No demolition materials shall be burnt or buried on the site.
- 66.
- 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 Ausgrid, 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.
67. 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.
68. 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.
69. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
70. 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.
71.
  - 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.
72. 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 Environmental Noise Manual – Chapter 171 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.

- 73. 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.

74.

- 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.
75. 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.
76. 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.
77. Construction Operations:
- a) the applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
  - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
  - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (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.
78. During Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from

erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.

79. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
80. 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.

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

81. The following conditions must be complied with prior to the issue of any Occupation Certificate:
  - i) All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
  - ii) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
82. Prior to the issue of any Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
83. 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.
84. Prior to release of any 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).
85. Prior to the issue of any Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.

86. 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 the issue of any Occupation Certificate of the development and release of damage deposit.
87. 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.
88. The Council nature strip in King 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.
89. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
90. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Botany DCP Part 10 - Stormwater Management. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
91. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
92. 17 off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
93. Construction related activities must not take place on the roadway without Council approval. Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit. Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RTA. Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.
94. The following works will be required to be undertaken in the road reserve at the applicant's expense:
  - i) Construction of a new fully constructed concrete vehicular entrance/s; and
  - ii) Removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required.

95. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council on 9562 1670. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
96. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
97. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
98. The overflow from the rainwater tank shall be directed to the storm water system.
99. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Council's DCP 78 - Stormwater Management. The certificate shall be in the form specified in DCP 78 and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
100. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
101. A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
102. A Restrictions on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure the following:-

*On-site detention system* - A Restriction on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure that there are no alterations made to the on-site detention system which is, or shall be, constructed on the lot(s) burdened. The expression '*on-site stormwater detention system*' shall include all ancillary gutters, pipes, drains, orifice plate, walls, kerbs, pits, grates, tanks, chambers, basins, rainwater tanks (if an airspace "credit" is claimed against the storage volumes) and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to the temporary storage. The on-site detention system is detailed on the approved plans prepared by ACOR Consultants dated Aug 2017. Any on-site detention system constructed on the lot(s) burdened is hereafter referred to as '*the on-site detention system*'.

*Pump-Out Facilities* - A Restriction on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure that there are no alterations made to any pump out facilities. The expression '*pump-out system*' shall include all ancillary

pipes, drains, kerbs, pits, grates, tanks, chambers, and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to the temporary storage. The pump-out system is detailed on the approved plans prepared by ACOR Consultants dated Aug 2017. Any pump-out system constructed on the lot(s) burdened is hereafter referred to as *'the pump-out system'*.

*Stormwater Quality Improvement Device* - A Restriction on the use of land pursuant to Section 88B of the *Conveyancing Act 1919* shall be created to ensure that there are no alterations made to the stormwater quality improvement device (SQID) which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of the Council. The expression *'Stormwater Quality Improvement Device (SQID)'* shall include all devices and mediums that are designed to treat stormwater as well as all ancillary pipes, drains, kerbs, pits, grates, chambers, basins and surfaces that direct stormwater to the SQID. The SQID is detailed on the approved plans prepared by ACOR Consultants dated Aug 2017. Any Stormwater Quality Improvement Device (SQID) constructed on the lot(s) burdened is hereafter referred to as *'the device'*.

The Bayside Council is to be nominated as the Authority to release, vary or modify these restrictions on the use of land. The Restriction/s are to be submitted to Council for approval prior to lodgement with NSW Land and Property Information. Proof of registration shall be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Standard wording of these can be found in Botany DCP Part 10 Appendix B, C & E.

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

103. Ongoing maintenance of the road verges and footpaths in King Street shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.
104. The overflow from the rainwater tank shall be directed to the storm water system.
105. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.
106. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

- a) permit stormwater to be temporarily detained and pumped by the system;
- b) keep the system clean and free of silt, rubbish and debris;
- c) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- d) carry out the matters referred to in paragraphs (b) and (c) at the proprietor's expense;



- e) not make alterations to the system or elements thereof without prior consent in writing of the Council.
- f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
- g) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

107. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.

The Registered Proprietor will:

- i) permit stormwater to be temporarily detained by the system;
- ii) keep the system clean and free of silt, rubbish and debris;
- iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- v) not make alterations to the system or elements thereof without prior consent in writing of the Council.
- vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
- viii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

108. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.

109.

- a) Each residential dwelling (apartment) is approved as a single dwelling. They 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;
- b) The adaptable apartments approved under this development consent is to remain unaltered at all times; and
- c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces shall be monitored by CCTV cameras at all times.

110. The communal outdoor roof terrace area shall not be used between the hours of 10:00pm – 7:00am each day.

111. 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*.

112. A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
- b) Before 7 am or after 10 pm on any other day.

113. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).

The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

114.

- a) A notice of requirement shall be obtained from the Water Board;
- b) A Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.

Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.

#### **ADVISORY NOTES**

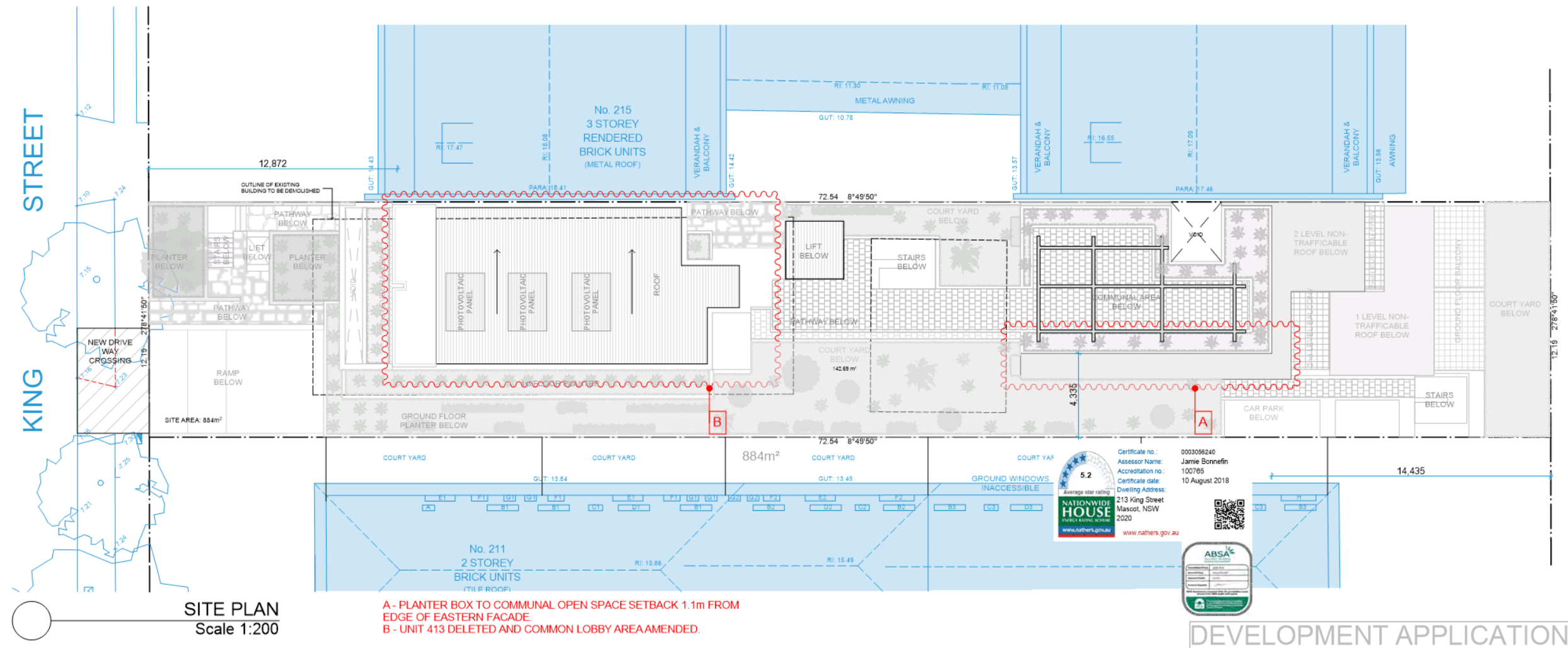
The following recommendations are made from NSW Police:

- Installation of CCTV cameras within and around the development.
- Improved lighting around the footpaths and car park areas within the development
- Ensuring the building design minimises the potential for climbing onto balconies
- Landscaping that promotes natural surveillance of common areas
- Underground car park that does not have hidden areas or dark spots. Main entry and exit points to car park to have CCTV installed.
- It is NOT advised to install storage cages or similar for the residents in the underground car park. If it is required, consider that they should NOT be constructed in an isolated area. The cages are easy targets when they have little supervision. CCTV cameras

must cover this area if they are constructed. Solid steel housing and quality key locks should be used to prevent access. All cages to be at least 8ft in height with adequate roofing, cages below this allow people access over the top

- Security measures in place for entry doors and lifts (security passes)
- Strongly recommended all letter boxes and any form of mail ports be built internal of the building. No letter boxes be available/accessible to the public without security swipe passes.
- CCTV to be installed in this vicinity.

<b>LEP &amp; DCP</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>SOLAR ACCESS &amp; VENTILATION</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>PARKING</b>		
<b>ZONING</b>	<b>R3</b>	<b>R3</b>	<b>SOLAR ACCESS</b>	<b>70% (9 UNITS)</b>	<b>83% (10 UNITS)</b>	<b>UNITS</b>	<b>RATE</b>	<b>REQUIRED</b>
<b>FSR</b>	<b>0.85:1</b>	<b>0.73:1</b>	<b>VENTILATION</b>	<b>60% (8 UNITS)</b>	<b>100% (12 UNITS)</b>	10 x 1 BEDRM	1.0	10
<b>HEIGHT</b>	<b>12m</b>	<b>14.4m</b>				2 x 2 BEDRM	1.2	2
						<del>4 x 3 BEDRM</del>	<del>1.5</del>	<del>2</del>
			<b>STORAGE</b>	<b>6m³ - 10m³</b>	<b>6m³ - 10m³</b>			
<b>CALCULATIONS</b>						12 UNITS		12 SPACES
<b>SITE AREA</b>	<b>884m²</b>					1/5 VISITOR		3 SPACES
<b>SOFT LANDSCAPED AREA</b>	<b>min. 35% = 309.4m²</b>	<b>284.67m²</b>						
<b>HARD LANDSCAPED AREA</b>	<b>max. 20% = 176.8m²</b>	<b>217.08m²</b>				<b>TOTAL</b>		<b>15 SPACES</b>
<b>DEEP SOIL AREA</b>	<b>min. 7% = 62m²</b>	<b>93.7m²</b>				*(NOTE: 2 ACCESSIBLE SPACES REQUIRED)		
<b>COMM. OPEN SPACE</b>		<b>318.3m²</b>				<b>PROPOSED</b>		
<b>GROUND FLOOR</b>		<b>250.32m²</b>				<b>BASEMENT - 17 SPACES</b>		
<b>FIRST FLOOR</b>		<b>200.28m²</b>				<b>(INCLUDING 2 ACCESSIBLE CAR SPACE</b>		
<b>SECOND FLOOR</b>		<b>200.42m²</b>				<b>&amp; 1 CAR WASH BAY)</b>		
<b>THIRD FLOOR</b>		<b>100.32m²</b>				<b>TOTAL</b>		<b>17 SPACES</b>
<b>TOTAL</b>		<b>651.02m²</b>						



**ARKHAUS** (02) 9697 9554 [hello@arkhaus.com.au](mailto:hello@arkhaus.com.au) [www.arkhaus.com.au](http://www.arkhaus.com.au) Suite 4.01/ 77 Dunning Avenue, Rosebery NSW 2018

NICK LYCENKO - REGISTERED ARCHITECT NO.3010

The works to be completed in accordance with the National Construction Code, Australian Standards and relevant by laws. All proprietary items are to be installed in accordance with manufacturers details and specifications. Statutory authority approvals and specifications that form part of the construction methods are to be adhered to. Work references of dimensioned measurements are to be taken from stated measurements. These drawings have been prepared by Arkhaus and remain the property of the above mentioned party. These drawings are not to be used in any way without the permission of Arkhaus and are subject to copyright laws.

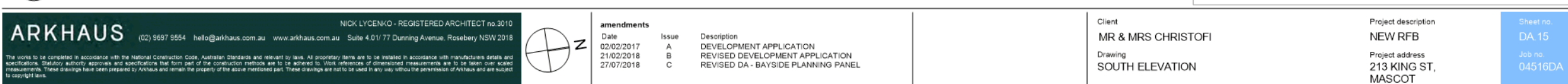
amendments			
Date	Issue	Description	
02/02/2017	A	DEVELOPMENT APPLICATION	
21/02/2018	B	REVISED DEVELOPMENT APPLICATION	
27/07/2018	C	REVISED DA - BAYSIDE PLANNING PANEL	

Client  
MR & MRS CHRISTOFI  
Drawing  
SITE PLAN

Project description  
NEW RFB

Project address  
213 KING ST,  
MASCOT

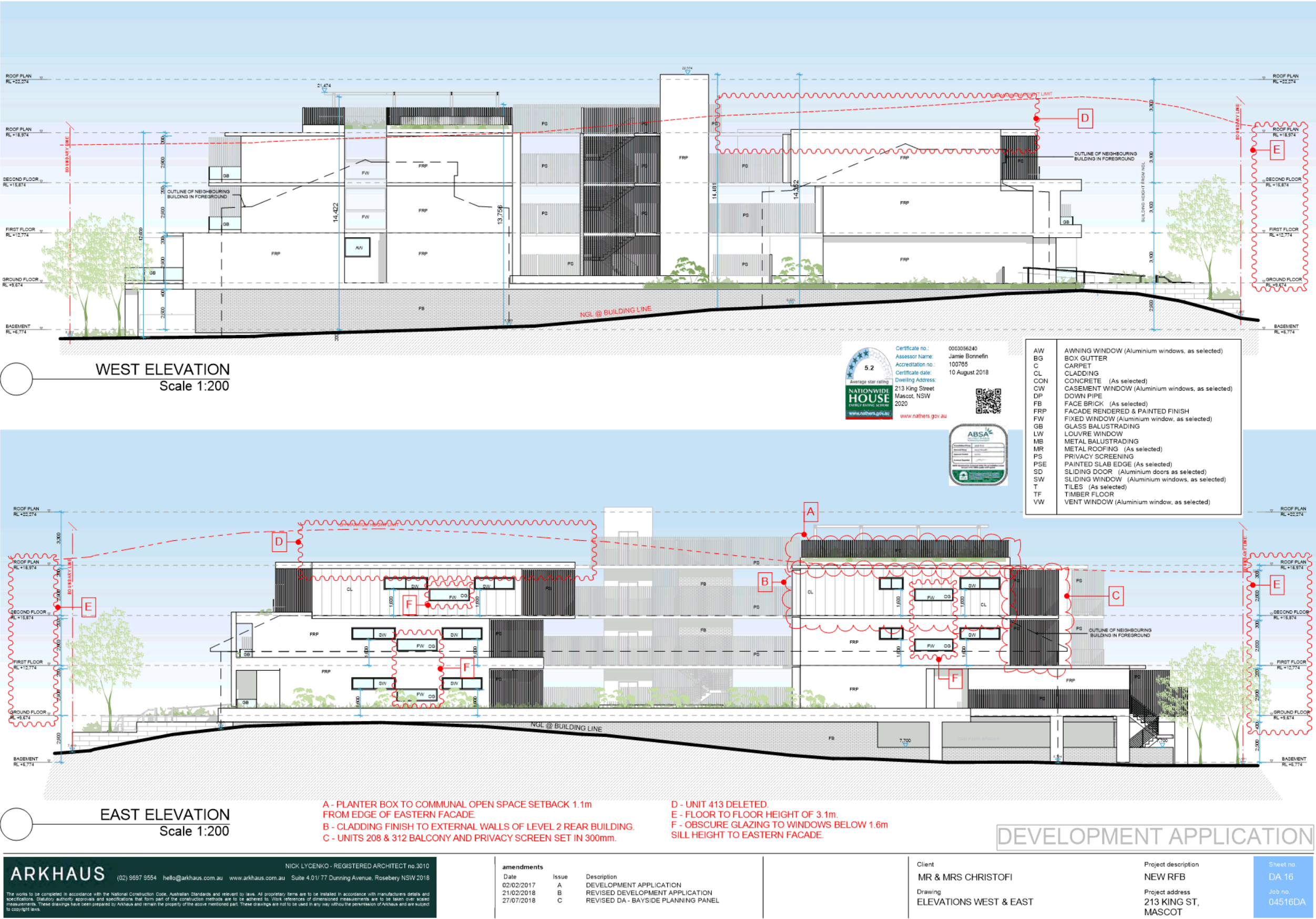
Sheet no.  
DA.02  
Job no.  
04516DA







AW	AWNING WINDOW (Aluminium windows, as selected)
BG	BOX GUTTER
C	CARPET
CL	CLADDING
CON	CONCRETE (As selected)
CW	CASEMENT WINDOW (Aluminium windows, as selected)
DP	DOWN PIPE
FB	FACE BRICK (As selected)
FRP	FACADE RENDERED & PAINTED FINISH
FW	FIXED WINDOW (Aluminium window, as selected)
GB	GLASS BALUSTRAIDING
LW	LOUVER WINDOW
MB	METAL BALUSTRAIDING
MR	METAL ROOFING (As selected)
PS	PRIVACY SCREENING
PSE	PAINTED SLAB EDGE (As selected)
SD	SLIDING DOOR (Aluminium doors as selected)
SW	SLIDING WINDOW (Aluminium windows, as selected)
TF	TILES (As selected)
TFM	TIMBER FLOOR
VW	VENT WINDOW (Aluminium window, as selected)





**APPENDIX 1**

**CLAUSE 4.6**

**EXCEPTION TO DEVELOPMENT STANDARD**

**HEIGHT STANDARD - CLAUSE 4.3 OF BOTANY BAY LEP 2013**

development application for the demolition of the existing buildings and the construction of a new four (4) storey residential flat building comprising 12 apartments with semi-basement car parking for 17 vehicles

213 KING STREET, MASCOT

SUBMITTED TO

BAYSIDE CITY COUNCIL

PREPARED BY

ABC PLANNING PTY LTD

AUGUST 2018

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

This *Clause 4.6 Exception to development standards* submission under the *Botany Bay Local Environmental Plan 2013* has been prepared to accompany the development application submitted to Bayside Council for the demolition of the existing buildings and the construction of a new three (3) storey residential flat building comprising 12 apartments with semi-basement car parking for 17 vehicles at 213 King Street, Mascot, as detailed in Architectural Plans prepared by Arkhaus dated 27 July 2018.

As shown in Figure 2, the proposed development has a maximum height of 14.481m (RL22.574) to the top of the lift overrun, exceeding the maximum permissible height of 12m established under *Clause 4.3 Height of buildings* under the *Botany Bay LEP 2013* by 2.281 metres (20.7%). The pergola structure over the rooftop communal open space, fence surrounding rooftop communal open space and minor portion of upper storey of rear building also exceed the maximum permissible height to a lesser extent.

This submission contends that strict compliance with the maximum height is unreasonable and/or unnecessary in the circumstances of the case, that the variation sought can be supported and that the *Clause 4.6 Exception to development standards* should be upheld.



Figure 1: Excerpt Height of Buildings Map – Sheet HOB\_001 with subject site superimposed

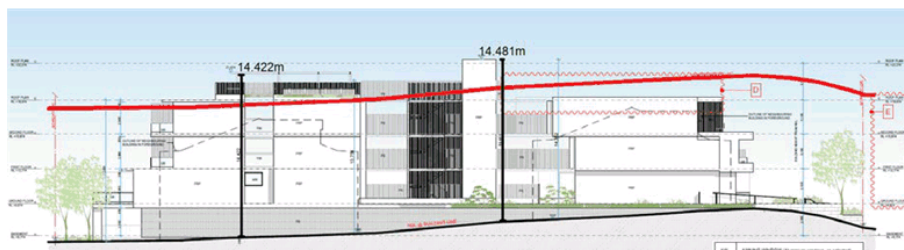


Figure 2: Excerpt West Elevation (Arkhaus 27/7/18, Dwg No. DA 16) with height limit and dimensions emphasised

**Clause 4.6 Exceptions to development standards**

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Director-General has been obtained.*

(5) *In deciding whether to grant concurrence, the Director-General must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

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

We submit that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case on the grounds that:

- The overall height of the development is exacerbated by:
  - The sloping topography resulting in the southern wing being substantially below the height limit and a minor portion of the northern wing exceeding the height limit (see Figure 2); and
  - Mitigation of flood impacts requiring flood freeboard level of RL7.9 metres.
- Non-compliant components:
  - Include the development's primary communal open space (64% of total communal open space within the subject site located on roof) and enable equitable access to that communal open space (lift); and
  - Are not inconsistent with:
    - Objectives of the development standard and applicable land use zone (see response to Question 4); or
    - Intent of the development standard to enable development with height 3 storeys with 3m floor to ceiling heights and sufficient slab thickness for the provision of services.
  - Are not visible from public domain, ensuring built form outcome consistent with streetscape character comprising mix of 1-2 storey dwelling houses and 2-3 storey multi dwelling housing development; and
  - Do not result in any adverse external amenity impacts in regard to loss of view, overshadowing or privacy to neighbouring properties, beyond that of a compliant building. As illustrated on the accompanying shadow diagrams, the shadows continue to allow for compliance of solar access to the eastern and western neighbours, whilst the southern neighbours also receive a compliant degree of solar access.
- In the case of:
  - The rooftop communal open space: enforcing the development standard would deny the primary communal open space to future residents of the proposed development (64% of total communal open space within the subject site located on roof). Requiring removal of the pergola structure over the rooftop communal open space would deny shading and detract from its useability and high level of amenity derived from northerly aspect and range of facilities including BBQ, lounge seating, raised timber decking with integrated landscaping (see Landscape Plan forming part of the application), without improving amenity to neighbouring dwellings.
  - The lift overrun: enforcing the development standard would preclude equitable access to the rooftop communal open space without tangible improvement in amenity to neighbouring dwellings.

It is noted that the proposed development complies with the allowable FSR of 0.73:1 and demonstrates a suitable design response to the sites infill nature, amongst two established medium density residential uses.

Given the proposed development's compatibility with the existing and desired future character, it is considered that there are is no public benefit in maintaining the development standard. It is therefore submitted that strict compliance with the standard is unreasonable and unnecessary in the particular circumstances of the case and that there are circumstances particular to the subject site which confirms the reasonable nature of the variation in this instance.

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

There are sufficient environmental planning grounds to justify contravening the development standard on the grounds that the components of the proposed development exceeding the maximum permissible height:

- Will not result in greater bulk and scale, loss of views or visual or acoustic privacy impacts than would a compliant development;
- Will have acceptable overshadowing impacts (at least 2 hours solar access to east, west and southern neighbours retained); and
- Will not be visible from the public domain and therefore will not result in the development appearing inconsistent with existing streetscape character.

There are also no internal amenity grounds that would determine that the additional height should not be granted. This is demonstrated by the compliant degree of communal open space, private open space, natural ventilation, solar access, apartment sizes, layouts and separation distances.

The combination of the internal and external factors demonstrates that there are sufficient environmental grounds to permit the height variation in this instance.

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

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

**4. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out - clause 4.6(4)(a)(ii)**

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

Statement of Environmental Effects

213 King Street, Mascot

**BBLEP 2013 Height Objectives****(1) The objectives of this clause are as follows:**

(a) *to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner*

**Assessment:** Notwithstanding non-compliance with the development standard, the proposed development remains consistent with the desired future character of the area derived from:

- The intent of the development standard to enable development with height 3 storeys with 3m floor to ceiling heights and sufficient slab thickness for the provision of services; and
- Existing streetscape character comprising mix of 1-2 storey dwelling houses and 2-3 storey multi dwelling housing development.

(b) *to ensure that taller buildings are appropriately located,*

**Assessment:** As above.

(c) *to ensure that building height is consistent with the desired future character of an area,*

**Assessment:** As above.

(d) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

**Assessment:** Elements of the proposed development exceeding the maximum permissible height:

- Will have minor visual impact from neighbouring dwellings and will be unlikely to be perceived from the public domain;
- Will not disrupt any significant views from the public domain or neighbouring property;
- Will not result in loss of privacy due to planting at edge of rooftop communal open space preventing overlooking; and
- Will not result in additional overshadowing impacts due to falling within the existing shadows cast by existing multi dwelling housing development to the west and residential flat building to the east.

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

**Assessment:** Elements of the proposed development exceeding the maximum permissible height are unlikely to be perceived from adjoining roads or public places such as parks and community facilities and therefore will not adversely affect the streetscape.

The above assessment demonstrates that the variation does not raise any inconsistency with the objectives of the height standard.

Statement of Environmental Effects

213 King Street, Mascot

**CONSISTENCY WITH THE OBJECTIVES OF THE ZONE R3 MEDIUM DENSITY RESIDENTIAL****Zone R3 Medium Density Residential****Objectives of zone**

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

**Assessment:** Comprising 12 residential units including mix of apartment types, the proposed development contributing to the housing needs of the community and variety of housing types:

- Within a medium density residential environment; and
- In close proximity to services, promoting alternative modes of transport including public transport (Mascot Station 1.1 kilometres to the north-west and bus services operating in Botany Road 350 metres to the east) and walking and cycling.

Elements of the proposed development exceeding the maximum permissible height improve amenity to future residents without compromising the extent to which the development achieves the Objectives of the land use zone in which the subject site is located.



Statement of Environmental Effects

213 King Street, Mascot

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

**Assessment:** The proposed development is consistent with the Ministerial Directions under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, with particular reference to the following directions:

**3.1 Residential Zones****(1) The objectives of this direction are:**

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,
- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- (c) to minimise the impact of residential development on the environment and resource lands.

**3.4 Integrating Land Use and Transport****(1) The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:**

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and

**Conclusion**

The above assessment has demonstrated that strict compliance with the height control is unreasonable and unnecessary in the circumstances and that there would be no public benefit in maintaining the development standard in this instance.

It has also been demonstrated that the proposed height meets the objective to an equal or better degree than a development with a compliant height, given the positive streetscape outcome and consistency with the established pattern of development.

For reasons mentioned herein, this clause 4.6 variation is forwarded to Council in support of the variation to the height associated with the development proposal at 213 King Street, Mascot and is requested to be looked upon favourably by Council.

**Bayside Planning Panel**

**25/09/2018**

Item No	6.4
Application Type	Development Application
Application No	DA-2018/32
Lodgement Date	17/02/2018
Property	<b>DA-2018/32 - 41 O'Neill Street, Brighton Le Sands</b>
Ward	Botany Bay
Owner	Australian Festivals Pty Ltd
Applicant	Ms Jaqueline Saad
Proposal	Conversion of existing dwelling to a five (5) bedroom Boarding House
No. of Submissions	11 submissions
Cost of Development	\$18,000
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

- 1 That Development Application No. DA-2018/32 for the proposed conversion of the existing dwelling to a five (5) room boarding house development at No. 41 O'Neill Street Brighton Le Sands, be APPROVED pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 2 That the objectors be advised of the Bayside Planning Panels decision.
-

Brighton Memorial Playing Field

Brighton Open Space (Part)

O'NEILL STREET

O'CONNELL STREET

PRESIDENT AVENUE

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- 1 Supplementary Assessment Report [↓](#)
- 2 Original Report to BPP 8 May 2018 - 41 O'Neill Street, Brighton Le Sands [↓](#)
- 3 Revised Site Plan - 41 O'Neil Street Brighton Le Sands [↓](#)
- 4 Revised Elevations 1 - 41 O'Neil Street Brighton Le Sands [↓](#)
- 5 Revised Elevations 2 - 41 O'Neil Street Brighton Le Sands [↓](#)
- 6 Revised BCA [↓](#)
- 7 Revised Plan of Management [↓](#)

# BAYSIDE COUNCIL

## Supplementary Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2018/32
<b>Date of Receipt:</b>	17 February 2018
<b>Property:</b>	41 O'Neill Street, BRIGHTON LE SANDS (Lot 131 DP 4393)
<b>Owner:</b>	Australian Festivals Pty Ltd
<b>Applicant:</b>	Ms Jacqueline Saad
<b>Proposal:</b>	Conversion of existing dwelling to a five (5) room boarding house
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Eleven (11)
<b>Author:</b>	Julia Hunt
<b>Date of Report:</b>	14 September 2018

### Key Issues

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This is a supplementary report to the original Planning Report considered by the Bayside Planning Panel at their meeting on the 8 May 2018. The Panel made the following determination:

1. *That the Development Application No.DA-2018/32 for the proposed conversion of the existing dwelling to a five (5) room boarding house development at No. 41 O'Neill Street, Brighton Le Sands, be deferred.*
2. *That the applicant is given the opportunity to:*
  - a. *Amend the application to comply with minimum room sizes and plan of management provisions.*
  - b. *Amend the application by the deletion of the dividing wall in the tandem garage at the rear.*
  - c. *Engage an expert to provide advice on fire upgrade measures and compliance with the class of building as a boarding house.*
3. *That the objectors be advised of the Bayside Planning Panel's decision.*

This supplementary report addresses only those matters deferred at the first BPP meeting.

The applicant submitted revised architectural plans, BCA report and Plan of Management in July 2018. This supplementary report assesses those revised documents and matters deferred in the first BPP meeting to be reported back to the Panel for consideration.

In the initial design, the size of Bedroom 4 and Bedroom 5 were 9.59sqm and 11.48sqm respectively, which did not comply with the required 12sqm minimum room size under the SEPP (ARH) 2009. The floor layout has now been revised, with Bedroom 4 and Bedroom 5 both measuring 12.04sqm in area which complies with the minimum accommodation room size under the SEPP (ARH) Clause 29 (f). The plans are also revised deleting the internal dividing wall in the garage, in accordance with the BPP recommendation.

The revised BCA report was assessed by Council's Certification Department regarding fire upgrade measures and compliance with the class of building as a boarding house and found to be satisfactory subject to conditions of consent.

The proposal is recommended for approval, subject to the recommended conditions of consent.

## Recommendation

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1. That the Development Application No.DA-2018/32 for the proposed conversion of the existing dwelling to a five (5) room boarding house development at No. 41 O'Neill Street, Brighton le Sands, be APPROVED pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

2. That the objectors be advised of the Bayside Planning Panel's decision.

## Background

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### History

Council received Development Application No. DA-2018/32 on 17 February 2018 seeking consent for the conversion of the existing dwelling house to a six (6) room boarding house development. At grade parking is to be maintained from both O'Neill Street (one parking space) and Cybil Lane (two spaces via a detached double car garage).

The application was placed on public exhibition for a period of 28 days from 22 February to 21 March 2018 and a total of eleven (11) submissions were received. Revised architectural plans were received by Council on 21 March with revisions resulting in the conversion of the non-compliant Bedroom 6 to an Office, resulting in a five (5) room boarding house development.

The DA has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (the Act); including the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) and State Environmental Planning Policy (Building Sustainability Index) BASIX 2004. The site is zoned R2 - Low Density Residential and the proposed change of use of the existing dwelling house to a boarding house development is permitted with Council consent.

Clause 29(2) of the ARHSEPP sets standards that cannot be used as grounds to refuse a development. Key issues identified under Clause 29(2) were minor and related only to minimum accommodation size requirements, discussed in the body of this Report. Clause 30A of the ARHSEPP requires that *'a consent authority must not consent to a boarding house unless the design of the development is compatible with the character of the local area'*. The proposed development does not result in any changes to the built form and site layout, retaining the bulk, scale and rhythm of the existing streetscape. The proposal is found to respect the character of the local area in this regard.

The application went to the Bayside Planning Panel meeting for consideration on Tuesday 8 May 2018. The Panel deferred the application subject to revised documents being submitted for further consideration by the Panel.

The applicant submitted revised plans and a revised Plan of Management to Council on 19 July 2018. The applicant then submitted a revised BCA Report on 25 July 2018 which was referred to Council's Senior Building Surveyor for their assessment. The proposed revised documents are assessed in the relevant sections of this supplementary report.

### **Proposal**

Council is in receipt of DA-2018/32 for the conversion of the existing dwelling to a five (5) room boarding house. The original application sought consideration of a six (6) room boarding house development, however revised architectural plans received by Council on 21 March, have reduced the overall room number to five (5) with two (2) kitchens; one communal lounge room to the rear and direct access to the existing private open space.

Specifically, the proposal comprises of the following:

- The construction of a light weight internal wall to enclose the existing lounge room and convert to Bedroom 3;
- Demolish and remove an existing nib wall to achieve a wider access to Bathroom 1 so as to satisfy the BCA provisions relating to accessibility;
- Removal of the existing hallway door;
- Minor external alterations including construction of an access ramp fronting O'Neill Street; and
- Change of use of existing dwelling house to boarding house development.

Stormwater discharge is to remain unaltered with all runoff discharged to O'Neill Street via a gravity system. The application is also accompanied by a revised Plan of Management dated 23 March 2018.

### **Site location and context**

The subject site, legally identified as Lot 131 DP 4393, is a regular shaped allotment with a primary frontage of 9.55 metres to O'Neill Street; depth of 47.4 metres and total site area of 453.059sqm. The site has a dual frontage and is currently occupied by a single storey brick dwelling house and vehicular crossing addressing O'Neill Street and rear lane access with a double car garage addressing Cybil Lane as shown in the images below.



The site is adjoined by a single storey fibro dwelling house to the east; a two storey brick dwelling house to the west; and the Brighton Le Sands Memorial Fields directly north. O'Neill Street is characterised predominantly of single and two storey dwellings with dual occupancy developments interspersed throughout and the Brighton Le Sands Public School exists approximately 600 metres north east of the site.

## 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*.

#### **S4.15 (1) - Matters for Consideration - General**

#### **S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

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

#### **Part 2 – New Affordable Rental Housing - Division 3 – Boarding Houses**

The Bayside Planning Panel determined in their meeting on the 8 May 2018 that

*the applicant is given the opportunity to:*

- a. Amend the application to comply with minimum room sizes and plan of management provisions.*
- b. Amend the application by the deletion of the dividing wall in the*



*tandem garage at the rear.*

The Panel was satisfied with other relevant clauses under the SEPP (ARH). The deferred matter of room size under the SEPP is addressed below.

**Clause 29(2)(f) - Accommodation Size**

Clause 29(2)(f) requires:

*if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:*

- (i) 12 sqm in the case of a boarding room intended to be used by a single lodger, or*
- (ii) 16 sqm in any other case.*

In the previous proposed design Bedroom 4 and Bedroom 5 did not comply with the numerical provisions of this Clause. The size of Bedroom 4 and Bedroom 5 were 9.59sqm and 11.48sqm respectively. The BPP determination required all rooms comply with minimum accommodation size standards. Revised plans received by Council Dated July 2018 amended these room sizes, which now comply with the minimum room size controls under the SEPP (ARH) 2008 as follows:

Bedroom 4: 12.04sqm

Bedroom 5: 12.04sqm

The bedroom sizes now comply with the SEPP (ARH) 2009 standards and the proposal is recommended for approval subject to conditions.

**Rockdale Local Environmental Plan 2011**

There were no deferred matters under RLEP 2011 at the BPP meeting on 8 May 2018.

**S4.15 (1)(a)(iii) - Provisions of any Development Control Plan**

**Rockdale Development Control Plan 2011**

There were no deferred matters under RDCP 2011 at the BPP meeting on 8 May 2018.

**S4.15(1)(a)(iv) - Provisions of regulations**

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

**4.15(1)(b) - Likely Impacts of Development**Social Impact

A revised Plan of Management was submitted to Council as required by the BPP in their determination in May 2018. The revised Plan of Management dated July 2018 is included in the draft conditions of consent and ensures the management of the facility and behaviour of residents is in accordance with social expectations.

Construction

The revised BCA report as required by the BPP meeting determination in May 2018, was submitted to Council in July 2018, and was assessed by Council's Certification Unit and found satisfactory subject to conditions. The revised plans also deleted the internal dividing wall in the garage, in accordance with the BPP recommendation.

**S4.15(1)(c) - Suitability of the site**

All relevant matters pertaining to the suitability of the site for the proposed boarding house development were considered and satisfied in the assessment of the proposal at the BPP meeting in May 2018. There are no additional comments under this supplementary report.

**S4.15(1)(d) - Public submissions**

The application was placed on public exhibition for a period of 28 days from 22 February to 21 March 2018 and a total of eleven (11) submissions were received. All submissions were considered and satisfied at the BPP meeting in May 2018. There are no additional comments under this supplementary report.

**S4.15(1)(e) - Public interest**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. The proposed development respects the existing streetscape character and will maintain the building bulk and rhythm of a single storey dwelling house. Furthermore, the proposal has demonstrated to not have unreasonable impacts upon surrounding properties whilst providing affordable housing within the Bayside community. As such, it is considered that the development application is within the public interest and recommended for approval.

**S7.11 Contribution towards provision or improvement of amenities or services**

Council's s.7.11 Planner has confirmed contributions are not applicable to this proposal as the estimated cost of works are less than \$100,000. No further consideration is required in this regard.

## Schedule 1 - Draft Conditions of consent

### General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Site/Roof Plan, Drawing No. A03, Revision 2	EPA Solutions	July 2018	19 July 2018
Ground Floor Plan, Drawing No. A04, Revision 2	EPA Solutions	July 2018	19 July 2018
Elevations - 1, Drawing No. A05, Revision 2	EPA Solutions	July 2018	19 July 2018
Elevations - 2, Drawing No. A06, Revision 2	EPA Solutions	July 2018	19 July 2018

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
5. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes the fitting of any form of doors and/or walls.
6. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
7. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.

### Development specific conditions

The following conditions are specific to the Development Application proposal.

#### 8. Car Parking

- (a) Three (3) parking spaces shall be maintained within the site at all times;
- (b) The parking spaces shall not be used for the storage of goods at any time.

9. Residential air conditioners must be designed so as not to operate:
- during peak time—at a noise level that exceeds 5 dB(A) above the ambient background noise level measured at any property boundary, or
  - during off peak time—at a noise level that is audible in habitable rooms of adjoining residences.

*Peak time means:*

- the time between 8:00 am and 10:00 pm on any Saturday, Sunday or public holiday, or*
- the time between 7:00 am and 10:00 pm on any other day*

*Off peak time means: Any time other than peak time.*

10. The use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an “offensive noise” as defined under the provisions of the Protection of the Environment Operations Act, 1997.
11. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
12. The building shall be designed, constructed and maintained to comply with the requirements of the Local Government Act 1993, as amended and the Regulations there under.
13. The proprietor of the premises - places of shared accommodation shall provide Council with details for Council’s Environmental Health Unit register by completing the Registration form available on request from the customer service centre.
14. The premises shall be registered with the NSW Fair Trading by the proprietor of the Boarding Houses by completing the registration form available online at [www.service.nsw.gov.au](http://www.service.nsw.gov.au) and providing documentary evidence to the Principal Certifying Authority.
15. Occupation shall not commence until a final inspection has been carried out by Councils Environmental Health Officer and all health related requirements have been complied with.
16. A new building works to comply with the Disability (Access to Premises Buildings) Standard 2010 and AS1428.1 2009. Details to be provided prior to the issue of the construction certificate.
17. Occupancy

**A.** Nothing in this consent authorises the use of the premises as detailed on the approved plans for any land use of the site beyond the definition of 'Boarding House'.

A 'Boarding House' is defined as 'a building that:

- (a) is wholly or partly let in lodgings; and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry; and*
- (d) has rooms, some or all of which may have private kitchen and bathroom*

*facilities, that accommodate one or more lodgers,*

*but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

*Note. Boarding houses are a type of residential accommodation - see the definition of that term in this Dictionary.*

**B.** The Boarding House is to operate in accordance with the requirements of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

Any variation of the approved land use and occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

**C.** All tenants must enter into an occupancy agreement prior to commencing tenancy at the premises. The minimum period for the occupancy agreement must be three (3) months in accordance with the definition of 'Boarding House' in the ARHSEPP and RLEP 2011 (see 'A' above).

The form of the occupancy agreement shall, at a minimum, including the provisions contained within the '*Standard Occupancy Agreement for general boarding houses*' under the *Boarding Houses Act, 2012*.

18. The Boarding House shall comply with the following:
- (a) A maximum of five (5) rooms with five (5) beds shall be provided on the site. This includes 5 rooms for seven (7) lodgers at any one time.
  - (b) The use of the outdoor communal area and communal room will be restricted to between 8.00am and 10.00pm daily.
  - (c) A 24 hour/7 day contact number shall be provided to all immediate and nearby residential neighbours for use in the event of a disturbance. If the contact number changes, neighbouring residences shall be provided with a new telephone number within 7 days.
19. Plan of Management (PoM)
- (a) The Boarding House shall, at all times, be operated in accordance with the approved PoM, Revision 5 and dated 18 July 2018, except where amended in accordance with the consent.
  - (b) A copy of the approved PoM shall be displaced in the entry foyer and each of the boarding rooms at all times;
  - (c) A copy of the PoM shall be made freely available to family and visitors who frequent the facility, as well as to neighbouring property owners and local residents, if requested.
  - (d) The PoM shall be reviewed annually. If the PoM is updated following the review, the operator shall:
    - (i) ensure that the amended PoM is consistent with all conditions of this consent;
    - (ii) provide a copy of the amended PoM to Council within 7 days of completion;
    - (iii) ensure that the amended PoM includes any additional operational requirements as required by Council.

20. Subdivision of the Boarding House is prohibited. The Boarding house shall remain in single ownership and management at all times.
21. The common room must not be used for habitable purposes without prior development consent.
22. Residential air conditioners must be designed so as not to operate:
  - (a) during peak time - at a noise level that exceeds 5 dB(A) above the ambient background noise level measured at any property boundary, or
  - (b) during off peak time - at a noise level that is audible in habitable rooms of adjoining residences.

*Peak time means:*

*(a) the time between 8.00am and 10.00pm on any Saturday, Sunday or public holiday, or*

*(b) the time between 7.00am and 10.00pm on any other day,*

*Off peak time means:*

*(a) any time other than peak time.*

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

23. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

1. A Footpath Reserve Restoration Deposit of \$1,670.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
2. An environmental enforcement fee of 0.25% of the cost of the works.
3. A Soil and Water Management Sign of \$18.00.
24. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
25. If Council is appointed as the Principal Certifying Authority (PCA) then structural engineer's details shall be submitted prior to the issue of the Construction Certificate; such structural drawings shall be certified by the Structural Engineer that the design complies with the relevant S.A.A. Codes for the following:
  1. all reinforced concrete floor slabs and external ramps
26. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
27. Timber framing members shall comply with the relevant provisions of the National Timber Framing Code AS 1684-1999. Details of the roof truss, truss

layout and proposed method of bracing shall be submitted to the Principal Certifying Authority prior to the first inspection.

28. Under Clause 94 of the Environmental Planning & Assessment Regulation 2000, the existing building to be brought into conformity with Part 3.7.2, 3.7.4 & 3.7.5 of the Building Code of Australia/National Construction Code – Volume 2.

Details are to be submitted to the certifying authority for approval prior to the issue of any Construction Certificate.

### **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

29. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.

30. 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:

1. stating that unauthorised entry to the work site is prohibited, and
  2. 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.
- Any such sign is to be removed when the work has been completed.

This condition does not apply to:

3. building work carried out inside an existing building or
4. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.

31. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

### **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

32. A CC is required a copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.

33. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.

34. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.

35. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.

36. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.



37. The following conditions are necessary to ensure minimal impacts during construction:

1. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
2. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
3. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
4. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
5. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
6. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  1. spraying water in dry windy weather
  2. cover stockpiles
  3. fabric fences
7. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

8. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared

pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

**Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

38. A sign indicating the permissible maximum length of time during which a person may board or lodge in the premises must be conspicuously displayed to public view outside the premises.
39. A schedule showing the numeral designating each bedroom and dormitory and the number of persons permitted to be accommodated in each must be conspicuously displayed on the premises.
40. Each bedroom must be numbered in accordance with the schedule and there must be displayed clearly on the door of or in each bedroom the maximum number of persons allowed to be accommodated in the bedroom.
41. All fixtures, fittings, furniture, shall be constructed of durable, smooth, impervious materials capable of being easily cleaned. All parts of the premises and all appurtenances (including furniture, fittings, bedsteads, beds and bed linen) must be kept in a clean and healthy condition, and free from vermin.
42. If the place is one in which persons may board or lodge for 7 days or longer, an adequate number of beds (each provided with a mattress and pillow and an adequate supply of clean blankets or equivalent bed clothing), adequate storage space and blinds, curtains or similar devices to screen bedroom and dormitory windows for privacy must be provided for the occupants.
43. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
44. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
45. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
46. The noise reduction measures specified in the noise report prepared by prepared by Koikas Acoustics Pty Ltd (Project Number: 3112) dated 18 July 2017 shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
47. Prior to issue of any Occupation Certificate a registered plumber or other suitably qualified professional is to check the existing stormwater system for the building and shall provide a certificate stating that the system is satisfactory and in good working condition. If the existing system or any element of the system cannot be certified as being satisfactory and in good working condition then the substandard section of the existing system is to be renewed.

**Development consent advice**

1. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
2. *Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

3. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass all matters related to ensuring that the proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.
4. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.
5. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
  - choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the

equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

6. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".
7. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
8. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

**Bayside Planning Panel**
**8/05/2018**

Item No	BPP18.017
Application Type	Development Application
Application No	DA-2018/32
Lodgement Date	17/02/2018
Property	<b>41 O'Neill Street, Brighton Le Sands</b>
Ward	Botany Bay
Owner	Australian Festivals Pty Ltd
Applicant	Ms Jacqueline Saad
Proposal	Conversion of existing dwelling to a five (5) bedroom Boarding House
No. of Submissions	11
Cost of Development	\$18,000.00
Report by	Alexandra Hafner, Senior Development Assessment Planner

**Officer Recommendation**

- 1 That the Development Application No.DA-2018/32 for the proposed conversion of the existing dwelling to a five (5) room boarding house development at No. 41 O'Neill Street, Brighton le Sands, be APPROVED pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 2 That the objectors be advised of the Bayside Planning Panel's decision.

**Background**

Council received Development Application No. DA-2018/32 on 17 February 2018 seeking consent for the conversion of the existing dwelling house to a six (6) room boarding house development. At grade parking is to be maintained from both O'Neill Street (one parking space) and Cybil Lane (two spaces via a detached double car garage).

The application was placed on public exhibition for a period of 28 days from 22 February to 21 March 2018 and a total of eleven (11) submissions were received.

Revised architectural plans were received by Council on 21 March with revisions resulting in the removal of the non-compliant Bedroom 6 and conversion to an Office resulting in the proposal seeking consent for a five (5) room boarding house development.

The DA has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (the Act); including the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) and State Environmental Planning Policy (Building Sustainability Index) BASIX 2004. The site is zoned R2 - Low Density Residential and the proposed change of use of the existing dwelling house to a boarding house development is permitted with Council consent.

Item BPP18.017

1

Clause 29(2) of the ARHSEPP sets standards that cannot be used as grounds to refuse a development. Key issues identified under Clause 29(2) were minor and related only to minimum accommodation size requirements, discussed in the body of this Report. Clause 30A of the ARHSEPP requires that 'a consent authority must not consent to a boarding house unless the design of the development is compatible with the character of the local area'. The proposed development does not result in any changes to the built form and site layout, retaining the bulk, scale and rhythm of the existing streetscape. The proposal is found to respect the character of the local area in this regard.

The proposal is recommended for approval, subject to the recommended conditions.

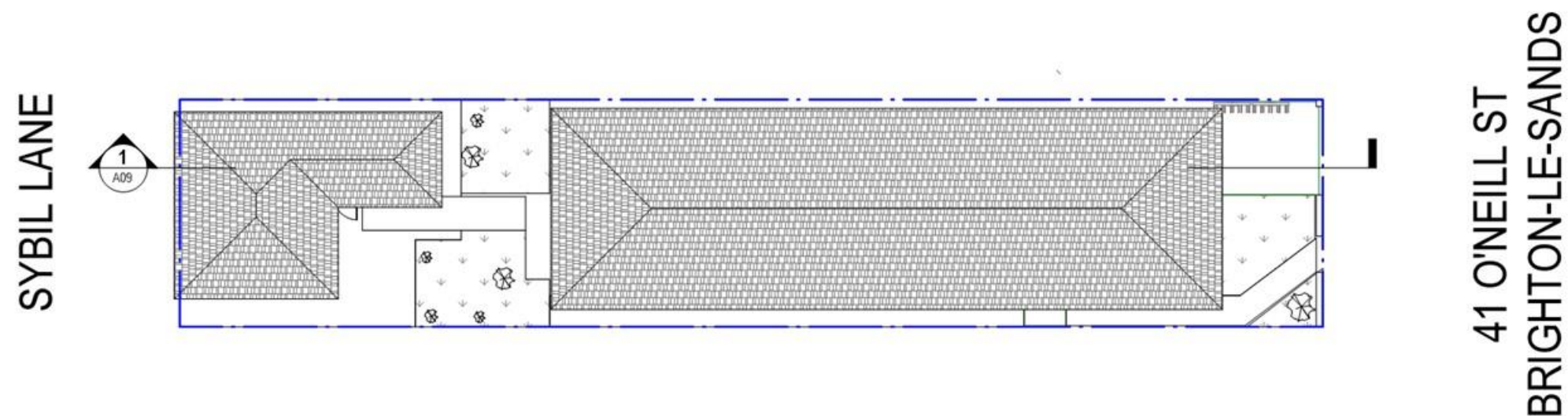
### Location Plan




**Attachments**

- 1 Planning Assessment Report
- 2 Site and Roof Plan
- 3 Elevations East and West
- 4 Sections and Schedules
- 5 Plan of Management
- 6 Clause 27

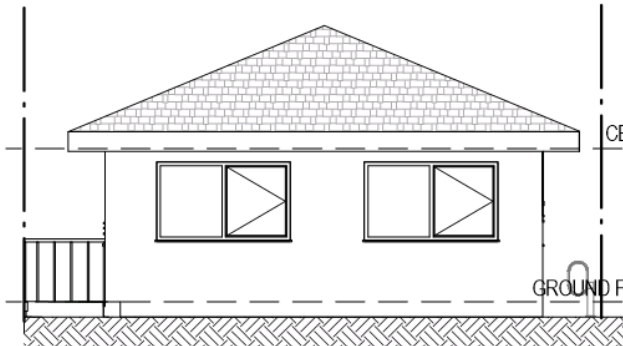




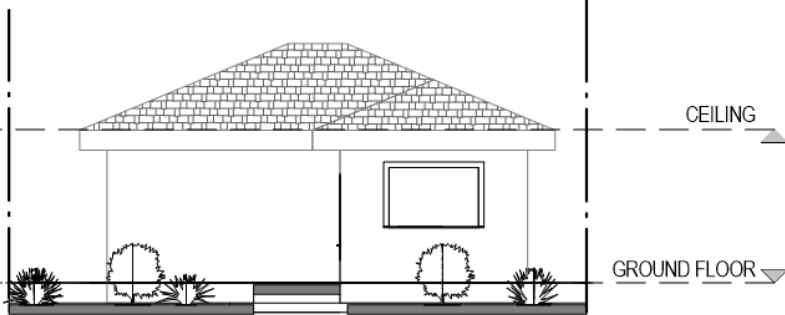
SITE AREA =	453.06m <sup>2</sup>
SITE COVERAGE =	229.36m <sup>2</sup> / 50.6%
LANDSCAPING =	202.30m <sup>2</sup> / 44.6%
PERVIOUS =	46.78m <sup>2</sup>
IMPERVIOUS =	155.52m <sup>2</sup>
POS =	58.30m <sup>2</sup>
ROOF AREA =	326.76m <sup>2</sup> (HOUSE + GARAGE)
HOUSE FOOTPRINT =	190.75m <sup>2</sup>
HOUSE GROUND FLOOR =	175.73m <sup>2</sup>
GARAGE =	53.63m <sup>2</sup>
FSR =	0.38:1

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No.	Description	Date																					
1	ISSUED FOR APPROVAL	JUNE 2017																					
2	STC1 REV AND BCA REPORT	JULY 2018																					
Project number	P102	<b>A03</b>																					
Date	JUNE 2017																						
Drawn by	TM																						
Checked by	R.G.	Scale	As indicated																				

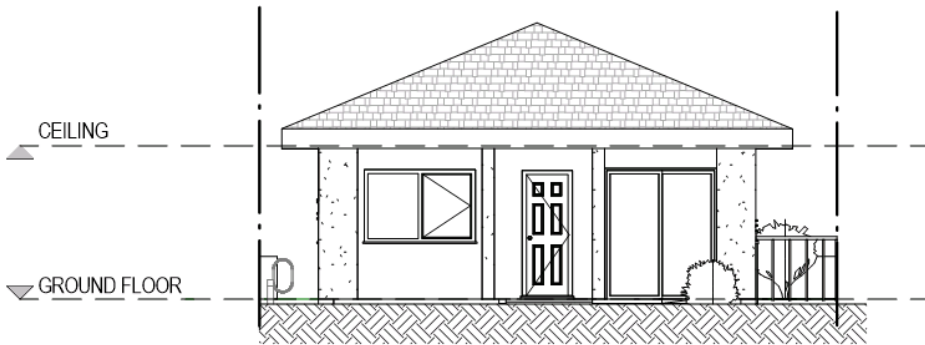
NGL: NATURAL GROUND LEVEL



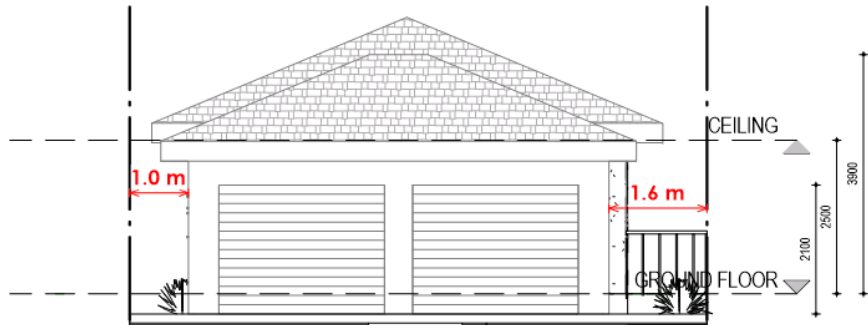
1 EXISTING DWELLING SOUTHERN ELEVATION  
1:100



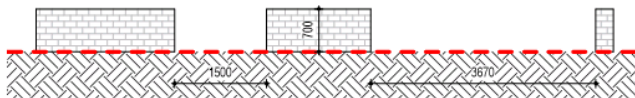
2 EXISTING GARAGE SOUTHERN ELEVATION  
1:100




4 EXISTING DWELLING NORTH HOUSE  
1:100

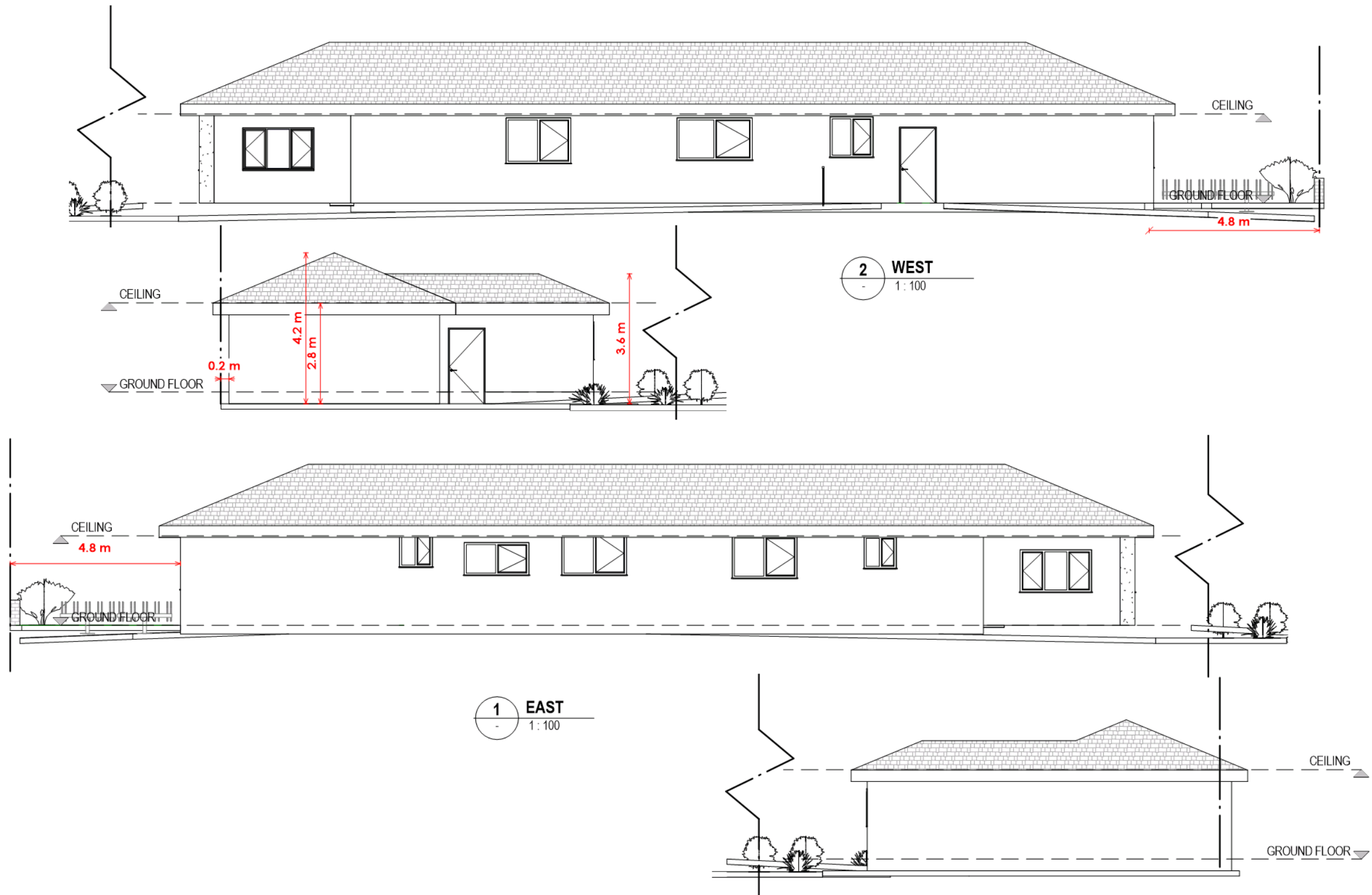



3 EXISTING GARAGE NORTHERN ELEVATION  
1:100



5 FRONT FENCE DETAIL  
1:100

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				Project number	P102	A05
				Date	JUNE 2017	
				Drawn by	TM	
				Checked by	R.G.	
		No.	Description	Date		
		1	ISSUED FOR APPROVAL	JUNE 2017		
		2	STC1 REV AND BCA REPORT	JULY 2018		



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					Project number	P102	A06	
					Date	JUNE 2017		
					Drawn by	TM		
					Checked by	R.G.		Scale
					No.	Description	Date	
			1	ISSUED FOR APPROVAL	JUNE 2017			
			2	STC1 REV AND BCA REPORT	JULY 2018			

**Building Code of Australia Design Compliance Report****DA Level Review****Alterations and Additions to Existing Dwelling House to Form Boarding House****41 O'Neil Street, Brighton Le Sands**



<b>Report Number &amp; Revision:</b>	MSA1815_Rev01
<b>Prepared For:</b>	Jaqueline Saad
<b>Date of Issue:</b>	18.07.2018

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## Revision History &amp; Quality Management

REPORT NUMBER	REV	STATUS	DATE
MSA1815	01	Issue for DA	18.07.2018
ROLE	NAME + SIGNATURES	CREDENTIALS	
Written By:	 Paul O'Shannassy <b>ASSOCIATE</b>	<b>Building Code, Access &amp; Fire Safety Consultant Grade 1 - Accredited Building Certifier / PCA</b> Building Professionals Board Accreditation No. BPB0825 Member of the Australian Institute of Building Surveyors Member of the Association of Accredited Certifiers Associated Member of the Association of Consultants in Access Australia (ACAA) Membership #594	
Reviewed By:	 Matt Shuter <b>DIRECTOR For MSA</b>	<b>Building Code, Access &amp; Fire Safety Consultant Grade 1 - Accredited Building Certifier / PCA</b> Building Professionals Board Accreditation No. BPB0809 Member of the Australian Institute of Building Surveyors Member of the Association of Accredited Certifiers	

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## Executive Summary

This report has assessed the **DA Level Design** for the proposed **boarding house** located at **41 O'Neill Street, Brighton-Le-Sands NSW** under the provisions of the Building Code of Australia (BCA) 2016.

The primary purpose of the report is to assess the development design and identify any significant non-compliance matters in comparison to the current deemed-to-Satisfy (DTS) provisions of the BCA. Assessment is limited to those issues ascertainable from the current level of detail.

Subject to the recommendations contained in Section 3.0 of this report, the development can readily comply with the requirements of the BCA.

See Table 3.0 of this report for full details.



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## 1.0 Introduction

This report has assessed the **DA Level Design** for the proposed **boarding house** located at **41 O'Neill Street, Brighton-Le-Sands NSW** under the provisions of the Building Code of Australia (BCA) 2016.

### 1.1 Basis of Report

The key basis of this report is to address compliance with the significant requirements of the Building Code of Australia (BCA) relevant to the new building works.

The scope of services is limited to assessment against:

- BCA 2016 – Volume 2: Part 2.1 Structure, Part 2.2 – Damp and Weatherproofing, Part 2.3 – Fire Safety, Part 2.4 – Health and Amenity, Part 2.5 – Safe Movement and Access and Part 2.6 – Energy Efficiency and relevant Australian Standards as detailed in Section 1.2 below.

### 1.2 Assessed Information

This report is based on the following:

- Desktop assessment of DA Level Architectural Plans prepared EPA Solutions – drawing numbers A00-A11 dated June 2018
- The National Construction Code – Building Code of Australia (BCA), prepared by the Australian Building Codes Board.

Note: a Reference to the "BCA" in this report is a reference to the Building Code of Australia 2016 – published by the Australian Building Codes Board (Volume 2)

### 1.3 Purpose of Report

The purpose of this report is to assess the following:

- Assessment of the proposed works under the current BCA and detail any significant departures (or those which have the ability to affect the current design);
- Provide recommendations to best address any significant departures from the requirements of BCA

### 1.4 Limitations of Report

- The assessment is limited to a desktop assessment only and has not included site assessment or physical assessment of the property in any way.
- This report does not include an assessment of the BCA requirements relation to 'Access for People with a Disability'.
- This report addresses the proposed works only and does not constitute an assessment of the existing building (except where compliance may be affected by the proposed works)
- Some requirements of the BCA are recognised as being interpretive in nature. Where these matters are encountered, interpretations are made in accordance with MSA policy. Specific relevant interpretations relevant to this assessment are included in Section 2.3 "BCA Interpretation Notes".



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- Assessment beyond the compliance matters ascertainable on the current documentation is beyond the scope of this report. Further assessment of the detailed design is recommended.
- An Energy Efficiency Assessment is beyond the scope of this report.
- Reporting on hazardous materials, OH&S matters or site contamination
- Detailed assessment of any engineering matters – e.g. structural, masonry, electrical, hydraulic, mechanical, fire
- Heritage assessment is beyond the scope of this report
- Assessment of land affectations e.g. Bushfire, High Wind, Earthquake and Flood Hazard is beyond the scope of this report
- Environmental or planning assessment is beyond the scope of this report
- Requirements of statutory authorities are excluded
- Provision of any Construction Certification under Part 4A of the Environmental Planning & Assessment Act 1979 is excluded
- This report is not to be used as the basis for any court proceedings or litigation.



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## 2.0 Building Characteristics

### 2.1 Building Description

The development primarily comprises alterations and additions to the existing single storey residential dwelling, to form a 5-bedroom boarding house, with associated communal facilities.

### 2.2 BCA Assessment Data

The following BCA assessment data is relevant to the proposal under the current BCA (based on plans provided):

**Table 2.2 BCA Assessment Data**

Item	Building BCA Characteristics
BCA Building Classification:	Class 1b*: Boarding House Class 10a: Private Garage

### 2.3 BCA Interpretation Notes

- *\*The floor area of the building is less than 300m<sup>2</sup> and that less than 12 persons are expected to be ordinarily resident (on the assumption that each bedroom will accommodate not more than 2 persons)*



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### 3.0 Building Code & Access Recommendations

The following table provides a 'clause by clause' assessment of the proposed development against the requirements of the BCA (excluding Disabled Access Provisions).

The compliance status and comment/recommendation are indicated (shaded) in the right-hand column as follows:

Complies – The design is considered to meet the requirements of the clause.

Does not comply – The design does not meet the requirements of the clause OR further information is required to determine compliance.

Compliance Readily Achievable (CRA) within the constraints of the current design\*

Not Applicable (NA). The clause is informational or does not apply to the subject design

*\*Clauses marked CRA. It should be noted that compliance with these items is not expected to necessitate significant design changes, and therefore can be addressed at Construction Certificate (CC) Stage, e.g. either in the CC architectural plans, or in a BCA Compliance Specification.*

**Table 3.0 – BCA Recommendations**

BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
<b>PART 3.1: SITE PREPARATION</b>		
<b>Earthworks</b> – BCA Part 3.1.1	Excavation and earthworks associated with the erection of the dwelling additions shall require design and supervision by an engineer.	The proposed works appear to be internal and not subject to this clause. To be confirmed at CC stage where relevant.



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
<b>Drainage</b> – BCA Part 3.1.2	<p>The building must be designed to ensure surface water drains away from the dwelling with floor levels located above the surrounding ground surface to prevent the ingress of storm water into the dwelling.</p> <p>A hydraulic engineer should design a drainage system in accordance with Part 3.1.2 and AS3500.3-2003 (Plumbing &amp; Drainage – Stormwater Drainage) and the relevant Council DCP for Stormwater discharge.</p>	<p>The proposed works (external ramps + landings etc) must not affect the external drainage system (in particular surface water drainage). It should be also noted however that Council may impose further requirements in terms of SW drainage.</p> <p><i>Full details should be provided at CC stage to the satisfaction of the Certifying Authority.</i></p>
<b>Termite Risk Management</b> – BCA Part 3.1.3	<p>Termite protection must be provided in accordance with Part 3.1.3 and AS3660.1-2000 (Termite Management – New Building Work).</p> <p>Details of the proposed method of termite protection is required to be provided with any Construction Certificate Application</p>	<p>The proposed works (e.g. external ramps etc) must not impact on the existing termite protection systems (and any new works must be protected as required by this clause).</p> <p><i>Full details should be provided at CC stage to the satisfaction of the Certifying Authority.</i></p>
<b>PART 3.2: FOOTINGS AND SLABS</b>		
<b>Footings and Slabs</b> – BCA Part 3.2	<p>Footings and slabs are to be designed in accordance with BCA Part 3.2, AS2870 Residential Slabs and Footings, and AS2159 Piling – Design and Installation.</p>	<p><i>Details for any proposed footings/slabs together with design certification is required to be provided by the structural engineer and submitted with any Construction Certificate Application.</i></p>



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
<b>PART 3.3: MASONRY</b>		
<b>Masonry</b> - BCA Part 3.3	Masonry shall be designed, constructed and weatherproofed in accordance with BCA Part 3.3, AS3700 <i>Masonry Structures</i> , and AS4773 <i>Masonry for small buildings parts 1 and 2</i> .	<i>Details for any new masonry elements shall be submitted with the Construction Certificate Application.</i>
<b>PART 3.4: FRAMING</b>		
<b>Framing</b> - BCA Part 3.4	<p>Timber Framing shall be designed and constructed in accordance with BCA Part 3.4.3 and AS1684 <i>Residential Timber Framed Construction</i> Parts 2 and 4.</p> <p>Steel Framing shall be designed and constructed in accordance with BCA Part 3.4.2, AS4100 <i>Steel Structures</i>, AS/NZS 4600 <i>Cold Formed Steel Structures</i> and/or NASH Standard <i>Residential and low-rise steel framing</i>.</p> <p>Structural Steel Members shall be designed and constructed in accordance with BCA Part 3.4.4, AS4100 <i>Steel Structures</i> and AS/NZS 4600 <i>Cold Formed Steel Structures</i>.</p>	<i>Details for any new framing is required to be submitted with the Construction Certificate Application.</i>
<b>PART 3.5: ROOF AND WALL CLADDING</b>		
<b>Roof Cladding, Wall Cladding and Gutters and Downpipes</b> - BCA Part 3.5	<p>The Tile Roof shall be installed and suitable flashed to comply with BCA Part 3.5.1 and AS2049 <i>Roof Tiles</i> and AS2050 <i>Installation of Roof Tiles</i>.</p> <p>Gutters and downpipes shall be designed and installed to comply with BCA Part 3.5.2 and AS3500 <i>Plumbing and Drainage</i>.</p> <p>Wall cladding shall be installed to comply with BCA Clause 3.5.3 with any openings suitably flashed in accordance with AS/NZS 2904 <i>Damp Proof Course and Flashing</i>.</p> <p>Details demonstrating the method of achieving compliance shall be submitted with any Construction Certificate Application.</p>	The proposed works do not appear to affect the existing roof and wall cladding.



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
<b>PART 3.6: GLAZING</b>		
<b>Glazing and Windows</b> – BCA Part 3.6	Windows and Glazing shall be designed and installed in accordance with BCA Part 3.6, AS2047 <i>Windows in Buildings – Selection and Installation</i> and AS1288 <i>Glass in Buildings – Selection and Installation</i> .	Details demonstrating the method of achieving compliance shall be submitted with any Construction Certificate Application.
<b>PART 3.7: FIRE SAFETY</b>		
<b>Fire Separation and External Walls of Dwellings</b> – BCA Part 3.7.1	To prevent fire spread to the building under BCA 3.7.1.4 & 3.7.1.5 external walls of Class 1 dwellings must be setback 900mm or greater from the side/rear boundary, or where within 900mm: <ul style="list-style-type: none"> <li>i. External walls must be fire rated to 60/60/60, or be of 90mm brick/masonry veneer construction</li> <li>ii. Windows in walls within 900mm must be non-openable fire windows or other construction with an FRL of -/60/-</li> <li>iii. Doors must be self-closing 35mm solid core doors.</li> </ul>	The external walls of the existing building are set back at least 900mm from the allotment boundaries, and on this basis, the new/affected openings in external walls are not required to be protected under this clause.
<b>Eaves Fascias and Gutters</b> – BCA Part 3.7.1.7	Eaves, fascias and gutters must meet the following requirements where within 900mm of the boundary to meet 3.7.1.7 of the BCA: <ul style="list-style-type: none"> <li>a. Eaves must be setback 450mm from the boundary with non-combustible lining and roof covering</li> <li>b. Fascias and gutters may be combustible when setback 450mm or greater, and non-combustible when &lt;450mm from the boundary.</li> </ul>	Eaves, fascias, and gutters do not appear to be affected by the proposed works.
<b>Roof Lights</b> – BCA 3.7.1.10	To meet BCA 3.7.1.10, combustible roof lights must: <ul style="list-style-type: none"> <li><input type="checkbox"/> Be not less than 900mm from the boundary (other than boundary with road or public space)</li> <li><input type="checkbox"/> Not have an aggregate area of more than 20% of the roof or part</li> <li><input type="checkbox"/> 1.8m from any roof light in an adjacent dwelling</li> </ul>	There are no skylights indicated on the roof plan.



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
<b>Smoke Alarms</b> – BCA Part 3.7.2	Hard-wired & interconnected Smoke Alarms complying with BCA 3.7.2 and AS3786-2014  3.7.2.4 Location — Class 1b buildings In a Class 1b building, smoke alarms must be installed on or near the ceiling— (a) in every bedroom; and (b) in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building; and (c) on each other storey.	<i>The proposal is capable of compliance with details to be submitted with the construction certificate application.</i>
<b>Lighting to Assist Evacuation</b> – BCA Clause 3.7.2.5	In a Class 1b building, a system of lighting must be installed to assist evacuation of occupants in the event of a fire, and— (a) be activated by the smoke alarm required by 3.7.2.4(b); and (b) consist of— (i) a light incorporated within the smoke alarm; or (ii) the lighting located in the corridor, hallway or area served by the smoke alarm.	<i>The proposal is capable of compliance with details to be submitted with the construction certificate application.</i>
<b>PART 3.8: HEALTH AND AMENITY</b>		
<b>Wet Areas and External Waterproofing</b> – BCA Part 3.8.1	Wet areas are to be waterproofed or water resistant in accordance with BCA Part 3.8.1 and AS2740 <i>Waterproofing of Domestic Wet Areas</i> .  Waterproofing membranes for external above ground use must comply with AS4654 <i>Waterproofing membranes for external above ground use</i> Parts 1 and 2	<i>Details demonstrating the method of achieving compliance shall be submitted with any Construction Certificate Application.</i>



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
<b>Room Heights – BCA Part 3.8.2</b>	Under BCA 3.8.2 ceiling heights must be at least: <ul style="list-style-type: none"> <li><input type="checkbox"/> 2.4m for habitable rooms</li> <li><input type="checkbox"/> 2.1m for non-habitable rooms including bathrooms and kitchens</li> <li><input type="checkbox"/> 2.0m above stair nosings</li> <li><input type="checkbox"/> Attic ceilings must be 2.2m for at least 2/3 of the area that is &gt;1.5m or higher</li> <li><input type="checkbox"/> Other sloping ceiling in habitable rooms must be 2.4m for at least 2/3 of the area that is &gt;1.5m</li> <li><input type="checkbox"/> Other sloping ceiling in non-habitable rooms must be 2.1m for at least 2/3 of the area that is &gt;1.5m</li> </ul>	<i>The proposal appears generally compliant.</i>
<b>Facilities – BCA Part 3.8.3</b>	The following facilities must be provided under BCA 3.8.3: <ul style="list-style-type: none"> <li><input type="checkbox"/> Kitchen Sink</li> <li><input type="checkbox"/> Food Prep Area</li> <li><input type="checkbox"/> Bath or Shower</li> <li><input type="checkbox"/> Laundry Washtub</li> <li><input type="checkbox"/> Wash Mach Space</li> <li><input type="checkbox"/> Drying Facilities</li> <li><input type="checkbox"/> Closet Pan</li> <li><input type="checkbox"/> Washbasin</li> </ul>	<i>The proposal appears generally compliant.</i>
<b>Light – BCA Part 3.8.4</b>	Under BCA 3.8.4, natural light is required to all habitable rooms by: <ul style="list-style-type: none"> <li><input type="checkbox"/> Windows with glazed areas being ≥10% of the room floor area, or</li> <li><input type="checkbox"/> Windows facing boundaries must be ≥900mm from the boundary</li> <li><input type="checkbox"/> Rooflights amounting to ≥3% of the room floor area</li> <li><input type="checkbox"/> Light may be borrowed from the adjoining room so long as the dividing wall has a window ≥10% and the rooms cumulatively comply</li> <li><input type="checkbox"/> Sanitary compartments, showers, bathrooms and laundries must have artificial lighting of at least 1 fitting per 16m<sup>2</sup> per AS1680.0.</li> </ul>	<i>The proposal appears generally compliant. Full details to be provided at CC stage.</i>
<b>Ventilation – BCA Part 3.8.5</b>	Under 3.8.5, natural ventilation must be provided to all habitable rooms by: <ul style="list-style-type: none"> <li><input type="checkbox"/> Openable windows/devices with glazed areas being ≥5% of the room floor area, or</li> </ul>	<i>The proposal appears generally compliant. Full details to be provided at CC stage.</i>



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION																								
	<div><div><input type="checkbox"/> Ventilation may be borrowed from the adjoining room so long as the dividing wall has a openable window/door device <math>\geq 5\%</math> and the rooms cumulatively comply (Note: can not share through sanitary compartment)</div><div><input type="checkbox"/> Mechanical exhaust ventilation which exhausts to the outside or ventilated roof area (unsarked or vents) can be used for bathrooms, sanitary compartments, laundries.</div></div>																									
PART 3.9: SAFE MOVEMENT AND ACCESS																										
<div>Stair Construction – BCA Part 3.9.1</div>	<div>To comply with BCA Part 3.9.1, provide details demonstrating compliance with the following:</div> <div><div><input type="checkbox"/> Stair flights must have not less than 2 risers and not more than 18 risers</div><div><input type="checkbox"/> No more than 3 winders in a quarter landing</div><div><input type="checkbox"/> A riser opening shall not be larger than 125mm</div><div><input type="checkbox"/> Landings shall be not less than 750mm long, 1:50 grade</div><div><input type="checkbox"/> Dimensions for Risers and Goings are as follows:</div></div> <table><tr><th>Stair Type</th><th>Riser (R)</th><th>Going (G)</th><th>Constant (2R + G)</th></tr><tr><td>Stairs (other than spiral)</td><td>115mm-190mm</td><td>240mm-355mm</td><td>550-700</td></tr><tr><td>Spiral stairs</td><td>140mm-220mm</td><td>210mm-370mm</td><td>680-590</td></tr></table> <div><input type="checkbox"/> Treads of goings and risers must be slip resistant, or non-skid nosing not less than the following when tested in accordance with AS4586</div> <table><tr><th>Application</th><th colspan="2">Surface Conditions</th></tr><tr><td></td><td>Dry</td><td>Wet</td></tr><tr><td>Tread surface</td><td>P3 or R10</td><td>P4 or R11</td></tr><tr><td>Nosing Strip</td><td>P3</td><td>P4</td></tr></table>	Stair Type	Riser (R)	Going (G)	Constant (2R + G)	Stairs (other than spiral)	115mm-190mm	240mm-355mm	550-700	Spiral stairs	140mm-220mm	210mm-370mm	680-590	Application	Surface Conditions			Dry	Wet	Tread surface	P3 or R10	P4 or R11	Nosing Strip	P3	P4	There are no stairs in the proposed development.
Stair Type	Riser (R)	Going (G)	Constant (2R + G)																							
Stairs (other than spiral)	115mm-190mm	240mm-355mm	550-700																							
Spiral stairs	140mm-220mm	210mm-370mm	680-590																							
Application	Surface Conditions																									
	Dry	Wet																								
Tread surface	P3 or R10	P4 or R11																								
Nosing Strip	P3	P4																								
<div>Balustrades – BCA Part 3.9.2</div>	<div>Balustrades at to comply with BCA Clause 3.9.2 as follows:</div> <div><div><input type="checkbox"/> Be at least 1,000mm above the FFL of balconies and landings, and no less than 865mm above the nosing line of stairs</div><div><input type="checkbox"/> Incorporate openings that are no larger than 125mm</div></div>	Balustrades are not typically required under this clause.																								



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
	<input type="checkbox"/> Where there is a fall of >4m, must not incorporate climbable members between 150mm-760mm	
<b>Handrails</b> – BCA Part 3.9.2.4	Under BCA 3.9.2.4, all stairs serving a change in level >1m must be: <ul style="list-style-type: none"> <li><input type="checkbox"/> Provided with a handrail to one side between 865mm-1m in height</li> <li><input type="checkbox"/> The handrail must not contain any obstruction that would break a hand-hold throughout the flight, except at winders where a newel post can be utilised</li> </ul>	Handrails are generally not required under this clause.
<b>Protection of Openable Windows</b> – BCA Part 3.9.2.5	a. All openable windows where there is a drop of more than 4m, must: <ul style="list-style-type: none"> <li><input type="checkbox"/> Have a sill height of no less than 865mm, and</li> <li><input type="checkbox"/> Not contain any climbable members below the sill between 150mm-760mm.</li> </ul> b. Bedroom windows serving rooms with a floor level over 2m above the floor level below must be provided with windows to prevent children falling through the window by having a sill height of at least 1.7m or: <ul style="list-style-type: none"> <li><input type="checkbox"/> A child-resistant device or screen that will not allow the window to be opened more than 125mm (eg child lock)</li> <li><input type="checkbox"/> An internal or external screen with no opening greater than 125mm (eg louvred screen)</li> <li><input type="checkbox"/> The restricting device must be capable of restricting a 250N force (eg to push the window open, or pushing on the screen)</li> </ul>	The fall from the windows is assumed to be less than 2m, and on this basis additional protective measures are not required.
<b>Swimming Pool Access</b> – BCA Part 3.9.3	Swimming Pools are to be provided with a barrier which separates the Swimming Pool from the dwelling house in accordance with the following: <ul style="list-style-type: none"> <li>- NCC / BCA Clause 3.9.3 (Swimming Pool Access)</li> <li>- Swimming Pools Act 1992 (as amended)</li> <li>- Swimming Pools Regulation 2008</li> <li>- Australian Standard AS1926.1-2012</li> </ul> Notably: the following summary applies (refer to standards for full requirements): <ul style="list-style-type: none"> <li><input type="checkbox"/> 1200mm high fence with 900mm non-climbable zone</li> <li><input type="checkbox"/> No gaps &gt;100mm</li> <li><input type="checkbox"/> External wall of pool cannot be used as fence/barrier in NSW</li> <li><input type="checkbox"/> Outwards opening gate</li> </ul>	There are no pools proposed.



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
	<input type="checkbox"/> 1500mm high latch or protected on inner side <input type="checkbox"/> 1800mm fence at boundary with 900mm non-climbable zone at the top on the pool side <input type="checkbox"/> No buildings within the pool area except for those directly associated with the pool (e.g. pool shed) <input type="checkbox"/> Cannot cross pool area to reach other features on the property (e.g. pool area between garage and dwelling)	
<b>Swimming Pool recirculation systems</b> – BCA Part 3.9.4	Swimming Pool recirculation systems are to comply with BCA Part 3.9.4 and AS1926.3 <i>Water recirculation systems</i> .	As above.
<b>PART 3.10: ADDITIONAL CONSTRUCTION REQUIREMENTS</b>		
<b>Additional Construction Requirements</b> – BCA Part 3.10	Where the project is located within a high wind area, earthquake area or flood hazard areas, the project must be designed in accordance with the relevant provisions of the BCA and relevant acceptable construction manuals	<i>Details to be provided at CC stage (where relevant)</i>
<b>PART 3.11: STRUCTURAL DESIGN MANUALS</b>		
<b>Structural Design Manuals</b> – BCA Part 3.11	The project must be designed in accordance with the relevant structural design manuals	<i>Details together with design certification is required to be provided by the engineer and submitted with any Construction Certificate Application</i>
<b>PART 3.12: ENERGY EFFICIENCY</b>		



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BCA Clause	BCA Requirement	COMPLIANCE COMMENT/STATUS/RECOMMENDATION
<b>Energy Efficiency</b> – BCA Part 3.12	<p>In NSW, Class 1a dwelling houses and class 10b swimming pools are subject to State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (the BASIX SEPP).</p> <p>BASIX applies to a development where:</p> <ul style="list-style-type: none"> <li>the value of the development exceeds \$50, 000 and is lodged after 1 July 2007</li> <li>a swimming pool exceed 40, 000 litres</li> </ul> <p>The development will require compliance with SEPP BASIX and the lodgment of a BASIX Certificate with the Development Application.</p> <p>Where the development application imposes energy efficiency requirements in addition to those required under the BASIX Certificate, (e.g. insulation), the project will need to satisfy BCA Part 3.12 <i>Energy Efficiency Acceptable Construction</i>.</p>	<i>Requirements for Energy Efficiency/BASIX to be provided/detailed at CC stage.</i>



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#### 4.0 Conclusion

This report has assessed the **DA Level Design** for the proposed **boarding house** located at **41 O'Neill Street, Brighton-Le-Sands NSW** under the provisions of the Building Code of Australia (BCA) 2016.

The primary purpose of the report is to assess the development design and identify any significant non-compliance matters in comparison to the current deemed-to-Satisfy (DTS) provisions of the BCA. Assessment is limited to those issues ascertainable from the current level of detail.

Subject to the recommendations contained in Section 3.0 of this report, the development can readily comply with the requirements of the BCA.



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## Plan of Management

41 O'Neill St  
Brighton le sands NSW 2216

Prepared on 18 July 2018: Version 5

## Plan of Management

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### 1. Title

This Plan of Management is for the boarding house at 41 O'Neill St Brighton le Sands.

### 2. Objectives

The objective of the new boarding house is to:

Provide the community with a low cost safe and social housing solution for those that need to live and work in the Brighton le Sands, St George area.

### 3. Operational Details

#### a) Address

The boarding house is situated at 41 O'Neill St Brighton le Sands, which is in a R3 residentially zoned area.

#### b) Operational details

The boarding house will operate 7 days a week all year round in line with council's registration requirements.

#### c) Hours of operation

The hours of operation shall be 24x7, 7 days a week in line with council's registration requirements.

### 4. Occupancy and Visitors

The boarding house may have the following roles visit and sleep overnight at the house:

**Residents** – have signed a contract and are permitted to sleep overnight at the boarding house in their own bedroom

**Visitors** – do not sign any contract and may visit a resident or may need to attend to the boarding house for repairs or legally enforced visits eg from the Police or Sydney Water

#### a) Maximum occupancy rate

The boarding house's maximum occupancy is expected to be 7 residents at any onetime. Bedrooms 1 and 2 can accommodate 2 lodgers in each of those bedrooms given the area is in excess of the required minimum 16sqm to the satisfaction of CI29 (2) (f) ARHSEPP. Bedrooms 3, 4 and 5 are for single occupants as they feature the minimum 12sqm to the satisfaction of CI29 (2) (f) ARHSEPP. Bedroom 2 has been assigned as the Disability Access bedroom.

#### b) Maximum Visitors

All visitors must sign the Visitor Book (located in the Foyer) when they enter and leave the boarding house.

The visiting hours are restricted from 9am to 9pm Monday to Sunday unless there are emergency repairs or maintenance work that needs to be performed outside these hours and relates to the structure and safety of the boarding house and its occupants.

### c) Visitors

All visitors must sign the Visitor Book (located in the Foyer) when they enter and leave the boarding house.

## 5. Measures to minimise unreasonable impacts on adjoining properties

The house rules and contract will also support noise minimisation requirements by the occupants.

### d) Use communal open spaces

The house rules and contract will warn residents and visitors from making excessive noise in the communal open spaces.

## 6. Maintenance on fire safety

The boarding house will feature the basic fire safety precautions such as placing fire extinguishers, blankets and smoke alarms near kitchen and communal areas. A hardwire smoke alarm will be fitted in each bedroom and throughout the house. Additionally, hardwired evacuation lights will also appear in the corridor.

## 7. Deliveries and loading/ unloading

### a) Provision of car parking

There is parking for two car spaces (waiting on Paul BCA) at the rear of the property, and space for a motor bike and 2 bicycles at the front of the property and will be assigned to residents in line with the signed contracts.

### b) Noise/ vibration from plant and equipment

There is no plant or equipment on the property or in the house that generates any noise or vibration. The house rules and contract will prevent residents and guests from bringing anything into the house or onto the property that makes any noise or vibration.

### c) If no onsite caretaker/ site manager, how is the use managed

The boarding house is classified as class 1B building in light of its maximum 300m building size and maximum 12 person occupancy limits and therefore is not required to have an on site manager.

The owner shall employ a site manager/ managing entity to manage the property and ensure the house and residents and visitors comply with this Plan of Management.

The site manager/ managing entity's phone numbers will be displayed in the communal area and at the Front House Door (so neighbours may contact the site manager/ managing entity if required). They will also conduct scheduled monthly inspections and be available to meet with residents and visitors as requested. The site manager/ managing entity will also conduct ad-hoc fortnightly visits to ensure compliance is maintained.

The Foyer will have a hallway table to house the Visitor Book as well as Group Notice Board.

## 8. Managing customers or patrons

### a) Boarding house staffing

The site manager/ managing agent of the property will ensure the house and residents and visitors comply with this Plan of Management.

### b) Proposed house rules

The proposed house rules are as follows:

- i. All persons living or visiting the boarding house shall respect their fellow citizens and not infringe on their safety or well being
- ii. Any illegal behaviour will be reported to the Police and or other government agency
- iii. All communal areas shall always be kept clean and tidy
- iv. Clean up after yourself when using the kitchen or bathrooms and communal areas
- v. All bedrooms shall be cleaned by the resident and be kept clean and tidy
- vi. Consume your own food or drink
- vii. The following behaviour will translate into breach of contract and trigger the contract termination process:
  - Intentional property or personal damage*
  - Illegal behaviour or possessions*
  - Excessive noise or unruly behaviour*
  - Non-payment of rent*

### c) Visitor Book

All non-residents who enter the property are to sign the Guest and Visitor Book located in the foyer.

### d) House furnishing

The house, separate to the rooms, will be furnished in the following ways:

- Both kitchens to feature sink, oven (large kitchen only), fridge and microwave supported by cupboard space and eating space (large kitchen only). The larger kitchen supports Disability Access
- Both bathrooms will have operational shower, vanity and toilet. The larger bathroom supports Disability Access
- The laundry supports Disability Access
- The communal social area will feature an operational air conditioning unit, a dining table, two sofas and one mounted television set and supports Disability Access

### e) Room furnishing

Each bedroom will feature a bed and built-in wardrobe or standalone wardrobe.

#### f) Use communal open spaces

Residents may use the communal open spaces from 7am – 10pm with bathrooms as the exception which can be accessed all the time ensuring showers outside these hours are reduced to 5 mins to minimise interruption to the others living at the property.

### 9. Waste minimisation

As per the Waste Management Plan, the owner will ensure the site manager/ managing agent implements the recommendations to ensure waste minimisation.

The house will also feature recycling bins in the kitchen.

### 10. Safety and security

The house will be equipped with a landline for all to use in case of emergency as well as fire blankets, fire extinguishers and smoke alarms in the kitchen and social communal area.

The owner will also make available contact numbers at the house for any emergency contact if the site manager/ managing entity is not on site or cannot be contacted at the time of an emergency.

### 11. Complaint handling

All complaints and their resolution process and handling times will be recorded and maintained by the owner for events that take place on the property of 41 O'Neill St Brighton le Sands.

All complaints for events that occur on the property of 41 O'Neill St Brighton le Sands involving the residents or visitors with should be lodged in writing to the site manager/ managing entity who will contact the impacted parties within 24 hours. The site manager/ managing entity will commence the resolution process within 5 business days and seek a resolution within 10 business days unless it involves a third party. If the complaint cannot be resolved within 10 days and it involves a third party, the site manager/ managing entity will engage Bayside Council which means their process, lead-times and resolution times apply.

The site manager/ managing entity's phone numbers will be displayed on the Office Door and at the Front House Door (so neighbours may contact the site manager/ entity if required).

### 12. POM review process

This Plan of Management will be reviewed on an annual basis with feedback incorporated from the residents, visitors, site manager / managing entity and other interested 3<sup>rd</sup> parties eg Bayside Council.



## 1. Customer Complaints Form

Customer Complaints Form				
41 O'Neill Street, Brighton Le Sands NSW 2216				
ALL complaints/incidents are to be directed to				
Ph:	OR	Email:		
<b>a) Complainants Details</b>				
<i>Please tick the appropriate box</i>				
<input type="checkbox"/>	I am a resident at 41 O'Neill St Brighton		Room No.	
<input type="checkbox"/>	I am a Neighbour to 41 O'Neill St Brighton			
<input type="checkbox"/>	I wish to remain anonymous			
<i>Note:</i>				
<i>* Response of outcome cannot be notified to those who do not enter their details</i>				
<i>* If you would like a response to our investigation, we need at least one contact detail recorded above.</i>				
Name:				
Phone Number:		Mobile:		
Email:				
Address:				
<b>b) Details of Complaint/Incident</b>				
Date of Incident:				
Time of Incident:				
Date Incident reported:				
Area of Concern:		Maintenance	Amenity	Health & Safety
				Other
Complaint/ Incident Description				
Person reported to (if relevant):				
Date Incident/Complaint made:				

<b>c) To be filled out by Property Manager</b>	
Person received Complaint:	
Capacity:	
<b><i>Note: Complainant must be contacted within two (2) business days to acknowledge complaint.</i></b>	
Date/Time responded:	
Method of response delivery:	
Action Taken:	
Details Complainant Contacted (if different than above)	
Signature	
Letter of response or other supporting documentations attached	



**Bayside Planning Panel**

**25/09/2018**

Item No	6.5
Application Type	Development Application
Application No	DA-2018/21
Lodgement Date	05/02/2018
Property	<b>DA-2018/21 - 41 Farr Street, Banksia</b>
Ward	Rockdale
Owner	Mr Ali Nazzal and Mrs Mona Nazzal
Applicant	Controller Consultants Pty Ltd
Proposal	Demolition of existing dwelling and ancillary structures and Torrens Title subdivision of existing lot into two (2) lots.
No. of Submissions	One
Cost of Development	10,000
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

- 1 That the Bayside Planning Panel supports the variation to clause 4.1(2) in accordance with the Clause 4.6 justification provided by the applicant.
  - 2 That the Development Application No.DA-2018/21 for the demolition of the existing structures and subdivision of the existing lot into 2 Torrens title lots at 41 Farr Street, Banksia be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 3 That the objector be advised of the Bayside Local Planning Panel's decision.
-

## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Proposed subdivision plan [↓](#)
- 3 Clause 4.6 statement [↓](#)
- 4 Indicative site plan [↓](#)
- 5 Indicative ground floor plan [↓](#)
- 6 Indicative first floor plan [↓](#)
- 7 Indicative south and north elevations [↓](#)
- 8 Indicative east and west elevations [↓](#)
- 9 Indicative 3D plan [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2018/21
<b>Date of Receipt:</b>	5 February 2018
<b>Property:</b>	41 Farr Street, BANKSIA (Lot 5 Sec10 DP 1677)
<b>Owner(s):</b>	Mr Ali Nazzal Mrs Mona Nazzal
<b>Applicant:</b>	Controller Consultants Pty Ltd
<b>Proposal:</b>	Demolition of existing dwelling and ancillary structures and Torrens Title Subdivision of existing lot into two (2) lots.
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	One (1)
<b>Author:</b>	Andrew Ison
<b>Date of Report:</b>	12 September 2018

### Key Issues

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The proposed development seeks to vary the minimum subdivision lot size development standard in the Rockdale LEP 2011 by 54.9% per lot. This is supported in this instance for the reasons outlined within this report.

The proposal also has a variations to the provisions of the Rockdale DCP 2011 with regard to the lot width. This matter has been discussed within this report and is worthy of support.

### Recommendation

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1. That the Bayside Planning Panel supports the variation to Clause 4.1(2) of the Rockdale LEP 2011 in accordance with the Clause 4.6 justification provided by the applicant.
2. That the Development Application No.DA-2018/21 for the demolition of the existing structures and subdivision of the existing lot into 2 Torrens title lots at 41 Farr Street, Banksia be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. That the objector be advised of the Bayside Local Planning Panel's decision.

## Background

### History

The subject site contains a detached dwelling and associated structures. There are no records available that relate to previous applications on this site.

The subject Development Application was lodged with Council on 5 February 2018.

On 7 February 2018, a letter was sent to the applicant advising that the proposed subdivision could not be supported in its current form with the recommendation that it is withdrawn.

On 8 May 2018, a meeting was held at Council with the applicant and Council staff including the Director of City Futures, and the Mayor. It was agreed that further information was to be provided by way of indicative house plans for each of the two lots as well as an amended Clause 4.6 variation. This additional information was received on 1 June 2018.

### Proposal

DA-2018/21 seeks development consent for the following:

- Demolition of existing structures; and
- Torrens Title Subdivision into two (2) lots.

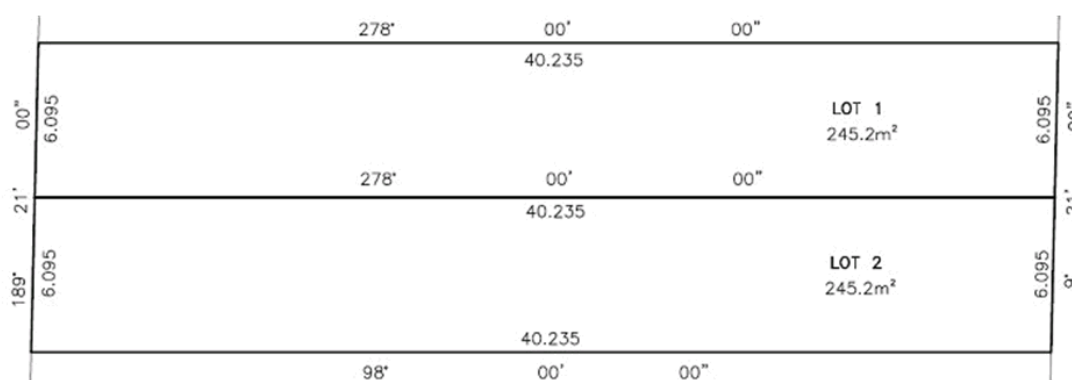


Figure 1: Proposed subdivision plan, provided by the applicant

### Site location and context

The subject site is located at 41 Farr Street, Banksia (Lot 5 Sec 10 DP 1677). The subject site has a frontage of 12.19 metres and a site area of 490.4 square metres. The subject site currently contains a detached dwelling and associated structures. The site has a fall from the rear towards the street of approximately 1 in 20. The subject site is located south east of the Banksia town centre, to the east of Princes Highway and north of Bestic Street. The subject site is located in a residential area with the predominant character being low density residential with detached and semi detached dwellings.





Figure 2: Aerial showing subject sites, marked in red (Source: Bayside IntraMaps)



Figure 3: Site photo subject site (taken 14 June 2018)



## 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*.

#### **S4.15 (1) - Matters for Consideration - General**

#### **S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

#### **Rockdale Local Environmental Plan 2011**

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.1 Minimum subdivision lot size	No - see discussion	No - see discussion
4.6 Exceptions to development standards	Yes - see discussion	Yes - see discussion

#### 2.3 Zone R2 Low Density Residential

The site is located within the R2 - Low Density Residential Zone, the objectives of which are as follows:

- *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 ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The proposed demolition of existing structures and Torrens Title Subdivision of the existing allotment is permitted with Council consent.

#### 2.7 Demolition requires consent

The application is accompanied by a Survey Plan (Demolition Plan), prepared by CitiSurv Pty Ltd, Issue A and dated 5 December 2017. The Plan nominates all existing structures to be demolished, including the single storey dwelling house and detached garage and brick retaining wall. Subject to standard conditions imposed on any consent granted by Council, the provisions of this Clause are satisfied.

#### 4.1 Minimum subdivision lot size

As per the LEP, the subject site is affected by a Minimum Lot Size (LSZ) development standard of 450 square metres, as indicated below.

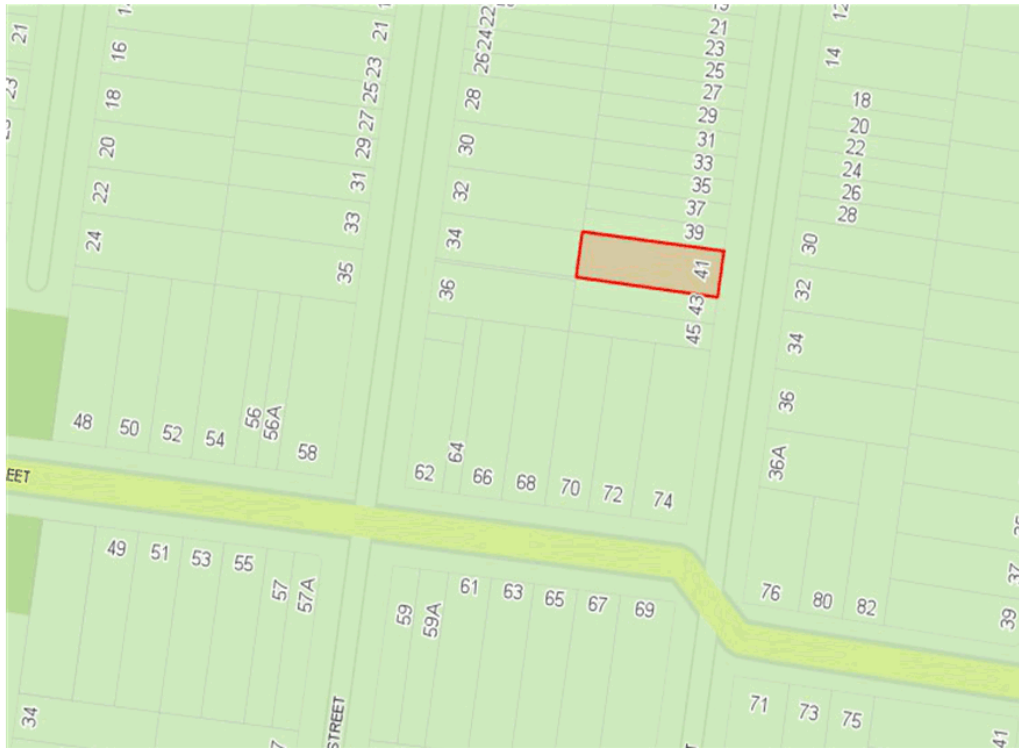


Figure 4: Minimum Lot Size LEP map (Source: Bayside IntraMaps)

The proposed 2 lot subdivision will result in lot sizes of 245.2 square metres, which represents a variation of 54.9% for each lot.

The applicant has submitted a clause 4.6 variation to development standard in relation to the proposed exceedance. The above has will be addressed in the Clause 4.6 section of this report.

#### 4.6 Exceptions to development standards

The applicant has lodged a Clause 4.6 statement to argue why the variation to the minimum lot size development standard is to be supported.

Under sub-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) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The applicant has applied the principles established by the Land and Environment Court in *Wehbe v Pittwater Council* [2007], which set out five ways of establishing that compliance with the standard is unreasonable or unnecessary. These were further tested in *Four2Five v Ashfield Council* where meeting the objectives of the standard was not sufficient to demonstrate that compliance was unreasonable or unnecessary.

Each of the five principles have been addressed by the applicant:

*(1) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard.*

Applicant's Clause 4.6 Statement

Notwithstanding the proposed shortfall in the site area, the proposed development is consistent with and satisfies the objectives for minimum lot size in that:

- The proposal will promote the efficient use of land by providing a subdivision layout consistent with the existing lot layouts presented along the western side of Farr Street, between Bestic and Tabrett Streets. The proposal will result in the orderly development of land which the subject site now lacks as it remains the only remaining site within the section of Farr Street which is yet to be subdivided;
- It is intended to redevelop the two proposed lots under the provisions of the Exempt & Complying Development Codes SEPP 2008. In order to demonstrate compliance and satisfaction of objectives 4.1(b) and (c), detailed architectural drawings have been prepared and submitted to Council that identify a proposed/possible building footprint and envelope of dwellings on each lot in accordance with the provisions of the Codes SEPP.
- The plans demonstrate that the two lots can accommodate two relatively large sized dwellings that can comply with the SEPP provisions, minimise any potential impact on the surrounding residential properties and be designed in such a way that they will complement the existing and desired streetscape character of Farr Street and the immediate locality.

Comment

It is agreed that the proposed subdivision will result in lot sizes that are consistent with those seen in the subject perimeter block (i.e. Farr Street to the east, Tabrett Street to the north, Gibbes Street to the west and Bestic Street to the south), and in particular the lots to the north (number 1 to number 39 Farr Street). Accordingly, and future re-development by way of a semi-detached development will be deemed to be an orderly development as it will provide a consistency with the streetscape on the western side of Farr Street between Tabrett Street and Bestic Street.

The land is affected by an ANEF contour greater than 25, given the site's proximity to Sydney Airport. As per Clause 1.19 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Complying Development for the purposes of new dwellings cannot be carried out.

Accordingly, the indicative building plans that have been provided are not accurate, on the basis that they would need to demonstrate compliance with the relevant controls of the Rockdale Development Control Plan (DCP) 2011.

A review of the plans against the Part 5.1 DCP controls relating to dwelling houses indicates that the side setbacks need to be a minimum of at least 1.2m (as opposed to the 1m demonstrated on the plans) and the four bedrooms would need to provide at least 2 parking spaces (as opposed to the one provided for each dwelling).

Furthermore, the gross floor area for each dwelling would need to be reduced to not exceed the Floor Space Ratio development standard of 0.55:1 as prescribed under Clause 4.4(2A) of the Rockdale Local Environmental Plan (LEP) 2011. Finally, not enough detail has been provided to demonstrate the impact of a proposed two storey dwelling on Proposed Lot 2 on the neighbouring property to the south, particularly with solar access in mid-winter.

Notwithstanding the above, the proposed scheme does provide sufficient evidence that it could accommodate future development that could fully comply with the relevant development standards as prescribed in the LEP and development controls in the DCP.

Compliance with these requirements can be achieved at the time of a new Development Application for each of the future dwellings.

Accordingly, the development does provide sufficient evidence that it does and will comply with the objectives of the FSR standard.

*(2) The underlying objective or purpose is not relevant to the development*

Applicant's Clause 4.6 Statement

The purpose of the standard is still considered to be relevant to the development; however, compliance with the standard in this circumstance is not considered reasonable as the variation sought is not considered to undermine the underlying objective.

Comment

The underlying objectives and purpose of the minimum lot size development standard has been generally achieved as stated above, subject to amended plans. Therefore the numerical standard, whilst being relevant, can be varied and strict compliance with the numerical requirement of the 450 square metre standard is considered unnecessary in this instance.

*(3) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard*

Applicant's Clause 4.6 Statement

The underlying purpose of the standard is to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area while providing lot sizes and dimensions that are able to accommodate development consistent with relevant development controls.

In this instance, compliance with the standard would frustrate the current subdivision pattern as the subject site is the only lot within this section of Farr Street that has not been further subdivided to reflect the predominant lot layout pattern. Additionally, provision of additional housing would be compromised despite it being demonstrated that the proposed lot sizes and dimensions are capable of supporting an appropriately scaled and designed development under the provisions of the Codes SEPP 2008. To require 100% compliance is therefore considered unreasonable as the variation is acceptable based on merit. The objectives of the standards, as outlined above, will still be achieved despite the variations.

Comment

It is agreed as detailed above that the underlying objectives and purposes of the minimum lot size development standard remain generally relevant to the proposed subdivision, and it will provide a scheme that is consistent with the majority of the existing lots on the western side of Farr Street between Tabrett Street and Bestic Street.

However, as also detailed above further amended plans will be required to be based on a DA instead of a CDC, and accordingly demonstrate compliance with the LEP and DCP.

*(4) The development standard has virtually been abandoned or destroyed by Council's own actions*

Applicant's Clause 4.6 Statement

Council has abandoned this development standard by granting significant variations to the standard. This is made evident in Table 1 below which provides details of all the properties in the street that have been subdivided and their resulting site area.

It is considered that compliance with the standard would be unnecessary and unreasonable in this instance.

House number	Site area
1 Farr Street	283.8
3 Farr Street	250.0
5 Farr Street	251.9
7 Farr Street	240.8
9 Farr Street	254.4
11 Farr Street	235.5
13 Farr Street	248.1
15 Farr Street	244.2
17 Farr Street	244.9
19 Farr Street	241.6
21 Farr Street	251.8
23 Farr Street	245.3
25 Farr Street	245.3
27 Farr Street	245.9
29 Farr Street	243.0
31 Farr Street	248.9
33 Farr Street	246.9
35 Farr Street	247.0
37 Farr Street	248.0
39 Farr Street	243.1
41 Farr Street	490.4
43 Farr Street	282.0
45 Farr Street	282.0

Comment

The development standard has not been strictly speaking abandoned in the context of the applicant's argument as the DP numbers as provided in the applicant's Clause 4.6 statement (not replicated above) indicate that they were registered well before the now repealed Rockdale LEP 2000 and also the Rockdale Planning Scheme Ordinance that was gazetted in 1973. Both of these environmental planning instruments would have had development standards governing minimum lot size.

Notwithstanding the previous paragraph, the above table does indicate quite a large number of lots that are smaller than the 245.2 square metres for each proposed lot.

Therefore, it can be agreed that based on the above that there is a strong historical trend that the minimum lot size development standard for this section of Farr Street is far below what is currently prescribed in the LEP and is consistent with what is proposed as part of this application.

*(5) The zoning of the 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 and unnecessary*

Applicant's Clause 4.6 Statement

The current use and character of the land is of a low density residential nature. Future development on the created lots can be both appropriately and readily facilitated. In addition to providing a subdivision lot layout that will present consistency with the dominant theme within the sites local context, balanced additional growth in housing in the locality through the provision of additional dwellings will result.

To frustrate reasonable development of this site by compelling compliance with the development standard is considered unreasonable and inappropriate.

Comment

It has been established that the proposed subdivision is appropriate and strict adherence to the development standard in this instance is considered to unnecessary. Furthermore, it can be demonstrated with the future dwelling plans provided that it could provide a scheme that could minimise impacts on the amenity of neighbouring properties, but further amendments are required to demonstrate compliance with the LEP and DCP as well as maximising amenity on 43 Farr Street.

Accordingly, since the proposal does satisfy the objectives of the minimum lot size development standard pursuant to Clause 4.1 of the LEP, the proposed subdivision is considered to be appropriate and strict adherence to the development standard in this instance is unnecessary.

**(b) there are sufficient environmental planning grounds to justify contravening the development standard.**

Applicant's Clause 4.6 statement

The above 5 part test demonstrates that there are sufficient environmental planning grounds to justify contravening the minimum lot size development in this particular instance.

Comment

It is considered that there are insufficient environmental planning grounds arising from the proposal to not support of this variation to the minimum lot size development standard given:

- The proposed subdivision will not adversely impact the surrounding streetscape and desired future character of the area.
- Any future development post registration of the subdivision, by way of semi-detached dwellings as demonstrated in the indicative plans, is permissible with consent in the R2 Low Density Residential zone.
- The non-compliance with the minimum lot size development standard, whilst noted, is considered reasonable in this instance as it will provide lot sizes and frontages that are consistent with most of the other lots on the western side of Farr Street between Tabrett Street and Bestic Street.
- Indicative plans for future dwellings have been provided. Whilst they nominate a CDC scheme which cannot be achieved as per Clause 1.19 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the plans can be amended to demonstrate compliance with the requirements for a DA. Notwithstanding the required amendments, the overall scheme as presented to Council can still accommodate a development that is consistent with the relevant development standards in the LEP and development controls in the DCP.
- The proposed lot sizes do not set an undesirable precedent for future development within the precinct as it will result in lot sizes that are consistent with a large number of lots on the western side of Farr Street and result in a future development that will complement the streetscape.

Therefore, it is considered that there are sufficient planning grounds for a variation to the minimum lot size and the variation is in the public interest.

Under sub-clause (4), development consent must not be granted for development that contravenes a development standard unless:

**(a)(i) the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3)**

Comment: The applicant's written statement adequately covers matters required by sub-clause 3.

**(a)(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.**

Applicant's Clause 4.6 statement

The relevant zone objectives are considered to be satisfied by this proposal, despite the variation to the development standard, as the proposal will provide opportunity for additional housing for the community in the zone while providing for a range of housing types that does not compromise the amenity of the surrounding area. This has been reinforced with the submission of potential building designs and footprints permissible on each lot under the provisions of the Codes SEPP 2008.

No other land uses are proposed and as such, it is considered that the proposal is consistent with the



objectives of the R2 – Low Density Residential Zone.

On that basis the proposed variation is considered to be consistent with the applicable Zone and Standard Objectives and is not contrary to the public interest. The proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

#### Comment

This Clause 4.6 assessment concludes that the proposal attains compliance with the objectives of the standard, and therefore, is in the public interest.

#### **S4.15 (1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
5.1 Residential Subdivision	No - see discussion	No - see discussion

#### 5.1 Residential Subdivision

##### *Control 5.1.24*

An indicative building plan has been provided as part of this DA, on the basis of it being as per the Complying Development provisions of the General Housing Code. However, as previously discussed under the Clause 4.6 section of this report, it cannot be considered as it is located in an area that exceeds the 25 ANEF contour.

Accordingly, any future residential development post-registration of any subdivision of this land will be subject to a DA. Therefore, any considerations with relation to water management, soil management and tree preservation will need to be considered as part of any future DA.

It is noted that there is a large street tree that sits on the verge at approximately the mid-point of the frontage. Council's Tree Management Officer has advised that the street tree is not significant and could be removed to accommodate any future driveway that may need to be constructed, on the basis that a replacement tree is planted.

##### *Control 5.1.25*

Each future lot will have a frontage to a public road (i.e. Farr Street).

##### *Control 5.1.26*

Each proposed lot will have a frontage of 6.095 metres, which does not comply with the minimum 15 metre frontage control as prescribed.

The neighbouring lots to the north and the south have similar frontages to what is proposed as part of this subdivision.



Figure 5: Cadestral map of perimeter block, demonstrating similar lot widths (Source: Bayside IntraMaps)

It is considered that it complies with the relevant objectives of Part 5.1 of the DCP in that it will ensure that the orderly development of land and promote good economic use of land, with any future DA's for residential dwellings to ensure that a high standard of site layout and design.

On this basis, it is recommended that this variation is supported.

#### *Control 5.1.28*

Conditions will be imposed within the attached draft conditions with respect to adequate provisions of infrastructure services.

#### **4.15(1)(b) - Likely Impacts of Development**

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

#### **S4.15(1)(c) - Suitability of the site**

Having regard to the above, it is considered that the site is suitable for the proposed subdivision.

#### **S4.15(1)(d) - Public submissions**

The application was notified for a period of 14 days under the RDCP 2011 and Regulations 2000. One (1) submission was received concerning the proposal with further discussion below.

*Car parking*

Comment: The proposal seeks consideration of the demolition of existing structures and Torrens Title Subdivision into two (2) lots only. Parking provisions as contained within the Rockdale DCP 2011 will be considered as part of any future DA's for residential dwellings.

*Building height; frontage and heritage and character*

Comment: The proposal does not seek consideration of any building form. Matters relating to building height; frontage; heritage and character as contained within both the Rockdale LEP 2011 and Rockdale DCP 2011 will be considered as part of any future DA's for residential dwellings.

**S4.15(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.

**S7.11 Contribution towards provision or improvement of amenities or services**

A Section 7.11 Contribution Payment of \$10,551.33 is payable in accordance with Council's Policy and accordingly, imposed as a condition on the draft Notice of Determination.

**Schedule 1 - Draft Conditions of consent****General Conditions**

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Proposed Subdivision	CitiSurv Pty Ltd	6/12/17	5/2/18

3. A separate development application shall be submitted to Council and approved for the construction of any proposed residential dwellings on site.
4. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.

5. Excavation, filling of the site or construction of retaining walls are not permitted unless approved by a separate Development Consent and authorised by a subsequent construction certificate.

### **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

6. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
7. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

8. A Section 7.11 contribution of \$10,551.33 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue the Subdivision Certificate. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 7.11 contributions plan in the following manner:

Open Space \$8,251.37  
 Town Centre & Streetscape Improvements \$233.80  
 Pollution Control \$1203.33  
 Library & Community Services \$811.43  
 Rockdale Administration \$51.40

Copies of Council's Section 94 (Section 7.11) Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 444-446 Princes Highway, Rockdale.

9. The following fees shall be paid to Council prior to commencement of demolition. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

- i. A Footpath Reserve Restoration Deposit of \$2,640.00 (new house/major additions/inground pool) \$1,716.00 (medium to minor additions and garage), \$550.00 (carport, above ground pool or similar). This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$19.00.
10. 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, and
    - 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. Any such sign is to be removed when the work has been completed. This condition does not apply to:
      - iii. building work carried out inside an existing building or
      - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
  11. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
  12. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

### **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

13. A copy of the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
14. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
15. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
16. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
17. All contractors shall comply with the following during all stages of demolition and construction:
  - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road

- or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
18. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
19. The following conditions are necessary to ensure minimal impacts during construction:
- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
  - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
  - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
  - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
  - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.

- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  - a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.
 

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.
- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 20. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 21. The existing street tree located at the front of the property is not to be removed or pruned, including root pruning, without the written consent of Council.

### **Prior to issue of subdivision certificate**

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

- 22. All excess material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
- 23. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the release of the Subdivision Certificate.
- 24.



Prior to the issue of a Subdivision Certificate for the development, an application for Property Address Allocation and associated fee is required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy. The form is available for download at:  
<https://www.bayside.nsw.gov.au/services/developmentconstruction/buildingoralteringproperty>  
 Derivation and production of address data components are governed by the NSW Addressing User Manual to ensure consistency of application.  
[http://www.gnb.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/199411/NSW\\_AUM\\_July2018\\_Final](http://www.gnb.nsw.gov.au/__data/assets/pdf_file/0007/199411/NSW_AUM_July2018_Final)

25. The subdivision is to occur in accordance with Development Consent No. 2018/21 and any subsequent Section 4.55 modifications.
26. A Subdivision Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted to Council prior to lodgment with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted.
27. The submission and approval of a subdivision certificate application. In this regard, a fee is payable in accordance with Council's current adopted Fees and Charges.
28. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

29. All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. These provisions are to be put into effect prior to the release of the Subdivision/Strata Certificate.
30. Council will not issue the Subdivision Certificate unless the following has been provided to Council :
  - Utility Service Plan
  - Original of Section 73 Compliance Certificate referring to Subdivision – (Sydney Water Act 1994)
  - Administration Sheet and 88B instruments prepared by a qualified surveyor
31. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the release of the Subdivision Certificate.

### Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.

- b. *Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

- c. In order for the final Subdivision Certificate to be signed and released by Council, the following must occur:

i) all of the above conditions of consent must be complied with.

- d. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.

- e. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
- Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
- Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

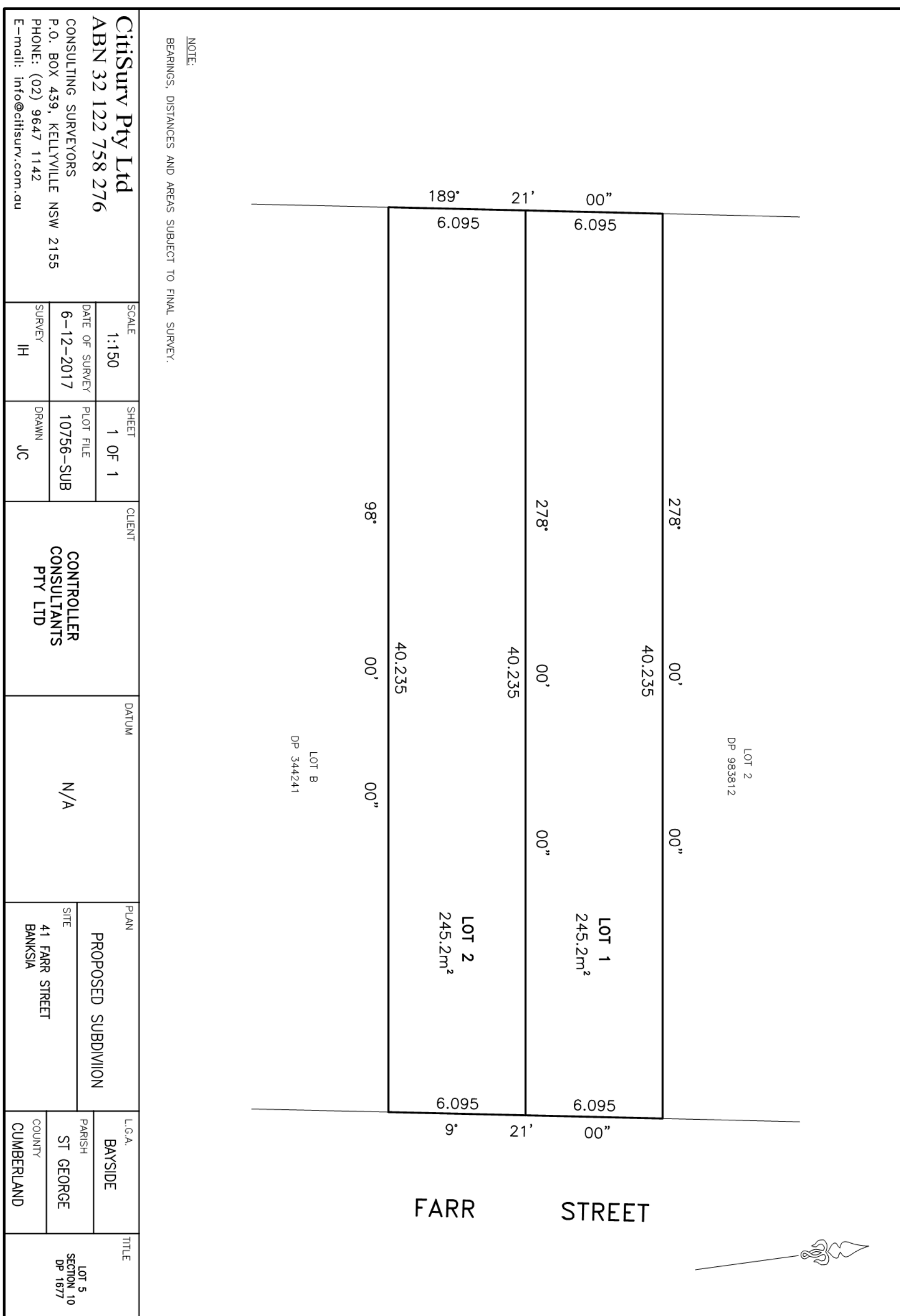
- f. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Protection of the Environment Operations (Waste) Regulation 2005.

- g. Demolition and construction shall minimise the emission of excessive noise and

prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:

- choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- h. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".
- i. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.





No 41 Farr Street, Banksia

Clause 4.6 Request to Vary Development Standard

*MINIMUM SUBDIVISION LOT SIZE*

Submitted to Bayside Council

Date: 28 May 2018  
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Issue A



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## 1. Introduction

This submission accompanies a development application to Bayside Council seeking consent for the demolition of the existing dwelling and ancillary structures and the Torrens title subdivision of an existing residential lot into two (2) lots at 41 Farr Street, Banksia

The proposal is non-compliant with Clause 4.1 of Rockdale Local Environmental Plan 2011 (RLEP) - Minimum subdivision lot size and this Clause 4.6 exception to a development standard request is submitted to address that non-compliance.

## 2. Land to which this Exception to Development Standard Request applies.

This exception to development standard request applies to 41 Farr Street, Banksia, legally defined as Lot 5 Section 10 DP. 1677. The location of the site is as shown on the Locality Map below:



Figure 1: Locality map Source: six.nsw.gov.au

### 3. Relevant Development Standard

The Development Standard to which this variation request applies is the minimum lot size provision as set out in Clause 4.1- Minimum subdivision lot size of the Rockdale Local Environmental Plan 2011 (RLEP). That Clause states as follows:

#### 4.1 Minimum subdivision lot size for dual occupancies and multi dwelling housing

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

- (a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,
- (b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,
- (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

(2) This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.

(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).

(3B) Despite subclause (3), development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed, if:

- (a) the area of each lot resulting from the subdivision is equal to or greater than 350 square metres, and
- (b) each of the lots will have one of the dwellings on it.

(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

(4A) This clause does not apply to the subdivision of land in Zone R2 Low Density Residential on which the erection of an attached dwelling or a semi-detached dwelling is proposed.

The subject site is identified on the relevant Lot Size Map as being within Land Identified as “G” on that Map as shown below:

The applicable development standard therefore requires provision of a minimum site area of 450m<sup>2</sup>, or greater, for the creation of a new lot. The subject site presents a lot sizes of 245.2m<sup>2</sup> following the Torrens title subdivision. This presents a variation of 54.9%.

### 4. Justification for use of Clause 4.6

Clause 4.6 of KLEP replaces the powers previously found in State Environmental Planning Policy No 1. – Development Standards and allows development standards to be varied, subject to the satisfaction of various other sub clauses. It provides as follows: -

#### 4.6 Exceptions to development standards

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

#### Note.

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
  - (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

Clause 4.6 imposes four (4) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development.

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The third precondition requires Council to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The fourth requires Council to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

In giving consideration to the use of Clause 4.6 Council is guided by the recent exercise of the use of clause 4.6 by officers of the Land and Environment Court of NSW and NSW Court of Appeal as consent authority in a range of appeal matters.

## 5. Recent Court Judgements

There are a number of relevant Court cases that provide guidance to a consent authority in the exercise of powers available under clause 4.6 and also provide guidance on those matters that must be addressed in a written request to vary a development standard.

In summary, it can be concluded from the recent decisions in regard to the exercise of the powers available to a consent authority under clause 4.6 that, firstly, there is a broad discretion under clause 4.6(4) as to the degree of satisfaction required by that clause with the reasons for the variation being either specifically particular to the development site or as broad as circumstances that might apply to a number of sites.

Secondly, that a consent authority will not exceed its power under clause 4.6 if it identifies the matters in clause 4.6 about which the consent authority must be satisfied, undertakes an analysis of those matters as they apply to the application and concludes (giving reasons) that the application satisfies those matters, and thirdly, that a consent authority can be satisfied that, if it has clearly demonstrated that it considers that the written request for a variation has addressed the specific

requirements of the provision, that any such decision would be difficult to challenge as being invalid.

The following assessment has regard to Court Judgement of Chief Justice Preston in *Wehbe v Pittwater Council* (2007) NSW LEC 827 which is still of relevance. That judgment identified the five different ways in which an objection may be well founded and that approval may be consistent with the aims of the provisions. The five tests form a part of the assessment.

#### **6. Clause 4.6 Assessment**

##### **6.1 Clause 4.6(1) Objectives of Clause**

The objectives of Clause 4.6 are satisfied in that:

- (a) the use of an appropriate degree of flexibility is justified in relation to the variation to the minimum lot size area for this particular development as the variation does not detract from the objective of the minimum lot size area standard to achieve a planned residential density in the locality nor undermine the applicability of the standard to other like developments on other sites; and
- (b) allowing flexibility in the particular circumstances of the proposed subdivision of this site will allow an appropriately scaled and sited development on the adjoining lot, which would sit comfortably within the context of the immediate locality.

##### **6.2 Clause 4.6 (2) Applicability**

The relevant development standard subject to this variation request is not excluded from the operation of the clause.

##### **6.3 Clause 4.6(3)**

In accordance with the provisions of this clause, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a 'five part test' for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standard is well founded and compliance is unreasonable or unnecessary. Below is an assessment of the matters in the 'five part test'.

#### Five Part Test

- I. The objectives of the standard are achieved notwithstanding non-compliance with the standard.

#### Comments

The Objectives of Clause 4.1 for the minimum lot size development standard are as follows:

- (a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*
- (b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,*
- (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

Notwithstanding the proposed shortfall in the site area, the proposed development is consistent with and satisfies the objectives for minimum lot size in that:

- The proposal will promote the efficient use of land by providing a subdivision layout consistent with the existing lot layouts presented along the western side of Farr Street, between Bestic and Tabrett Streets. The proposal will result in the orderly development of land which the subject site now lacks as it remains the only remaining site within the section of Farr Street which is yet to be subdivided.
- It is intended to redevelop the two proposed lots under the provisions of the Exempt & Complying Development Codes SEPP 2008. In order to demonstrate compliance and satisfaction of objectives 4.1(b) and (c), detailed architectural drawings have been prepared and submitted to Council that identify a proposed/possible building footprint and envelope of dwellings on each lot in accordance with the provisions of the Codes SEPP.
- You can see from these drawings that the two lots can accommodate two relatively large sized dwellings that can comply with the SEPP provisions, minimise any potential impact on the surrounding residential properties and be designed in such a way that they will complement the existing and desired streetscape character of Farr Street and the immediate locality.

The proposal demonstrates that despite the shortfall in site area, each new lot can readily accommodate a form of development which is compatible with that currently presented within the sites immediate context.

Notwithstanding the reduced lot size for subdivision, the proposal achieves an appropriate site dimension and width which will result in a subdivision pattern that is consistent with the existing and future desired character of the neighbourhood and as demonstrated can accommodate dwellings of adequate size and scale without have an unreasonable amenity impact on the surrounding properties and complementing the existing streetscape character of the locality.



2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary;

Comment

The purpose of the standard is still considered to be relevant to the development; however, compliance with the standard in this circumstance is not considered reasonable as the variation sought is not considered to undermine the underlying objective.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment

The underlying purpose of the standard is to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area while providing lot sizes and dimensions that are able to accommodate development consistent with relevant development controls.

In this instance, compliance with the standard would frustrate the current subdivision pattern as the subject site is the only lot within this section of Farr Street that has not been further subdivided to reflect the predominant lot layout pattern. Additionally, provision of additional housing would be compromised despite it being demonstrated that the proposed lot sizes and dimensions are capable of supporting an appropriately scaled and designed development under the provisions of the Codes SEPP 2008. To require 100% compliance is therefore considered unreasonable as the variation is acceptable based on merit. The objectives of the standards, as outlined above, will still be achieved despite the variations.

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.

Comment

Council has abandoned this development standard by granting significant variations to the standard. This is made evident in Table I below which provides details of all the properties in the street that have been subdivided and their resulting site area.

It is considered that compliance with the standard would be unnecessary and unreasonable in this instance.



<b>List of Properties – 1 to 45 Farr Street, Banksia</b>			
House No:	Lot No.	DP. No	Site Area (sqm)
1	15	664955	283.8
3	1	929969	250.0
5	1	928009	251.9
7	1	928656	240.8
9	1	928801	254.4
11	1	134316	235.5
13	12	650056	248.1
15	1	980415	244.2
17	2	981142	244.9
19	1	981141	241.6
21	10	1050212	251.8
23	1	517787	245.3
25	9	653270	245.3
27	1	927781	245.9
29	1	571700	243.0
31	1	126773	248.9
33	1	103956	246.9
35	1	32427	247.0
37	1	983812	248.0
39	2	983812	243.1
41 (subject site)	5	1677 Sect.10	490.4
43	B	344241	282.0
45	A	344241	282.0

*Table 1: Lot Sizes of properties in Farr Street*

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

#### Comment

The current use and character of the land is of a low density residential nature. Future development on the created lots can be both appropriately and readily facilitated. In addition to providing a subdivision lot layout that will present consistency with the dominant theme within the sites local context, balanced additional growth in housing in the locality through the provision of additional dwellings will result.

To frustrate reasonable development of this site by compelling compliance with the development standard is considered unreasonable and inappropriate.

In summary it is considered that there are sufficient environmental planning grounds to justify contravening the minimum lot size development in this particular instance.

#### **6.4 Clause 4.6(4) Public Interest and consistency with Zone and Standard Objectives**

In assessing a development's consistency with zone objectives, an established principle from the Land and Environment Court is as follows:

*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.*

The zone objectives for the R2 Low Density Residential Zone are as follows:

##### **I Objectives of R2 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 ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The relevant zone objectives are considered to be satisfied by this proposal, despite the variation to the development standard, as the proposal will provide opportunity for additional housing for the community in the zone while providing for a range of housing types that does not compromise the amenity of the surrounding area. This has been reinforced with the submission of potential building designs and footprints permissible on each lot under the provisions of the Codes SEPP 2008.

No other land uses are proposed and as such, it is considered that the proposal is consistent with the objectives of the R2 – Low Density Residential Zone.

On that basis the proposed variation is considered to be consistent with the applicable Zone and Standard Objectives and is not contrary to the public interest. The proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

#### **6.5 Clause 4.6(4)**

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As outlined, the proposed development remains in

the public interest as contravention of the standard does not undermine the objectives of the minimum lot size standard.

As per clause 1(1)(f) of Schedule 1 of the Regulation) and Clause 4.6(4)(b) and in accordance with Planning Circular PS 18-003 issued by the Department of Planning & Environment, concurrence of the Secretary can be assumed by the Independent Hearing and Assessment Panels to determine a development application where a development standard is varied by more than 10% and as such, the Bayside Council IHAP is nominated as the concurrence authority.

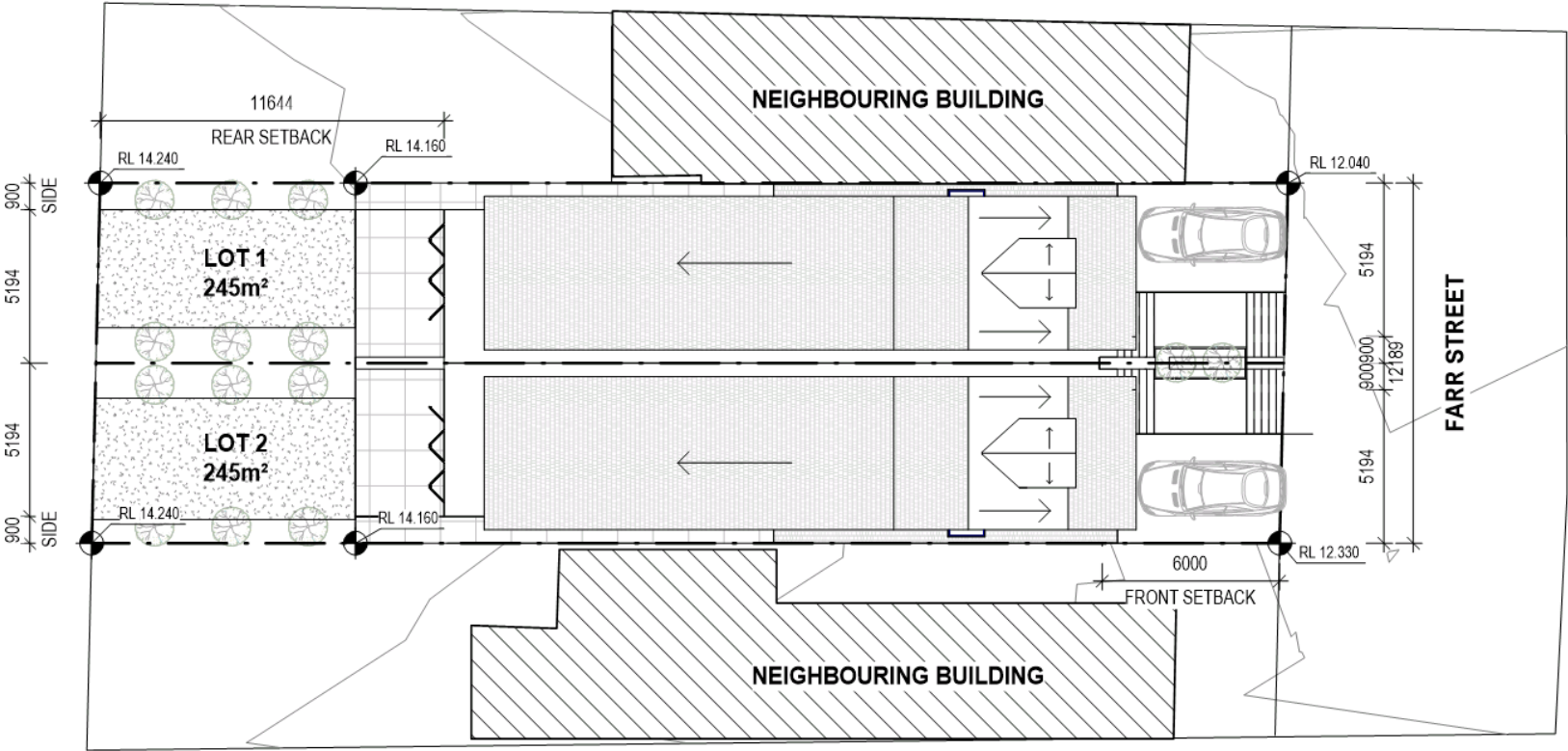
#### 6.6 Clause 4.6(5)

As addressed above, under the current provisions we wish to nominate the Bayside Council IHAP as the concurrence authority; however, the following points are made in relation to this clause:

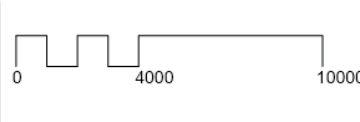
- a) The contravention of the minimum lot size standard does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the minimum lot size standard is acceptable in the circumstances given that the underlying objectives of the control are achieved and it will not set an undesirable precedent for future development within the locality.

Strict compliance with the minimum lot size control is therefore considered unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and does not result in unreasonable environmental amenity impacts.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that the IHAP support the development proposal. The proposal promotes the economic use and development of the land consistent with its zone and purpose and therefore the IHAP is requested to invoke its powers under Clause 4.6 to permit the proposed variation.



1 SITE PLAN  
1 : 200



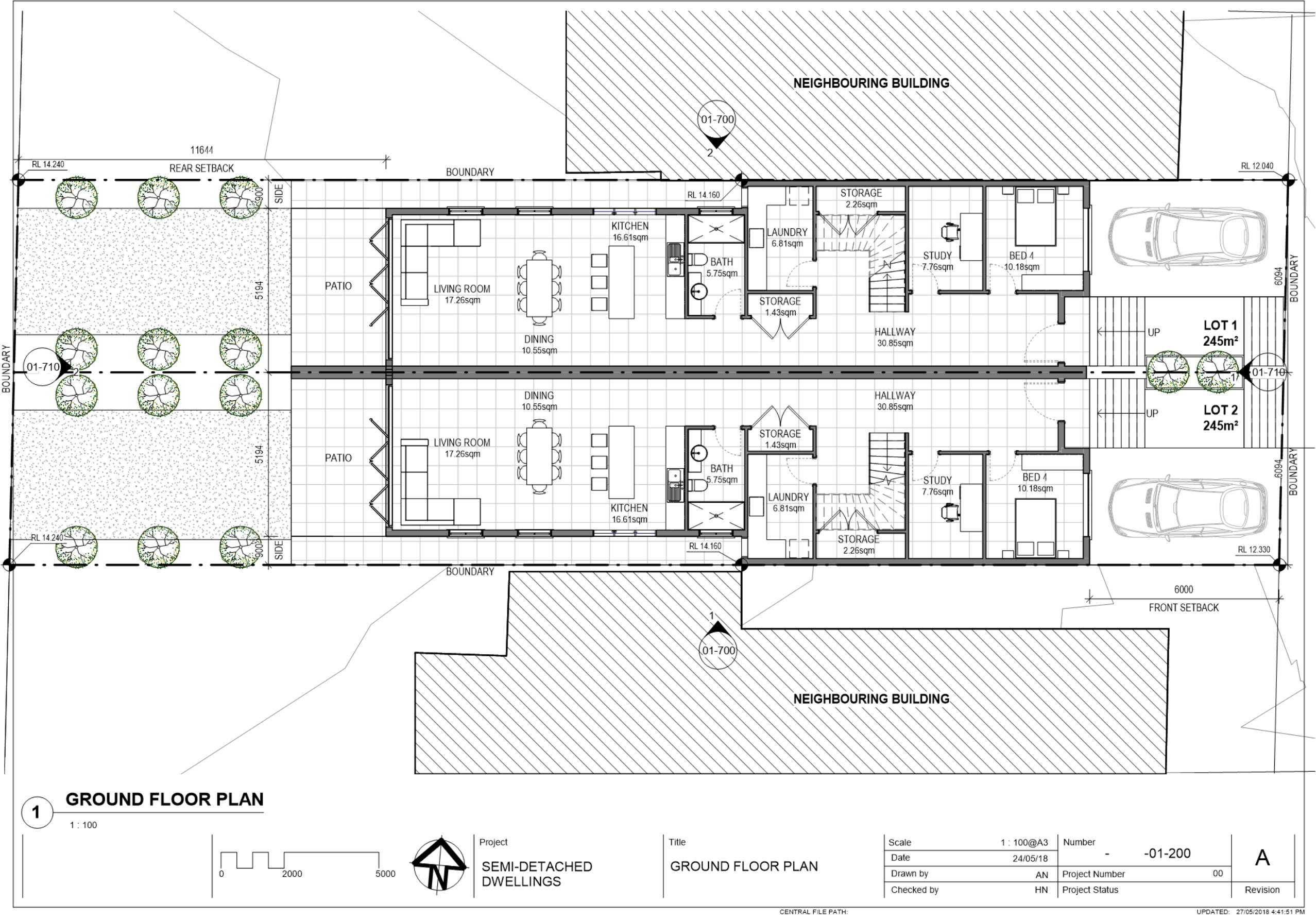
Project  
SEMI-DETACHED DWELLINGS

Title  
SITE PLAN

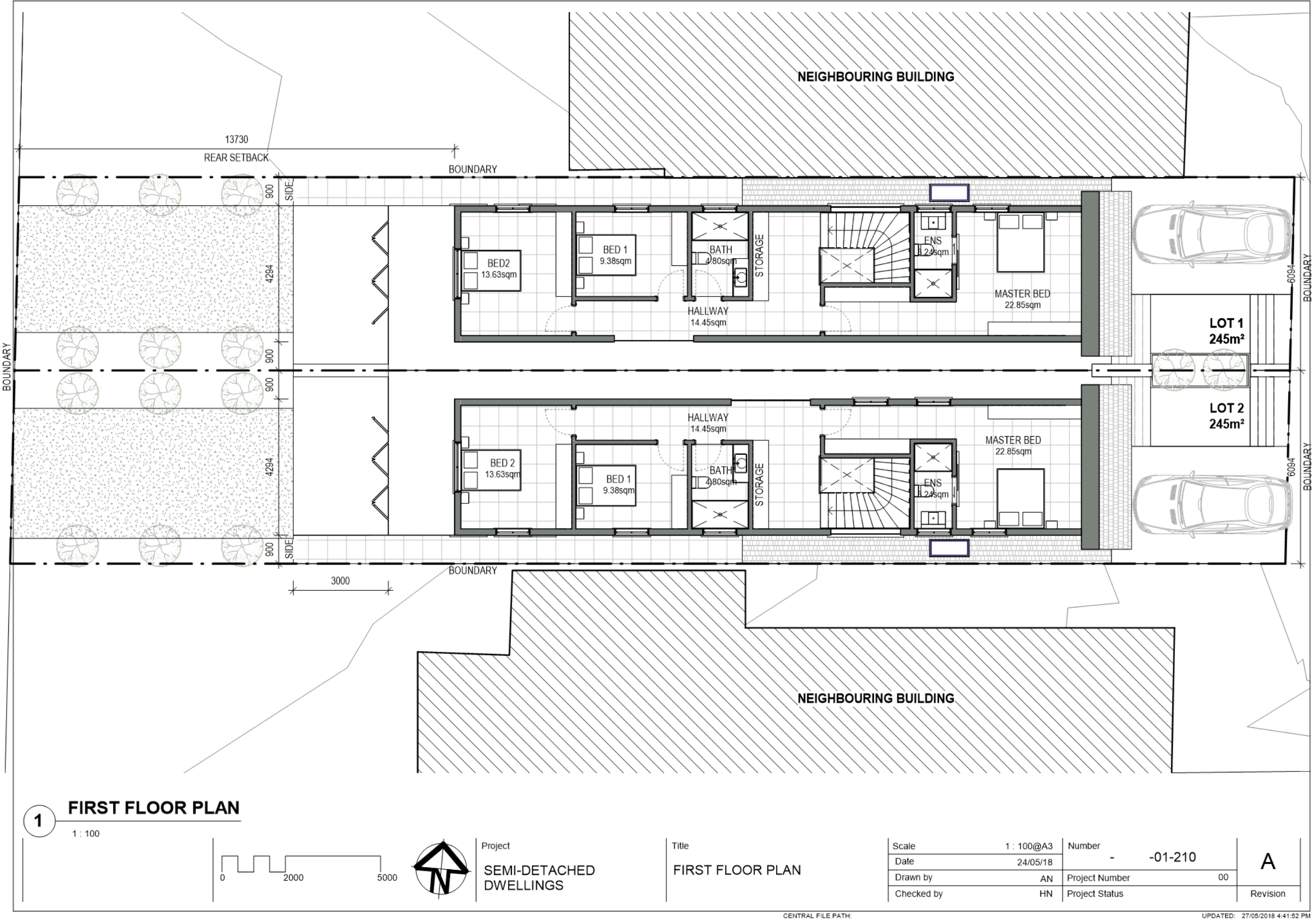
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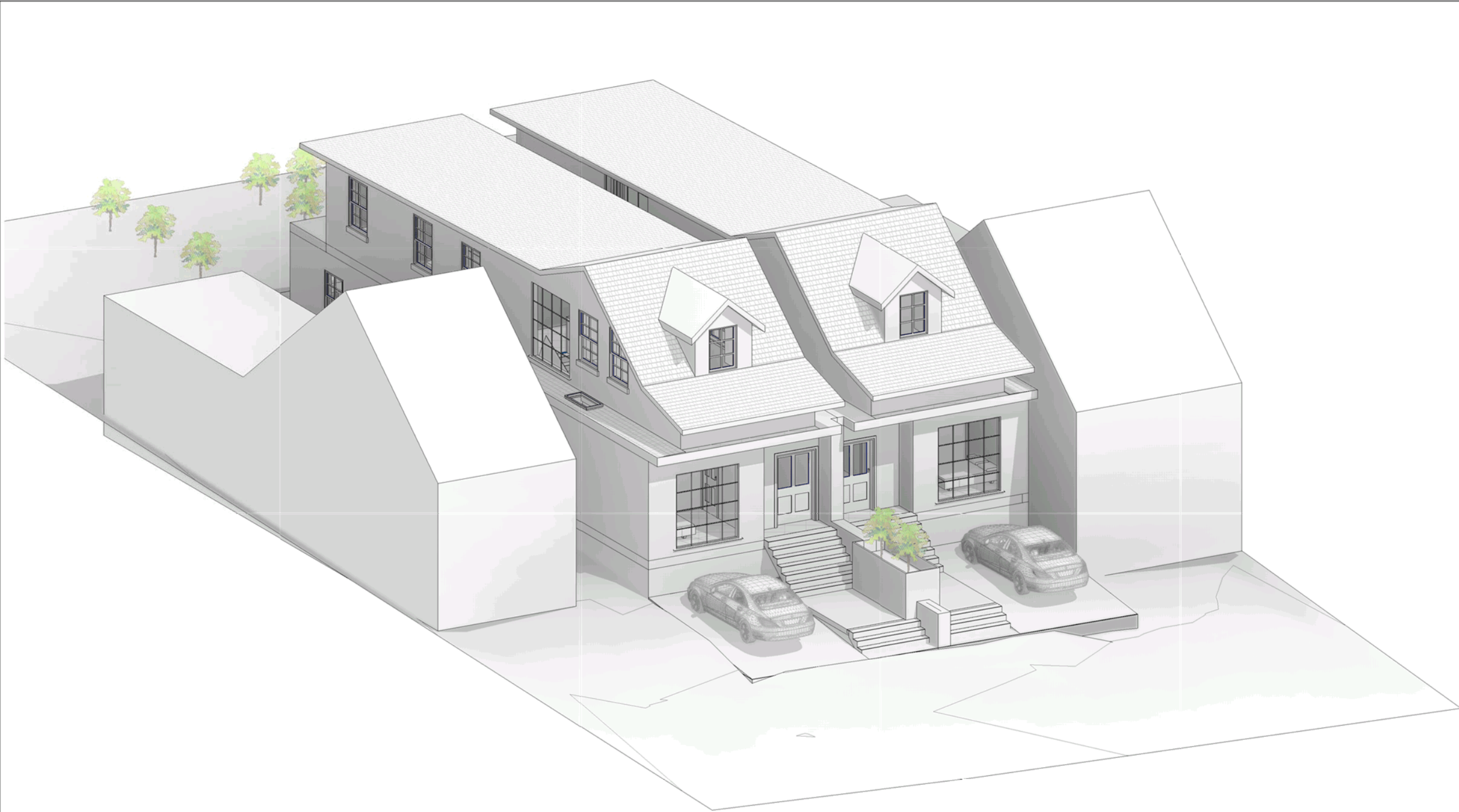












1 3D VIEW



Project  
SEMI-DETACHED  
DWELLINGS

Title  
3D VIEW

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Checked by	HN	Revision		

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**Bayside Planning Panel**

**25/09/2018**

Item No	6.6
Application Type	Development Application
Application No	F18/404
Lodgement Date	20/07/2018
Property	<b>DA-2016/117/6 - 671-683 Gardeners Road, Mascot</b>
Ward	Mascot
Owner	Karimbla Properties (No. 46) PL
Applicant	Karimbla Properties (No. 46) PL
Proposal	Deletion of Conditions 102, 104(c) and 107
No. of Submissions	Nil
Cost of Development	N/A
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

That the Section 4.55(1A) application for the Deletion of Conditions 102, 104(c) and 107 is APPROVED subject to the following:

- 1 Delete Conditions 104(c) and 107 as the child care centre was removed as part of DA-2017/1155
  - 2 Retain the wording of Conditions 102 as per the original development consent issued under Development Application consent, based on advice from the Roads and Maritime Services.
-



## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Statement of Environmental Effects [↓](#)
- 3 RMS Referral Response [↓](#)

## BAYSIDE COUNCIL

### Planning Assessment Report

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#### Application Details

<b>Application Number:</b>	DA-2016/117/05
<b>Date of Receipt:</b>	20 July 2018
<b>Property:</b>	671-683 Gardeners Road, Mascot (Lot 17 in DP 1238487)
<b>Owner:</b>	Karimbla Properties (No. 46) PL
<b>Applicant:</b>	Karimbla Properties (No. 46) PL
<b>Proposal:</b>	Deletion of Conditions 102, 104(c) and 107
<b>Recommendation:</b>	Part approval subject to amended conditions
<b>Value:</b>	Nil
<b>Zoning:</b>	B4 Mixed Use under Botany Bay Local Environmental Plan 2013
<b>Author:</b>	Andrew Ison, Senior Development Assessment Planner
<b>Date of Report:</b>	25 September 2018

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#### Key Issues

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The key issues relate to the following:

- The deletion of a series of conditions relating to the public domain and child care centre as approved as part of the previous DA.

#### Recommendation

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1. That the Section 4.55(1A) application for the Deletion of Conditions 102, 104(c) and 107 is APPROVED subject to the following:
  - (a) Delete Conditions 104(c) and 107 as the child care centre was removed as part of DA-2017/1155.
  - (b) Retain the wording of Conditions 102 as per the original development consent issued under Development Application consent, based on advice from the Roads and Maritime Services.

### Site Description

The subject site is commonly known as 671-675 Gardeners Road, Mascot (Lot 17 in DP 1238487). The site is irregular in shape, an area of 6.21 Hectares, and the mixed use development is currently under construction. The surrounding area is characterised primarily by various forms of commercial and industrial developments and uses. The subject site is located on the southern side of Gardeners Road, between Kent Road to the west and Bourke Road to the east.



Figure 1: Aerial showing subject site, marked in red (Source: Bayside IntraMaps)

### Description of approved development and proposed modifications

#### **Approved Development DA-2016/117**

Development Application (DA) 2016/117 was approved by the Sydney Central Planning Panel on 19 January 2017 for the following:

- The construction of two residential flat buildings incorporating two x 4 storey podiums, 2 x 14 storey towers containing 239 residential units, a retail tenancy, a childcare centre, private recreation facilities, at-grade and above ground 'sleeved' podium parking for 255 cars and 24,648m<sup>2</sup> of gross floor area;
- Construction of a new north-south private / publically accessible open space link; and
- Associated excavation, earthworks and landscaping.

#### **Approved Modification DA-2016/117/02**

A Section 96(1A) application was lodged on 15 February 2017 to amend a series of conditions. At the time of writing, this application had yet to be determined.



**Approved Modification DA-2016/117/03**

On 12 December 2017, Council approved under delegated authority a modification under the former Section 96(1A) provisions (now Section 4.55(1A)) as follows:

- Amend Condition 77(c) pertaining to the hours of construction of the approved mixed use development; and
- Amend Condition 117 to refer to the current Section 96(1A) application.

**Approved Modification DA-2016/117/04**

A Section 96(1A) application lodged on 21 July 2017 to amend a series of conditions relating to trees and landscaping. This was withdrawn by the applicant on 2 July 2018.

**Proposed Modifications DA-2016/117/05**

On 11 September 2018, the Bayside Planning Panel approved a 4.55(1A) application which modified a number of conditions, those being 38, 83, 85, 86, 87, 88, 90, 93, 96, 97 and 101 and the deletion of condition 95.

**Proposed Modifications DA-2016/117/06**

The applicant seeks to amend a series of conditions as such:

- Condition 102: Deletion of this condition relating to the installation and protection of all signs fronting the property. The applicant has argued that West Connex is to be undertaking these works to the public domain as part of its program, and therefore the condition is no longer valid.
- Condition 104(c): Deletion of this condition relating to the child care centre as it was deleted as part of DA-2017/1155.
- Condition 107: Deletion of this condition relating to the child care centre as it was deleted as part of DA-2017/1155.

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

**Statutory Considerations**

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***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.4.55(1A) – Modifications involving minimal environmental impact**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:



*(a) it is satisfied that the proposed modification is of minimal environmental impact,*

The proposed modification does not involve any physical amendments to the approved development and relates to a series of development consent conditions in terms of modifying the timing of completion of various works and other commitments.

*(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

As discussed above, the proposed modification does not involve any physical amendments to the approved development.

*(c) it has notified the application in accordance with:*

- i. the regulations, if the regulations so require, or*
- ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Notification has been carried out in accordance with Part 2 of the Botany Bay Development Control Plan (DCP) 2013.

*(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

No submissions have been received.

#### **S.4.15(1) - Matters for Consideration – General**

##### **S.4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

##### **Botany Bay Local Environmental Plan 2013 (LEP)**

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application. Given that the subject application makes proposes no physical amendments to the approved development, there are no relevant provisions to the assessment of this application.

##### **S.4.15(1)(a)(ii) - Provisions of any Draft EPI's**

There are no current Draft EPIs applicable to this development.

##### **S4.15(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**

Given that the subject application makes proposes no physical amendments to the approved development, there are no relevant provisions to the assessment of this application.

**S.4.15(1)(a)(iv) - Provisions of regulations**

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

**S.4.15(1)(b) - Likely Impacts of Development**Condition 102

This application was referred to the Roads and Maritime Services (RMS) for comment.

The RMS Roads and Maritime objects to the proposed deletion of Condition 102. The New M5 project scope only includes placing signs which are directly related to the West Connex project. This may not necessarily include all signage (for example, parking signage) required as part of Council's consent.

It also provides consistency with DA-2017/1155/03, where Condition 59 which prescribes the same requirement was retained after a similar request by the applicant.

Conditions 104(c) and 107

Development Application (DA) 2017/1155 was approved on 18 January 2018 under delegated authority for alterations to approved building (under DA-2016/117) by replacing childcare centre with four residential apartments and replacing indoor gym with retail spaces including a 24 hour/7 gym.

On this basis, Council is supportive of the deletion of these conditions as they are now redundant.

**S.4.15(1)(c) - Suitability of the site**

Site suitability was assessed as part of the original Development Application, and the modifications to the conditions do not change the deemed acceptable suitability of the approved development on the subject site.

**S.4.15(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. No submissions were received.

**S.4.15(1)(e) - Public interest**

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

**Section 94 Contributions**

The proposed modification does not change any Section 94 Contributions that are payable, and as prescribed in the original development consent (as amended).

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**Conclusion**

Development Application No. 2016/117/06 for the Deletion of Conditions 102, 104(c) and 107 at 671-683 Gardeners Road, Mascot has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for partial approval subject to modified conditions of consent.

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**Attachment****Schedule 1 – Conditions of Consent**

Premises: 671-679 Gardeners Road, Mascot

DA No: 2016/117/06

**SCHEDULE OF CONSENT CONDITIONS**

**GENERAL CONDITIONS**

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

Drawing No.	Author	Dated Received
Ground Plan (Drawing No. DA-110-001, Revision S6)	Turner Architects	Dated 20/12/2016 Received 04/01/2017
Level 1 (Drawing No. DA-110-002, Revision S5)	Turner Architects	Dated 26/10/2016 Received 04/01/2017
Level 2 to 3 Plan (Drawing No. DA-110-003, Revision S5)	Turner Architects	Dated 26/10/2016 Received 04/01/2017
Level 4 Podium Plan (Drawing No. 110-004, Revision S5)	Turner Architects	Dated 03/11/2016 Received 04/01/2017
Level 5 to 13 Tower Plan (Drawing No. DA-110-005, Revision S7)	Turner Architects	Dated 20/12/2016 Received 04/01/2017
Plant Rooms (Drawing No. DA-110-006, Revision S3)	Turner Architects	Dated 03/11/2016 Received 04/01/2017
Roof Plan (Drawing No. DA-110-007, Revision S3)	Turner Architects	Dated 03/11/2016 Received 04/01/2017
North Elevation (Drawing No. DA-250-001, Revision S4)	Turner Architects	Dated 01/11/2016 Received 04/01/2017
East Elevation (Drawing No. DA-250-002, Revision S3)	Turner Architects	Dated 01/11/2016 Received 04/01/2017
South Elevation (Drawing No. DA-250-003, Revision S3)	Turner Architects	Dated 01/11/2016 Received 04/01/2017
West Elevation (Drawing No. DA-250-004, Revision S3)	Turner Architects	Dated 01/11/2016 Received 04/01/2017
East Elevation – North South Street (Drawing No. DA-250-005, Revision S3)	Turner Architects	Dated 01/11/2016 Received 04/01/2017
West Elevation – Street (Drawing No. DA-250-006, Revision S3)	Turner Architects	Dated 01/11/2016 Received 04/01/2017
Cross Section (Drawing No. DA-350-001, Revision S2)	Turner Architects	Dated 01/11/2016 Received 04/01/2017

Referenced documents

Drawing No.	Author	Dated Received
Cover Sheet	Turner Architects	Dated 09/11/2016 Received 22/11/2016
Site Plan (Drawing No. DA-100-001, Revision S3)	Turner Architects	Dated 03/11/2016 Received 22/11/2016
Site Analysis (Drawing No. DA-100-002, Revision S2)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
GFA Diagrams (Drawing No. DA-710-001, Revision S7)	Turner Architects	Dated 20/12/2016 Received 04/01/2017
Shadow Diagrams (Drawing No. DA-720-001, Revision S3)	Turner Architects	Dated 02/11/2016 Received 22/11/2016
View from Sun Analysis Sheet 1 (Drawing No. DA-720-002, Revision S2)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
View from Sun Analysis Sheet 2 (Drawing No. DA-720-003, Revision S2)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
View from Sun Analysis Sheet 3 (Drawing No. DA-720-004, Revision S1)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
View from Sun Analysis Sheet 4 (Drawing No. DA-720-005, Revision S1)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
Podium Shadow Diagrams (Drawing No. 720-006, Revision S1)	Turner Architects	Dated 03/09/2016 Received 22/11/2016
ADG Diagrams (Drawing No. DA-721-001, Revision S2)	Turner Architects	Dated 31/10/2016 Received 22/11/2016
Site Survey (Drawing No. 21386, Sheet 1 – 3)	B & P Surveys	Dated 24/05/2016 Received 27/07/2016
Adaptable Apartments (Drawing No. DA-810-001, Revision S1)	Turner Architects	Dated 08/07/2016 Received 27/07/2016
Materials and Finishes (Drawing No. Da-910-001, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
CGI View from north west Gardeners Road (Drawing No. DA-920-001, Revision S2)	Turner Architects	Dated 26/07/2016 Received 27/07/2016
CGI View from north east Gardeners Road (Drawing No. DA-920-002, Revision S2)	Turner Architects	Dated 26/07/2016 Received 27/07/2016

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received</b>
Perspective 1 (Drawing No. DA-920-003, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 2 (Drawing No. DA-920-004, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 3 (Drawing No. DA-920-005, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 4 (Drawing No. DA-920-006, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 5 (Drawing No. DA-920-007, Revision S1)	Turner Architects	Dated 08/07/2016 Received 27/07/2016
SEPP 65 Report (Revision A)	Turner	Dated 08/07/2016 Received 27/07/2016
Design Verification Statement (Revision A)	Turner	Dated 08/07/2016 Received 27/07/2016
Statement of Environmental Effects and DCP Assessment Table	Meriton Property Services Pty Ltd	Dated 25/07/2016 Received 27/07/2015
Clause 4.6 Variation	Urbis	Received 01/12/2016
Thermal Comfort & BASIX Assessment (Issue B)	Efficient Living	Dated 03/11/2016 Received 03/11/2015
Acoustic Report (Revision 1)	Acoustic Logic	Dated 17/06/2016 Received 27/07/2016
Waste Management Plan (Revision C)	Elephants Foot	Dated 11/07/2016 Received 27/07/2016
Transport Impact Assessment	Arup	Dated 11/07/2016 Received 27/07/2016
Access Report (Revision 2)	Wall to Wall Design & Consulting	Dated 04/07/2016 Received 27/07/2016
BCA Compliance Assessment Report (1423-96, Rev 00)	AED Group	Dated 27/06/2016 Received 27/07/2016
Arboricultural Assessment Report	Tree and Landscape Consultants (TALC)	Dated 20/06/2016 Received 27/07/2016
Amended Arborist Report	TALC	Dated 06/09/2016 Received 21/09/2016
Amended Arborist Report	TALC	Dated 28/10/2016

Drawing No.	Author	Dated Received
		Received 28/10/2016
Landscape Cover (Revision C)	Context	Dated October 2016 Received 28/10/2016
Landscape Masterplan (Page 1, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Streetscape / Public Domain Plan (Page 2, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Masterplan (Page 3, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Masterplan Podium Level (Page 4, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Section Ground Level (Page 5, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Section Ground Level (Page 6, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Section Podium Level (Page 7, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Planting / Indicative Palette & Schedule (Page 8, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Plan of Management	Meriton Property Services Pty Ltd	Dated 11/07/2016 Received 27/07/2016
Construction Management Plan	Meriton Property Services Pty Ltd	Dated June 2016 Received 27/07/2016
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 31/05/2016 Received 27/07/2016
Civil Infrastructure Development Application Report (Revision 1)	at&I	Dated 11/07/2016 Received 27/07/2016
Detailed Site Assessment	Coffey	Dated 31/10/2012 Received 27/07/2016
Site Auditor Interim Advice (Ref: 16112_IA1)	Zoic Environmental Pty Ltd	Dated 23/11/2016 Received 23/11/2016
Geotechnical Site Investigation	Coffey	Dated 18/05/2016



Drawing No.	Author	Dated Received
		Received 27/07/2016
Flood Report (Ref: X14220.0)	Calibre Consulting	Dated 12/10/2015 Received 27/07/2016
Qualitative Wind Impact Assessment (Revision 0)	SLR	Dated 11/07/2016 Received 27/07/2016
QS Report	Steven Wehbe	Dated 11/07/2016 Received 27/07/2016
8.00 Apartment Schedule (Revision S2)	Turner	Dated 29/11/2016 Received 29/11/2016

- 2 No construction works (including excavation) shall be undertaken prior to the issue of a Construction Certificate.
- 3 This Consent relates to land in Lot 1 in DP 777315 Lot 500 in DP 1030729 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 4 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.
- 5 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 6 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 each relevant BASIX Certificate for the each building in the development are fulfilled.
  - (a) Note:  
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.
- (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

#### **CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

7 The following condition is imposed by Ausgrid and is to be complied with.

- (a) Ausgrid has identified the following assets to be affected by the development works:
  - (i) Existing substation(s) within site boundary and associated underground cables. Including the easement, lease or right of ways over these electrical assets.
  - (ii) Close proximity of overhead and/or underground cable/s on public land

Ausgrid require that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, electric and magnetic fields (EMF), noise, visual amenity and other matters that may impact on Ausgrid or the development. In general, conditions to be adhered to by the developer include, but are not limited to, the following:

- (b) Ausgrid requires kiosk substation housings to be separated from building ventilation system air intake and exhaust duct openings, by not less than 6 metres. This applies irrespective of whether the building ducted ventilation system is mechanical or natural and irrespective of whether or not fire dampers are installed in the ducts.
- (c) Any portion of a building other than a BCA class 10a structure constructed from non-combustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass blockwork or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non-ignitable blast resisting barrier. For further details on fire segregation requirements refer to Ausgrid's Network Standard 141.
- (d) Any work undertaken near Overhead Power lines needs to be done in accordance with:
  - (i) WorkCover Document ISSC 23 "Working Near Overhead Power Lines"
  - (ii) Ausgrid Network Standards
  - (iii) Ausgrid Electrical Safety Rules
- (e) The location of underground cables by using Dial Before You Dig and comply with the requirements of Ausgrid's Network Standard 156: Working Near or Around Underground Cables before any excavation works are undertaken.

- (f) Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.
- (g) The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (e.g. whether a substation is required on site).
- (h) The developer is to ensure that the proposed works do not contravene Ausgrid's technical standards and statutory requirements, in regards to the safe and reliable operation of Ausgrid's network.

8 The following conditions are imposed by the **Sydney Water**:

- (a) Water and Wastewater
  - (i) Strategic investigation shows that the trunk water and wastewater systems have adequate capacity to service the proposed development.
  - (ii) The drinking water main available for connection is the 150mm main on the southern side of Gardeners Road. Depending on the final location of the connection to the water network and number of dwellings within the approved development, local system amplifications may be required.
  - (iii) The wastewater main available for connection is the existing 300mm main in Gardeners Road. A minor extension to provide a connection point within the boundary of the development will be required.
  - (iv) Detailed requirements will be provided at Section 73 application phase.
- (b) Sydney Water E-Planning
  - (i) Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is [urbangrowth@sydneywater.com.au](mailto:urbangrowth@sydneywater.com.au). Further advice and requirements for this proposal are at attachments 1. If you require any further information, please contact Manwella Hawell of Urban Growth Strategy on of Urban Growth 02 8849 4354 or e-mail [manwella.hawell@sydneywater.com.au](mailto:manwella.hawell@sydneywater.com.au)
- (c) Sydney Water Servicing
  - (i) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.  
Applications must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au)> Plumbing, building and developing> Developing Land development or telephone 13 20 92.
- (d) Building Plan Approval
  - (i) The developer must have the building plans stamped and approved before any construction is commenced. Approval is needed because

construction/building works may affect Sydney Water's assets (e.g. Water, sewer and stormwater mains).

For further assistance please telephone 13 20 92 or refer to the Building over or next to assets page on the Sydney Water website (see Plumbing, building and developing then Building over or next to assets).

(e) Requirements for Business Customers for Commercial and Industrial Property Developments

- (i) If this property is to be developed for Industrial or Commercial operations, it may need to meet the following requirements:

*Trade Wastewater Requirements*

If this development is going to generate trade wastewater, the property owner must submit an application requesting permission to discharge trade wastewater to Sydney Water's sewerage system. You must wait for approval of this permit before any business activities can commence.

The permit application should be emailed to Sydney Water's Business Customer Services at [businesscustomers@sydneywater.com.au](mailto:businesscustomers@sydneywater.com.au). It is illegal to discharge Trade Wastewater into the Sydney Water sewerage system without permission.

A Boundary Trap is required for all developments that discharge trade wastewater where arrestors and special units are installed for trade wastewater pre-treatment.

If the property development is for Industrial operations, the wastewater may discharge into a sewerage area that is subject to wastewater reuse. Find out from Business Customer Services if this is applicable to your development.

(f) Backflow Prevention Requirements

- (i) Backflow is when there is unintentional flow of water in the wrong direction from a potentially polluted source into the drinking water supply.

All properties connected to Sydney Water's supply must install a testable Backflow Prevention Containment Device appropriate to the property's hazard rating. Property with a high or medium hazard rating must have the backflow prevention containment device tested annually. Properties identified as having a low hazard rating must install a non-testable device, as a minimum.

Separate hydrant and sprinkler fire services on non-residential properties, require the installation of a testable double check detector assembly. The device is to be located at the boundary of the property.

*Before you install a backflow prevention device:*

1. Get your hydraulic consultant or plumber to check the available water pressure versus the property's required pressure and flow requirements.
2. Conduct a site assessment to confirm the hazard rating of the property and its services. Contact PIAS at NSW Fair Trading on 1300 889 099.

For installation you will need to engage a licensed plumber with backflow accreditation who can be found on the Sydney Water website: <http://www.sydneywater.com.au/Plumbing/BackflowPrevention/>

(g) Water Efficiency Recommendations

- (i) Water is our most precious resource and every customer can play a role in its conservation. By working together with Sydney Water, business customers are able to reduce their water consumption. This will help your business save money, improve productivity and protect the environment.

Some water efficiency measures that can be easily implemented in your business are:

- Install water efficiency fixtures to help increase your water efficiency, refer to WELS (Water Efficiency Labelling and Standards) Scheme, <http://www.waterrating.gov.au/>
- Consider installing rainwater tanks to capture rainwater runoff, and reusing it, where cost effective. Refer to <http://www.sydneywater.com.au/Water4Life/InYourBusiness/RWT-Calculator.cfm>
- Install water-monitoring devices on your meter to identify water usage patterns and leaks.
- Develop a water efficiency plan for your business.

It is cheaper to install water efficiency appliances while you are developing than retrofitting them later.

(h) Contingency Plan Recommendations

- (i) Under Sydney Water's customer contract Sydney Water aims to provide Business Customers with a continuous supply of clean water at a minimum pressure of 15 meters head at the main tap. This is equivalent to 146.8kpa or 21.29psi to meet reasonable business usage needs.

Sometimes Sydney Water may need to interrupt, postpone or limit the supply of water services to your property for maintenance or other reasons. These interruptions can be planned or unplanned.

- (ii) Water supply is critical to some businesses and Sydney Water will treat vulnerable customers, such as hospitals, as a high priority.

9 The following conditions are imposed by the **NSW Roads and Maritime Service**

- (a) All redundant driveways are to be removed and replaced won Gardeners Road with kerb and gutter to Roads and Maritime requirements. The design and construction of the kerb and gutter crossing on Gardeners Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, Statewide Delivery, Parramatta (telephone 88492138).

Detailed design plans of the proposed kerb and gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of the relevant a Construction Certificate and commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

- (b) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
- (c) All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
- (d) A construction zone will not be permitted on Gardeners Road.
- (e) A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Gardeners Road during construction activities.
- (f) The swept path of the longest vehicle (to service the site) entering and existing the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
- (g) Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any charges are to be submitted to Roads and Maritime for approval, prior to the commencement of works on site. Details should be forwarded to:
  - 1. The Sydney Asset Management
  - 2. Roads and Maritime Services
  - 3. PO Box 973 Parramatta CBD 2124.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2124.

- (h) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

The report and any enquiries should be forwarded to:

Project Engineer, External Works  
Sydney Asset Management  
Roads and Maritime Services  
PO Box 973 Parramatta CBD 2124.

Telephone 8849 2114  
Fax 8849 2766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days' notice of the intention to excavate

- below the base of the footings. The notice is to include complete details of the work.
- (i) All vehicles are to enter and leave the site in a forward direction.
  - (j) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2002 for heavy vehicle usage.
  - (k) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclist travelling along the footpath.
- 10 The following conditions are imposed by the **Sydney Airport Corporation Limited (SACL)** and must be complied with:
- (a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
  - (b) The application sought approval for the property development to a height of 51.0 metres Australian Height Datum (AHD).
  - (c) In the capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, the Airfield Design Manager has no objection to the erection of this development to a maximum height of 51.0 metres AHD. Should you wish to exceed this height a new application must be submitted.
  - (d) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
  - (e) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. Sydney Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
  - (f) Information required by Sydney Airport prior to any approval is set out below:
    - (i) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)). The height of the prescribed airspace at this location is 51 metres above AHD.
    - (ii) Planning for Aircraft Noise and Public Safety Zones: Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF). Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport



boundary, it is recommended that proposed land uses which have high population densities should be avoided.

- (g) Application for Approval of Crane Operation
- (i) Pursuant to s. 183 of the Airports Act 1996 and Regulation 7 of the Airports (Protection of Airspace) Regulations 1996, the Proponent must apply through the Airport to the Secretary of the Department of Infrastructure and Regional Development for approval of the operation ("controlled activity") set out in the Schedule.
  - (ii) An Application for approval must be given to the Airport at least 28 days before commencement of the operation.
  - (iii) The operation must not commence without approval, and must only proceed in compliance with any conditions imposed on such approval.
  - (iv) Sydney Airport has delegated authority from the Secretary to determine "short term" operations (less than 3 months).
  - (v) The Airport is required to invite submissions from CASA and Airservices regarding the proposed operation.
  - (vi) The Secretary and the Airport, as applicable, may request further information before determining an application.
  - (vii) The "Important Notes" must be read and accepted.
  - (viii) The Proponent must complete this Application and provide it to Sydney Airport, with a copy to the Council as part of the relevant Development Application.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION, EXCAVATION OR BUILDING WORKS**

- 11 The applicant must, prior to the commencement of any works, pay the following fees:
- (a) Development Control \$12,900.00
  - (b) Builders Damage Deposit & Performance Bond \$531,300.00 (# No. 12)
- 12 Prior to the issue of any Construction Certificate, the applicant shall lodge a Builder's Damage Deposit and Performance Bond of **\$531,300.00** (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.
- 13 To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,

- (b) Negotiate with the utility authorities (e.g. AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
    - (i) The additional load on the system, and
    - (ii) The relocation and/or adjustment of the services affected by the construction.
  - (c) As part of this development, the Ausgrid lighting poles along Kent and Gardeners Roads fronting the site, will need to be decommissioned and new lighting poles shall be constructed satisfying V3 lighting requirements for Kent and Gardeners Roads and any other requirements as specified by Council, RMS and any other service provider,
  - (d) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider (where required), and
  - (e) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the relevant staged Construction Certificate.
  - (f) 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.
- 14 Prior to commencement of any works, the Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.
- 15 Prior to the commencement of excavation or any building works, 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.
- 16 Prior to the commencement of excavation or any building works, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority.
- The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction

related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

- 17 A Construction Management Program shall be submitted to, and approved in writing by the PCA prior to the commencement of excavation or any building works. The program shall detail:
- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
  - (b) The proposed phases of construction works on the site and the expected duration of each construction phase,
  - (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
  - (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
  - (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
  - (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
  - (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
  - (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
  - (i) Proposed protection for Council and adjoining properties, and
  - (j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
  - (k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
- 18 Prior to the commencement of excavation or any building works, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) and approved by the relevant road authority. The plan shall:
- (a) be prepared by a RMS accredited consultant,
  - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,

- (c) during construction, if access from Kent Road is required, the applicant is to submit documentary evidence to the Principal Certifying Authority that the required Section 138 Consent under the Roads Act, 1993 has been issued by the New South Wales Roads and Maritime Services, and
- (d) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

*Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*

- 19 Prior to the commencement of any excavation or building work, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
- 20 To ensure the necessary assessment and remediation is completed, a NSW Environment Authority (EPA) Accredited Site Auditor shall be appointed to the site prior to the commencement of any remediation works, excavation or commencement of works at the site. The Site Auditor shall review and endorse any additional investigation and remediation proposed prior to the commencement of any works.
- 21 In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.
- 22 Prior to the demolition of any building or structure, a Hazardous Building Material Assessment (HBMA) shall be carried out and a report provided to council to ensure that any hazardous materials that may have been used within the structural components of buildings and infrastructure are adequately addressed to protect site personnel and the public from the risk of exposure. This shall be undertaken by an appropriately qualified consultant and shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority) prior to the demolition of any building or structure.  
  
Should any hazardous materials be identified a Work Management Plan completed in accordance with AS2601 – Demolition of Buildings shall be submitted to the Principal Certifying Authority prior to the demolition of any building or structure. The report shall contain details regarding the type of hazardous material and the proposed methods of containment and disposal.

- 23 A Soil and Water Management Plan (SWMP) shall be prepared in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004). All management measures recommended and contained within the Soil and Water Management Plan (SWMP) shall be implemented in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times. A copy of the SWMP shall be kept on-site at all times and made available to Council Officers on request.
- 24 Erosion and sediment control devices shall be installed and functioning 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 public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines including the Protection of the Environment Operations Act 1997.
- These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 25 The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
- 26 Shaker pads and a wheel washer are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 27 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 afterhours contact telephone number.
  - (b) Any such sign is to be removed when the work has been completed.
- 28 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- (a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
  - (b) Each toilet provided:
    - (i) must be standard flushing toilet; and,

- (ii) must be connected;
    - (iii) to a public sewer; or
    - (iv) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
    - (v) if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
  - (c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- 29 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.
- 30 Prior to the commencement of any demolition, excavation or remediation 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.
- i)
- 31 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: -
- (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve,
  - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips,
  - (c) Permit to install temporary ground anchors in public land,
  - (d) Permit to discharge ground water to Council's stormwater drainage system,
  - (e) Permit for roads and footways occupancy (long term/ short term),
  - (f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,

- (g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
  - (h) Permit to place skip/waste bin on footpath and/or nature strip, and
  - (i) Permit to use any part of Council's road reserve or other Council lands.
- 32 Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.
- 33 In order to ensure that a total of nine (9) trees including: three (3) London Plane trees (Tree #32, Tree #31 and Tree #30) to the west of the site along Kent Road, together with two (2) Paperbark trees (Tree #24 and Tree #25) and four (4) Tallowood (Trees #20, Tree #20a, Tree #20b and Tree #20c), within the setback to Gardeners Road are retained and protected during construction, and their health and structural stability ensured, the following is required:
- (a) A revised storm water/drainage layout is required to be submitted to Council for review and approval prior to the issue of construction certificate. The storm water/drainage layout is required to be revised – with consultation with the Consultant Arborist - to ensure that the trees identified for retention will not be adversely impacted, in accordance with AS4970-2009 Protection of Trees on Development Sites.
  - (b) A Consultant Arborist AQF Level 5 shall be engaged from site establishment to the post-construction period to erect tree protection zones and signage, inspect and advise on all works during the entire construction period, monitor tree health and to authorize and undertake tree canopy and root pruning where necessary only and to the minimum only so that the health or structural stability of the trees is not impacted.
  - (c) All tree works and tree management shall be undertaken in accordance with the Arborist report by Tree and Landscape Consultants (TALC) (dated 20th June 2016 and Statement of Aboricultural Issues dated 28 October 2016). For all tree root and canopy work to trees, comply with the recommendations and requirements and management plan contained within this report.
  - (d) Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report.
  - (e) Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction. The fence shall remain in place until construction is complete.



- (f) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
- (g) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
- (h) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
- (i) The TPZ's are "No-Go" zones. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist.
- (j) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
- (k) Excavation within the TPZ and within a nominated radial dimension from the tree trunk as determined by the consultant Arborist in accordance with AS 4970 : 2009 – Protection of Trees on Development Sites shall be carried out manually using hand tools or light machinery to minimise root damage or disturbance.
- (l) No tree roots greater than 30mm in diameter shall be pruned without further assessment by Council's Tree Officer and the consulting Arborist and only following the submission of further Arborists reports to Council so as not to unduly impact or stress the tree.
- (m) Ensure no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under application from the consultant Arborist. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
- (n) For retained trees on the private property adjoining, the developer is required to consult with Council and advise prior to any tree works taking place.
- (o) Care shall be taken with construction work in the primary root zone of all existing neighbouring trees to be retained. These trees must be retained and construction works are to accommodate tree roots, branches and canopy without damage or impact. Trees are not to be pruned back to the boundary fence line under any circumstances. The canopy may otherwise overhang the property.
- (p) The Applicant will be required to undertake any tree maintenance or remedial pruning works required by Council or the Consultant Arborist at the completion of construction.
- (q) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

- 34 Fire booster assemblies and electrical kiosks and the like are to be housed within the building structure or screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect prior to their installation.
- 35 Prior to the commencement of any works, the applicant must inform Council, in writing, of:
- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work; or
  - (b) The name and permit number of the owner-builder who intends to do the work;
  - (c) The Council also must be informed if: -
    - (i) A contract is entered into for the work to be done by a different licensee; or
    - (ii) Arrangements for the doing of the work are otherwise changed.

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

**The following conditions shall be satisfied prior to the issue of the relevant construction certificate unless otherwise stated**

- 36 Prior to the issue of any Occupation Certificate, 671-683 Gardeners Road (Lot 1 in DP 777315 and Lot 500 in DP 1030729) and 1-5 Kent Road (Lot 30 in DP 789177) must be consolidated and the consolidated title registered.
- 37 The applicant must prior to the issue of any Construction Certificate, pay the following fees:
- (a) Waste Levy \$7,408.60;
  - (b) Street Tree Maintenance Bond \$10,000.00 (# No. 36)
- 38 Prior to the issue of any Construction Certificate, the applicant is to submit payment of a Street Tree Maintenance Bond of \$10,000.00. The duration of the Bond shall be limited to a period of 24 12 months after final inspection of new street trees by Council. At the completion of the 24 12 month period the Bond shall be refunded pending a satisfactory inspection of the trees by Council. If any tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes this work. (DA-2016/117/05)
- 39 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.)*

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

- (a) Provisions made in the Civil Infrastructure Development Application Report, project no. 16-381-01 by AT&L, dated July 2016 and but not limited to Part 6 of the SMTG,
  - (b) The On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff from the site for all storm events up to and including 1 in 100 year ARI storm and permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the "State of Nature" condition (i.e. the site is totally grassed/turfed), rather than pre-development condition,
  - (c) Stormwater discharge to Council/RMS Kerb & Gutter shall be limited to a single outlet with maximum capacity of 10L/s. If greater discharge rate is proposed (upto the maximum discharge rate stated in the point above), the a direct connection to Council/RMS pit and pipe system isrequired,
  - (d) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure,
  - (e) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
  - (f) The pump out system from the basement carpark proposed shall discharge to the on-site stormwater detention (OSD) system,
  - (g) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,
  - (h) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
  - (i) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
  - (j) The submission of detailed calculations including computer modelling where required to support the proposal.
- 40 Evidence that a NSW Environment Authority (EPA) Accredited Site Auditor appointment has been appointed to the site is required to be provided to Council prior to the issue of any Construction Certificate.
- 41 The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans, a contribution of **\$3,420,043.94** is payable as calculated below:
- City of Botany Bay Section 94 Contributions Plan 2016**
- The s94 contributions (as indexed as at 2015/16) for residential and commercial/retail are as follows (including application of credit):

a) Community Facilities:	\$ 525,810.26
b) Administration:	\$ 39,187.02
c) Open Space & Recreation (Mascot):	\$ 53,346.79
d) Open Space & Recreation (Citywide):	\$ 2,284,013.26
e) Transport (Mascot):	\$ 302,483.16
f) Transport (Citywide):	\$ 215,203.46
<b>TOTAL:</b>	<b>\$ 3,420,043.94</b>

**Note:** The Section 94 Contributions are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

- 42 Prior to the issue of the Construction Certificate for the relevant stage, the applicant shall submit amended plans to Council for approval, showing the following:
- (a) As per the Qualitative Wind Impact Assessment prepared by SLR, the following recommendations are to be shown on a set of amended plans:
- (i) A 1.8m vertical shield or screen along the western perimeter of the retail outdoor dining area to help shield potential westerly winds impacting the area;
  - (ii) Local shade cloths to the Level 4 communal open space of Buildings D and E to further protection from adverse winds;
  - (iii) A 1.8m balustrade surrounding the perimeters of both proposed Level 4 communal open space and childcare open spaces for further shielding.
  - (iv) Scattered landscaping within the proposed level 4 childcare open space is recommended to help break up adverse winds.
- 43 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Certifying Authority with the application for the above ground Construction Certificate. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 44 Prior to the issue of a Construction Certificate, the construction certificate drawings are to show the sub-surface OSD tanks and infiltration trenches are to be located at least 3 metres away from the canopy dripline of any existing tree to be retained and not located where it will limit the planting of trees on the site. Excavation proximate to trees shall be carried out manually using hand tools, or with small machinery to minimise tree root damage, disturbance or soil compaction. If tree roots are encountered Council's Tree Officer must be called for a site inspection. If tree roots cannot be cut without compromising the tree then the OSD will be required to be re-configured or relocated.

- 45 The Applicant has permission to remove trees Tree #1, Tree #2, Tree #3, Tree #4, Tree #5, Tree #6, Tree #7, Tree #8, Tree #9, Tree #10, Tree #11, Tree #12, Tree #13, Tree #14, Tree #15, Tree #16, Tree #17, Tree #18, Tree #19, Tree #21, Tree #22, Tree #23, Tree #26, Tree #27, Tree #28, Tree #29, Tree #33, as identified by the Consultant Arborist in the report by Tree and Landscape Consultants (TALC) (dated 20th June 2016). Note: Trees are not permitted to be removed until the Construction Certificate has been issued.
- 46 Tree removal shall be undertaken by the Applicant at their own expense and adhere to the following:
- (a) A qualified Arborist with their own public liability insurance must be engaged.
  - (b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit.
  - (c) A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.
- Council will take no responsibility for any damage incurred to persons, property or services during the tree removal works.
- 47 The private domain landscape areas shown on the plan by Context, Plans 01 to 08 (Issue C, dated October 2016) shall comprise detailed landscape construction documentation (plans and specifications) to be submitted to and approved by Council's Landscape Architect prior to the issue of any Construction Certificate. The landscape documentation is to be prepared by Context Landscape Architects and shall include, but not be limited to:
- (a) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
  - (b) Canopy trees are required to be incorporated within the landscape setback along Kent Road frontage and Gardeners Road frontage.
  - (c) Canopy trees are to be used extensively within the ground level community park. Planters are required to be of adequate depth and soil volume to accommodate both large and medium size canopy trees in accordance with DCP Part 10 Part 4.6.
  - (d) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large canopy trees.
  - (e) All deep soil areas to include canopy trees where feasible to mitigate the loss of existing mature trees on site and to provide a level of amelioration to the development that is appropriate to the scale of the building heights.
  - (f) Indicate the location of all basement structures relative to the landscape areas.
  - (g) The nine (9) existing trees identified for retention shall be shown on all plans.
  - (h) Barbeque facilities to be incorporated within the Level 4 Podium Courtyard.
  - (i) Within the new ground level community park (between Buildings E and F), areas of paving, schedule of materials, edge treatments, tactiles and sectional

construction details. Paving to Council Draft Public Domain schedule/ specification. Drainage details in specific locations such as the public parks, use of WSUD initiatives or materials is required to be indicated.

- (j) Privacy to the balconies facing the communal open space at podium level are to be adequately treated through fencing and mounding to provide a sufficient landscape screen.
- (k) Adequate screen planting is to be provided in front of the perforated metal screen to the car park along Gardeners Road.
- (l) Full details including plans, sections and material palettes indicating the proposed treatments of the interface between the privately owned through site link (between buildings E and F) and the public domain (along the northern boundary) are to be submitted to Council's Landscape Architect for review and approval prior to issue of the Construction Certificate for above ground works. The proposed treatments (including, but not limited to fencing, landscaping and paving) shall not impede public access and is not to be inconsistent with Condition 88 of the Development Consent. The proposed treatment should take the following into consideration:
  - (i) Landscaping based solutions are encouraged over any type of fencing;
  - (ii) The treatment will need to read as being publically accessible;
  - (iii) It should be fully permeable, with large-scale, wide gates that will allow full access to the space during the day for the public;
  - (iv) Materiality will need to be in keeping with the Public Domain Manual for Mascot Station Precinct and the opportunity exists to be innovative and creative with use of such materials such as corten steel blades or similar treatments (for fencing).

- 48 The public domain landscape areas shown on the plan by Context, Plans 01 to 08 (Issue C, dated October 2016) shall comprise detailed landscape construction documentation (plans and specifications) to be submitted to and approved by Council's Landscape Architect prior to the issue of any Construction Certificate. The landscape documentation is to be prepared by Context Landscape Architects and shall include, but not be limited to:

- (a) The clear delineation of all public domain areas as follows:
  - (i) Kent Road and Gardeners Road footpath areas.
- (b) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
- (c) Street trees are required along Kent Road, Gardeners Road, and within the community park between Building E and Building F.
- (d) All street trees are to be in accordance with Council's Street Tree Master Plan.
- (e) All deep soil areas are to include evergreen canopy trees where feasible to mitigate the loss of existing mature trees on site and to provide a level of amelioration comparable to the scale of the buildings.
- (f) Canopy trees are to be used extensively within the community park at the north of the new North South Street. Planters are required to be of adequate depth and soil volume to accommodate both large and medium size canopy trees in accordance with Councils DCP (Part 10 Part 4.6).

- (g) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking. Canopy trees are to be a minimum litreage of 200 litres and street trees 400 litre.
  - (h) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictors, tree pits, tree grates, tree guards, tree pit treatments and so on in accordance with Council's Draft Public Domain specifications.
  - (i) Areas of paving, schedule of materials, edge treatments, tactiles and sectional construction details. Paving to Council Draft Public Domain schedule/specification. Drainage details in specific locations such as the public parks, use of WSUD initiatives or materials.
  - (j) Details of all fencing, privacy screening, arbors and the like – elevations and materials, impacting or visible to public domain areas.
  - (k) Details of all other hardscape landscape elements such as street furniture, pedestrian amenity lighting, playground and recreational equipment, water features and water stations, bins, bollards, public toilets, signage suite. Locations to be clearly identified on plan. Provide sectional construction details and elevations.
  - (l) Rigid polyethylene sheet type tree root barriers are to be specified as required to protect structural elements.
  - (m) A detailed public art proposal.
  - (n) A way finding signage proposal.
  - (o) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP (Part 10 Part 4.6) and capable of supporting medium and large canopy trees.
  - (p) Trees are to be used extensively throughout the site and shall be of an appropriate scale to complement and ameliorate buildings and for appropriate scaling within pedestrian areas – footpaths and open spaces. Deep soil zones must include larger trees. Trees are to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration.
  - (q) Indicate the location of all basement structures relative to the landscape areas.
  - (r) The nine (9) existing retained trees shall be shown on all plans.
- 49 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
- (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and
  - (b) For residential flat developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.



- 50 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
- (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines,
  - (b) All service vehicles shall enter the property front in front out,
  - (c) Demonstrate safe headroom clearance of 4.5m is achieved in the driveway entrance and along the along the travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including Council's Garbage Truck,
  - (d) Swept path analysis shall be provided for manoeuvring of commercial vehicles, and
  - (e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.
- 51 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
- (a) Disabled car parking spaces shall be provided and clearly marked as per the Transport Impact Assessment, by ARUP, dated 11 July 2016, Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
  - (b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.
- 52 Prior to the release of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Engineering and Regulatory Services Department, showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
- 53 The drawings for the construction certificate for the car park shall show the following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	35 spaces
0.9 space / bed unit	118 spaces
1.4 space / bed unit	70
1 visitor space / 7 dwellings	34 spaces
Retail Spaces	12
Child Care Centre	34
<b>TOTAL REQUIRED</b>	<b>303</b>
<b>TOTAL PROVIDED</b>	<b>255</b>

Excess car parking spaces within the development at 1-5 Kent Road are to be reallocated to 671-683 Gardeners Road so as to make up the shortfall identified in the table above.

Any parking in excess of 303 car parking spaces is to be allocated to a residential apartment or the retail tenancy.

- 54 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 the certifying authority prior to the release of the Construction Certificate and the building plans endorsed with the required acoustical measures.

The measures required in the acoustical assessment report prepared by **Acoustic Logic, dated 17 June 2016, Report reference number 20160869.1/1706A/R1/TA** 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 and,
- (d) External door specification,
- (e) Acoustically treated mechanical ventilation.

**Note:** In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner.

- 55 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Certifying Authority prior to the issue of the Construction Certificate and its location and specifications endorsed on the construction drawings.
- 56 In order to maximise visibility in the basement car parks, the ceilings shall be painted white. This requirement shall be reflected on the Construction Certificate plans.

#### **DURING WORKS**

- 57 An experienced Landscape Contractor shall be engaged to undertake all landscaping (site and public domain) work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants

in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.

- 58 New street trees at the pot size specified shall be installed in the accordance with the approved landscape plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
- 59 Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
- (a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 1 metre to support trees. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
  - (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
  - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
  - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
  - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 60 During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be make 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.

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- (a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
  - (b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
  - (c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land. 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) During construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas.
- 62 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
- 63 Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 64 All remediation work must be carried out in accordance with:
- (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
  - (b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
  - (c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
  - (d) Any Remedial Action Plan (RAP) required to be submitted as part of the Deferred Commencement Condition 1).
- 65 To ensure that the risk to the environment, workers and occupants of the residential premises is acceptable, any remediation or management measures for excavation and construction outlined in the contaminated land report provided as part of Deferred Commencement condition DC1 shall be complied with during excavation and construction.

- 66 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
  - (a) SafeWork NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m2 of bonded asbestos and/or any friable asbestos.
  - (b) Protection of the Environment Operations Act 1997.
  - (c) Protection of the Environment Operations (Waste) Regulation 2014.
  - (d) NSW Environment Protection Authority Waste Classification Guidelines 2014.
- 67 All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 68 To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill (should this be required) shall be appropriately certified material and shall be validated in accordance with the:
  - (a) Office of Environment and Heritage (OEH) approved guidelines; and
  - (b) Protection of the Environment Operations Act 1997; and
  - (c) Protection of the Environment Operations (Waste) Regulation 2014.
  - (d) All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
- 69 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
  - (a) The Erosion and Sediment Control Plan;
  - (b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
  - (c) Protection of the Environment Operations Act 1997.
- 70 During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.
- 71 Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the construction works.

- 72 If required pursuant to deferred commencement condition DC1, a Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
- (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
  - (b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
  - (c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.
- 73 The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority). The report is to be submitted after completion of remediation works and prior to the issue of any Occupation Certificate.
- 74 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.
- 75 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.
- 76 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.
- 77 The following shall be complied with during construction and demolition:
- (a) **Construction Noise**
    - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
  - (b) **Level Restrictions**
    - (i) Construction period of 4 weeks and under:
      - (1) 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:
      - (1) 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 06:00pm
    - (ii) **Saturday** 08:00am to 03:00pm 04:00pm

(iii) ***No demolition or construction to take place on Sundays or Public Holidays.***

(d) Silencing

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

(Condition modified – DA-16/117/03)

- 78 During excavation and 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.
- 79 During excavation and construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

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

- 80 Prior to the issue of any Occupation Certificate, the applicant is to provide the following:
- (a) Certification is to be provided to the Certifying Authority that all apartments, including U423 (which provides 9.8m<sup>3</sup> of storage and should provide at least 10m<sup>3</sup>) comply with the minimum requirements for storage under the ADG with at least 50% of this storage requirement contained within the apartment.
  - (b) The service rooms on the top level are to be provided with natural light and ventilation.
  - (c) The entry to the lobby of Building E is to provide a small meeting place facilitated by the provision of seating.
- 81 To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 shall be submitted to Council for clearly demonstrating that the site is suitable for the proposed development. A separate SAS shall be provided for any land dedication to council, such as parks or roadways and the site audit statement shall not be subject to any ongoing management measures.
- 82 Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy any Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the release of any applicable Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions.
- 83 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. (DA-2016/117/05)

- 84 A qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a closed circuit television (CCTV) inspection and then report on the existing condition of the existing stormwater drainage infrastructure on Kent Road, and all the new stormwater drainage lines associated with the development.

The camera and its operation shall comply with the following:

- (a) The internal surface of the drainage pipe/culvert shall be viewed and recorded in a clear and concise manner,
- (b) The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints,
- (c) Distance from the manholes shall be accurately measured, and
- (d) The inspection survey shall be conducted from manhole to manhole.
- (e) The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council for review. Any damage to the culvert/pipeline since the commencement of construction on the site shall be repaired in full to the satisfaction of Council. A written acknowledgement shall be obtained from Council (attesting this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

- 85 Prior to the issue of any the relevant Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards. (DA-2016/117/05)

- 86 Prior to the issue of any the relevant Occupation Certificate, the applicant shall carry out the following works:

- (a) On Kent Road, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council and RMS Infrastructure Specifications. Location of kerb & gutter to be confirmed with RMS and Council prior to construction,
- (b) On Gardeners Road, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council and RMS Infrastructure Specifications. Location of kerb & gutter to be confirmed with RMS and Council prior to construction,
- (c) On Kent Road, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications,
- (d) On Gardeners Road, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications. (DA-2016/117/05)

- 87 Prior to the issue of any the final 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. (DA-2016/117/05)
- 88 Prior to the issue of any the relevant Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- (a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
  - (b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.
- The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation. (DA-2016/117/05)*
- 89 Prior to the issue of any Occupation Certificate, Lot 1 in DP 777315 and Lot 500 in DP 1030729 are to be consolidated.
- 90 Prior to the issue of any the final Occupation Certificate, a new 16.6 wide "Easement for Public Access" shall be created over the proposed North-South Link. The draft plan of easement shall be lodged with Council for approval. The proposed new easement shall be unlimited in stratum. Once approval from Council is granted, the plan shall be registered with Land & Property Information prior to the issue of any Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes. (DA-2016/117/05)
- 91 Any Stratum subdivision of the development shall be the subject of a further Development Application to Council.
- 92 That before entering a lease/occupancy agreement, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
- Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as on a the notice board in the communal room, where it can easily be observed and read by persons entering the building.
- 93 The public domain landscaping shall be installed in accordance with the approved landscape plan as stamped by Council's Landscape Architect prior to the issue of any the final Occupation Certificate. This amended plan supersedes the original landscape plan. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation and to Council's satisfaction all times.

- 94 To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 95 ~~Landscaping on the property and in the public domain shall be installed in accordance with the approved landscape plan as stamped by Council's Landscape Architect prior to the issue of any Occupation Certificate. This amended plan supersedes the original landscape plan prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent all times. (DA-2016/117/05)~~
- 96 ~~Prior to the issue of any the final Occupation Certificate,~~ the public footpaths in Kent Road, Gardeners Road and in the new ground level community park shall be constructed in accordance with the approved Public and Private Domain Plans and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and prior to pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks). (DA-2016/117/05)
- 97 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of an the relevant Occupation Certificate. (DA-2016/117/05)
- 98 ~~Prior to release of the Occupation Certificate~~ the developer must submit to the Certifying Authority an acoustic report to verify that the measures stated in the 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).
- 99 All services (Utility, Council, etc.) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 100 ~~Prior to the issue of the Occupation Certificate,~~ street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
- 101 ~~Prior to the issue of any the final Occupation Certificate,~~ a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:

- (a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to; and
  - (b) A Floor Space Ratio (FSR) of 3.43:1 and a maximum height of 46.34m and up to a maximum of RL 51m AHD, as approved under this Development Consent No. 16/117, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
  - (c) The development as built, stands within a consolidated lot otherwise described as Lot 1 in DP 777315 and Lot 500 in DP 1030729. (DA-2016/117/05)
- 102 The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 103 Any air conditioning units are to be located so that they are not visible from the street or public place and are not obscure windows/window frames or architectural features of the development and installed in a manner not be inconsistent with the relevant provisions of the Building Code of Australia (BCA).
- 104
- (a) ~~Prior to the issue of any Occupation Certificate,~~ the retail spaces are to be allocated to the closest spaces to the retail tenancy.
  - (b) ~~Prior to the issue of any Occupation Certificate,~~ entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.
  - (c) ~~Prior to the issue of any Occupation Certificate, customers and staff of the childcare centre are to be provided with swipe cards that access Level 4 only so as to protect the privacy of the two residences on Level 4, and also to restrict non-customers from accessing Level 4. (DA-2016/117/06)~~
- 105 Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

**CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

- 106 The use of the retail tenancy is subject to a separate approval (DA or complying development certificate).
- 107 ~~The use of the child care centre is subject to a separate Development Application to be lodged with Council for approval. It should be noted in any future application that the~~

~~primary outdoor area is to be located where the majority of solar access is provided. (DA-2016/117/05)~~

- 108 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.
- 109 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a period of 12 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, bi-annual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties. Maintenance but does not include trimming or pruning of the trees under any circumstances.
- 110 Ongoing maintenance of the road verges and footpaths and nature strips in Kent Road Gardeners Road shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.
- 111 The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
  - (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
  - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
  - (d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 112 Any air conditioning units shall comply with the following requirements:
  - (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) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
    - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
    - (ii) Before 7 am or after 10 pm on any other day.
- 113 Visible light reflectivity from building materials use on new building facades must not exceed 20%.
- 114 The following shall be complied with at all times:
  - (a) All loading and unloading associated with the retail tenancy is to be undertaken within the loading dock (basement) of Building C (1-5 Kent Road, Mascot).
  - (b) No garbage collection associated with the retail premises is permitted between 10pm and 6am.
  - (c) The collection of garbage associated with the residential premises shall be restricted to 6am to 6pm Monday to Sunday.
- 115 The following shall be complied with at all times:
  - (a) Each residential dwelling (apartment) is approved as a single dwelling for use and occupation by a single family. They 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, other than permitted by Exempt and Complying provisions;
  - (b) The adaptable apartments approved under this development consent are to remain unaltered at all times; and
  - (c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces as identified by the NSW Police, shall be monitored by CCTV cameras at all times.
- 116 All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas. This is to be complied with at all times.
- 117 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 16/117 dated as 27 July 2016 **and DA- 16/117/03 lodged with Council on 11 May 2017** and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

**(Condition modified – DA-16/117/03)**

**ADVISORY CONDITIONS**

No response was received from the **NSW Police Service**. Standard conditions have been included below:

Surveillance

- (a) Digital technology should be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. All access areas to the building be covered by such equipment including mail delivery ports. This equipment needs to be checked and maintained on a regular basis.
- (b) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site.
- (c) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (d) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (can't see outside). Mirroring can be reduced by using appropriate external lighting.
- (e) Main entrance of all parking, lift entries and lobbies to be covered with CCTV footage.
- (f) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (g) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.

Lighting

- (a) Lighting (lux) levels for this development must be commensurate with a medium crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with Australian Standard AS:1158.
- (b) Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens).
- (c) The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.
- (d) A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the business.
- (e) Improved lighting needs to extend from the development towards adjacent streets. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment.

Territorial Reinforcement

- (a) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any such order is an offence under Section 628 of the Act.

Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.

- (b) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
  - (i) Warning, trespassers will be prosecuted
  - (ii) Warning, these premises are under electronic surveillance
- (c) Directional signage should be posted at decision making points (eg. Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (d) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- (e) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- (f) Signage needs to be provided to assist occupants to identify fire suppression equipment, e.g. extinguishers, fire hoses etc.
- (g) Graffiti resistant materials and anti-graffiti coating should be utilised throughout the development or at least ground levels situated on the outsides of the buildings.

#### Space/Activity Management

- (a) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW <http://www.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>.
- (b) It is NOT advised to install storage cages or similar for the residents in the underground car park. If it is required, consider that they should NOT be constructed in an isolated area. The cages are easy targets when they have little supervision. CCTV cameras must cover this area if they are constructed. Solid steel housing and quality key locks should be used to prevent access.

#### Access Control

- (a) The door and door frames to these premises should be of solid construction.
- (b) Doors should be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors



or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are required for residential units.

- (c) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space.
- (d) The doors in the required exits must be readily open-able without a key from the side that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- (e) Any sliding doors MUST be fitted with lockable bolts in the bottom and top of the door frame.
- (f) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks which comply with the Australian Standard – Mechanical Locksets for windows in buildings, AS:4145 <http://www.standards.org.au> to restrict unauthorised access. This standard specifies the general design criteria, performance requirements, and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical windows, such as wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard. (e.g. locking bars, electronic locking devices, detection devices, alarms).
- (g) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.

## Statement Environmental Effects

### Section 4.55 Application

#### **671-675 Gardeners Road, Mascot**

Delete Conditions 102, 104(c) and 107

16 July 2018

#### **PREPARED BY**

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**Statement of Environmental Effects**  
 671-675 Gardeners Road, Mascot  
 Amend conditions 102, 104(c) and 107

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### Annexure 1: Amended Conditions

## 1 Introduction

This Statement of Environmental Effects relates to a Section 4.55 Application seeking Council's consent to amend DA 16/117.

The subject Section 4.55 Application seeks to delete conditions 102, 104(c) and 107.

This Statement:

- describes the site and its surrounding area,
- details the nature of the proposed development, and
- undertakes an assessment of the proposal under the heads of consideration in Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979.

The conclusion is reached that the proposal is acceptable with regard to all relevant planning issues.

## 2 Site and Surroundings

### 2.1 The Site

The site is known as 671-675 Gardeners Road, Mascot. **Figure 1** shows the general location of the site and **Figure 2** shows an aerial view of the site and its boundaries.

The site comprises Lot 17 in Deposited Plan 1238487.

The site is currently under construction in accordance with DA 16/117 – refer section 3.1 of this Statement.

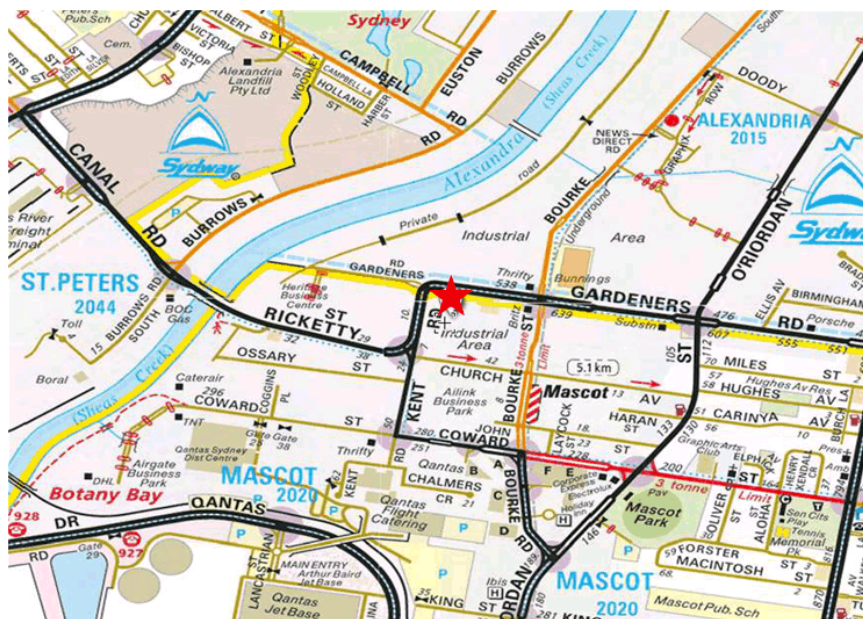


Figure 1: Location of subject site marked with red star



Figure 2: Aerial view of subject site – red border (as at 24 February 2016)

## 2.2 Surroundings

The existing surrounding area is in transition from industrial to residential and some commercial landuses. The transition reflects changes occurring over the Mascot area more broadly.

The site is located within 400 metres (7 minute walk) to Mascot Railway Station and the town centre that surrounds the station.

The adjoining site to the east has been demolished and sits vacant for future redevelopment.

To the north of the site, on the other side of Gardeners Road, is a mix of commercial and light industrial development.

The adjoining site to the south (1-5 Kent Road) has recently been approved for redevelopment. The approved development, once completed, is to be combined with the proposed development on the subject site.

To the west of the site, on the other side of Kent Road, are existing light industrial buildings.

### 3 Proposed Modifications

#### 3.1 Existing Consent

On 19 January 2017, the Council issued its consent for approval of DA 16/117 for the following development:

*Integrated Development Application for the construction of two residential flat buildings incorporating two x 4 storey podiums, 2 x 14 storey towers containing a total of 239 residential units, a retail tenancy, a childcare centre, private recreation facilities, at-grade and above ground 'sleeved' podium parking for 255 cars and 24,648sqm of gross floor area; construction of a new north-south private publically accessible open space link; associated excavation, earthworks and landscaping.*

#### 3.2 Proposed Amendments

It is proposed to delete conditions 102, 104(c) and 107.

**Annexure 1** contains a copy of the proposed amended conditions, and the following paragraphs provide explanation for the proposed changes.

**Statement of Environmental Effects**  
671-675 Gardeners Road, Mascot  
Amend conditions 102, 104(c) and 107

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#### **4 Threshold Test – Substantially the Same**

It is considered that the development is substantially the same as the original approval.

The proposed amendments involve altering conditions only. The proposal results in no physical changes to the approved development. Overall, the development remains substantially the same in form as the approved development.

On this basis, the proposed amendments are considered to constitute substantially the same development and are, therefore, accessible under Section 4.55 of the Environmental Planning and Assessment Act, 1979.



## 5 Environmental Planning Assessment

### 5.1 Section 4.15(1)(a)(i): Environmental Planning Instruments

#### 5.1.1 Botany Local Environmental Plan 2013

Part 2 of the Botany Local Environmental Plan 2013 (LEP) identifies that the subject site is zoned B4 Mixed Use. The proposal is permitted in the zone subject to consent from the Council.

There are no other clauses of the LEP that are particularly relevant in the assessment of the proposal.

### 5.2 Section 4.15(1)(a)(ii): Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject site.

### 5.3 Section 4.15(1)(a)(iii): Development Control Plans

#### 5.3.1 Botany Development Control Plan 2013

Botany Development Control Plan 2013 (DCP) applies to the subject site. However, none of its provisions are relevant in the assessment of the proposed amended conditions.

### 5.4 Section 4.15(1)(a)(iiia): Planning Agreements

Not applicable.

### 5.5 Section 4.15(1)(a)(iv): Regulations

The Section 4.55 Application has been made in accordance with the requirements contained in Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.

### 5.6 Section 4.15(1)(b): Likely Impacts

The proposed changes will have no adverse impact. No material change will result from the proposed modifications.

### 5.7 Section 4.15(1)(c): Suitability of the Site

There are no environmental constraints on the site that would impede the proposal or render it unsuitable for the site.

### 5.8 Section 4.15(1)(d): Submissions

Should notification be required for the proposal, Council will consider submissions at the close of the notification period.

### 5.9 Section 4.15(1)(e): The Public Interest

For the reasons set out in this Statement, it is considered that the public interest would be best served by approval of the Section 4.55 under consideration, particularly, given the absence of any demonstrable adverse impacts resulting from the proposal.

## **6 Conclusion**

The subject Section 4.55 Application seeks to delete conditions 102, 104(c) and 107.

The proposal satisfies the relevant heads of consideration under Section 4.15 of the Environmental Planning & Assessment Act, 1979.

It is considered that the proposal provides an appropriate response to the planned development of the site and will assist in the orderly and economic development of the land.

The development is substantially the same as when originally approved for the purposes of Section 4.55 of the Environmental Planning and Assessment Act and will have no implications upon the public domain.

It is therefore submitted that Council grant consent to the Section 4.55 application and amend the development consent in the manner requested.

## **Annexure 1: Amended Conditions**

**CONDITION 102**

~~The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.~~

**Reason for amendment:**

West Connex is to be undertaking these works to the public domain as part of its program. Therefore, the condition is no longer valid on the consent.

**CONDITION 104(c)**

~~Prior to the issue of any Occupation Certificate, customers and staff of the childcare centre are to be provided with swipe cards that access Level 4 only so as to protect the privacy of the two residences on Level 4, and also to restrict non-customers from accessing Level 4.~~

**Reason for amendment:**

DA 2016/1155 deletes the childcare centre from the development of the site. Therefore, this childcare condition is to be deleted for consistency.

**CONDITION 107**

~~The use of the child care centre is subject to a separate Development Application to be lodged with Council for approval. It should be noted in any future application that the primary outdoor area is to be located where the majority of solar access is provided.~~

**Reason for amendment:**

DA 2016/1155 deletes the childcare centre from the development of the site. Therefore, this childcare condition is to be deleted for consistency.



Transport  
Roads & Maritime  
Services

23 August 2018

Our Reference: SYD16/01042 (A23744188)  
Council Ref: 2016/117/6

The General Manager  
Bayside Council  
444-446 Princes Highway  
Rockdale NSW 2216

Attention: Luis Melim

Dear Ms Wallace

**MODIFICATION TO DELETE CONDITIONS 102, 104(C) AND 107 RELATING TO  
REGULATORY SIGNS AND CHILD CARE CENTRE USE**

Reference is made to Council's correspondence dated 26 July 2018, regarding the abovementioned application which was referred to Roads and Maritime Services (Roads and Maritime) for comment in accordance with Schedule 3 of the *State Environmental Planning Policy (Infrastructure) 2007*.

Roads and Maritime has reviewed the submitted application and raises no objection to the proposed deletion of Conditions 104(C) and 107.

Roads and Maritime objects to the proposed deletion of Condition 102. The New M5 project scope only includes placing signs which are directly related to the WestConnex project. This may not necessarily include all signage (for example, parking signage) required as part of Council's consent.

If you have any further inquiries in relation to this development application Kerry Ryan would be pleased to take your call on 8849 2008 or e: [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Rutledge'.

**Robert Rutledge  
A/Senior Land Use Planner  
South East Precinct, Sydney Division**

Roads and Maritime Services

27-31 Argyle Street, Parramatta NSW 2150 |  
PO Box 973 Parramatta NSW 2150 |

[www.rms.nsw.gov.au](http://www.rms.nsw.gov.au) | 13 22 13