



# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA201900060
<b>Address</b>	11-13 Dibble Avenue, Marrickville
<b>Proposal</b>	To demolish existing improvements and construct a 4 storey residential flat building containing 16 units with associated car parking
<b>Date of Lodgement</b>	22 February 2019
<b>Applicant</b>	Benson McCormack Architecture
<b>Owner</b>	Peter Gabriel Pty Limited, Kon Gabriel Pty Limited
<b>Number of Submissions</b>	10 submissions
<b>Value of works</b>	\$4,811,403.00
<b>Reason for determination at Planning Panel</b>	The type of development exceeds officers' delegation, being a development to which <i>State Environmental Planning Policy No. 65</i> applies; number of submissions exceeds 10; and proposed height exceeds development standard by more than 10%
<b>Main Issues</b>	Height, Floor Space Ratio
<b>Recommendation</b>	Consent subject to conditions
<b>Attachment A</b>	Recommended Conditions of Consent
<b>Attachment B</b>	Architectural Plans
<b>Attachment C</b>	Clause 4.6 request – Height
<b>Attachment D</b>	Clause 4.6 request – Floor Space Ratio



### LOCALITY MAP

Subject Site		Objectors		N
Notified Area		Supporters		

## 1. Executive Summary

This report concerns an application to demolish existing improvements and construct a 4 storey residential flat building containing 16 units with associated car parking. The application was notified in accordance with Council's policy and 10 submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to tree management, architectural expression, internal amenity, setbacks, flood management and biodiversity. The amended proposal was not required to be notified in accordance with Council's Notification Policy.

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum height of buildings development standard by 24.3% (3.4 metres) and exceeds the floor space ratio development standard by 4.25% (49sqm). Written variation requests under Clause 4.6 of MLEP 2011 have been submitted by the applicant for the non-compliances and the justification provided is well founded and worthy of support.

The proposal is generally consistent Marrickville Development Control Plan 2011 (MDCP 2011). The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable given the context and circumstances of the site.

The application is suitable for approval subject to the imposition of appropriate conditions.

## 2. Proposal

Approval is sought to demolish existing improvements and construct a 4 storey residential flat building containing 16 units over 3 storeys and a level of at-grade car parking. The application includes the following works:

- Demolition of existing improvements on the site;
- Removal of trees;
- Construction of ground floor lobby, services and car parking area containing a total of 14 car parking spaces, including 4 accessible car parking spaces, 11 bicycle parking spaces, waste management facilities and plant areas;
- Construction of a 3 storey residential flat building above containing 8 x 1 bedroom dwellings, 6 x 2 bedroom dwellings and 2 x 3 bedroom dwellings, with 4 dwellings being adaptable;
- Communal open space area on the roof top level with green roof; and
- Landscaping throughout the site.

## 3. Site Description

The site is comprised of 2 land parcels legally described as Lots 6 and 7 in Deposited Plan 20495 and is collectively known as 11-13 Dibble Avenue, Marrickville.

The site is situated on the south eastern side of Dibble Avenue between Riverside Crescent and Ewart Street, Marrickville.

The site has a combined area of 1,352.10sqm, a frontage to Dibble Avenue of 30.48 metres and a maximum depth of 47.46 metres. The land has an overall fall of approximately 810mm metres across the site from RL 2.75 metres AHD at the northern corner to RL 1.94 metres AHD at the southern corner.

No. 11 currently contains a single storey dwelling house and No. 13 currently contains a dwelling house and a rear outbuilding. The site has 2 vehicular crossings from Dibble Avenue.

The site is adjoined by No. 9 Dibble avenue to the north east which contains a 3 storey residential flat building and to the north of the site by A.B. Crofts Playground, which is a Council owned reserve. The surrounding development is generally low to medium scale residential development. To the south east of the site is Dibble Avenue Waterhole which is a local heritage item.

## 4. Background

### 4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

#### Subject Site

Application	Proposal	Decision & Date
13 Dibble Avenue, Marrickville (DA201500718)	To demolish existing improvements and construct 4 storey residential flat building containing 9 dwellings with associated car parking	Deferred commencement consent, dated 1 June 2016

#### Surrounding properties

Nil recent relevant development history

### 4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter/ Additional Information
22 May 2019	Request for Additional Information sent to applicant raising concerns regarding excessive FSR, non-compliance with setbacks, biodiversity, urban design, tree management, flood management and car parking.
18 July 2019	Amended plans, Clause 4.6 requests, landscape plans, Flood Impact Report and Biodiversity Report submitted to Council.
26 Jul 2019	Final Architectural Plans and Documents submitted to Council.

## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

## 5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Marrickville Local Environmental Plan 2011
- Draft Marrickville Local Environmental Plan 2011 (Amendment 4)

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 concerns the protection/removal of vegetation identified under Marrickville Development Control Plan 2011 (MDCP 2011). There are a number of trees protected by MDCP 2011 which are discussed later in Section 5(c)(i)(viii) of this report under the provisions of Part 2.20 of MDCP 2011.

### 5(a)(ii) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

The development is subject to the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65). SEPP 65 prescribes 9 design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is generally acceptable having regard to the 9 design quality principles.

#### Apartment Design Guide

The ADG contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP the requirements contained within MDCP 2011 in relation to visual privacy, solar and daylight access, ceiling heights, private open space and balconies and natural ventilation have no effect. In this regard objectives design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The development has been assessed against the relevant design criteria within Part 3 and 4 of the ADG as follows:

#### Communal and Open Space

The ADG prescribes the following requirements for communal and open space:



- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

The development provides 315sqm of common open space on the ground floor level of the development however this area is heavily landscaped. A further 97sqm of common open space is provided on the rooftop level. The combined area equates to 30% of the total site area.

The development provides a high quality space for use by residents which receives adequate solar access. Furthermore, each dwelling in the building is provided with a generously sized balcony accessible off the principal living area and as such the development is acceptable having regard to the requirements of the SEPP.

### Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m <sup>2</sup>	-	7%
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	
Greater than 1,500m <sup>2</sup>	6m	
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	

The site has a total area of 1,352.10sqm which would require a deep soil zone consisting of 7% of the site area. The development provides 530sqm (39%) of deep soil landscaping throughout the site which exceeds the 7% requirement and is acceptable.

### Visual Privacy/Building Separation

Objective 3F-1 of the ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres
Over 25 metres (9+ storeys)	12 metres	6 metres

The development provides a 10 metres rear boundary setback which exceeds the required 6 metres and is considered sufficient to enable adequate separation, notwithstanding that no residential accommodation is located to the rear.

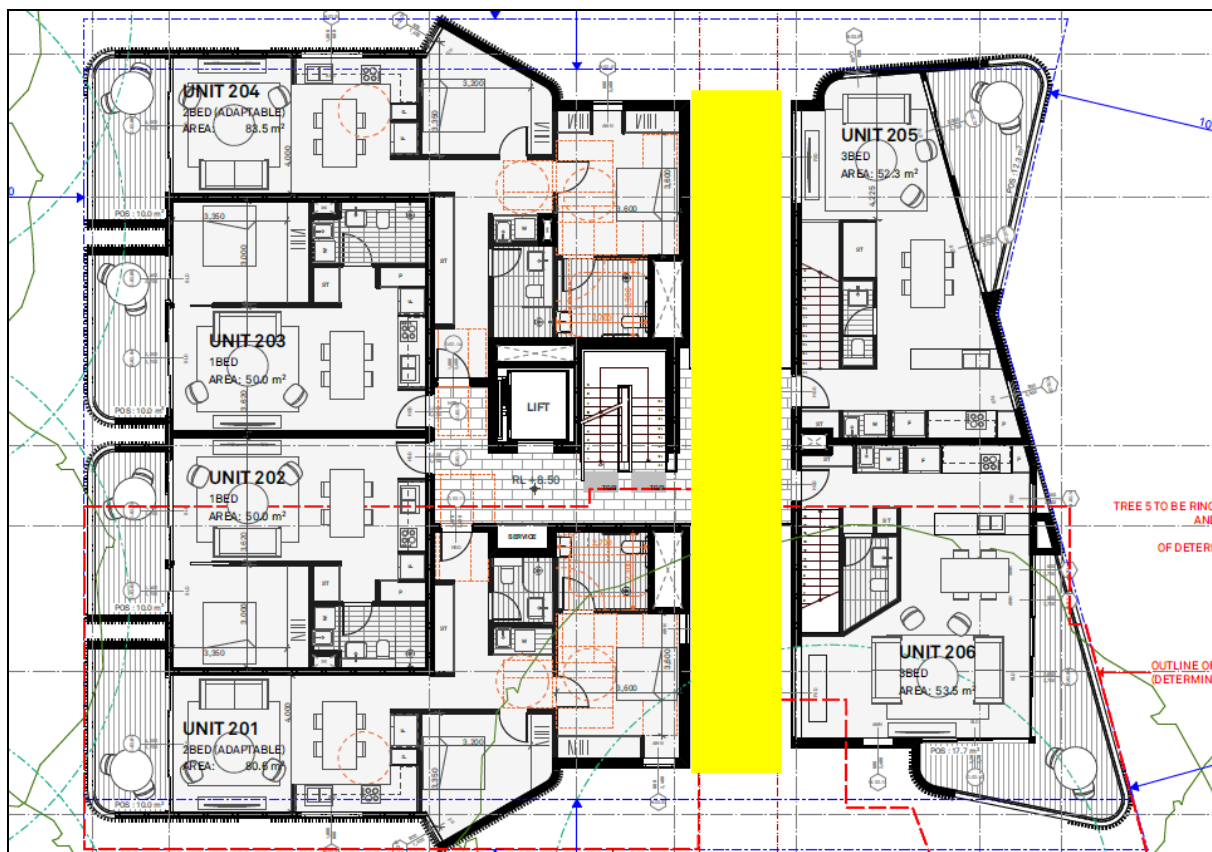
The development provides a minimum 3 metre side boundary setback to the eastern and western sides, with the central portion of the development increasing to 5.4 metres. The development to the east of the site at No. 9 Dibble Avenue has a 3 metre setback and therefore the 3-5.4 metre setback proposed along that boundary is sufficient to provide sufficient visual privacy for both developments.

Furthermore, the development includes measures such as privacy screening to protect the visual privacy of No. 9.

The nearest residential development to the west of the site is approximately 20 metres away on the other side of A.B. Croft Playground and the playground provides significant mature vegetation. No concern is raised with regard to privacy to the developments to the west of the site.

The siting of the development responds appropriately to Council's built form controls with regard to setbacks requirements. Whilst not complying with the minimum side boundary setback for some portions of the eastern and western elevations, the development provides adequate privacy screening, building orientation and separation to ensure visual privacy for adjoining dwellings and achieves the objective of the building separation control in the ADG.

The ADG prescribes minimum required separation distances from buildings within the same site. The subject development is considered to contain only 1 building form. Notwithstanding, the building is segmented to allow for a drainage easement, resulting in a 3 metre separation between units fronting Dibble Avenue and units at the rear of the building, as highlighted in the image below:



Only the second floor level contains multiple units with windows fronting this space, being units 201 (Window W.02.01) and 206 (Window W.04.14). These windows are offset and do not provide direct views that would result in unreasonable privacy impacts. Notwithstanding, a condition is included in the recommendation requiring that Window W.02.14 be modified to provide appropriate privacy treatment to ensure privacy for the bedroom window to unit 201.

### Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

14 of the 16 dwellings within the development receive solar access in accordance with the above controls, equating to 87.5% of the dwellings.

### Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

10 of the 16 dwellings within the development receive natural ventilation in accordance with the above controls. Units which have been nominated as achieving cross ventilation are dual aspect units, i.e., they have openings in at least two separate or different enclosing external walls which permits cross ventilation to occur.

### Ceiling Heights

The development provides floor to ceiling heights in accordance with the ADG controls.

### Apartment Size

All apartments within the development comply with the ADG minimum size.

### Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
  - 3.6 metres for studio and 1 bedroom apartments.
  - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

The development provides apartments that comply with all of the above requirements.

#### Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
1 Bedroom apartments	8m <sup>2</sup>	2 metres
2 Bedroom apartments	10m <sup>2</sup>	2 metres
3+ Bedroom apartments	12m <sup>2</sup>	2.4 metres

Note: The minimum balcony depth to be counted as contributing to the balcony area is 1 metre.

All apartments are provided with primary balconies that comply with the minimum area and minimum depth as per above.

#### Common Circulation and Spaces

The ADG prescribes that the maximum number of apartments off a circulation core on a single level is 8. The maximum number of units accessible off a single level is 6 which is acceptable.

#### Storage

The development provides sufficient storage within the apartments complying with the minimum size as per the requirements of the ADG.

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

A BASIX Certificate was submitted with the application indicating that the proposal achieves full compliance with the BASIX requirements. Appropriate conditions are included in the recommendation to ensure the BASIX Certificate commitments are implemented into the development.

#### **5(a)(iv) Marrickville Local Environment Plan 2011 (MLEP 2011)**

The application was assessed against the following relevant clauses of the Marrickville Local Environment Plan 2011:

- (i) Clause 1.2 - Aims of the Plan
- (ii) Clause 2.3 - Land Use Table and Zone Objectives
- (iii) Clause 2.7 - Demolition
- (iv) Clause 4.3 - Height
- (v) Clause 4.4 - Floor Space Ratio
- (vi) Clause 4.6 - Exceptions to Development Standards
- (vii) Clause 5.10 - Heritage
- (viii) Clause 6.1 - Acid Sulfate Soils
- (ix) Clause 6.2 – Earthworks
- (x) Clause 6.3 – Flood Planning
- (xi) Clause 6.4 – Terrestrial Biodiversity

The following table provides an assessment of the application against the development standards:

Development Standard	Proposal	Complies	% of variation
<b>Floor Space Ratio</b> Permitted: 0.85:1	0.88:1	No	4.25% (49sqm)
<b>Height of Building</b> Permitted: 14 metres	17.4metres	No	24.3% (3.4 metres)

The following provides further discussion of the relevant issues:

(i) Aims of the Plan (Clause 1.2)

Clause 1.2 relates to the aims of the MLEP 2011, and includes the following relevant aims:

*“(2) The particular aims of this Plan are as follows:*

- (a) to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,*
- (b) to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,*
- (d) to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,*
- (e) to promote accessible and diverse housing types including the provision and retention of affordable housing,*
- (f) to ensure development applies the principles of ecologically sustainable development,*
- (g) to identify and conserve the environmental and cultural heritage of Marrickville,*
- (h) to promote a high standard of design in the private and public domain.”*

The development is considered to be consistent with the above aims of MLEP 2011 for the following reasons:

- The development provides an appropriate mix of housing types;
- The development provides alternative modes of transport on site including bicycle and motorcycle parking and constrains the provision of car parking in accordance with Council's controls;
- The development is appropriate in respect of the heritage item located on site;
- All dwellings within the development comply or exceed the minimum standards prescribed by the ADG as discussed earlier in this report and enjoy a high level of internal amenity, including access to common open space and well landscaped areas; and
- The development utilises high quality materials and finishes and presents a development that is generally consistent with Council's controls for the site. The development provides an acceptable front setback, retaining mature street trees and provides high quality landscaping to reduce the visual bulk of the development when viewed from the public domain.

(i) Land Use Table and Zone Objectives (Clause 2.3)

The site is zoned R1 General Residential under the provisions of MLEP 2011. The development is permissible with Council's consent under the zoning provisions applying to the land. The development is acceptable having regard to the objectives of the R1 - General Residential zone.

(ii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

(iii) Height (Clause 4.3)

A maximum building height of 14 metres applies to the land under MLEP 2011. The development has a maximum building height of 17.4 metres which does not comply with the development standard. The development represents a variation of 24.3% or 3.4 metres from the development standard.

A written request, in relation to the development's non-compliance with the maximum height development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. That request is discussed below under the heading "Exceptions to Development Standards (Clause 4.6)".

(iv) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 0.85:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

The development has a gross floor area (GFA) of 1,198sqm which equates to a FSR of 0.88:1 on the 1,352sqm site which does not comply with the FSR development standard. The development represents a variation of 4.25% or 49sqm from the development standard.

A written request, in relation to the development's non-compliance with the floor space ratio development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. That request is discussed below under the heading "Exceptions to Development Standards (Clause 4.6)".

(v) Exceptions to Development Standards (Clause 4.6)

As outlined in above, the proposal results in a variation to the following development standards:

- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio

The applicant seeks a variation to the height of buildings development standard under Clause 4.3 of Marrickville Local Environmental Plan 2011 by 24.3% or 3.4.

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of Marrickville Local Environmental Plan 2011 by 4.25% or 49sqm.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of MLEP 2011 below.



**Clause 4.3 - Height of buildings**

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the MLEP 2011 justifying the proposed contravention of the development standard which is summarised as follows:

- The development is consistent with the objectives of the R1 General Residential zone;
- The development is consistent with the objectives of the development standard prescribed by Clause 4.3 of MLEP 2011;
- The subject site is burdened by a number of constraints including a flood affectation, a drainage easement through the centre of the site and a 10m buffer zone to the Dibble Avenue Waterhole. The proposal has nonetheless endeavoured to ensure that all of the habitable floor area associated with the development is within the maximum building height control ensuring that the proposed bulk of the building will be consistent with the desired future character of the area.
- The additional building height sought by this proposal stems from the introduction of a green roof in support of green building design principles. It is envisaged that the proposed green roof will further assist in achieving biodiversity outcomes on the site by providing for a habitat for local wildlife. To enable the ongoing maintenance of the green roof, the central stair and lift core has been extended to access this level and generates the greatest degree of non-compliance.
- The variation is limited to elements at roof level which have been centralised to minimise their prominence to the public domain. The maximum breach occurs only for the length of the lift overrun which is approximately 5.6m. Aside from this, when measured to the awning over the common open space, the maximum building height is 15.2m, representing a non-compliance of just 1.2m. The proposed lift and stairwell elements span an area of just 5.6m and are setback 16.9m from the street frontage visually minimising the only solid elements proposed at this level.
- It is noted that if the 14 metres was measured from the flood planning level, the development would be compliant with the exception of the lift overrun.

The applicant's written rationale adequately demonstrates compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011, as reproduced below:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*
- *To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.*

The proposal is consistent with the objectives of the R1 General Residential zone for the following reasons:

- The proposal provides for the housing needs of the community through the redevelopment of the site to provide for 16 residential units, replacing the existing two detached dwellings.
- Of the 16 proposed units the development provides a range of apartment sizes complying with the provisions of MDCP 2011 including 8 units having been designed as 1 bedroom units, 6 units as 2 bedroom units (including adaptable designs) and 2 units as 3 bedroom units. The proposal therefore caters to varying housing types.

It is considered the development is in the public interest because it is consistent with the objectives of the height of buildings development standard, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011, as reproduced below:

- (a) to establish the maximum height of buildings,*
- (b) to ensure building height is consistent with the desired future character of an area,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The proposal is consistent with the objectives of the development standard for the following reasons:

- The building height is consistent with the desired future character of the area and does not contain any habitable space above the height development standard.
- Surrounding buildings and the adjacent playground continues to receive satisfactory exposure to the sky and sunlight; and
- The development provides an appropriate built form and land use intensity.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. The concurrence of the Planning Secretary may be assumed under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of MLEP 2011.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of MLEP 2011. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the height of buildings development standard and it is recommended the Clause 4.6 exception be granted.

#### **Clause 4.4 - Floor space ratio**

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of MLEP 2011 justifying the proposed contravention of the development standard which is summarised as follows:

- The development is consistent with the objectives of the R1 General Residential zone;
- The development is consistent with the objectives of the development standard prescribed by Clause 4.4 of MLEP 2011;

- The variation proposed is minor and equates to only 4.25% or 49sqm of GFA which is attributed to by the increase in the sizes of the units proposed in order to provide better amenity than smaller sized units. The development proposes larger sized units than the minimum sizes required under the SEPP 65 ADG in order to afford future occupants with better levels of amenity than compliant minimum unit sizes would. Importantly, the increased GFA and FSR achieves a better planning outcome for the site than what a fully compliant development would.
- The proposed habitable floor areas have been carefully designed within the maximum height control afforded to the site.
- The proposal has made regard to the varying environmental constraints which affect the site including its flood affectation, a drainage easement which passes through the centre of the site and the requirement for a 10m buffer zone to the Dibble Avenue Waterhole located to the rear of the site.

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011, as reproduced below:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*
- *To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.*

The proposal is consistent with the objectives of the R1 General Residential zone for the following reasons:

- The proposal provides for the housing needs of the community through the redevelopment of the site to provide for 16 residential units, replacing the existing two detached dwellings.
- Of the 16 proposed units the development provides a range of apartment sizes complying with the provisions of MDCP 2011 including 8 units having been designed as 1 bedroom units, 6 units as 2 bedroom units (including adaptable designs) and 2 units as 3 bedroom units. The proposal therefore caters to varying housing types.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011, as reproduced below:

- (a) *to establish the maximum floor space ratio,*
- (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) *to minimise adverse environmental impacts on adjoining properties and the public domain.*

The proposal is consistent with the objectives of the development standard for the following reasons:

- It has been demonstrated that the development will not have adverse environmental impacts on the use or enjoyment of adjoining properties and the public domain. In particular, the development would not create any adverse amenity impacts for adjoining properties with regard to visual or acoustic privacy, overlooking and overshadowing as a consequence of the additional GFA and FSR.
- It is noted that the oversized units equates to an additional 80.4sqm of GFA when compared to a development meeting the minimum apartment size requirements of the ADG. The oversized units result in improved amenity of those units.
- The development achieves a good design outcome with an appropriate density and bulk. The development is accordingly considered to be consistent with the desired future character of the local area.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. The concurrence of the Planning Secretary may be assumed under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of MLEP 2011.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of MLEP 2011. For the reasons outlined above, there are sufficient planning grounds to justify the departure from floor space ratio development standard and it is recommended the Clause 4.6 exception be granted.

(vi) Heritage (Clause 5.10)

The subject site contains a portion of the heritage listed Dibble Avenue Waterhole, Marrickville, being Item I12 in Schedule 5 of Marrickville Local Environmental Plan 2011).

The application was referred to Council's Heritage Specialist who provided the following recommendations:

- *Side setbacks should be amended to a minimum of 4.5 metres.*
- *A ground floor perimeter wall with perforated bricks must be provided along the front façade and on the side elevations, up to the edge of the stormwater pipe easement.*
- *Building mass, horizontality and façade articulation is to be redesigned so it reflects the original subdivision pattern of the two lots and surrounding development. The front façade is to be articulated so that it presents with complementary detailing to the average building widths within the street.*
- *Amend vehicular access to 1 driveway.*
- *The front fence shall be low and translucent to complement other fences within the streetscape.*
- *Any fencing to the rear of the site shall be sympathetic to the environmental significance of the waterhole.*
- *A green roof should be provided;*
- *The proposal should take advantage of its frontage to the playground area/pocket park, providing active frontage and outlook to the park at Level 1 to 3; and*
- *Internal amenity and planning should be reconsidered.*

Amended plans were submitted to Council on 19 July 2019 making the following amendments to the proposal:

- Side setbacks increased where possible to a minimum of 3 metres and a maximum of 5.4 metres;
- Building mass, horizontality and façade articulation has been reconsidered;
- Vehicular access has been amended to provide only 1 vehicular crossing;
- Front fence has been amended to be a low face brick fence and a larger, iron palisade fence set back from the street front;
- A green roof and communal open space has been provided;
- Internal planning of some of the units has been reconsidered to provide better internal amenity and reduce long lengths of corridor; and
- Additional windows have been provided to provide better outlook to the playground; and
- No fencing is proposed to the rear of the site.

The amended plans were referred to Council's Heritage Specialist who advised that the development is now considered acceptable having regard to Clause 5.10 of MLEP 2011 and Part 8 of MDCP 2011. Having regard to the ample setback proposed to the waterhole, and the landscaping scheme proposed, the revised proposal is considered satisfactory and adequately protects the heritage item located at the rear of the site.

(vii) Acid Sulfate Soils (Clause 6.1)

The land is identified as land being affected by Class 5 acid sulfate soils on the MLEP 2011 Acid Sulfate Soils Map.

Clause 6.1 of MLEP 2011 states that for works in Class 5 areas, a preliminary assessment is only required where the development is within 500 metres of adjacent Class 1-4 lands and where the water table is likely to be lowered below 1 metre AHD.

The proposed development involves works within 500 metres of adjacent Class 2 land that is below 5 metres AHD however no significant excavation is proposed as part of the development and therefore the water table is unlikely to be lowered below 1 metre AHD on adjacent land. Given this, it is unlikely that the proposed works will involve excavation at or below the groundwater level or involve works that could lower the groundwater table. Accordingly, a preliminary soil assessment is not required given the circumstances and site RL levels.

The development is thus acceptable having regard to acid sulfate soils.

(viii) Earthworks (Clause 6.2)

The proposed works include only minimal excavation for footings as the proposed car parking is located at-grade.

The development is acceptable having regard to the matters of consideration prescribed by Clause 6.2(3) of MELP 2011.

(ix) Flood Planning (Clause 6.3)

The site is identified on the Flood Planning Area (Overland Flow), Flood Planning Area (Cooks River) and Floor Liable Land maps accompanying Part 2.22 of MDCP 2011.

A Flood Impact Assessment Report was submitted with the application which satisfies the provisions of Clause 6.3 of MLEP 2011.

The matter of flooding is discussed in more detail later in Section 5(c)(i)(x) of this report under the provisions of Part 2.22 of MDCP 2011.

(x) Terrestrial Biodiversity (Clause 6.4)

The site is identified as Wildlife Corridor on the Biodiversity map accompanying Part 2.13 of MDCP 2011.

A Biodiversity Assessment Report was submitted with the application which satisfies the provisions of Clause 6.4 of MLEP 2011.

The matter of biodiversity is discussed in more detail later in Section 5(c)(i)(vi) of this report under the provisions of Part 2.13 of MDCP 2011.

## 5(b) Draft Environmental Planning Instruments

### 5(b)(i) Draft Marrickville Local Environmental Plan 2011 (Amendment 4)

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The amended provisions contained in the Draft LEP Amendment contains an additional Clause in the LEP to be known as Clause 6.19 – Design Excellence which aims to deliver the highest standard of architectural, urban and landscape design in the LGA. The clause would be applicable to the development site as it has a maximum permitted building height of more than 14 metres and requires an assessment of whether the proposal exhibits design excellence. The quality of the proposed design has been assessed under Section 5(a)(iv)(i) Clause 1.2 of MLEP 2011 as part of this assessment.

## 5(c) Development Control Plans

### 5(c)(i) Marrickville Development Control Plan 2011

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

Part	Compliance
Part 2.5 Equity of Access and Mobility	Yes – see discussion
Part 2.6 Visual and Acoustic Privacy	Yes – see discussion
Part 2.7 Solar Access and Overshadowing	Yes – see discussion
Part 2.9 Community Safety	Yes – see discussion
Part 2.10 Parking	Yes, subject to condition – see discussion
Part 2.11 Fencing	Yes
Part 2.13 Biodiversity	Yes – see discussion



Part 2.16 Energy Efficiency	Yes
Part 2.18 Landscaping and Open Spaces	Yes – see discussion
Part 2.20 Tree Management	Yes – see discussion
Part 2.21 Site Facilities and Waste Management	Yes – see discussion
Part 2.22 Flood Management	Yes – see discussion
Part 2.23 Acid Sulfate Soils	Yes
Part 2.25 Stormwater Management	Yes
Part 3 – Subdivision, Amalgamation and Movement Networks,	Yes – see discussion
Part 4.2 Multi Dwelling Housing and Residential Flat Buildings	Yes – see discussion
Part 8 Heritage	Yes
Part 9 Strategic Context	Yes

The following provides discussion of the relevant issues:

## **PART 2 – Generic Provisions**

### **(i) Equity of Access and Mobility (Part 2.5)**

Part 2.5 of MDCP 2011 specifies the minimum access requirements including the following accessible facilities in accordance with the relevant Australian Standards:

<b>MDCP Requirement</b>	<b>Proposed</b>	<b>Consistency</b>
For developments with five (5) or more dwellings, one adaptable dwelling per five or part thereof.	16 dwellings require the provision of 4 adaptable dwellings.	Yes
Appropriate access for all persons through the principal entrance of a building and access to any common facilities	A level entry of sufficient width has been provided and lift access throughout the building and to the common open space is provided.	Yes
1 accessible parking space for every adaptable dwelling	4 accessible parking spaces servicing 4 adaptable dwellings	Yes
1 accessible visitor's parking space for every four accessible parking spaces or part thereof, designed in accordance with relevant Australian Standards.	No visitor parking is provided on site	No*

*Table 1: Assessment of proposal against Part 2.5 of MDCP 2011*

Based on the assessment provided in Table 1 above, the proposal satisfies the relevant provisions of Part 2.5 of MDCP 2011 with the exception of an accessible visitor car parking space. The matter of accessible visitor car parking is discussed later in Section 5(c)(i)(v) of this report in the discussion of car parking generally under Part 2.10 of MDCP 2011.

(ii) Acoustic and Visual Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains objectives and controls relating to acoustic and visual privacy. Whilst the ADG prescribes privacy controls which effectively prevail over the controls contained in MDCP 2011, the controls contained in MDCP 2011 are still a relevant matter for consideration. To ensure the development maintains acoustic and visual privacy for the surrounding residential properties and for future occupants of the development, the following aspects are discussed:

- All balconies face towards the front and rear of the site;
- All bedroom and living room windows are setback a minimum of 4 metres from the side boundaries with the exception of some front-facing bedroom windows to Units 101, 104, 201, 204, 301 and 304;
- All side-facing windows are screened with vertical timber battens to restrict outward views;
- The rooftop communal open space is sufficiently set back approximately 8 metres from the side boundaries to restrict views to neighbouring dwellings.

The proposal is considered to comply with the visual and acoustic privacy controls under MDCP 2011. The layout and design of the development would ensure that the visual and acoustic privacy currently enjoyed by residents of adjoining residential properties is protected. The development maintains a high level of acoustic and visual privacy for the surrounding residential properties and would ensure a high level of acoustic and visual privacy for future occupants of the development itself.

Given the above the development is reasonable having regard to the objectives and controls relating to visual and acoustic privacy as contained in MDCP 2011.

(iii) Solar Access and Overshadowing (Part 2.7)

**Overshadowing**

The shadow diagrams submitted with the application illustrate the extent of overshadowing as a result of the development. The development will result in increased overshadowing to the A.B. Croft playground immediately to the west of the site.

Significant amendments to the proposal to increase the side boundary setbacks and reduce the extent of overshadowing over the playground have been made since the initial shadow diagrams were submitted. Notwithstanding, the original proposal and amended proposal will ensure a minimum of 3 hours direct solar access to the majority of the playground in mid-winter.

No additional overshadowing will occur to the residential flat building development to the east of the site at No. 9 Dibble Avenue.

Considering the above, the development is considered acceptable having regard to Part 2.7 of MDCP 2011.

(iv) Community Safety (Part 2.9)

Part 2.9 of MDCP 2011 contains objectives and controls relating to community safety. The Statement of Environmental Effects submitted with the application demonstrates the way in which consideration has been made of the four CPTED principles contained in Section 2.9.3.

The proposal is considered acceptable having regard to community safety in that:

- The principal entrance to the building is visible from Dibble Avenue and is in a prominent position being well lit and signposted;
- The development has been designed to overlook and provide passive surveillance over Dibble Avenue;
- Principal access to the car park is provided internally and security arrangements have been incorporated to ensure all vehicles in the parking area and all entrances and exits to and from the communal parking area are secure and only authorised users have access;
- No roller shutters are provided that are visible from the street; and
- The street number is conspicuously displayed at the front of the development.

The development includes a security gate at the front entrance to the complex to provide additional security for common areas within the development. A condition is included in the recommendation requiring the entrance to the complex being well lit and to comply with the relevant Australian Standard to avoid excessive light spillage.

(v) Parking (Part 2.10)

**Car, Bicycle and Motorcycle Parking Spaces**

The property is located in Parking Area 2 under Part 2.10 of MDCP 2011. The following table summarises the car, bicycle and motorcycle parking requirements for the development: Parking rates are rounded up or down to the nearest whole figure in accordance with Control C2 of Part 2.10.

Component	Control	Required	Proposed	Complies?
<b>Car Parking</b>				
Resident Car Parking	0.5 car parking spaces per 1 bedroom unit	8 x 1 bed unit – 4 spaces		
	1 car parking spaces per 2 bed unit	2 x 2 bed units = 2 spaces		
	1.2 car parking spaces per 3 bed unit	2 x 3 bed units = 2.4 spaces		
	<b>Total required:</b>	<b>8.4 spaces</b>	<b>10 spaces</b>	<b>Yes + 2</b>
Accessible Resident Car Parking	1 car parking space per 1 adaptable dwelling	4 adaptable dwellings = 4 accessible spaces	<b>4 spaces</b>	<b>Yes</b>
Residential Visitor Parking	0.1 space per unit	12 units = 1.2 spaces	<b>0 spaces</b>	<b>No*</b>
Accessible Visitor Parking	0.25 space per adaptable unit	4 adaptable units = 1 accessible visitor space	<b>0 spaces</b>	<b>No*</b>
<b>Bicycle Parking</b>				
Resident Bicycle Parking	1 bicycle parking space per 2 units	16 units = 8 spaces		
Visitor Bicycle Parking	1 bicycle parking space per 10 units	16 units = 1.6 spaces		
	<b>Total required:</b>	<b>10 spaces</b>	<b>11 spaces</b>	<b>Yes + 1</b>

Component	Control	Required	Proposed	Complies?
<b>Motorcycle Parking</b>				
Motorcycle Parking	5% of the total car parking requirement	14 car parking spaces required = 0.9 spaces		
	<b>Total required:</b>	<b>0.7 spaces</b>	<b>1 space</b>	<b>No*</b>

Table 2: Assessment of proposal against Part 2.10 of MDCP 2011

As detailed above, the development complies with the car, bicycle and motorcycle parking requirement with the exception of visitor and accessible visitor car parking and motorcycle parking. Notwithstanding, the development provides 2 excess car parking spaces and there is sufficient excess parking for 2 spaces to be identified as visitor spaces. Space 6 may be appropriate to be converted into an accessible space given the adjacent shared zone. A condition is therefore included in the recommendation requiring 1 space to be identified as an accessible visitor space and 1 space should be identified as a visitor space.

Furthermore, 1 motorcycle parking space should be provided on site and a condition to this effect is included in the recommendation.

A number of submissions raised concern regarding the development putting additional strain on on-street car parking. The addition of 16 units and 14 car parking spaces (including 2 visitor parking spaces) is not considered to put significant strain on the on-street parking network. The development is located in car parking area 2 which acknowledges that car parking is moderately constrained in the area and the development complies with Council's car parking controls for car parking area 2, including the provision of visitor car parking.

It is further noted that the reinstatement of 2 existing vehicular crossings and the development utilising only one crossing will result in increased kerbside car parking.

Subject to compliance with the above, the development is acceptable having regard to the provisions of Part 2.10 of MDCP 2011.

(vi) Biodiversity (Part 2.13)

**Wildlife corridors**

The site is identified as Wildlife Corridor on the Biodiversity map accompanying Part 2.13 of MDCP 2011 and is identified in the former Marrickville Council's Biodiversity Strategy 2011 – 2021. As such, the development must demonstrate compliance with Part 2.13.4 of MDCP 2011.

The application was referred to Council's Urban Ecology Officer who provided the following comments, in part:

*“Documentation accompanying the Development Application must address impacts on biodiversity as required by the Biodiversity Conservation Act 2016 (BC Act). The impacts of any development proposal on threatened species, populations and ecological communities and their habitats are to be addressed by documentation accompanying the development application. That documentation must provide an indication as to whether the proposed development is likely to significantly affect those threatened species, populations and ecological communities and be assessed in accordance with the Biodiversity Conservation Act 2016.*

*The proposal documentation doesn't include the Biodiversity Assessment by Molino Stewart referred to in the Statement of Environmental Effects. Therefore, the requirements of the BC Act are not fully addressed and the impact this proposal will*

*have on local biodiversity is unclear. The key biodiversity impacts relate to tree removal, increase in impervious area, and proximity to the Dibble Avenue Waterhole.*

*The site is in the wildlife corridor as per MLEP 2011 and MDCP 2011. Dibble Avenue Waterhole is also a Priority Biodiversity Site as identified in the Marrickville Biodiversity Strategy 2011 – 2021. The Dibble Avenue Waterhole site provides habitat for a variety of birds, microbats and aquatic fauna. It is noted that the Landscape Plan shows a 10m vegetated buffer zone, which will protect biodiversity at Dibble Avenue Waterhole. However, a small portion of the 10m buffer is shown as built environment and this must be amended.*

*The width of the building is not supported. Building set back from side boundaries must be increased to avoid root damage to the tree and to allow for wider vegetation and improved biodiversity connections. The material palette should reflect the location next to the waterhole and the building itself should be designed to provide habitat for local wildlife through installations like insect hotels and bird boxes.*

*The site must reduce the impervious area and incorporate WSUD and green infrastructure throughout, as per Marrickville DCP 2.17 Water Sensitive Urban Design. The landscape design must enhance urban biodiversity on the site by creating habitat for local flora and fauna. A buffer zone of planting must be located along the rear boundary of the site. Trees proposed to be removed shall be ring barked, safe pruned with the stags retained for habitat.*

*The proposed building should be re-designed to incorporate green building principles including green walls and green roofs, as per the draft Marrickville DCP Section 2.18 Green Walls and Roofs.”*

Additional information and amended plans were submitted to Council on 18 July 2019 providing the following in response to the above advice:

- A Biodiversity Impact Report was submitted addressing the Biodiversity Conservation Act 2016 and Clause 6.4 of MLEP 2011;
- Amended plans illustrating:
  - Increased setbacks to the eastern and western boundaries;
  - An amended landscape plan including a green roof being provided across the majority of the roof with access to the roof for maintenance;
  - An increased rear boundary setback to ensure no encroachment into the 10 metre buffer zone to the waterhole;
  - Water Sensitive Urban Design measures including on site detention; and
  - Amendments to the material palette to include wood cladding to reflect the location near the waterhole.

The additional information and amended plans were reviewed by Council’s Urban Ecology Officer who advised that the development is acceptable subject to the imposition of appropriate conditions which are included in the recommendation.

(vii) Landscaping and Open Spaces (Part 2.18)

Part 2.18.11.6 of MDCP 2011 prescribes landscaped area, private and common open space controls for residential flat buildings.

**Landscaped Area**

Control C22 specifies the following for landscaped area:

***“C22 Landscaped area***

- i. The entire front setback must be of a pervious landscape with the exception of driveways and pathways.*
- ii. In addition to front setback, a minimum of 45% of the total site area must be landscaped area at ground level.”*

The entire front setback of the development consists of landscaped area with the exception of the vehicular and pedestrian access points. The development provides approximately 530sqm of landscaped area over the entire site including the front setback, equating to approximately 40% which is considered acceptable given the portion of possible landscaped area on the ground level occupied by car parking required to be located above ground due to flooding requirements.

Furthermore, the development provides 350sqm (or 25% of the site) of green roof on the rooftop level of the development. Whilst not located on the ground floor, the green roof reduces stormwater runoff and provides a habitat for native birds, thus achieving the objectives of the control. This equates to a total of 65% of the site being landscaped.

A landscape plan and maintenance schedule was submitted with the application which is considered acceptable.

***(viii) Tree Management (Part 2.20)***

There are a number of trees on the property covered by and protected under Part 2.20 of MDCP 2011. The development will impact on a number of trees on the site, on the adjoining sites and a number of street trees. Amended plans were submitted to Council increasing the eastern and western side boundary setbacks and deleting one of the two originally proposed vehicular crossings.

The application was referred to Council's Tree Management Officer who made the following comments, in part:

*“There are significant concerns in relation to the potential impact of the proposal on Trees 1 and 2 (2 x Melaleuca quinquenervia - street trees) and Tree 3 (Acmena smithii).*

*A vehicular crossover, driveway, pathways and low landscape walls are located within the Tree Protection Zones (TPZ) with some works within the Structural Root Zones (SRZ) of Trees 1 and 2. It is acknowledged that as part of a previous approval (DA201500718) these works were supported on the basis that Ground Penetrating Radar (GPR) was used to map roots within the vehicular crossover area however this technology is not always accurate in mapping the roots (and does not provide root diameters).*

*It would be a preferred option that root mapping by an Arborist actually digging a trench using a tree sensitive methodology such as hand digging or AirKnife or Hydrovac along the edge of the proposed crossover and driveway to the depth proposed for subgrade and installation (within the TPZ) be undertaken.*

*Notwithstanding the above and given that the vehicular crossover as proposed has previously been approved conditions are provided in relation to mitigating the impact to Trees 1 and 2 should the proposal be supported.*

*The proposal results in an increase in the constructed ground surfaces within the TPZ of Tree 3 and requires a significant portion of the canopy to be pruned. The estimate of canopy to be removed is stated to be 10 – 15% in the current AIA however it is*



*estimated that it is likely to be greater than 15%. The cumulative impact of the works within the TPZ (roots) and canopy reduction are likely to lead to a decline in the health of the tree over time.*

*It is acknowledged that the current proposal will result in a reduced impact on the canopy of Tree 3 compared with the previous approval (DA201500718) due to greater setbacks and therefore conditions are provided for inclusion in the determination should the proposal be supported.*

*The following street trees are to be retained and protected during the works:*

- *Trees 1, 2, 6 and 7 – Melaleuca quinquenervia (Broad Leafed Paperbark).*

*The following trees are located within the site and require removal as they spatially conflict with the proposal:*

- *Tree 5 – Cinnamomum camphora (Camphor Laurel). Located at the rear of the site on the embankment adjacent the waterhole. The previous DA approval required that this tree be significantly reduction pruned with the 'stag' being retained for habitat. It is understood that this approach was endorsed by the Biodiversity Team at the Council. It is recommended that the Biodiversity Team be consulted to determine if the retention of this tree (modified) as habitat is still considered appropriate and to recommend conditions.*
- *Tree 8 - Cinnamomum camphora (Camphor Laurel). Exempt due to size.*
- *Tree 9 – Cyathea cooperi (Tree Fern)*
- *Tree 10 – Ficus elastica (Rubber Tree). Exempt species.*
- *Trees 11 and 12 – Archontophoenix alexandrae (Alexander Palms)*
- *Not numbered - Phoenix canariensis (Canary Island Date Palm). Front of site. Exempt due to size.*

*The following tree is located on the adjacent site in AB Crofts Playground close to the common boundary with the subject site and must be retained and protected:*

- *Tree 4 – Lagunaria patersonii (Norfolk Island Hibiscus)*

*The following tree is located within the site and must be retained and protected:*

- *Tree 3 – Acmena smithii (Lilly Pilly). Southern side boundary.*

The amended plans were deemed supportable by Council's Tree Management subject to appropriate conditions which are included in the recommendation.

(ix) Site Facilities and Waste Management (Part 2.21)

**2.21.2.1 Recycling and Waste Management Plan**

A Recycling and Waste Management Plan (RWMP) in accordance with Council's requirements was submitted with the application and is considered to be adequate.

**2.21.2.5 Residential Waste**

The development includes 15 dwellings and would generate 1,152L of waste based on the calculation of 72L per dwelling. A minimum of 5 x 240L recycling, 5 x 240L general waste bins and an appropriate number of green waste bins are required to be provided for the development.

A total of 19 x 240L bins are provided in the waste storage area on the ground floor. There is considered to be a sufficient quantity of waste bins to accommodate the required recycling and general waste under Part 2.21.

The RWMP submitted with the application indicates that waste collection will occur from Dibble Avenue with the bins being transferred from the waste room located on the ground floor level to the kerb on collection day and the bins will be required to be transported by a nominated resident/caretaker. To ensure the amenity of neighbouring dwellings is not compromised given the large number of bins, a condition is included in the recommendation requiring that the bins are to be brought in within 12 hours of being emptied.

Control C25 specifies that space must be provided for communal compost facilities for residential flat buildings. A condition is included in the recommendation requiring that a communal composting area be provided.

Control C27 requires that for residential flat buildings a dedicated room or caged area of at least 12cbm must be provided for the temporary storage of discarded bulky items which are awaiting removal. There is sufficient space on the ground floor level to accommodate bulky goods and a condition is included in the recommendation requiring amended plans being submitted to demonstrate a suitable location.

The development is considered acceptable having regard to the objectives and controls contained in part 2.21 of MDCP 2011.

(x) Flood Management (Part 2.22)

The site is identified on the Flood Planning Area (Overland Flow), Flood Planning Area (Cooks River) and Floor Liable Land maps accompanying Part 2.22 of MDCP 2011.

The site is also traversed by Council stormwater lines (450 mm & 750 mm pipes).

The application was referred to Council's Development Engineer who provided the following comments:

***"1. Flooding***

*Flood Impact Assessment Report dated February 2019 and prepared by Hydro Spatial shall be revised and submitted to Council addressing the following items.*

- a) The probable maximum flood (PMF) level for the site is 6.40m AHD that is above the habitable floor level of level 1 apartments (RL 5.40m AHD). As such, an emergency management and evacuation plan and route for the level 1 apartments shall be developed and included in the report.*
- b) Flood Risk category maps (low, medium and high) for the site particularly addressing the car park.*
- c) Summary and recommendations.*
- d) Justification for the lower flood levels in the waterhole and surrounding areas for the post developed scenario.*

***2. Stormwater Drainage***

*Stormwater Concept Plans dated 25 January 2019 and prepared by Australian Consulting Engineers shall be revised and submitted to Council addressing the following items.*

- a) OSD will be required for the site. For sites greater than 1000sqm, the allowable discharge will be limited to the equivalent fully pervious discharges for the site. The stormwater plans shall be revised accordingly and resubmitted.
- b) The site is traversed by Council stormwater lines (450 mm & 750 mm pipes). The stormwater trunk drainage system shall be upgraded to a 1 in 20 year capacity through the site. The stormwater concept plans including calculations must be submitted for assessment and approval.

### 3. Other

*Referring to the Architectural Floor Plan the pedestrian bridge connection width must be limited to the stair case width. In addition, the applicant shall demonstrate that the pedestrian bridge connecting the two buildings is capable of being dismantled easily during any stormwater drainage works within the drainage easement and then reassembled on completion of the works."*

Amended plans and an amended Flood Impact Assessment Report were submitted to Council on 19 July 2019 and were referred to Council's Development Engineer for comment. Council's Development Engineer advised that all matters have been addressed with the exception of points 1.b) and 1.d) above. Notwithstanding, the development is acceptable subject to the imposition of appropriate conditions which are included in the recommendation.

## **PART 3 – Subdivision, Amalgamation and Movement Networks**

### (xi) Residential Torrens Title Subdivision and Amalgamation Controls (Part 3.2.2)

Part 3. of MDCP 2011 contains controls relating to residential subdivision and amalgamation.

The site comprises 2 land parcels legally described as Lots 6 and 7 in Deposited Plan 20495 and is collectively known as 11-13 Dibble Avenue, Marrickville. The application seeks to amalgamate the 2 lots into a single lot. The resultant site would accommodate the residential flat building and would have characteristics similar to a number of lots in the street which have undergone the process of redevelopment into residential flat buildings. The proposed amalgamation is acceptable having regard to the objectives and controls contained in part 3 of MDCP 2011.

## **PART 4.2 - Multi Dwelling Housing and Residential Flat Buildings**

Part 4.2 of MDCP 2011 provides controls relating to Multi Dwelling Housing and Residential Flat Buildings provisions including building form, building detail and desired future character guidelines and controls for specific centres. An assessment of the development having regard to the relevant provisions of Part 4.2 of MDCP 2011 is provided below.

### (xii) General Controls (Part 4.2.3)

Part 4.2.3 of MDCP 2011 prescribes the following unit mix requirements for residential flat buildings containing 6 or more dwellings:

**"C1** *New developments with six or more dwellings must provide the following mix of dwelling types:*

- |      |                     |                |
|------|---------------------|----------------|
| i.   | Studio              | 5% - 20%;      |
| ii.  | 1 bedroom           | 10% -40%;      |
| iii. | 2 bedroom           | 40% - 75%; and |
| iv.  | 3 bedroom or bigger | 10% - 45%."    |

The development includes 8 x 1 bed dwellings (50% of 16), 6x 2 bed dwellings (37.5% of 16) and 2 x 3 bed dwellings (12.5% of 16) which does not comply with the abovementioned unit mix requirements as no studio dwellings are provided.

Despite being contrary to the above dwelling mix, the mix of apartment sizes in this instance is considered acceptable as the development:

- Provides a small number of dwellings in total; and
- Provides a range of dwelling types and sizes to meet the needs of the community having regard to the demographics of the locality which are generally larger than single person households.

The provision of 3 bedroom dwellings in this location with access to private car parking is favourable.

(xiii) Built Form and Character (Part 4.2.4)

#### 4.2.4.1 Floor Space Ratio and Site Coverage

The floor space ratio of the development has been discussed earlier in this report under the provisions of Marrickville Local Environmental Plan 2011.

Part 4.2.4.1 MDCP 2011 specifies the following maximum site coverage controls for residential flat buildings:

Development Type	Maximum Site Coverage
Residential flat building	45% for one storey 35% for two storey 30% for three or more storeys

Council considers the site coverage of a development to be *“the proportion of the allotment occupied by the ground floor plan area of a building or buildings, including garages, carports, awnings, out buildings, etc, expressed as a percentage ratio”*.

The site coverage for this proposal, measured as the area covered by the upper levels of the development, equates to approximately 30% of the site area which complies with the above requirement. The development generally complies with Council's setback controls, provides adequate provision for infiltration of stormwater, deep soil planting, landscaping, areas of common and private open space and does not have any unreasonable impact on the amenity of neighbouring residential accommodation and as such is acceptable.

#### 4.2.4.2 Building heights

The matter of height has been discussed earlier in this report under the provisions of Marrickville Local Environmental Plan 2011.

#### 4.2.4.3 Building Setbacks

Part 4.2.4.3 of MDCP 2011 prescribes front, side and rear setback controls. Setbacks are generally required to allow neighbours adequate access to sunlight, for view sharing, to preserve established tree and vegetation corridors and provide adequate separation between buildings to maintain privacy.

In accordance with Control C12 of Part 4.2.4.3 of MDCP 2011, the development is required to have a minimum 9 metre front setback and 4.5 metre side and rear setbacks.

The development proposes the following setbacks:

Boundary	Setback
Front – Dibble Avenue	All levels – 5m to balcony edge, 7.25m to building edge
Eastern (Side)	All levels – 3m to 5.4m
Western (Side)	All levels – 3m to 5.4m
Northern (Rear)	All levels – 10m

The following additional controls apply:

**C13** *Notwithstanding any compliance with the front, side and rear setback controls, applicants must demonstrate that proposed building setbacks:*

- i. Provide adequate separation between buildings;*
- ii. Protect adjoining buildings from overlooking and loss of amenity;*
- iii. Maintain solar access in accordance with Council's requirements to adjoining premises; and*
- iv. Are acceptable in terms of their impact on existing views (in this regard, Council encourages view sharing between surrounding residences).*

**C14** *Variations to building setbacks may be permitted where:*

- i. There is no adverse impact of any proposed boundary wall on neighbours;*
- ii. Privacy between neighbouring dwellings and their open space improves; and*
- iii. The proposed setback matches an existing setback of a neighbouring building, leading to an improved streetscape and visual relationship.*

Whilst not complying with the numerical front boundary setback control as above, it has been demonstrated that the proposed front boundary setback is consistent with a number of existing developments along Dibble Avenue, including the RFB directly to the east at No. 9 and is considered appropriate.

The rear boundary setback complies with the 10 metre buffer to the Dibble Avenue waterhole. It is noted that no residential accommodation is located adjacent to the site to the rear.

Amended plans were submitted during the assessment process making significant increases to the eastern and western side boundary setbacks to provide increased distance from the residential flat building at No. 9 Dibble Avenue to the east and to the protected Lilly Pilly to the west and to provide an increased setback to the Council playground.

The development provides a minimum 3 metre side boundary setback to the eastern and western sides, with the front portion of the building having a setback of 4 metres and the central portion having a setback of 5.4 metres.

Whilst this does not comply with the numerical side boundary setback control, the development is considered to provide adequate separation between the subject development and the residential flat building at No. 9 Dibble Avenue to the east and includes measures to protect the visual privacy of the dwellings in that development and complies with Council's controls for solar access.

Considering the above the development is acceptable having regard to building setbacks and the built form and character controls contained within Part 4.2.3 of MDCP 2011.

(xiv) Streetscape, general appearance and materials (Part 4.2.5)

The development is consistent with the objectives and controls contained in Part 4.2.5 in that:

- The form of the development has been divided into symmetrical vertical bays visible from Dibble Avenue to break up the massing and reflect the scale of existing residential flat buildings in the locality.
- The development is sensitive to the specific characteristics of the site and its locality, including the location to nearby Dibble Avenue Waterhole and A.B. Crofts Playground;
- The external building materials and finishes, consisting mainly of timber battens and render is considered complimentary to the street.
- The development is oriented to complement the existing pattern of development found in the street;
- The development addresses the principal street frontage and provides an attractive visible facade from the street.
- The uppermost 3 metres of the development does not include any habitable space.

The development is considered to be a contemporary design and using high quality materials and finishes.

(xv) Parking and Access (Part 4.2.6)

The car, bicycle and motorcycle parking requirements for this proposal have been discussed earlier in this report.

The proposal includes a new at-grade car park with vehicular access via a new driveway crossing from Dibble Avenue. The 2 existing vehicular crossings will be removed and kerb reinstated. The car parking is appropriate given:

- The vehicular entrance is located to have least impact on the streetscape and amenity of adjoining neighbours; and
- The vehicular access is not located nearby to an intersection.

(xvi) Ceiling Heights (Part 4.2.7)

The development provides 3.1 metre floor to floor heights on each residential level which is acceptable.

## 5(d) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

## 5(e) The suitability of the site for the development

The site is zoned R1 – General Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.



### 5(f) Any submissions

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. A total of 10 submissions were received.

The following issues raised in submissions have been discussed in this report:

- Excessive Height – See Section 5(a)(iv)(iii) and (v);
- Excessive Floor Space Ratio – See Section 5(a)(iv)(iv) and (v);
- Bulk and scale, streetscape and height – See Section 5(a)(iv)(xiii);
- Overshadowing impacts – See Section 5(c)(i)(iii)
- Visual and Acoustic Privacy – See Section 5(c)(i)(ii);
- Lack of car parking - See Section 5(c)(i)(v)
- Removal of and impact to trees – See Section 5(c)(i)(viii);
- Heritage implications – See Section 5(a)(iv)(vi);
- Flooding - See Sections 5(a)(iv)(ix) and 5(c)(i)(x);
- Impacts on biodiversity of the waterhole - See Sections 5(a)(iv)(x) and 5(c)(i)(vi); and
- Waste Management - See Section 5(c)(i)(ix).

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: Misleading information in Statement of Environmental Effects and Heritage Impact Statement

Comment: Concern has been raised that a number of misleading comments have been made in the SEE and HIS submitted with the application. Council does acknowledge that a number of the comments made in those statements are inaccurate however a comprehensive assessment of the application having consideration to the SEE, Architectural Plans and other expert reports has been carried out by Council staff and the development is considered acceptable.

Issue: Concern raised over traffic impacts

Comment: The driveway accommodates 14 car parking spaces only and is not expected to generate excessive amounts of traffic.

Issue: Concern regarding adverse traffic and noise impacts during construction

Comment: Concern has been raised regarding adverse traffic and noise impacts during construction. Council's standard conditions of consent are recommended to be included in the approval to ensure that construction traffic, noise, impacts and due process is adhered to during the demolition and construction phase of the development.

Issue: Concern regarding pedestrian and traffic safety

Comment: Concern has been raised regarding hazards with additional cars using Dibble Avenue especially when exiting the site. A condition is included in the recommendation requiring that all cars enter and exit the site in a forward direction to ensure minimal impact on pedestrian safety.

All relevant matters raised in the submissions able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act have been discussed in the report.

### 5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The development is consistent with the aims and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan and other relevant Environmental Planning Instruments. As discussed throughout this report, the development will not result in any significant impacts on the amenity of adjoining premises and the streetscape and thus the development is considered to be in the public interest.

## 6 Referrals

### 6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in various sections of the report above.

- Development Engineer
- Tree Management Officer
- Resource Recovery
- Heritage & Urban Design Advisor
- Environmental Services – Biodiversity

### 6(b) External

The application was not required to be referred to any external bodies.

## 7. Section 94 Contributions

Section 94 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$237,966.00 would be required for the development under Marrickville Section 94 Contributions Plan 2014.

A credit has been provided for 2 x existing dwelling houses.

A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum height of buildings and floor space ratio development standards. The proposal is generally consistent Marrickville Development Control Plan 2011 (MDCP 2011). The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is suitable for approval subject to appropriate terms and conditions.

## 9. Recommendation

- A. That the Inner West Local Planning Panel approve a variation to the maximum height and floor space ratio development standard prescribed by Clause 4.3 and Clause 4.4 in the Marrickville Local Environmental Plan 2011, as it is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and objectives for development within the zone
- B. That the Panel, as the consent authority pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: 201900060 to demolish existing improvements and construct a 4 storey residential flat building containing 16 units with associated car parking at 11-13 Dibble Avenue, Marrickville subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### Attachment A – Recommended conditions of consent

#### Building Classification

#### Conditions of Consent

#### Fees

##### 1. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$237,966.00 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 23 July 2019.

**\*NB** Contribution rates under Marrickville Section 94/94A Contributions Plan 2014 are indexed quarterly (for the method of indexation refer to Section 2.15 of the Plan).

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

#### (CONTRIBUTION PAYMENT REFERENCE NO. DC002661

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Public Amenities Type:	Contribution \$
Community Facilities	\$25,866.00
Plan Administration	\$4,666.00
Recreation Facilities	\$204,539.14
Traffic Facilities	\$2,894.86
<b>TOTAL</b>	<b>\$237,966.00</b>

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\*.

**\*NB** A 0.75% credit card transaction fee applies to all credit card transactions.

##### 2. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the

prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

### 3. Security Deposit – Custom

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$8,056.50
Inspection Fee:	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

## General Conditions

### 4. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan and Revision No.	Plan Name	Date Issued	Prepared by
A-0006 B	Site Plan	July 2019	Benson McCormack Architecture
A-0101 B	Ground Floor Plan	July 2019	Benson McCormack Architecture
A-0102 B	Level 1 Floor Plan	July 2019	Benson McCormack Architecture
A-0103 B	Level 2 Floor Plan	July 2019	Benson McCormack Architecture
A-0104 B	Level 3 Floor Plan	July 2019	Benson McCormack Architecture
A-0105 B	Level 4 Floor Plan	July 2019	Benson McCormack Architecture
A-0106 B	Roof Plan	July 2019	Benson McCormack Architecture
A-0201 B	Elevation North	July 2019	Benson McCormack Architecture
A-0202 B	Elevation South	July 2019	Benson McCormack Architecture

A-0203 B	Elevation East	July 2019	Benson McCormack Architecture
A-0204 B	Elevation West	July 2019	Benson McCormack Architecture
A-0221 B	Sections	July 2019	Benson McCormack Architecture
A-1304 B	Adaptation Plan	July 2019	Benson McCormack Architecture
A-1306 B	Materials and Finishes	July 2019	Benson McCormack Architecture
LP01 D	Landscape Plan	15 July 2019	Matthew Higginson
LP02 D	Section & Plant Schedule	15 July 2019	Matthew Higginson
LP03 D	Landscape Plan - Roof Garden	15 July 2019	Matthew Higginson
-	Arboricultural Impact Assessment	18 July 2019	TALC
000 C, 101 C, 102 C, 103 C, 104 C, 105 C, 106 C	Stormwater Drainage Concept Plans	16 July 2019	Australian Consulting Engineers
-	Flood Risk Management Plan	17 July 2019	Kozarovski and Partments
1132 Ver. 1.2	Biodiversity Assessment Report	19 July 2019	Molino Stewart
977884M_03	BASIX Certificate	19 July 2019	Planning & Environment

As amended by the conditions of consent.

#### 5. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Window W.02.14 being amended in the following manner:

- a) Fixed and obscure glazing in any part below 1.6 metres floor from the finished floor level; or
- b) Minimum sill height of 1.6 metres above the finished floor level.

#### 6. Waste Management

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating:

- a) Communal composting facilities being provided; and
- b) A dedicated room or caged area of at least 12cbm being provided for the temporary storage of discarded bulky items that are awaiting collection. The area must be located on the ground floor level and appropriately screened from the public domain.

#### 7. Car Parking

The development must provide and maintain within the site:

- a) A total of 14 car parking spaces must be paved and line marked.
- b) 4 car parking spaces, for persons with a disability must be provided and marked as accessible car parking spaces.
- c) 2 visitor car parking spaces must be provided and marked as visitor car parking spaces.  
1 of the visitor spaces must be provided and marked as an accessible car parking

space. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site.

- d) 1 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times.
- e) 11 Bicycle storage spaces within the site.

#### 8. Residential Flat Buildings – Hot Water Systems

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

#### 9. Residential Flat Buildings – Air Conditioning Systems

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

#### 10. Residential Flat Buildings – Adaptable Dwellings

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 4 units are Adaptable units.

No works are to occur to the premises that would prevent the Adaptable units from being adapted for persons with a disability.

#### 11. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

#### 12. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

#### 13. Verification of Levels and Location

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

#### 14. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

#### 15. Tree Removal

Approval is given for the following trees to be removed:

Tree	Approved works
Tree 8 - <i>Cinnamomum camphora</i> (Camphor Laurel)	Removal
Tree 9 – <i>Cyathea cooperi</i> (Tree Fern)	Removal

Tree 10 – <i>Ficus elastica</i> (Rubber Tree)	Removal
Trees 11, 12 – <i>Archontophoenix alexandrae</i> (Alexander Palms)	Removal
<i>Phoenix canariensis</i> (Canary Island Date Palm). Front of site.	Removal

Removal of any other tree (that would require consent of Council) on the site is not approved.

#### 16. Tree Retention

The trees identified below are to be retained:

Tree/location
Tree 4 – <i>Lagunaria patersonii</i> (Norfolk Island Hibiscus). Adjacent park.
Tree 5 – <i>Cinnamomum camphora</i> (Camphor Laurel). Rear. Must be ringbarked and reduction pruned for habitat. Pruning to be approved by Council (Biodiversity Officer) prior to being undertaken
Trees 1, 2, 6 and 7 – <i>Melaleuca quinquenervia</i> (Broad Leafed Paperbark). Located on the Dibble Avenue frontage.
Tree 3 – <i>Acmena smithii</i> (Lilly Pilly). Southern side boundary.

Details of the trees to be retained must be included on the Construction Certificate plans with the Tree Protection Zone and Structural Root Zone (TPZ and SRZ in accordance with AS4970 'Protection of trees on development sites') clearly marked on the Ground Floor Plans, Landscape Plans (excluding Tree 5) and Stormwater and Drainage plans.

### Prior to any Demolition

#### 17. Advising Neighbors Prior to Excavation

At least 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 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.

#### 18. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

#### 19. Hoardings

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.



**20. Construction Traffic Management Plan**

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with RMS accreditation. The Certifying Authority must approve by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a) Description of the demolition, excavation and construction works;
- b) Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c) Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d) Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e) Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f) Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g) Proposed hours of construction related activities and vehicular movements to and from the site;
- h) Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i) Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j) Measures to maintain public safety and convenience;
- k) Any proposed road and/or footpath closures;
- l) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m) Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n) Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;

- p) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q) On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r) Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t) Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

#### **21. Tree Management**

A Project Arborist shall be engaged **before work commences** for the duration of the site preparation, demolition, construction and landscaping.

Project Arborist - for the purpose of these conditions a Project Arborist is a suitably qualified professional who shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF) and who does not remove or prune trees in the Inner West local government area.

#### **22. Tree Management**

The contact details of the Project Arborist shall be advised to Council's Urban Forest Team before work commences and maintained up to date for the duration of the works. If a new Project Arborist is appointed details of the new Project Arborist shall be notified to Council's Urban Forest Team within 7 days.

#### **23. Tree Management**

The requirements of the Tree Protection Plan (Appendix D) contained the Arboricultural Impact Assessment (AIA) prepared by TALC and dated 18<sup>th</sup> July 2019 shall be shown clearly on the Construction Certificate drawings, including the Construction Management Plan.

The PCA must ensure the construction plans and specifications submitted fully satisfy the tree protection requirements identified in the TPP.

A Project Arborist who holds AQF Level 5 in Horticulture (Arboriculture) or above is to be appointed to monitor tree protection during the construction in accordance with the requirements identified in the TPP.

**All tree protection measures as detailed in the approved Tree Protection Plan must be installed and certified in writing as fit for purpose by the Project Arborist prior to works commencing.**

A Compliance Certificate is to be issued by the Project Arborist certifying that all tree protection measures as detailed in the Tree Protection Plan have been complied with prior to issue of the Occupation Certificate.

#### **24. Tree Management**

Prior to works commencing or release of a Construction Certificate (whichever occurs first), tree protection signage is to be attached to each tree protection zone, displayed in a prominent position and the sign repeated at 10 metre intervals or closer where the fence changes direction. Each sign shall contain in a clearly legible form (lettering should comply with AS 1319-*Safety signs for the occupational environment*), the following information:

- a) Tree protection zone;
- b) This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted;
- c) Any encroachment not previously approved within the tree protection zone shall be the subject to advice from the Project Arborist in report form and must include the following:
  - Proof shall be provided that no other alternative is available;
  - On completion, the Project Arborist's report shall be submitted to the Principal Certifying Authority for further consultation with Council;
- d) The name, address and telephone number of the builder and Project Arborist.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

## 25. Tree Management

To preserve the following trees no work shall commence until the trunk/s/branches are protected (in accordance with AS4970-*Protection of trees on development sites*) by the placement of 2 metres lengths of 50 x 100mm timbers spaced at 150mm centres and secured by wire/hoop strap over suitable protective padding material (i.e. underlay or carpet). The trunk protection shall be maintained intact until the completion of all work on site.

Tree/Location
Trees 1, 2, 6 and 7 – <i>Melaleuca quinquenervia</i> (Broad Leafed Paperbark) / the Dibble Avenue frontage.
Tree 3 - <i>Acmena smithii</i> (Lilly Pilly) / southern side boundary (trunk protection only required when fencing is removed for driveway construction within the TPZ radius of 7.5m).

Note – Where scaffolding or hoarding is to be erected within 300mm of branches that must be retained, branch protection is required as specified by the Project Arborist.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist to the satisfaction of the Principal Certifying Authority prior to the works commencing.

## Prior to Construction Certificate

## 26. Enclosure of Fire Hydrant

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

**27. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program 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.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.*

**28. Fibre-ready Facilities**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a) The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

**29. Consolidation of Lots**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that the separate lots comprising the development have been consolidated into one lot and under one title and registered at NSW Land Registry Services.

- a) Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork including stormwater downpipes within the outer walls of the building so they are not visible.

**30. Dilapidation Report – Pre-Development**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report on the visible and structural condition of the following public infrastructure:

- a) Full width of Dibble Street in front of the property, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath.
- b) Half-width of Dibble Street in front of adjacent properties, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath.
- c) Council drainage pipe traversing through the site including CCTV inspection in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia.

The dilapidation report is to be prepared by a practising Civil/Structural Engineer.

**31. Parking Facilities**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the

vehicular access, off-street parking facilities and associated vehicle standing areas comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, Australian Standard AS 2890.2-2018 Parking Facilities: Commercial vehicle facilities, AS/NZS 2890.3-2015 Parking facilities: Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities and the following specific requirements:

- b) The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
- c) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
- d) Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of AS/NZS 2890.1-2004.
- e) Minimum headroom of 2500mm must be provided above any disabled parking space(s).
- f) The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B99 design vehicle. Longitudinal sections must be provided along each outer edge of all ramps.
- g) The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that:
  - i. Car spaces adjacent to walls or fences are increased in width by an additional 300mm;
  - ii. End spaces are provided with an additional 1m aisle extension; and
  - iii. The location of columns within the carpark complies with figure 5.1 of AS/NZS 2890.1-2004;
- h) At the property boundary the access from the road to a standing area is (as near as practicable) perpendicular to the line of the adjacent road;
- i) The relative surface levels of the internal access from the road being controlled so that:
  - i. The surface levels at the property boundary match "alignment levels";
  - ii. The change in grade for any 2m length of access way does not exceed 1 in 8 (12.5%) unless suitable transitions are provided in accordance with AS2890.1;
  - iii. The maximum grade at any point does not exceed 1 in 5 (20%) or in the case of ramps greater than 20m in length 1 in 6 (16.7%); and
  - iv. The maximum grade at the property boundary does not exceed 1 in 20 (5%) within 6m of the property boundary;
- j) The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles; and
- k) The curved section of the ramp is designed in accordance with AS/NZS 2890.1-2004 with grades measured along the inside radius.

**32. Flood Compatible Fence**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans demonstrating that the proposed gate/fence at the Dibble Avenue must be flood compatible with vertical elements that are no wider than 50mm and separated by no less than 90mm to allow floodwaters to flow through unimpeded.

**33. Flood Affected Site**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer that the works comply with the following specific requirements:

- a) All habitable floor levels must be set at or above 3.8 m AHD (flood level plus 500mm freeboard). All structures below RL 3.8 m AHD must be constructed from flood compatible materials.
- b) All electrical equipment and wiring must be waterproofed or installed at or above RL 3.8 m AHD.
- c) A structural engineer's certificate must be submitted stating that the proposed building has been designed to withstand the forces of flood water, debris and buoyancy up to the 1 in 100-year flood level.
- d) The existing ground levels throughout the site must be maintained so as not to alter the existing overland flow path. Details of all obstructions or changes in level within the overland flow paths must be detailed on the plan.
- e) All fencing within the overland flow path must be of an open type so as to allow for the free flow of water throughout the site so as to maintain existing flows.

**34. Overland Flow path**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer detailing hydrologic and hydraulic calculations for the overland flow path and the capacity of the existing system and measures necessary to protect the premises in a 1 in 100 year ARI storm event and the requirements of Council's Flood Planning Policy.

**35. Flood Risk Management Plan**

Prior to the issue of a Construction Certificate, the Inner West Council must be provided with a Flood Impact Assessment Report prepared and certified by a suitably qualified Civil Engineer addressing the following items:

- a) Flood Risk category maps (low, medium and high) for the site.
- b) Justification for the lower flood levels in the water hole and surrounding areas for the post developed scenario.

Flood Risk Management Report dated 17 July 2019 and prepared by Kozarovski and Partners did not address the above two items using a hydraulic model (TUFLOW).

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer. The Plan must be prepared to make provision for the following:

- a) The plan must be generally in accordance with the recommendations of the Flood Impact Assessment Report prepared by HydroSpatial Pty Ltd and dated February

2019. Also the Flood Risk Management Report dated 17 July 2019 and prepared by Kozarovski and Partners.

- b) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
  - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
  - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
  - iii. Flood warning signs/depth indicators for areas that may be inundated
  - iv. A flood evacuation strategy.
  - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- c) All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.
  - i. Building Code of Australia
  - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level
  - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood
  - iv. Flood hazard level (FHL) Flood Planning Level (FPL)

### **36. Amended Architectural Plans to Reflect Flood Risk Management Plan**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the recommendations of the Flood Risk Management Plan. The design must be prepared to make provision for the following:

- a) Specification of materials.
- b) Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans must occur except as identified by this condition. Any changes to such must be subject to separate approval.

### **37. Engineering Design - Structural Engineer Plans and Certification**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer that incorporate the recommendations of the Flood Risk Management Plan.

The design must be prepared to make provision for the following:

- a) Structural integrity of all structures from immersion and/or impact of velocity and debris.
- b) Waterproofing works, where applicable.

### **38. Stormwater Drainage System – Major Developments**

The submitted stormwater concept plan dated 16 July 2019 and prepared by Australian Consulting Engineers has been assessed as a concept plan only.

Prior to the issue of a Construction Certificate, the Inner West Council must be provided with stormwater drainage design plans incorporating the following specific requirement.

- a) The site is traversed by Council stormwater lines (450 mm & 750 mm pipes). The stormwater trunk drainage system shall be upgraded to a 1 in 20 year capacity through the site. The stormwater detailed plans including calculations must be submitted for assessment and approval.

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications that the design of the site drainage system complies with the following specific requirements:

- a) The design must be generally in accordance with the stormwater drainage concept plan on Project Number 181243, Drawings 00 to 106, Revision C dated 16 July 2019 and prepared by Australian Consulting Engineers.
- b) All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- c) No pumps or charged systems (including roof drainage) must be included in the design.
- d) To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.
- e) Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road or directly into Council's piped drainage system.
- f) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- g) An overland flow path must be provided within the setback to the side boundary fences between the rear of the dwelling and Dibble Avenue frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flow path.
- h) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- i) All redundant pipelines within the footpath area must be removed and footpath/kerb reinstated.
- j) Only a single point of discharge is permitted to the Council pipe.



- k) Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided; this must include any existing overland flow routes from upstream;
- l) A water balance model must be submitted to accompany the water re-use proposal;
- m) A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets. For sites with a GFA greater than 2000sqm a MUSIC model (including .sqz file) must be included with the report;
- n) A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken; and
- o) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- p) Stormwater quality improvement devices must be installed such that stormwater flows leaving the site meet the following environmental targets:

Pollutant	Baseline Pollution Load (kg/ha/yr)	Retention Criteria
Gross Pollutants, including trash, litter and vegetation matter greater than 5mm	500	90% reduction of average annual load
Total Suspended solids, including sediment and other fine material less than 5mm	900	85% reduction of average annual load
Total Phosphorous	2	65% reduction of average annual load
Total Nitrogen	15	45% reduction of average annual load
Hydrocarbons (Oil and Grease)		90% reduction of average annual load – no visible discharge
Toxicants		100% containment of toxicants

### 39. Council Stormwater Pipe - Physical Location

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended site plans to accurately show the location of the Council's stormwater pipe. The stormwater pipe must be located by the use of test pits and must be inspected by a suitably qualified Civil Engineer. The location of Council's stormwater pipe must be pegged out across the site, and the actual location and depth of the pipe must be used in the design of the footings of the proposed building.

### 40. Works adjacent to Council's Stormwater Pipeline

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared by a suitably qualified Civil Engineer that demonstrate any footings or excavation to be located or undertaken adjacent to Council's stormwater pipeline address the following requirements:

- a) All footings and excavation must be located outside of the easement boundaries.

- b) All footings and excavation must be located a minimum of 1000mm from the centreline of the pipeline or 500mm from the outside of the pipeline, whichever is the greater distance from the centreline.
- c) All footings adjacent to Council's stormwater pipe must be taken to a depth 500mm below a line of influence measured at 450 from a point 1m from the invert of the stormwater pipe in the direction of the footing unless the footings are to be placed on competent bedrock.
- d) If permanent excavation is proposed beneath the overtop of the pipeline, suitable means to protect the excavation and proposed retaining structures from seepage or other water flow from the pipeline and surrounding subsoil must be provided.

#### 41. External Catchment

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared by a suitably qualified Civil Engineer that demonstrate adequate site drainage for all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.

#### 42. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a) The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- b) New concrete footpath and kerb and gutter (if required) along the frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determined by the Council Engineer.
- c) Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.

#### 43. Landscape Plan

The Landscape Plan prepared by Matthew Higginson (Dwgs LP01 – 03) must be amended to include:

- a) One additional canopy tree (75 litre at planting) to be included in the landscape area between the rear building setback and the waterhole. The tree must be located so that the mature canopy will not impact other trees and shall be a species that will attain a minimum mature height of 8 metres. The tree species shall be in accordance with the Dibble Avenue Wetlands Vegetation Management Plan.
- b) Annotation that all trees are to be supplied in accordance with AS2303 '*Tree stock for landscape use*'.
- c) Annotation that no tree roots greater than 30mm in diameter are to be damaged or pruned during construction, soil cultivation or planting.
- d) A landscape maintenance strategy for the owners / occupiers to administer over a twelve (12) month establishment period.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

#### 44. Tree Management

Paving works within the specified radius of the trunks of the following trees will be of a type and construction to ensure that existing water infiltration and gaseous exchange to the trees root system is maintained or improved.

Schedule	
Tree/location	Radius in metres (TPZ)
Trees 1, 2, 6 and 7 – <i>Melaleuca quinquenervia</i> (Broad Leafed Paperbark) / the Dibble Avenue frontage. Tree 3 - <i>Acmena smithii</i> (Lilly Pilly) / southern side boundary.	Within the TPZ as nominated in the Arboricultural Impact Assessment (AIA) prepared by TALC and dated 18 <sup>th</sup> July 2019.

#### 45. Tree Management

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate. **Note:** A plan detailing the paving shall be submitted to the Principal Certifying Authority to address the above requirements prior to the issue of a Construction Certificate.

The footings of all structures (including landscape walls and in the case of the vehicular crossover, footpath and driveway the whole structure) within the nominated radial zones (TPZ) must be designed and installed in conjunction with input from a consultant Arborist holding a minimum qualification of AQF5 Diploma Arboriculture.

Schedule	
Tree/location	Radius in metres
Trees 1, 2, 6 and 7 – <i>Melaleuca quinquenervia</i> (Broad Leafed Paperbark) / the Dibble Avenue frontage. Tree 3 - <i>Acmena smithii</i> (Lilly Pilly) / southern side boundary.	Within the TPZ as nominated in the Arboricultural Impact Assessment (AIA) prepared by TALC and dated 18 <sup>th</sup> July 2019.

The piers shall be located such that no roots of a diameter greater than 30mm will be severed or injured during the construction period. The beams must be a minimum of 50mm above the top of any root not approved for removal.

Structural details of the pier or pier and beam or cantilever construction shall be submitted to the Principal Certifying Authority satisfying the above requirements prior to the release of a Construction Certificate.

#### 46. Tree Pruning

A detailed Pruning Specification is required for Trees 1, 2, 3, 5, 6 and 7. The specification must include marked up images of each limb that requires removal, the length and diameter of those limbs and the overall percentage of canopy to be removed and must be submitted for approval by Council prior to the issue of a Construction Certificate.

**Note** - The pruning specification relating to the four (4) street trees must consider the pruning that is required for the installation of the scaffolding/hoarding. It should be noted that substantial pruning (branches with a diameter greater than 100mm or greater than 10% of

the canopy) that will be detrimental to the street trees will not be supported and the scaffolding/hoarding design and configuration must be amended accordingly.

Note – The Pruning Specification for Tree 5 must be developed in liaison with Council's Urban Ecology team.

The specification must be prepared in accordance with the Development Fact Sheet 'Arborist Reports' and by an AQF Level 5 Arborist.

#### **47. Diversity of local native plant species**

Prior to the issue of a Construction Certificate, Council's Urban Ecology team must be provided with an amended landscape plan certified, by a qualified landscape architect, demonstrating a plant schedule consisting of 90% local native plant species comprising small shrubs, grasses, ferns and groundcovers and local native canopy tree species, as per the Dibble Avenue Weed and Vegetation Management Plan 2009. Appropriate species can be sourced from local native plant nurseries, such as the Marrickville Community Nursery.

The 10m buffer zone from the waterhole must be densely planted with a diversity of plant types. The current Landscape Plan includes cultivars and does not include enough shrub layer in the buffer zone.

#### **48. Lighting Design**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an amended landscape plan showing that any proposed outdoor lighting is no brighter than 5 LUX OR 10W. External lighting must use sensor lighting and light shields to prevent light spill towards the Dibble Avenue Waterhole.

#### **49. Creating Habitat for Native Fauna**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a landscape plan showing how external spaces have been designed to protect and enhance urban biodiversity (Marrickville DCP Part 2.13) by creating habitat for a variety of fauna species by using at least one of the below:

- a) A grouping of timber logs (minimum 3 logs)
- b) A grouping of stone boulders (minimum 3 boulders)
- c) A bee and/or insect hotel
- d) A habitat box (e.g. bird box or bat box)

#### **50. Green Roof**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a maintenance report, prepared by a suitably qualified person, outlining the care and maintenance strategy for the first two (2) years of the green roof and must include (at a minimum) the following detail:

- a) strategy for any leaks or weaknesses in the membrane;
- b) watering in dry periods (if an irrigation system has not been connected to a water supply);
- c) removal of weeds;
- d) light fertilization with slow release complete fertilizers; and
- e) the replacement of dead plants.

The green roofs are to be accessible from the building for maintenance purposes. Installers of green roofs will have experience with green roof systems.

The green roofs must be structurally sound and able to be appropriately waterproofed. Evidence of this in documentation from a qualified Structural Engineer and waterproofing specialist must be submitted to the Certifying Authority.

Preferable materials will be hardy and long lasting in external environments so minimal upkeep is required, and materials should also be environmentally friendly with respect to the amount of energy and water consumed.

### During Demolition and Construction

#### **51. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a) 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

8:00am to 12:00pm, Monday to Saturday; and  
2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

#### **52. Survey Prior to Footings**

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

**53. Tree Management**

If tree roots (with a diameter of less than 30mm) are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly using a sharp and *fit for purpose tool*. The pruning shall be undertaken by a minimum Level 3 (AQF 3) qualified Arborist.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority

**54. Tree Management**

The trees to be retained shall be inspected, monitored and treated by Project Arborist during and after completion of development works to ensure their long term survival. Regular inspections and documentation from the Project Arborist to the Principal Certifying Authority are required at the following times or phases of work:

Schedule	
Tree/location	Time of Inspection
Trees 1, 2, 6 and 7 – <i>Melaleuca quinquenervia</i> (Broad Leafed Paperbark) / the Dibble Avenue frontage. Tree 3 - <i>Acmena smithii</i> (Lilly Pilly) / southern side boundary. Tree 4 – <i>Lagunaria patersonii</i> (Norfolk Island Hibiscus) / Adjacent park.	<ul style="list-style-type: none"> <li>• Directly following installation of protective fencing/tree protection</li> <li>• <b>During excavation within the Tree Protection Zone.</b></li> <li>• During the approved canopy pruning.</li> <li>• During the erection of any hoarding or scaffolding that will impact trees to be retained.</li> <li>• At any time tree fencing/protection is required to be altered,</li> <li>• At project completion to verify that protection measures have been undertaken.</li> </ul>

The works must be undertaken in accordance with Section 3.5 – 3.11 and Appendix D (Tree Protection Plan) of the Arboricultural Impact Assessment (AIA) prepared by TALC and dated 18<sup>th</sup> July 2019 – noting limitations in the conditions of this consent relating to root diameters that are approved for removal.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

**55. Tree Management**

No tree roots of 30mm or greater in diameter located within the specified radius of the trunks of the following tree shall be severed or injured in the process of any works during the construction period.

Schedule	
Tree/location	Radius in metres
Trees 1, 2, 6 and 7 – <i>Melaleuca quinquenervia</i> (Broad Leafed Paperbark) / the Dibble Avenue frontage. Tree 3 - <i>Acmena smithii</i> (Lilly Pilly) / southern side boundary.	Within the TPZ as nominated in the Arboricultural Impact Assessment (AIA) prepared by TALC and dated 18 <sup>th</sup> July 2019.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

#### 56. Tree Management

No storage of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time unless approved in writing by the Project Arborist prior to being undertaken.

No disposal of materials beneath the canopy of any tree protected under Council's Tree Management Controls at any time.

#### 57. Tree Management

Excavation for the installation of any services within the specified radius of the trunks of the following trees shall utilise the thrust boring method or another method that will avoid damage to roots that must be retained. Thrust boring being carried out at least 800mm beneath natural ground level to minimise damage to tree(s) root system. Entry and Exit pits to be located under the direct supervision of the Project Arborist.

Schedule	
Tree/location	Radius in metres
Trees 1, 2, 6 and 7 – <i>Melaleuca quinquenervia</i> (Broad Leafed Paperbark) / the Dibble Avenue frontage. Tree 3 - <i>Acmena smithii</i> (Lilly Pilly) / southern side boundary.	Within the TPZ as nominated in the Arboricultural Impact Assessment (AIA) prepared by TALC and dated 18 <sup>th</sup> July 2019.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

#### 58. Tree Management

No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

### Prior to Occupation Certificate

#### 59. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a) Heavy duty concrete vehicle crossing(s) at the vehicular access location(s).
- b) The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone.
- c) The existing concrete footpath across the frontage of the site must be reconstructed.
- d) Other works subject to the Roads Act 1993 approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

#### **60. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

#### **61. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that any damaged stone kerb has been replaced.

#### **62. Redundant Vehicle Crossing**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all redundant vehicular crossings to the site have been removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominantly stone the replacement kerb must also be in stone.

#### **63. Parking Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a Chartered/Registered Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a) The car park has been completed, line marked and all signage relating to car parking erected.
- b) A notice has been clearly displayed at the building frontage to indicate that visitor parking is available within the property.
- c) Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

#### **64. Public Domain - Major Developments**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.



**65. Dilapidation Report – Post-Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

**66. Flood Risk Management Plan – Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with Certification by a qualified practising Civil Engineer that all aspects of the flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

**67. Stormwater Drainage and Road Works – Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with Certification by a qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications that:

- a) All works required to be undertaken on public roads must be designed and constructed in accordance with Council's approved plans.
- b) Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia has been carried out of completed stormwater drainage works that are to revert to Council by an accredited operator.
- c) Full works-as-executed plans in PDF and CAD format (dwg or dxf files), prepared and signed by a Registered Surveyor have been submitted to Council.

**68. Works as Executed – Site Stormwater Drainage System**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with Certification by a Chartered/Registered Civil Engineer that:

- a) The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.
- b) Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.

**69. Operation and Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.

- b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

#### **70. Easements, Restrictions on the Use of Land and Positive Covenants**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a) Restrictions on the Use of Land related to on Site Stormwater Detention System and stormwater quality improvement devices;
- b) Restrictions on the Use of Land related to Stormwater Surface Flow Paths;
- c) Positive Covenant related to on-site stormwater detention and/or retention system;
- d) Positive Covenant related to stormwater quality improvement devices; and
- e) Positive Covenant related to Stormwater Surface Flow Paths.

The wording in the Instrument must be in accordance with Councils Standard wording.

#### **71. Tree Management**

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including tree planting, have been undertaken in accordance with the approved plan(s) and conditions of consent. A copy of an active Landscape Management Plan/contract for the maintenance of the landscaping for a period of not less than two years after the installation is to be provided prior to the issue of the Occupation Certificate.

#### **On-going**

#### **72. Flood Risk Management Plan**

The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

#### **73. Operation and Management Plan**

The Operation and Management Plan for the on-site detention and stormwater quality improvement devices approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

#### **74. Vehicles Leaving the Site**

All vehicles must enter and exit the site in a forward direction.

#### **75. Bins**

Bins are to be brought in within 12 hours of being emptied. A collection point is to be designated where no part extends across neighbouring properties' kerbside frontages

#### **76. Tree Management**

The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 5 metres whereby they will be protected

by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 1 month.

#### **77. Green roof**

The landscaped green roof shall be maintained on an on-going basis and the approved maintenance report shall be implemented. Maintenance shall include watering in dry periods (if an irrigation system has not been connected to a water supply); removal of weeds, light fertilization with slow release complete fertilizers; and the replacement of dead plants.

#### **Advisory notes**

##### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

##### **Notification of commencement of works**

At least 7 days before any demolition work commences:

- a) the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and
- b) a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

##### **Storage of Materials on public property**

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

##### **Toilet Facilities**

The following facilities must be provided on the site:

- a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

##### **Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

##### **Other Approvals may be needed**

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

**Failure to comply with conditions**

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

**Other works**

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**Obtaining Relevant Certification**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a) Application for any activity under that Act, including any erection of a hoarding.
- b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
- d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
- e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
- f) Development Application for demolition if demolition is not approved by this consent.
- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

**National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

**Notification of commencement of works**

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i. the name and licence number of the principal contractor, and
  - ii. the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - i. the name of the owner-builder, and
  - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

**Dividing Fences Act**

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

**Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

**Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

**Chartered/Registered Engineer**

An engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng).

**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath

- c) Mobile crane or any standing plant
- d) Skip Bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street veranda over the footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

#### **Public Domain and Vehicular Crossings**

The vehicular crossing and/or public domain works are required to be constructed by your contractor. You or your contractor must complete an application for 'Design of Vehicle Crossing and Public Domain Works – Step 1' form and/or 'Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

#### **Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

#### **Easement and Covenant Process**

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

- a) Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

- b) **Engineer's Certificate**
  - i. A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:
  - ii. the soundness of the storage structure;
  - iii. the capacity of the detention storage;
  - iv. the emergency overflow system being in place;
  - v. the works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
  - vi. the freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
  - vii. basement car park pumps are class one zone two;
  - viii. OSR pumps and SQIDS have been installed and commissioned.
- c) **Restriction-As-To-User**

A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the detention area and stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, must not be carried out without the prior consent in writing of the Council.

Such restrictions must not be released, varied or modified without the consent of the Council.

A typical document is available from Council's Development Assessment Engineer
- d) **A Maintenance Schedule.**

#### Dial before you dig

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

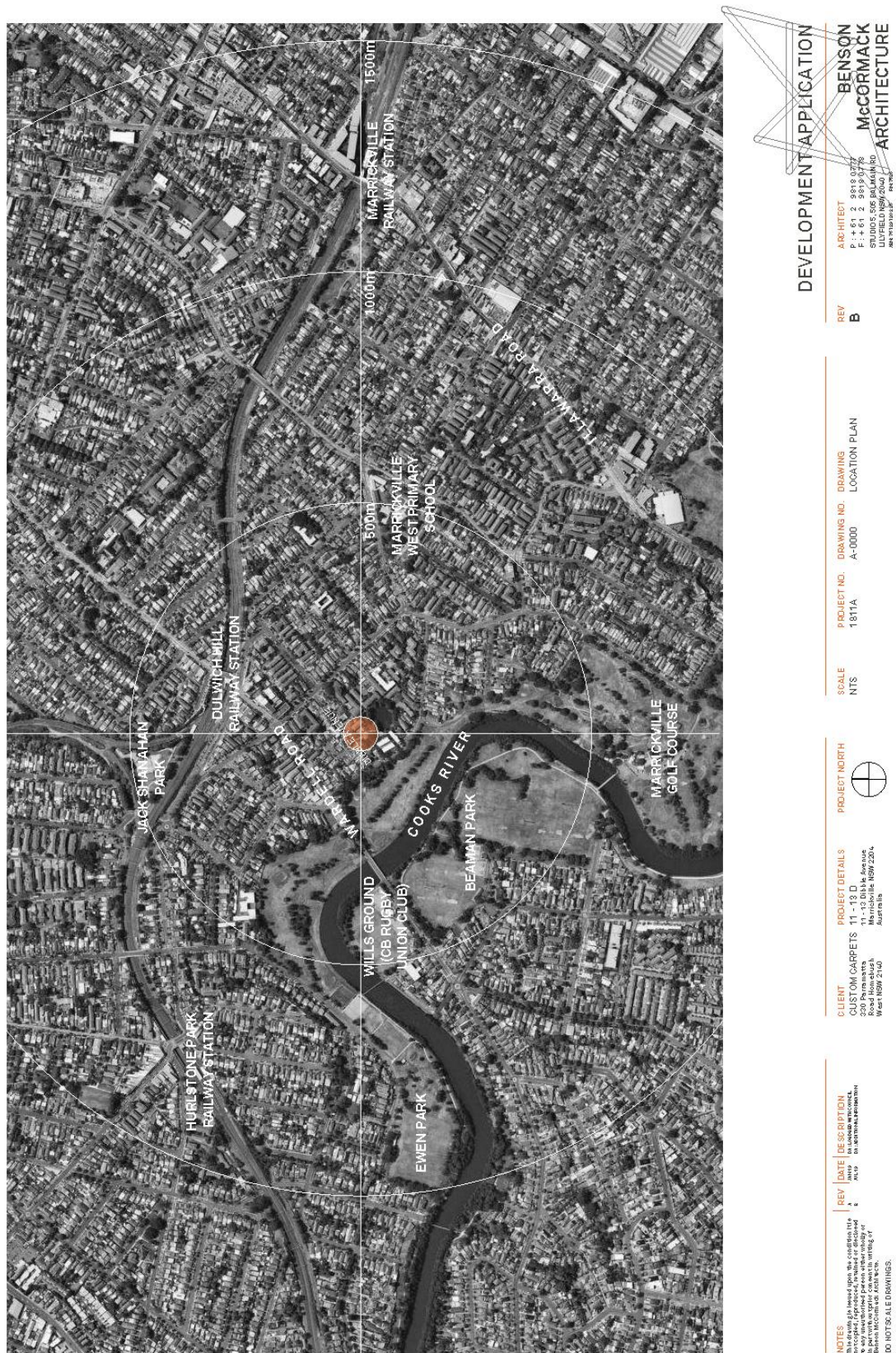
#### Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"

Long Service Payments Corporation	131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50 <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.



## Attachment B – Plans of proposed development







source: NSW Government SIX Maps

**NOTES**  
This drawing is issued upon the condition it is to be used for the purpose stated and is not to be used for any other purpose without the written consent of Benson McCormack Architects.  
DO NOT SCALE DRAWINGS.

**REV** | **DATE** | **DESCRIPTION**  
A | 14 JAN 14 | IN CONSULTATION WITH THE LOCAL COUNCIL  
B | 14 JAN 14 | IN ADDITIONAL INFORMATION

**CLIENT**  
CUSTOM CARPETS 11-13 D  
320 Parramatta Road  
Marrickville NSW 2204  
Australia

**PROJECT NORTH**

**SCALE**  
NTS

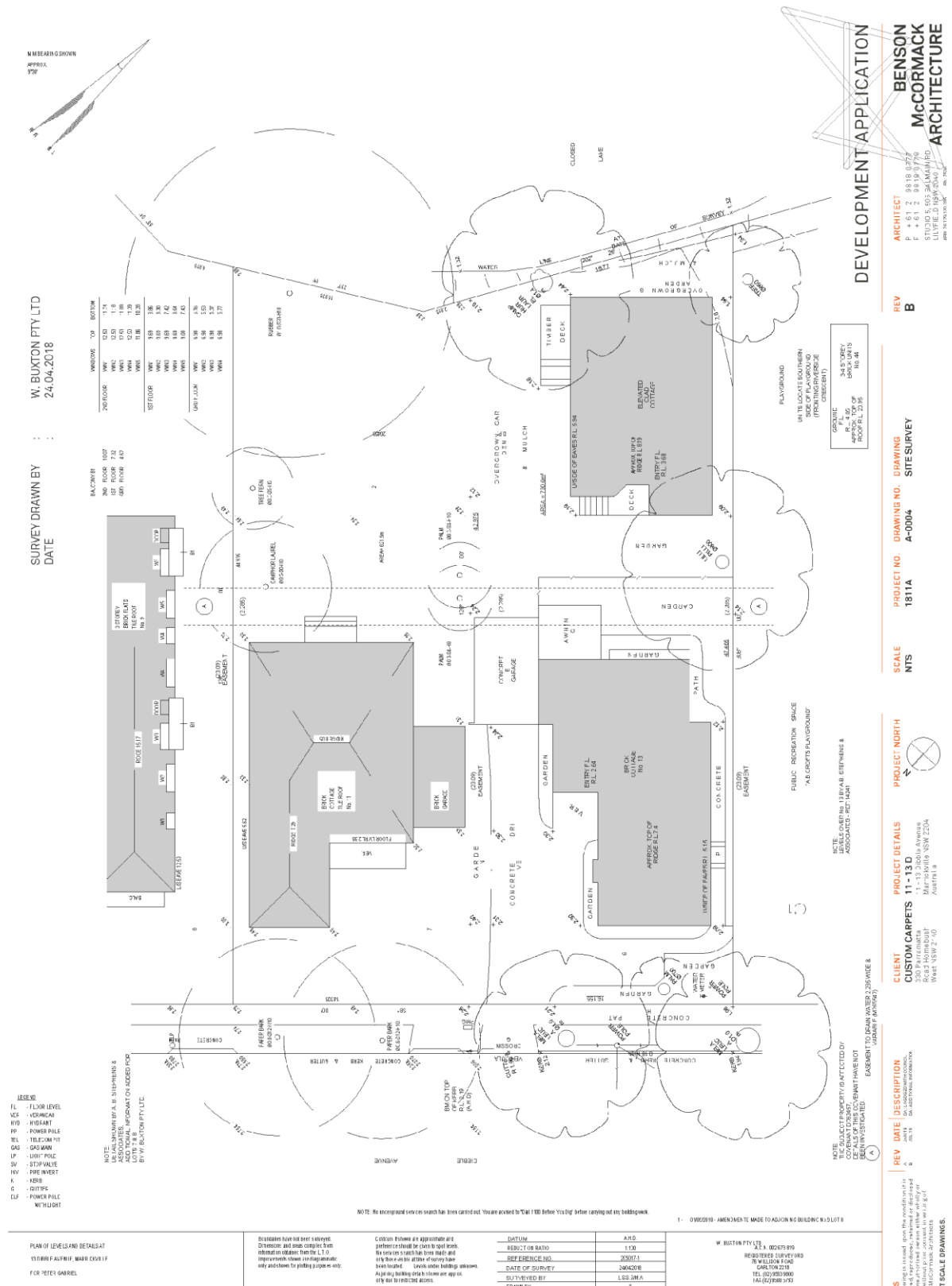
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**DRAWING NO.** A-001  
**DRAWING** CONTEXT PLANS

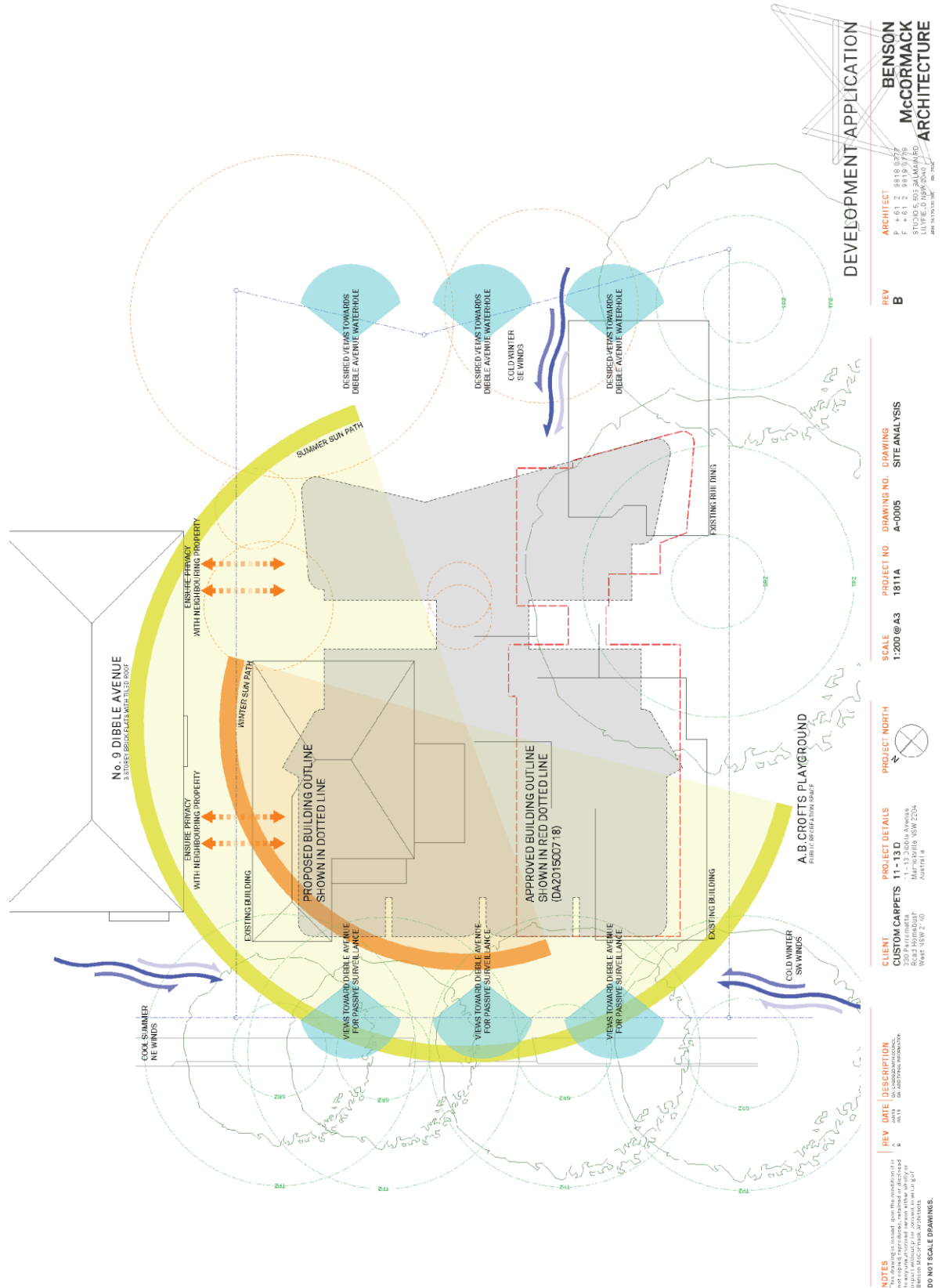
**REV** B

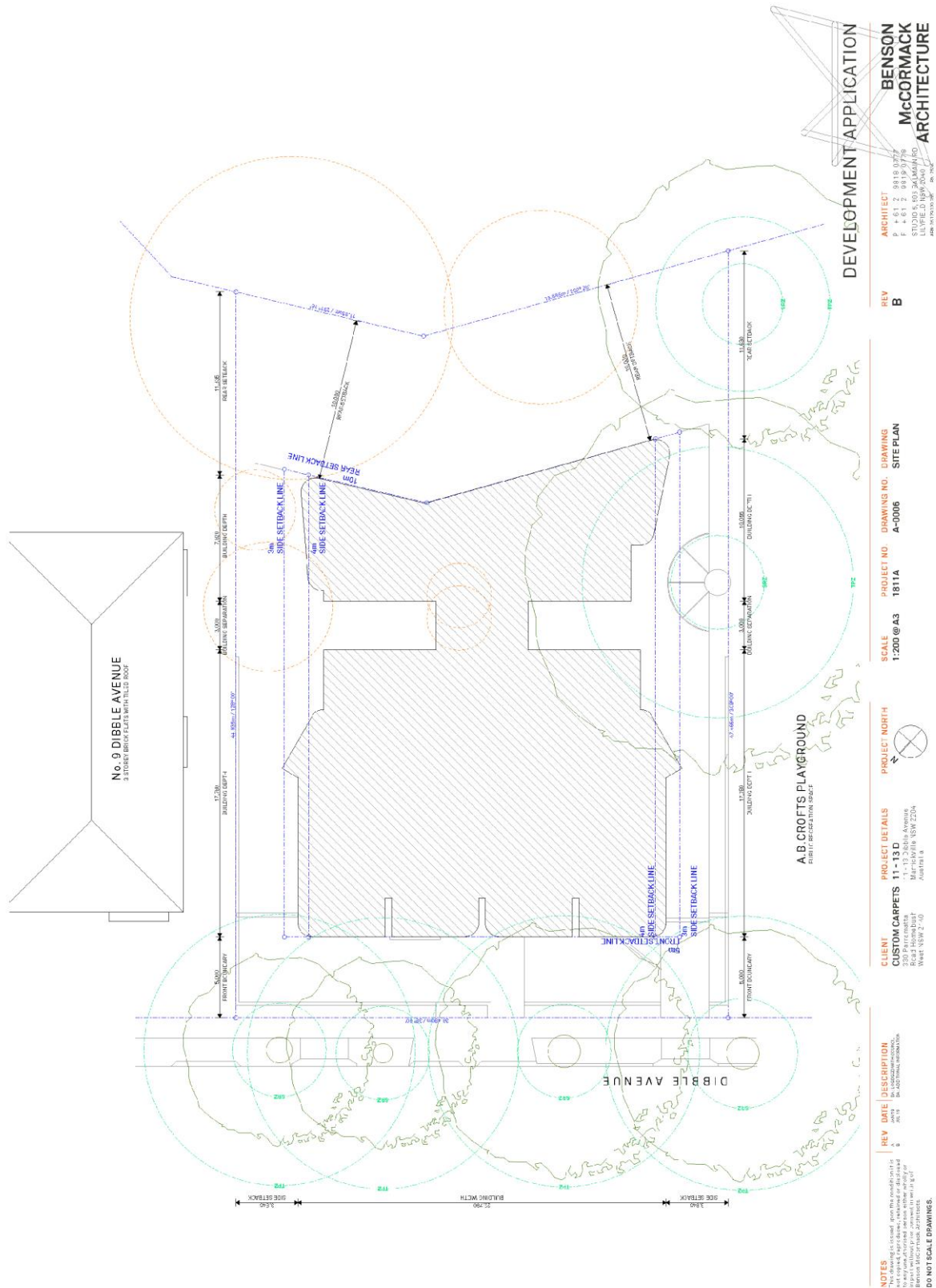
**ARCHITECT**  
BENSON  
McCORMACK  
ARCHITECTURE  
STUDIO 5, 805 BALMAIN RD  
LEFIELD NSW 2040  
AUSTRALIA  
PH: 02 9550 9776  
WWW.BENSONMCCORMACK.COM

DEVELOPMENT APPLICATION

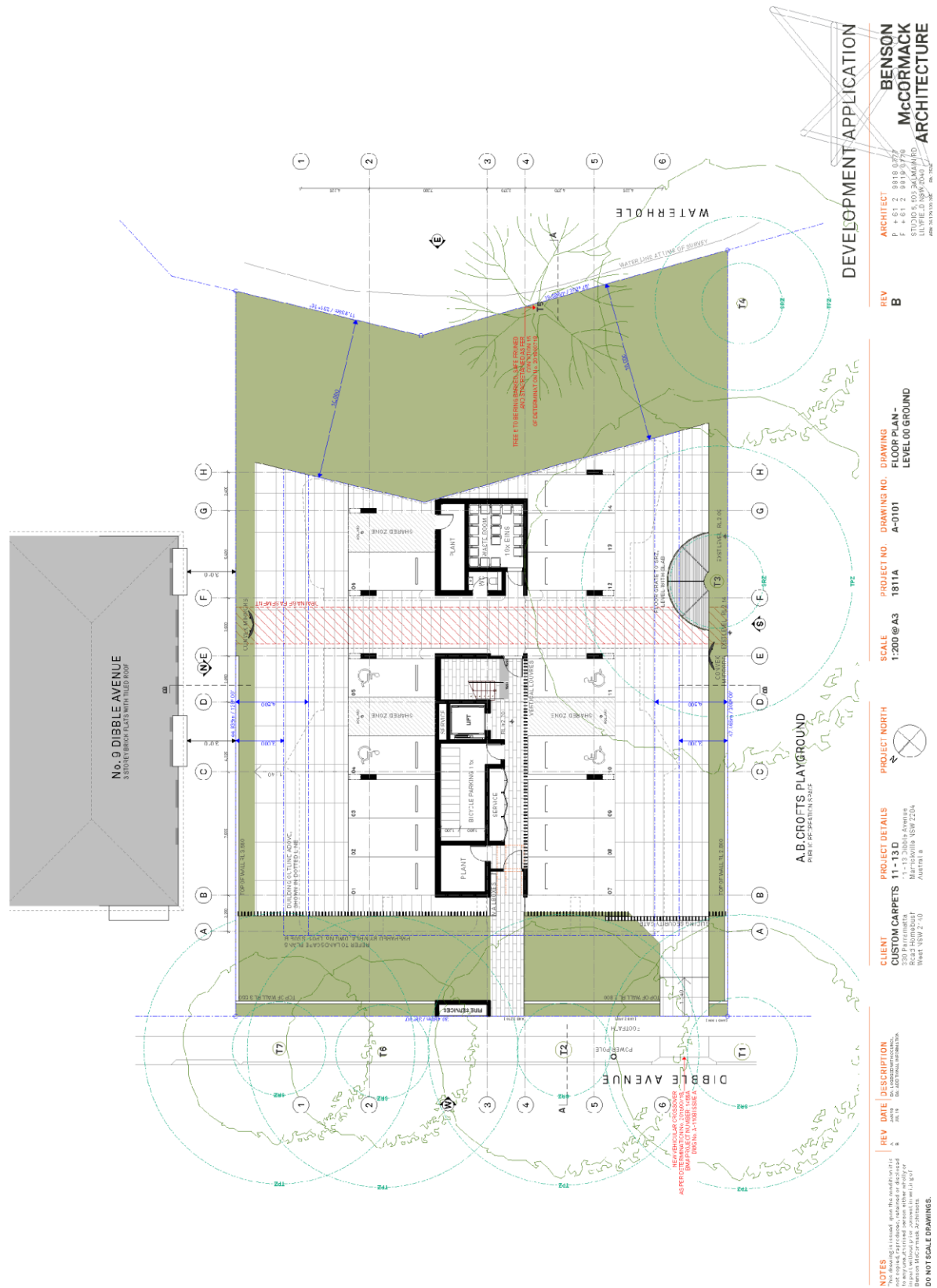
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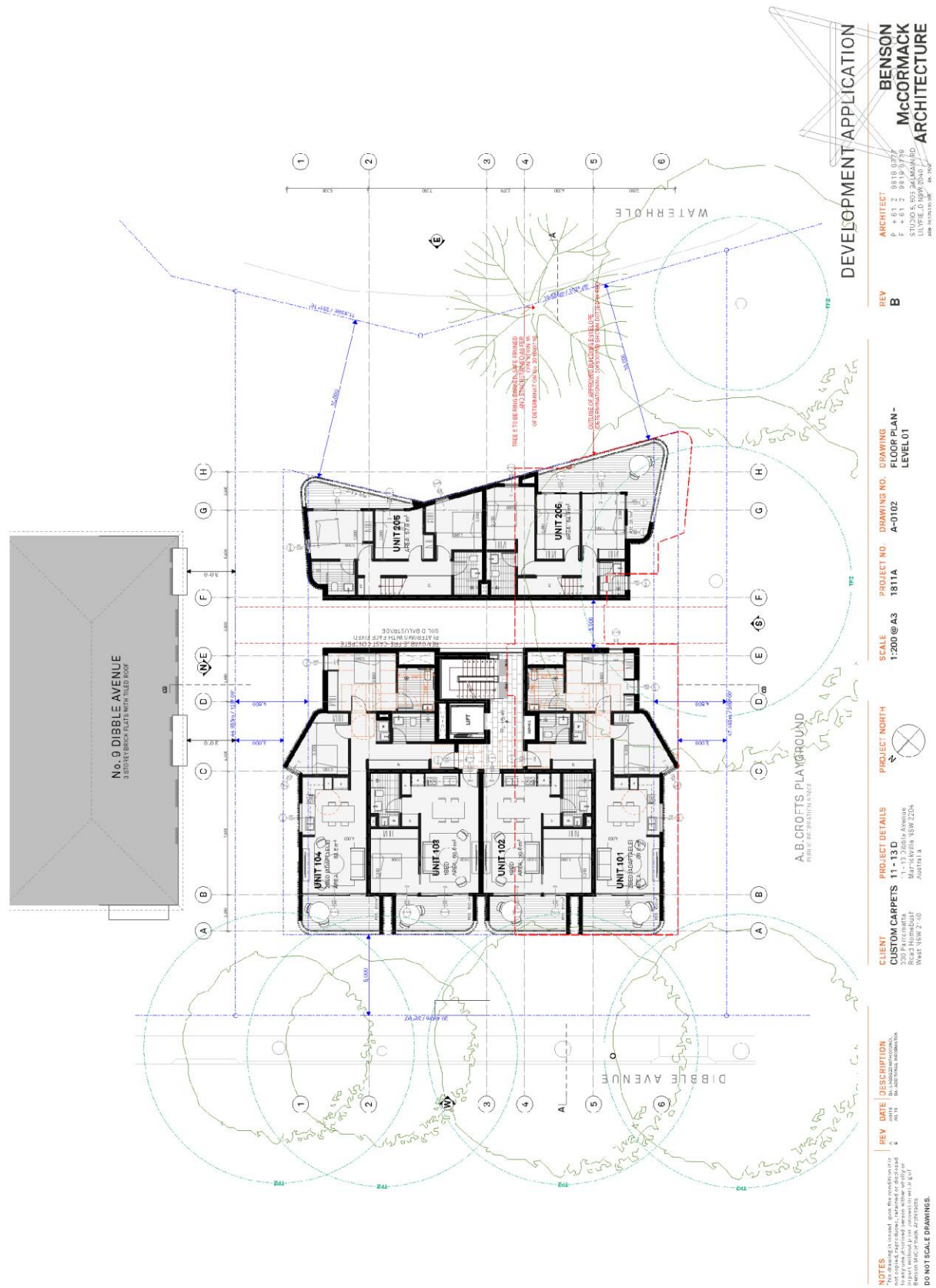


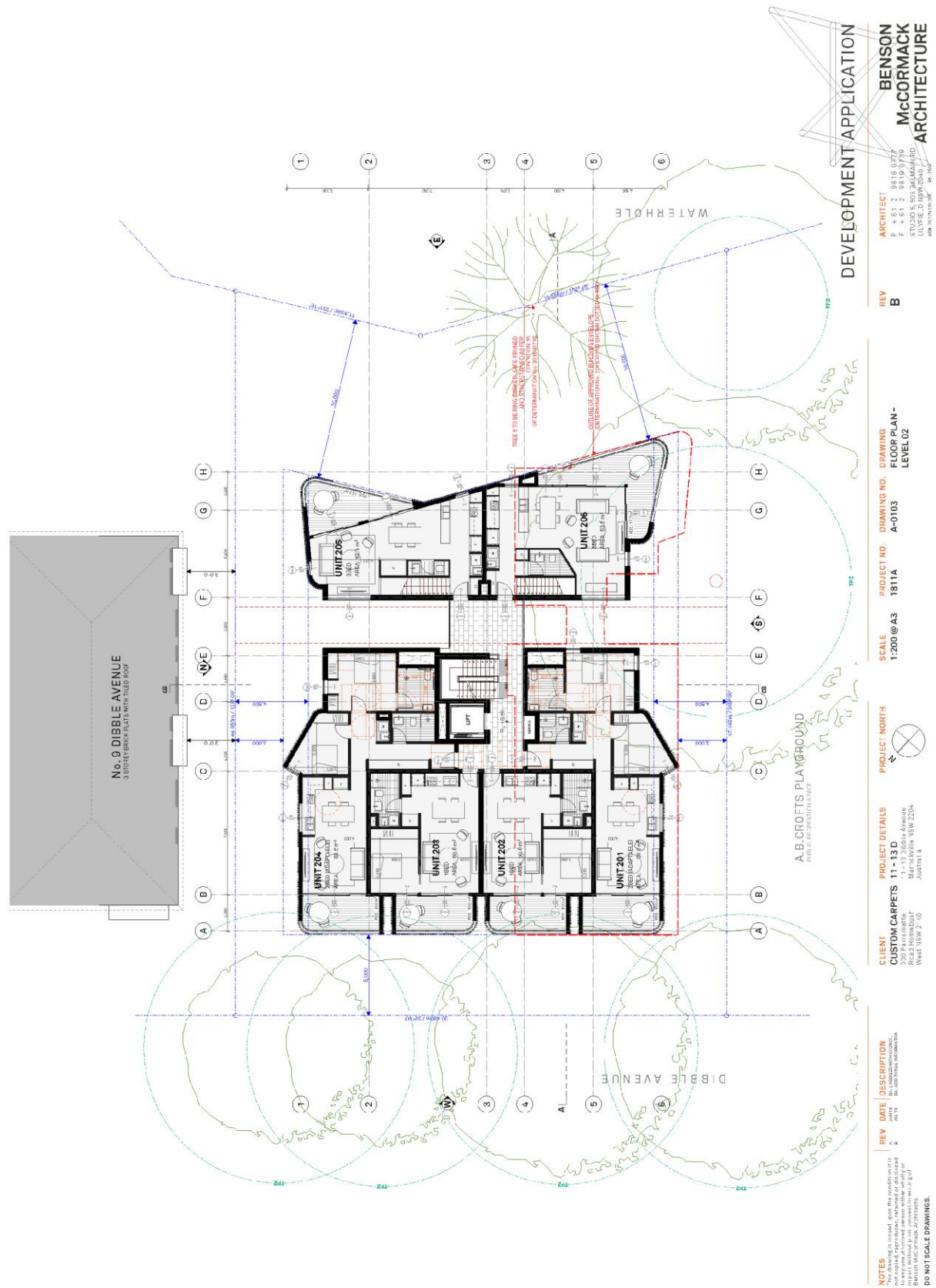




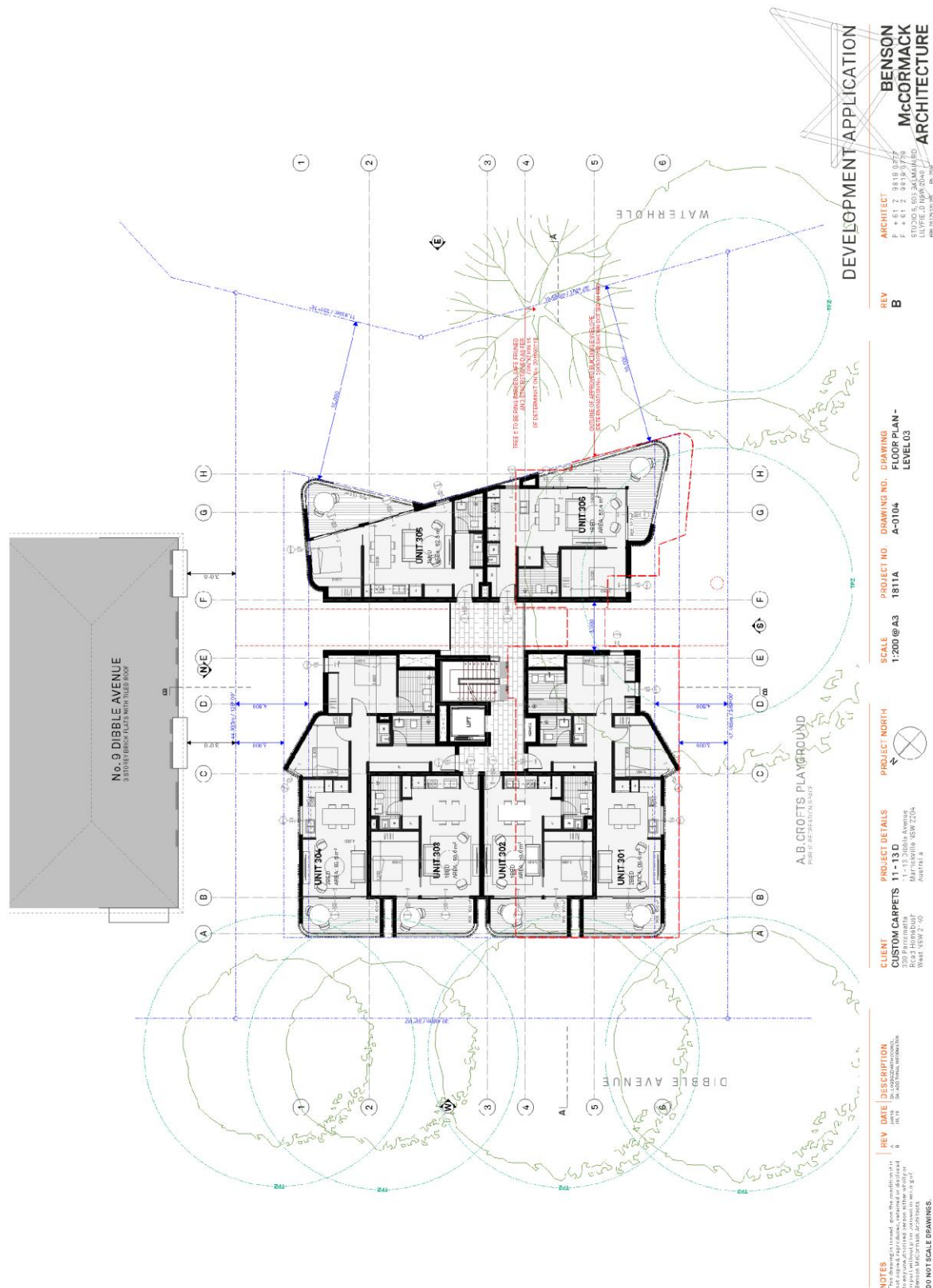


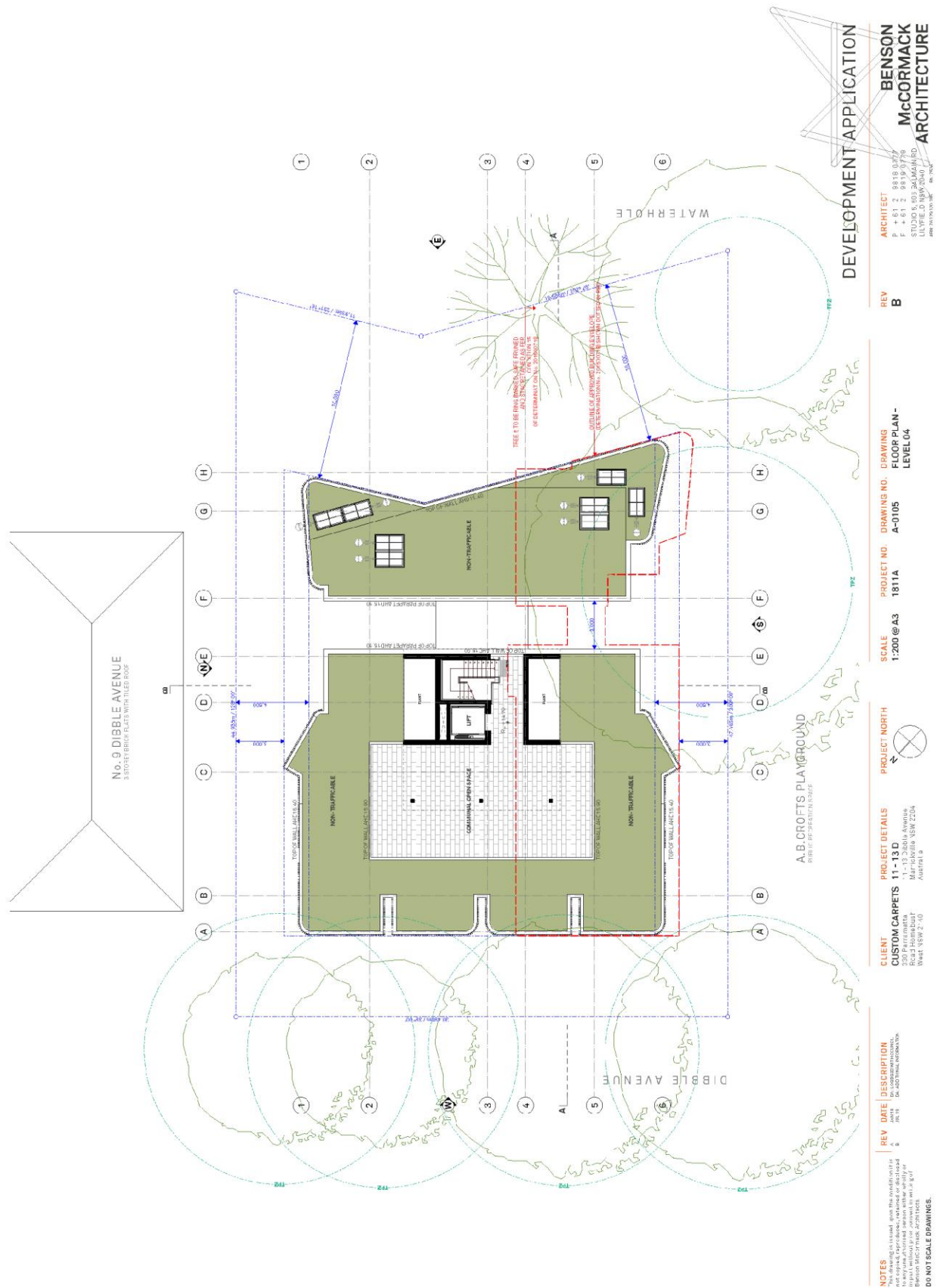


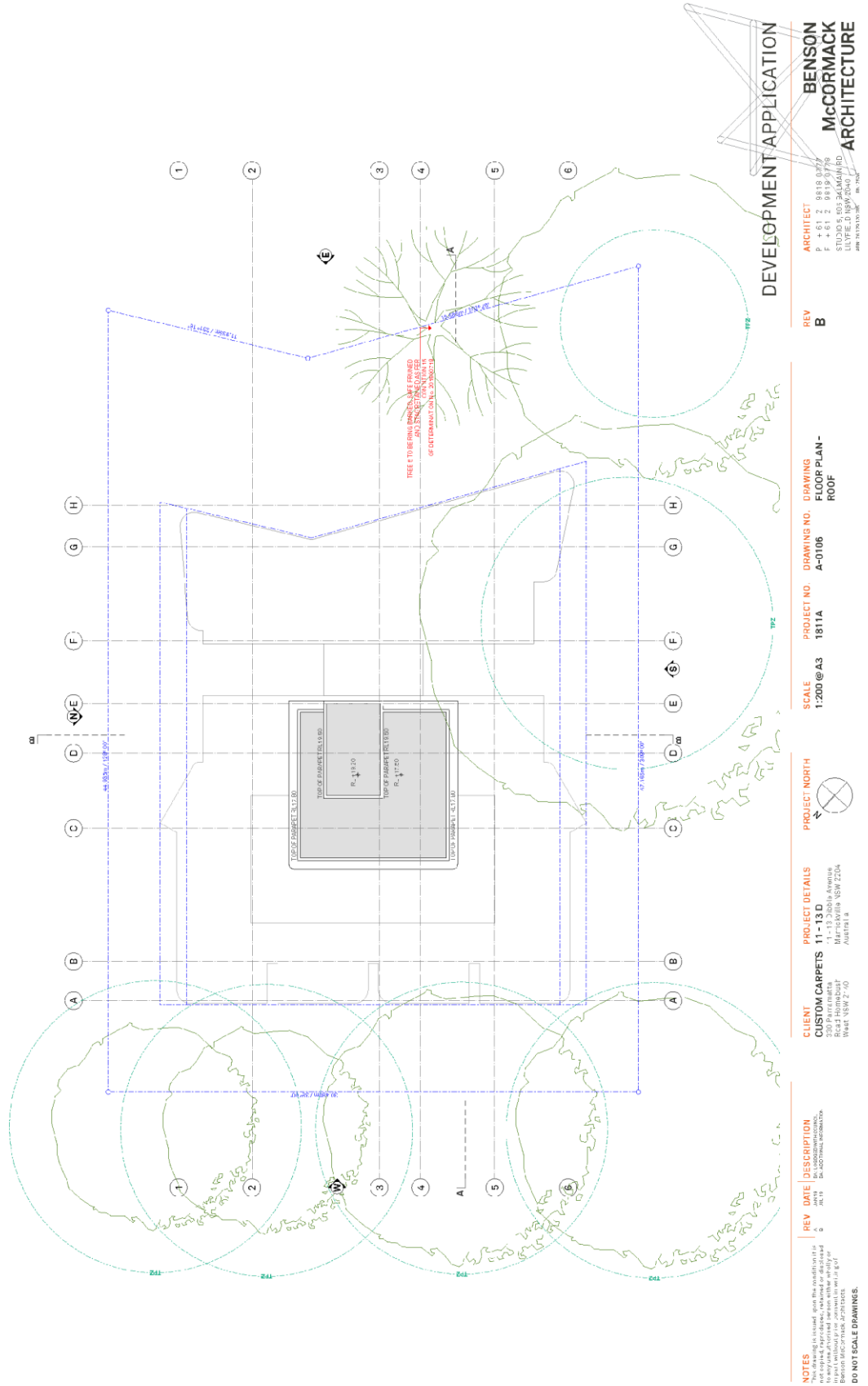




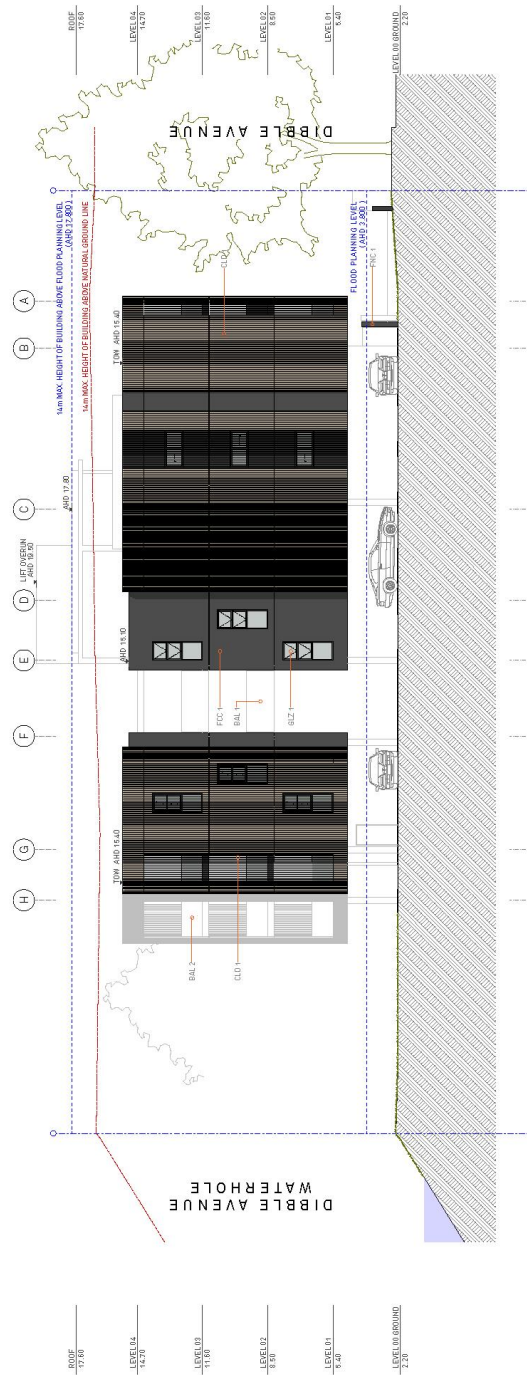




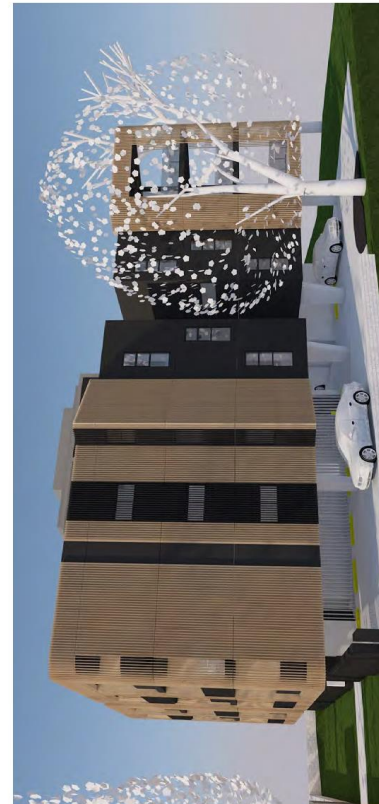








NOTES	REV	DATE	DESCRIPTION	CLIENT	PROJECT DETAILS		PROJECT NORTH	SCALE	PROJECT NO.	DRAWING NO.	DRAWING	REV	ARCHITECT
					CUSTOM CARPETS	11-13 D							
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NOT SCALE DRAWINGS.													



## DEVELOPMENT APPLICATION

NOTES

THIS DRAWING IS ISSUED UPON THE CONDITION IT IS NOT TO BE COPIED, REPRODUCED, ALTERED OR DISCLOSED IN ANY FORM WITHOUT PRIOR CONSENT IN WRITING OF BENSON MCCORMACK ARCHITECTS.

REV

DATE

DESCRIPTION

1

01 JUL 2024

ISSUED FOR APPROVAL

CLIENT

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West Hembury Road Hembury  
West NSW 2140

PROJECT DETAILS

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Marrionville NSW 2204  
Australia

PROJECT NORTH

1:200 @A3

SCALE

1:200 @A3

PROJECT NO.

1811A

DRAWING NO.

A-0202

ELEVATION - SOUTH

B

REV

1

01 JUL 2024

ISSUED FOR APPROVAL

ARCHITECT

P + 61  
2  
8818 0770  
STUDIO 5, 505 BALMAIN RD  
LYFIELD NSW 2140  
AAP 761 19 150 337  
BN 7205

BENSON  
MCCORMACK  
ARCHITECTURE





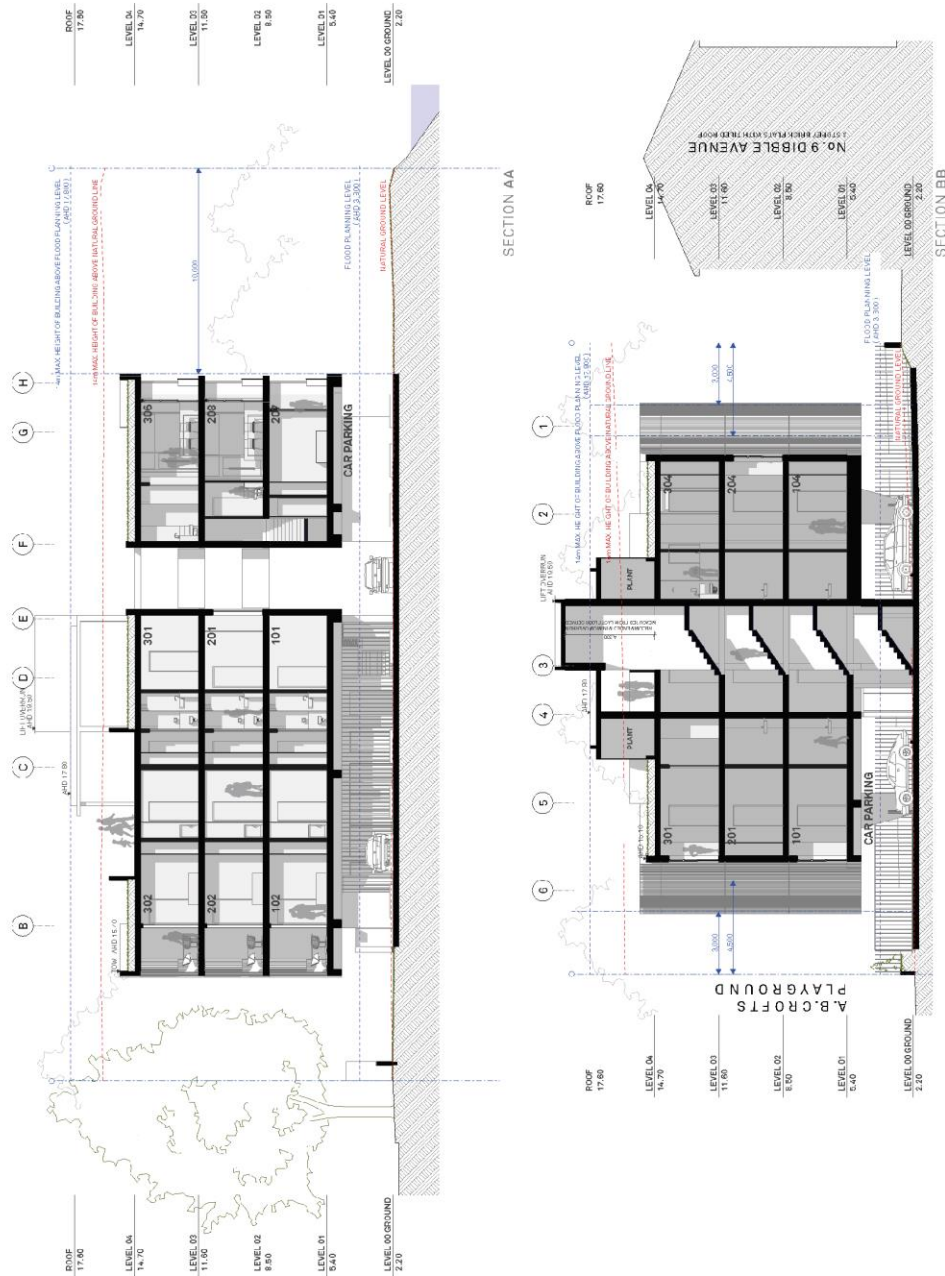
DEVELOPMENT APPLICATION

NOTES	REV	DATE	DESCRIPTION
1. This drawing is issued upon the condition it is not to be copied, reproduced, retained or displayed in any form without prior consent in writing of the Architect.	0	2023-08-10	ISSUED FOR INFORMATION
2. DO NOT SCALE DRAWINGS.			

CLIENT	PROJECT DETAILS	PROJECT NORTH
CUSTOM CARPETS 11-13 D'Arny Avenue Rosedale NSW 2204 West NSW 2140 Australia	PROJECT NO. 1811A DRAWING NO. A-0203 ELEVATION - EAST	PROJECT NORTH

SCALE	PROJECT NO.	DRAWING NO.	ARCHITECT	REV
1:200 @ A3	1811A	A-0203	BENSON MCCORMACK ARCHITECTURE	B

[illegible]



## DEVELOPMENT APPLICATION

**ARCHITECT**  
P + 61 2 9818 0377  
F + 61 2 9819 0778  
STUDIO 5, 505 BALMAIN RD  
LILYFIELD NSW 2040  
0061 261703130 136 651 7036

REV B

SCALE PROJECT NO. DRAWING NO. DRAWING  
1:200 @ A3 1811A A-0221 SECTIONS

PROJECT NORTH

**CLIENT** CUSTOM CARPETS 11-13 D  
330 Parramatta  
Road Homebush  
West NSW 2140  
Australia

**PROJECT DETAILS** 1-13 Dibble Avenue  
Marrickville NSW 2204  
Australia

REV	DATE	DESCRIPTION
A.	JAN 19 1978	DA L-60522 WITH H.C.U.M.D. DA L-60522 WITH H.C.U.M.D.

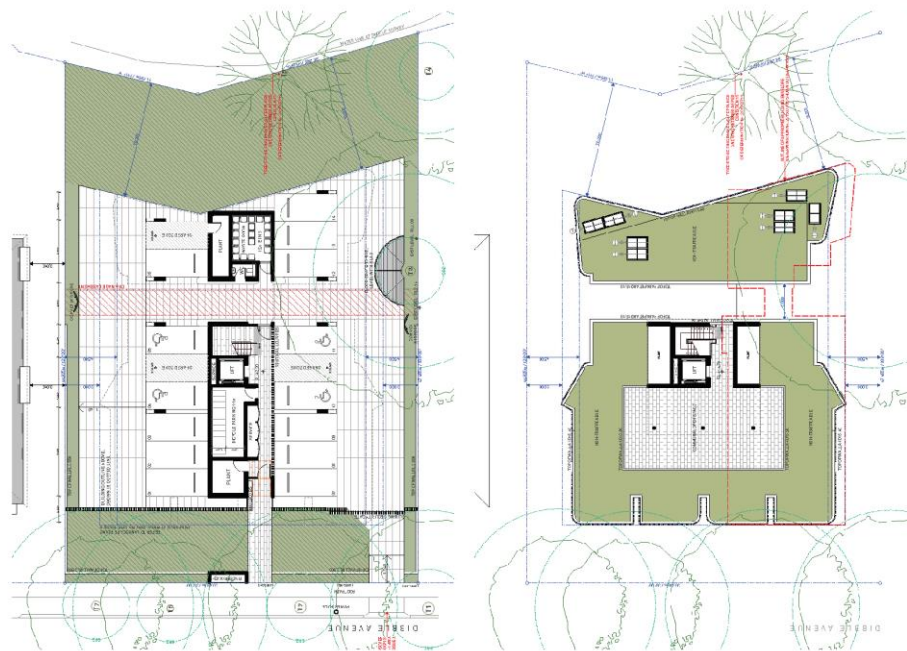
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SITE AREA	1,352.10m <sup>2</sup>
LANDSCAPED AREA	
DEEP SOIL LANDSCAPING	
<b>LANDSCAPE AREAS</b>	
LANDSCAPE	Area 885.30 <b>885.30 m<sup>2</sup></b>
MIN. LANDSCAPED AREA (30.10%)	405.63m <sup>2</sup>
PROPOSED LANDSCAPED AREA (60.5%)	<b>885.30m<sup>2</sup></b>
<b>Deep Soil Area</b>	
DEEP SOIL	Area 530.68 <b>530.68 m<sup>2</sup></b>
MIN. DEEP SOIL LANDSCAPING (10.0%)	202.82m <sup>2</sup>
PROPOSED DEEP SOIL LANDSCAPING (39.2%)	<b>530.68m<sup>2</sup></b>

NOTES	REV	DATE	DESCRIPTION
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**CLIENT** CUSTOM CARPETS  
330 Parramatta  
Road Homebush  
West NSW 2140

**PROJECT DETAILS** 11-13 Cribbs Avenue  
Marickville NSW 2204  
Australia

**PROJECT NORTH** 

SCALE 1:350 @ A3 PROJECT NO. 1811A DRAWING NO. A-1302 DRAWING AREA CALCULATIONS 02

**REV**  
**B**

**ARCHITECT**

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F + 61 2 9819 0770

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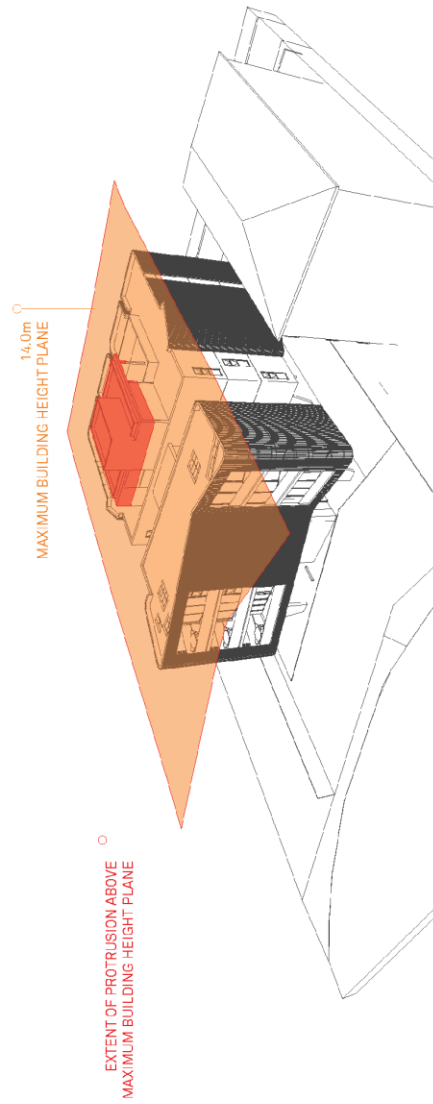
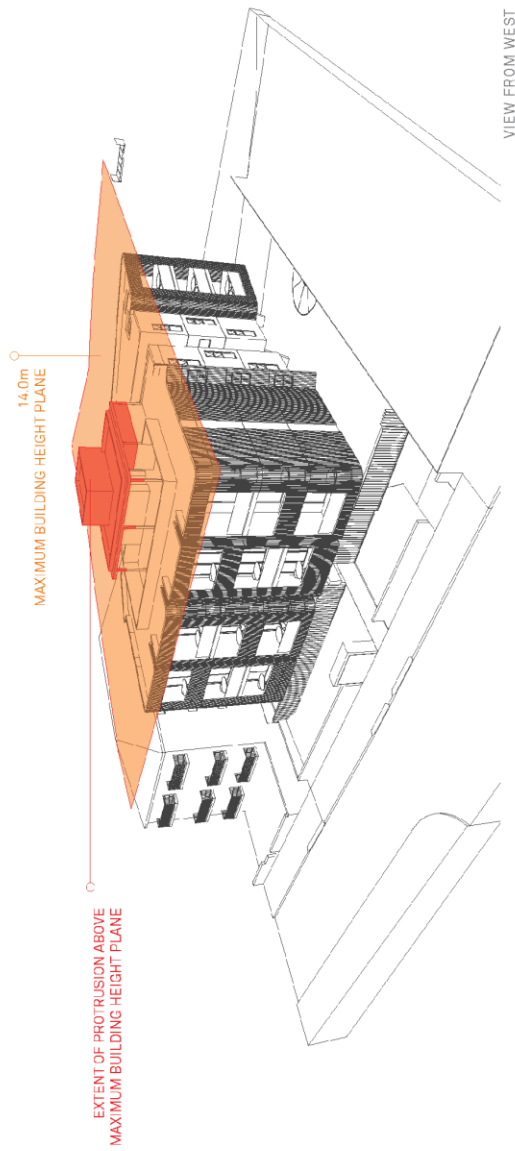
STUDIO 5, 05 BALMAIN RD  
LULFIE, D NSW 2040

ARCHITECTS

DATE: 14/05/2006

## DEVELOPMENT APPLICATION

**NOTES**



**NOTES**  
 This drawing is issued from the modification to the original drawing. It is not to be used for any other purpose without prior approval of the author.  
 Do not scale drawings.

REV	DATE	DESCRIPTION
0	26/10	Initial design and construction

**CLIENT**  
 CUSTOM CARPETS  
 100/100 Avenue  
 Road Homebush  
 West NSW 2140  
 Australia

**PROJECT NORTH**

**SCALE**

**PROJECT NO.**  
 1811A

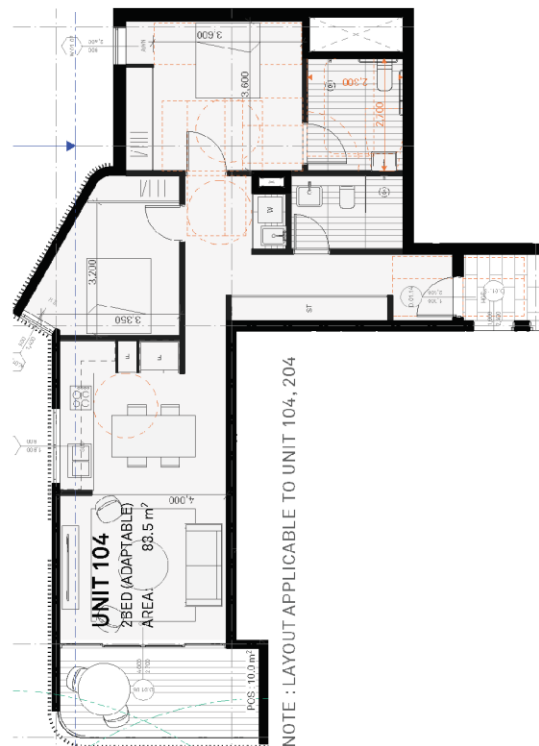
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 A-1303

**DRAWING NO.**  
 MAXIMUM BUILDING HEIGHT PLANE DIAGRAM

**REV**  
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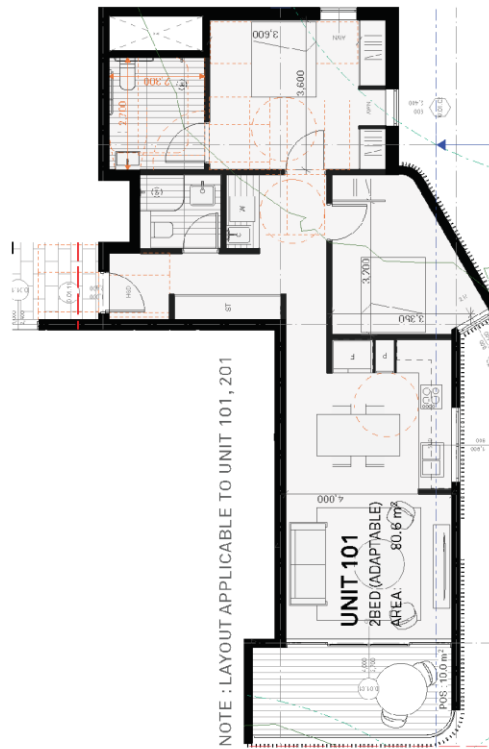
**ARCHITECT**  
 BENSON  
 McCORMACK  
 ARCHITECTURE  
 STUDIO 5, 855 JALAJARA RD  
 LILYFIELD NSW 2040  
 Australia

DEVELOPMENT APPLICATION



NOTE: LAYOUT APPLICABLE TO UNIT 104, 204

[NOMINATED ADAPTABLE UNITS : UNIT 101, 104, 201, 204]



NOTE: LAYOUT APPLICABLE TO UNIT 101, 201

REV	DATE	DESCRIPTION
A	JAN 18, 2010	ON LOGO/STYLING INFORMATION, ON LOGO/STYLING INFORMATION.

**NOTES**

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**CLIENT**  
CUSTOM CARPETS  
330 Parramatta  
Road Homebush  
West NSW 2140

**PROJECT DETAILS**  
11-13D  
1-13 Dribble Avenue  
Marickville NSW 2204  
Australia

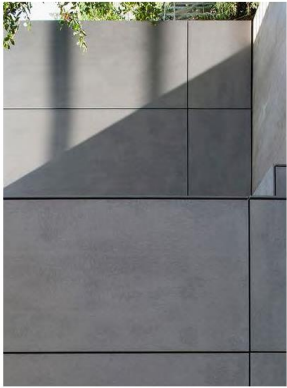
PROJECT NORTH

SCALE  
1:100 @ A3

REV B

**ARCHITECT**  
BENSON  
McCORMACK  
ARCHITECTURE  
P + 61 2 98 18 0377  
F + 61 2 98 19 0778  
STUDIO 5, E05 341 MAIN RD  
LILYFIE, NSW 2040  
PH: 56174330 FAX: 56174331

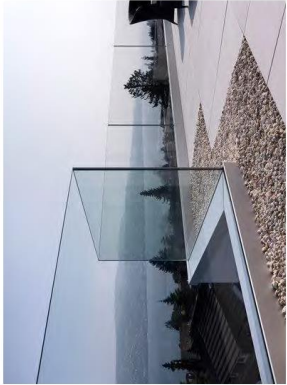
## DEVELOPMENT APPLICATION



FCC 1 FIBRE CEMENT CLADDING  
PAINT FINISH SIM/EG TO DULUX 'DOMINO'



BAL 3 ALUMINIUM BATTEN BALUSTRADE  
SIM/EG TO KNOTWOOD 'CHARCOAL ASH'



BAL 2 FRAMELESS CLEAR GLAZING BALUSTRADE  
WITH POWDERCOATED ALUMINIUM TOP RAIL  
TOP RAIL FINISH SIM/EG TO DULUX POWDERCOAT 'MONUMENT'



BAL 1 METAL PANEL BALUSTRADE



FNC 1 ALUMINIUM FENCING  
FINISH SIM/EG TO DULUX POWDERCOAT 'MONUMENT'



GLZ 1 ALUMINIUM FRAMED CLEAR GLAZING  
WINDOWS/DOORS  
FRAME FINISH SIM/EG TO DULUX POWDERCOAT 'MONUMENT'



CLD 1 ALUMINIUM BATTEN CLADDING  
SIM/EG TO KNOTWOOD 'IROKO'

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REV	DATE	DESCRIPTION
1	10/10/2023	ISSUED FOR TENDERS
2	10/10/2023	ISSUED FOR TENDERS

CLIENT  
CUSTOM CARPETS  
300 Pitt Street  
Road Homebush  
West NSW 2140  
Australia

PROJECT DETAILS  
PROJECT CARPETS  
11-13 Dole Avenue  
Marrickville NSW 2204  
Australia

PROJECT NORTH

SCALE

PROJECT NO.  
1811A

DRAWING NO.  
A-1306

DRAWING  
MATERIAL & FINISHES

REV  
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ARCHITECT  
BENSON  
McCORMACK  
ARCHITECTURE  
STUDIO 6, 606 BALMAIN RD.  
LLEWELLYN NSW 2040  
AUSTRALIA



DEVELOPMENT APPLICATION



UNIT BREAKDOWN					
UNIT	UNIT TYPE	INT. AREA (m²)	PRIVATE OS (m²)	SOLAR ACCESS	CROSS VENTILATION
UNIT 101	2 BR	80.58	10.0	YES	YES [DUAL ASPECT]
UNIT 102	1 BR	50.00	10.0	YES	NO
UNIT 103	1 BR	50.00	10.0	YES	NO
UNIT 104	2 BR	83.50	10.0	YES	YES [DUAL ASPECT]
UNIT 201	2 BR	80.58	10.0	YES	YES [DUAL ASPECT]
UNIT 202	1 BR	50.00	10.0	YES	NO
UNIT 203	1 BR	50.00	10.0	YES	NO
UNIT 204	2 BR	83.50	10.0	YES	YES [DUAL ASPECT]
UNIT 205	3 BR	110.05	19.1	NO	YES [DUAL ASPECT]
UNIT 206	3 BR	108.40	37.8	NO	YES [DUAL ASPECT]
UNIT 301	2 BR	80.58	10.0	YES	YES [DUAL ASPECT]
UNIT 302	1 BR	50.00	10.0	YES	NO
UNIT 303	1 BR	50.00	10.0	YES	NO
UNIT 304	2 BR	83.50	10.0	YES	YES [DUAL ASPECT]
UNIT 305	1 BR	52.27	12.3	YES	YES [DUAL ASPECT]
UNIT 306	1 BR	57.44	17.7	YES	YES [DUAL ASPECT]

**NOTE\_**  
UNITS NOMINATED AS BEING DUAL ASPECT HAVE OPENINGS IN 4" FASTING SEPARATOR  
DIFFERENT ENCLOSING EXTERNAL WALLS. \*CROSS VENTILATION

INTERNAL AREA		SOLAR ACCESS	
REQUIREMENT	REQUIREMENT		
APARTMENT DESIGN GUIDE 2015 ]	[ APARTMENT DESIGN GUIDE 2015 ]		
UNIT TYPE	MIN AREA		
BR	50m <sup>2</sup>	PROPOSED TOTAL UNITS	16
BR	70m <sup>2</sup>	PROPOSED COMPLIANT UNITS	14
BR	90m <sup>2</sup>	COMPLIANCE	87.5%
ADD 5m <sup>2</sup> FOR EVERY ADDITIONAL BATHROOM )			
		70% OF PROPOSED TOTAL UNITS	

PRIVATE OPEN SPACE		CROSS VENTILATION	
REQUIREMENT	REQUIREMENT		
APARTMENT DESIGN GUIDE 2015 ]	[ APARTMENT DESIGN GUIDE 2015 ]		
UNIT TYPE	MIN AREA	MIN DEPTH	60% OF PROPOSED TOTAL UNITS
BR	08m <sup>2</sup>	2.0m	PROPOSED TOTAL UNITS
BR	10m <sup>2</sup>	2.0m	PROPOSED COMPLIANT UNITS
BR	12m <sup>2</sup>	2.4m	COMPLIANCE
			16
			10
			62.5%

NOTES	REV	DATE	DESCRIPTION	CLIENT
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CUSTOM CARPETS	PROJECT DETAILS	PROJECT NORTH	SCALE	PROJECT 1811A
130 Parramatta Road Homebush West NSW 2140	11 - 13D 1 - 13 Tibbels Avenue Marionville NSW 2204 Australia			

SCALE PROJECT NO. DRAWINGS NO. DRAWING  
1811A A-1320 ADG COMPLIANCE

REV **B**

ARCHITECT

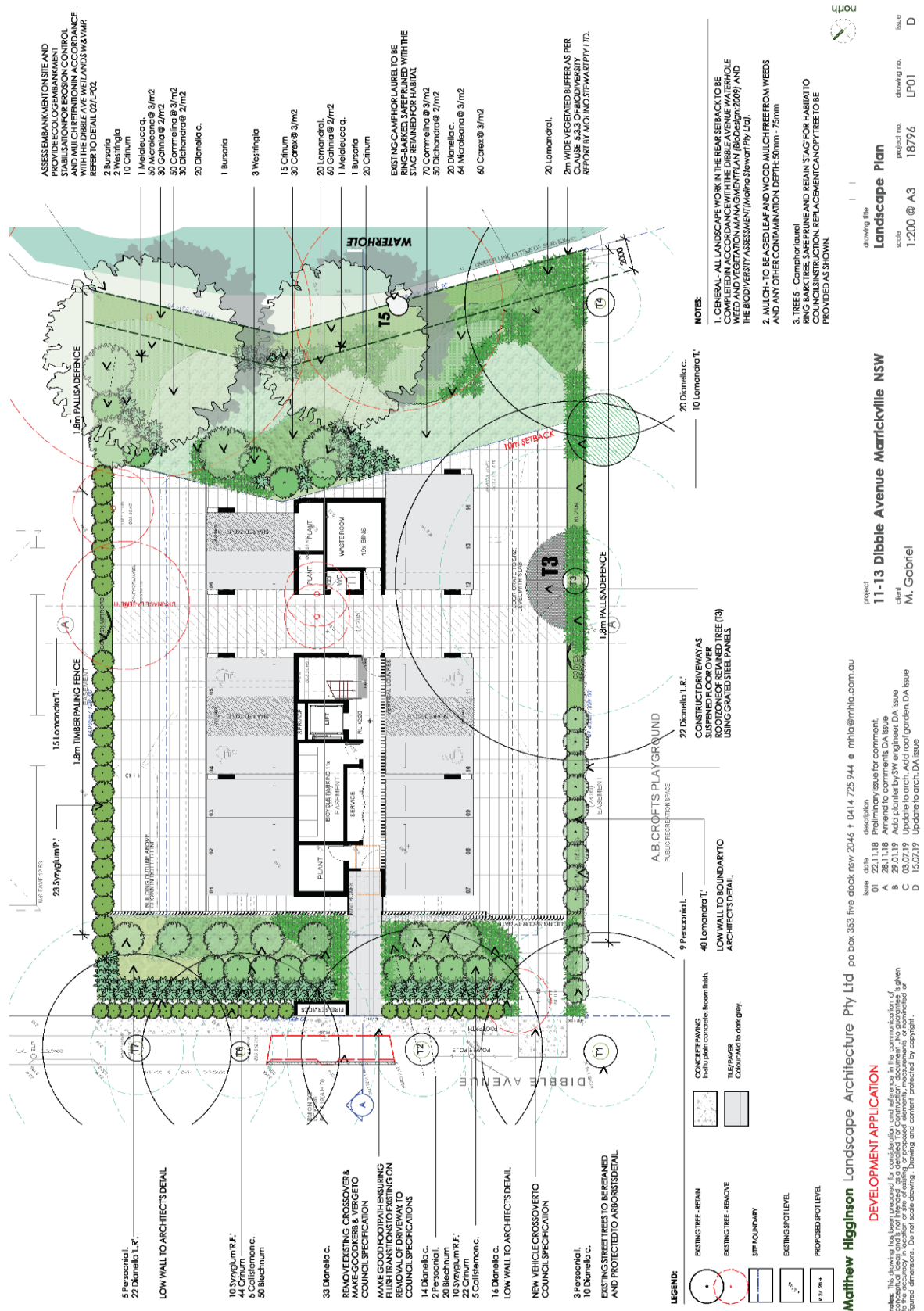
**BENSON  
McCORMACK  
ARCHITECTURE**

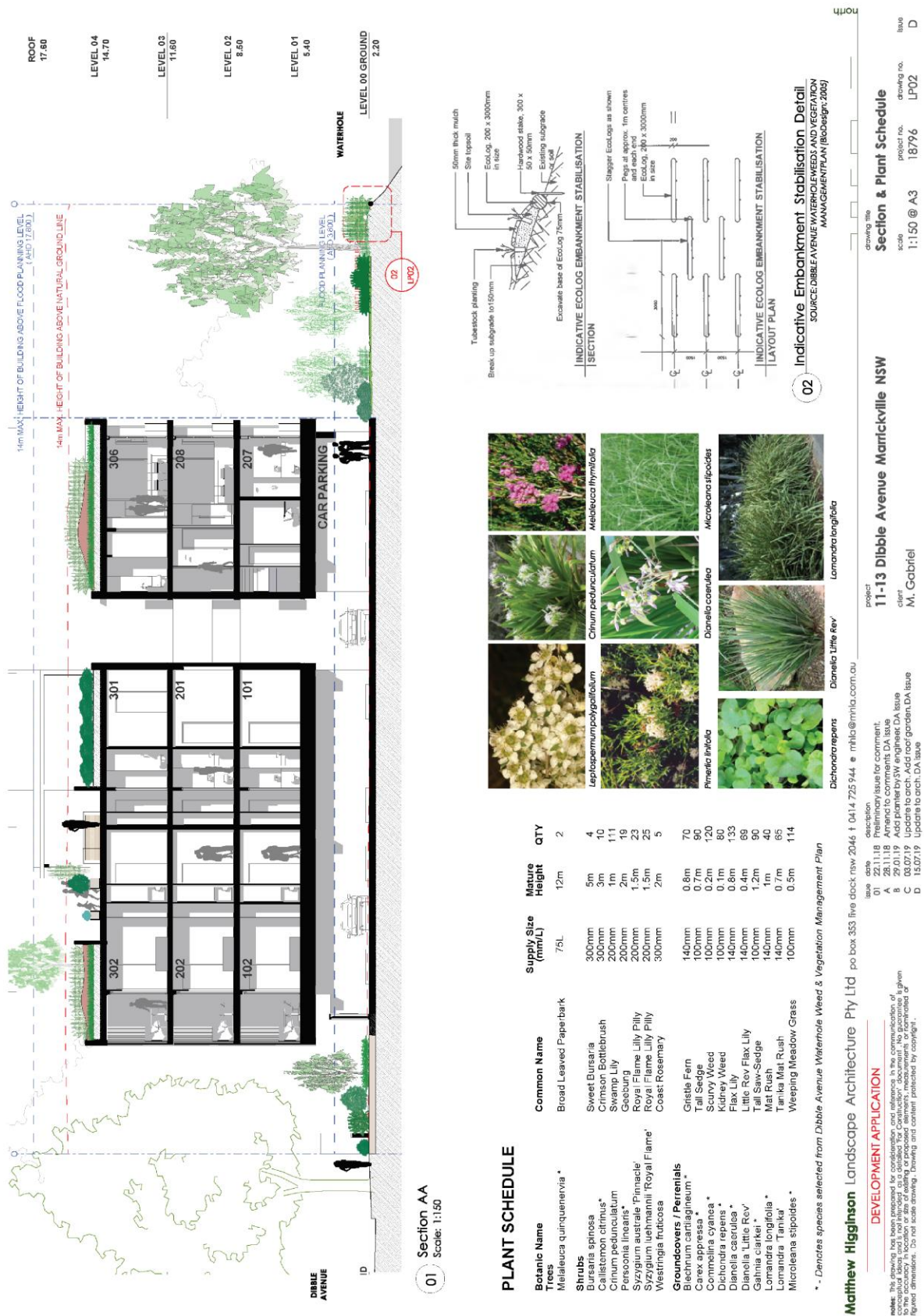
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F + 61 2 9819 0778

STUDIO 5 603 CAMDEN RD  
LILYPOND NSW 2159

## DEVELOPMENT APPLICATION











02 Detail Plan : Common Open Space  
Scale: 1:100

01 Landscape Plan : Roof Garden  
Scale: 1:200

PLANT SCHEDULE : ROOF GARDEN

Botanic Name	Common Name	Supply Size (mm/L)	Mature Height	QTY
Trees				
Syzygium 'Cascade'	Cascade Lily Pili	100L	4m	3
Shrubs				
Austrolipta ramosissima	Scout Bamboo Grass	200mm	1.5m	204
Dypsis lutescens	Golden Cane Palm	45L	2m	5
Lamandra 'Tanka'	Tanka Mat Rush	100mm	0.7m	216
Pennisetum alopecuroides	Foxtail Grass	100mm	0.8m	468
Syzygium 'Aussie Boomer'	Aussie Boomer Lily Pili	45L	1.5m	33
Rosmarinus officinalis	Rosemary	300mm	1m	12
Westringia 'Mundi'	Mundi Coast Rosemary	300mm	0.5m	236



Matthew Higginson Landscape Architecture Pty Ltd po box 353 five dock nsw 2046 t 0414 725 944 e mh@mla.com.au

DEVELOPMENT APPLICATION

Notes: This drawing has been prepared for consideration only and is not to be used for any other purpose. It is the responsibility of the client to ensure that all information is correct and that the drawing is used in accordance with the relevant legislation and standards. The client is advised that the drawing is not a contract and that the client should seek professional advice before proceeding with any development.

- Issue 01 22.11.18 Preliminary issue for comment  
A 28.11.18 Amend to comments DA issue  
B 29.01.19 Add planter by SW engineer DA issue  
C 03.07.19 Update to arch. Add roof garden DA issue  
D 13.07.19 Update to arch. DA issue

project 11-13 Dibble Avenue Marrickville NSW  
client M. Gabriel  
drawing title Landscape Plan - Roof Garden  
scale 1:200 @ A3  
project no. 18796  
drawing no. LP03  
issue D

## Attachment C – Clause 4.6 request – Height



24 July 2019

The General Manager  
Inner West Council  
PO BOX 14  
PETERSHAM NSW 2049

Attention: Asher Richardson

Dear Asher,

**RE: 11 – 13 DIBBLE AVENUE, MARRICKVILLE  
DA201900060  
REQUEST FOR ADDITIONAL INFORMATION – CLAUSE 4.6 VARIATION  
STATEMENT (CLAUSE 4.3 – HEIGHT OF BUILDINGS)**

This variation statement seeks to address the proposed variation to Clause 4.3 of the Marrickville Local Environmental Plan 2011 (MLEP11), which relates to the height of buildings development standard.

#### **1. Introduction**

This statement has been prepared in relation to the redevelopment of Nos. 11 – 13 Dibble Avenue, Marrickville as a four storey residential flat building comprising of 16 units. This submission follows a letter from Council dated 28 May 2019 and a subsequent meeting with Council Officers on 3 June 2019.

This submission should be read in conjunction with the cover letter and architectural plans prepared by Benson McCormack Architecture.

The proposed development meets the requirements as prescribed under Clause 4.6 of the MLEP11, as detailed in this written request for a variation to the maximum height of buildings control.

Clause 4.6 states the following:

#### ***“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 a development even though the development would contravene a development standard imposed by this or any other environmental*

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Leichhardt NSW 2040

■ **Brisbane Office**  
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f. 02 9569 1103  
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w. [www.gatassoc.com.au](http://www.gatassoc.com.au)

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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.
- (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 all of these zones.
- (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  
(ca) clause 6.17 or 6.18".*

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

*(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*

The Environmental Planning Instrument to which these variations relate to is the Marrickville Local Environmental Plan 2011.

The development standard to which this variation relates to is Clause 4.3 – Height of Buildings, which reads as follows:

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

*(a) to establish the maximum height of buildings,*

*(b) to ensure building height is consistent with the desired future character of an area,*

*(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*

*(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

Council's maps identify a maximum building height on the site of 14m.

Refer to Figure 1 below.





01 Landscape Plan : Roof Garden  
Scale: 1:200

02 Detail Plan : Common Open Space  
Scale: 1:100

PLANT SCHEDULE : ROOF GARDEN

Botanic Name	Common Name	Supply Size (mmL)	Mature Height	QTY
<b>Trees</b>				
Syzgium 'Cascade'	Cascade Lily Pilly	100L	4m	3
<b>Shrubs</b>				
Austrospira ramosissima	Strut Bamboo Grass	200mm	15m	204
Dyopsis litocens	Tanika Mat Palm	45L	2m	5
Lomandra 'Tankila'	Tanika Mat Rush	100mm	0.7m	216
Pennisetum alopecuroides	Foxtail Grass	100mm	0.9m	488
Syzgium 'Aussie Boomer'	Aussie Boomer Lily Pilly	45L	1.5m	33
Rosmarinus officialis	Rosemary	300mm	1m	12
Westringia 'Mundi'	Mundi Coast Rosemary	300mm	0.5m	238



*Lomandra Tanika*\*



Austrostipa



Westringia 'Mundī'



**Tennissetum**



*Syzygium 'Cascade'*



*Syzygium*;



**Rosmarinus**

**Matthew Higginson** Landscape Architecture Pty Ltd  
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**DEVELOPMENT APPLICATION**

	date	description
01	22.11.18	Preliminary issue for comment.
A	28.11.18	Amend to comments DA issue
B	29.01.19	Add planter by SW engineer DA
C	03.07.19	Update to arch. Add roof garden
D	15.07.19	Update to arch. DA issue

project  
**11-13 DIB**

client  
**M. Gabriel**

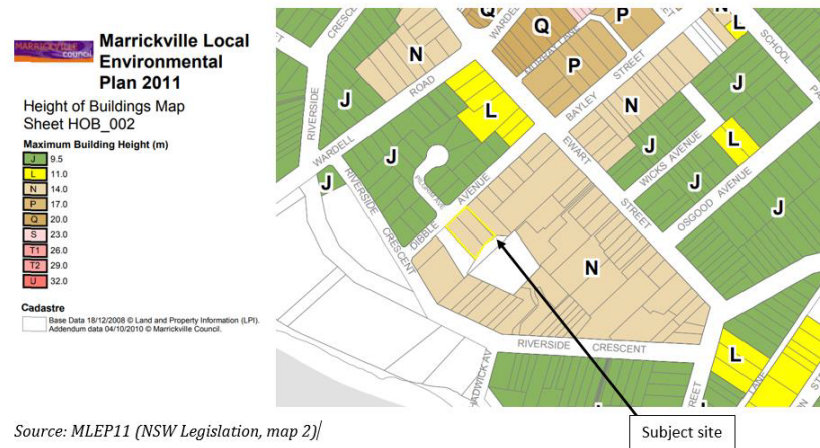
11-13 Dibble Avenue Marrickville NSW

growing time

**Landscape Plan - Roof Garden**

scale	project no.	drawing no.
1:200 @ A3	18796	LP03

Figure 1: Height of Buildings Map



This submission seeks a maximum building height of 17.4m as measured to the lift overrun. A variation of 3.4m or 24.3% is proposed.

It is worthy to note that the maximum breach occurs only for the length of the lift overrun which is approximately 5.6m. Aside from this, when measured to the awning over the common open space, the maximum building height is 15.2m, representing a non-compliance of just 1.2m.

A written justification is therefore required for the proposed variation to the maximum height of buildings development standard, in accordance with Clause 4.6 of the MLEP11.

## 2. Site Background

The subject site is commonly known as 11 – 13 Dibble Avenue, Marrickville and is legally defined as Lots 6 and 7 in Deposited Plan 20459. The site is generally rectangular in its shape, with an oblique angle to its rear boundary. The site has a 30.48 metre frontage to Dibble Avenue. The length of the site ranges between 47.465 metre (south-western boundary) and a 44.935 metre (north-eastern boundary). The overall site area is 1,352.1m<sup>2</sup>.

The site currently contains a single storey detached brick dwelling and detached rear studio over Lot 6 and a single storey brick dwelling with front verandah and brick garage on Lot 7. Adjoining the site to the south-west is a public reserve known as A.B. Croft's Playground. The site adjoins to its rear a waterhole, known as Dibble Avenue Waterhole, which is an item of local heritage under the Marrickville Local Environmental Plan 2011 (Item I12 in Schedule 5).

Development in the area is residential in nature with a mix of established single and double storey dwellings together with townhouses and other residential flat buildings.

Refer to Figure 2: Site Location Map



Source: <https://maps.six.nsw.gov.au/>

### 3. Extent of Non-Compliance

As noted above, Clause 4.3 of the MLEP 2011 states that the subject land has been determined to have a maximum building height of 14m.

The application proposes a maximum height of 17.4m as measured to the lift overrun. A variation of 3.4m or 24.3% is proposed.

As acknowledged above, the maximum breach occurs only for the length of the lift overrun which is approximately 5.6m. Aside from this, when measured to the awning over the common open space, the maximum building height is 15.2m, representing a non-compliance of just 1.2m.

The additional building height sought by this proposal stems from the introduction of a green roof in support of green building design principles. It is envisaged that the proposed green roof will further assist in achieving biodiversity outcomes on the site by providing for a habitat for local wildlife. It is worthy to note that all areas of proposed planting at roof level will be non-trafficable.

To enable the ongoing maintenance of the green roof, the central stair and lift core has been extended to access this level and generates the greatest degree of non-compliance.

The roof level also incorporates a small area of communal open space to the benefit of future residents and includes an area covered by an awning for shade protection. The proposed awning, which is of an open design, also exceeds the maximum building height control.

All habitable areas of the residential flat building are however compliant with the maximum height control.



#### 4. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

*"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

<b>First</b>	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i>  <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that 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. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the height of buildings standard, the first method is invoked.

The objectives supporting the height of buildings control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.



The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

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

- (a) to establish the maximum height of buildings,*
- (b) to ensure building height is consistent with the desired future character of an area,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity”.*

Objective

*(a) to establish the maximum height of buildings,*

Comment

With regards to objective (a), the proposal provides for a residential flat building whereby all of the proposed habitable floor area is contained within the maximum building height control. As detailed in the comments above, the proposed variation only occurs at roof level with respect to the lift/lift overrun, central stairs and awning over the limited area of communal open space.

The proposed variation, though numerically non-compliant provides for a positive biodiversity outcome on the site as the proposed green roof provides for additional plantings on the site that will act as a habitat for local wildlife and complements the natural environment found within the Dibble Avenue Waterhole to the rear of the site.

Objective

*(b) to ensure building height is consistent with the desired future character of an area,*

Comment

The subject site is burdened by a number of constraints including a flood affectation, a drainage easement through the centre of the site and a 10m buffer zone to the Dibble Avenue Waterhole. The proposal has nonetheless endeavoured to ensure that all of the habitable floor area associated with the development is within the maximum building height control ensuring that the proposed bulk of the building will be consistent with the desired future character of the area.

The proposed non-compliance is limited to elements at roof level which have been centralised to minimise their prominence to the public domain. The proposed lift and stairwell elements span an area of just 5.6m and are setback 16.9m from the street frontage visually minimising the only solid elements proposed at this level.

As noted in the comments above, an awning structure is also proposed over part of the communal open space that is trafficable. This structure has been carefully designed as a lightweight, open element so as to avoid a bulky appearance and so as to not detract from the green elements at roof level.

The design also considers and promotes the heritage and natural significance of the waterhole by providing the required minimum 10m setback to the waterhole. As provided in the submitted landscape plans, the setback incorporates deep soil landscaping and riparian plantings to the rear of the site, creating a vegetated buffer zone to the waterhole.

Objective

*(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*

Comment

Reference should be made to the submitted shadow analysis plans prepared by Benson McCormack Architects. The plans show both the existing and additional shadows cast by the development in plan and perspective. There is no detrimental impact on surrounding residential properties.

Due to the orientation of the site, the majority of overshadowing at June 21 by the proposed development will fall to the south upon the Council owned public open space being the A.B. Croft's Playground and the Dibble Avenue Waterhole. These areas are already overshadowed by the dense canopy trees located on the site and surrounds. There will be no overshadowing impacts upon the neighbouring residential flat building to the north east.

Nonetheless, the proposal has sought to minimise the potential for overshadowing through increased setbacks to the southern boundary inclusive of a curves design to part of the building.

Objective

*(d) to nominate heights that will provide an appropriate transition in built form and land use intensity".*

Comment

The proposed development is in keeping with the objectives of the R1 General Residential zone which considers development to provides for the housing needs of the community and supports a variety of housing types.

The proposed development will replace the existing two dwellings with 16 new residential apartments that are designed in accordance with the amenity considers of the Apartment Design Guide promoting solar access and natural cross ventilation.

The proposal therefore provides for the orderly and economic development of the site, given the site's orientation, location and context it is considered that the site is well suited for the proposed four storey building. Similar developments occur along Riverside Crescent.

**5. Are there Sufficient Environmental Planning Grounds?**

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The application proposes a maximum building height of 17.4m as measured to the lift overrun. A variation of 3.4m or 24.3% is proposed.

As acknowledged in this letter, the maximum breach occurs only for the length of the lift overrun which is approximately 5.6m. Aside from this, when measured to the awning over the common open space, the maximum building height is 15.2m, representing a non-compliance of just 1.2m.

It is important to reiterate that the amenity of the site and its surrounds is in no way negatively impacted through the proposal. The proposed development is in keeping with the land use table provided by the R1 General Residential controls and has made regard to the context of the site. This is evident in the provision of a 10m buffer zone to the waterhole to maintain the ecological health of the waterhole. The development will further contribute to the environmental vitality and significance of the waterhole through the provision of recommended riparian plantings to the sides and rear boundaries to synergise with the ecology of the waterhole.

These aspects are reinforced through the provision of a green roof. The area of planting at roof level has been specifically designed to be non-trafficable in nature allowing for habitats to be created and supported for local wildlife.

Furthermore, the height of the building has been partly driven by the flood affectation of the site acknowledging that the site is located within the Cooks River Flood Planning Area. Accordingly, due to flooding issues, a basement car park would be impractical. Instead, an on-grade car park is proposed. This raises the habitable level above an on-grade car parking area with the first level of the first floor at RL 5.40m AHD.

As reiterated throughout this report, the proposal has still ensured that all habitable floor levels are provided within the maximum building height control despite this affectations. The proposed variation is only sought to elements at roof level and act to primarily facilitate the ongoing management of the green roof.

In this case, strict compliance with the development standard for height of buildings in the MLEP 2011 is unnecessary and unreasonable.

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#### **6. Is the Variation in the Public Interest?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The proposed application is considered to be consistent with the desired future controls and when assessed against Council's provisions maintains compliance with general design and amenity outcomes, solar access, privacy and landscaping provisions.

The building contextually has regard to its surrounding properties and provides excellent amenity to residents that is further enhanced through the additional area of communal open space proposed at roof level.

Furthermore, it is important to also consider the objectives of the R1 General Density Residential zone in relation to the development, which are as follows:

***Zone R1 General Density Residential***

***Objectives of zone***

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*
- *To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.*

In response to the above, the following is provided:

Objective

- *To provide for the housing needs of the community.*

Comment

The proposal will provide for the housing needs of the community through the redevelopment of the site to provide for 16 residential units, replacing the existing two detached dwellings.

Objective

- *To provide for a variety of housing types and densities.*

Comment

Of the 16 proposed units, 8 have been designed as 1 bedroom units, 6 as 2 bedroom units and 2 as 3 bedroom units (including adaptable designs). The proposal therefore caters to varying housing types. With respect to density, it is worthy to acknowledge that the adjoining site to the east is currently developed as a residential flat building and accordingly the proposal is not considered to be out of context with the existing streetscape.

Objective

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment

There are no other land uses sought under this application.

Objective

- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*

Comment

The application before Council solely seeks development consent for residential development. There are no retail/commercial premises proposed.

Objective

- *To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.*

Comment

The proposal does not include office premises.

The proposed development therefore meets the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

**7. Public Benefit of Maintaining the Standard**

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It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high-quality residential flat building in keeping with the residential zoning.

Given the site's orientation, location and context it is considered that the site is well suited for the development.

The development is generally consistent with the current planning controls.

The provision of a green roof reinforces green building design principles and complements the natural environment to the rear of the site, being the Dibble Avenue Waterhole.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the height of buildings control within the MLEP11 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

**8. Is the Variation Well Founded?**

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It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the MLEP11 in that:

- ❑ Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- ❑ There are sufficient environmental planning grounds to justify the departure from the standards;
- ❑ The development meets the objectives of the standard to be varied (height of buildings) and objectives of the R1 General Residential zoning of the land;
- ❑ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ❑ The breach does not raise any matter of State or Regional Significance; and
- ❑ The development submitted aligns with the predominantly residential nature of the neighbourhood noting there are examples of residential flat buildings in the street and further to the site along Riverside Crescent.

Based on the above, the variation is considered to be well founded.

## 9. General

Clause 4.6 also states that:

- “(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 all of these zones.
- (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,*
  - (ca) clauses 6.17 or 6.18.”*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A revised BASIX certificate was provided as part of the amended plans.

Clauses 5.4, 6.17 and 6.18 of the MLEP11 do not apply to the proposal.

#### **10. Conclusion**

---

The proposal does not strictly comply with the maximum height of buildings control as prescribed by Clause 4.3 of the MLEP11. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the MLEP11 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the MLEP11 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum height of buildings is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.



Melissa Rodrigues  
GAT & Associates  
Plan 2513



## Attachment D – Clause 4.6 request – FSR



18 July 2019

The General Manager  
Inner West Council  
PO BOX 14  
PETERSHAM NSW 2049

Attention: Asher Richardson

Dear Asher,

**RE: 11 – 13 DIBBLE AVENUE, MARRICKVILLE  
DA201900060  
REQUEST FOR ADDITIONAL INFORMATION – CLAUSE 4.6 VARIATION  
STATEMENT (CLAUSE 4.4 – FLOOR SPACE RATIO)**

This revised variation statement seeks to address the proposed variation to Clause 4.4 of the Marrickville Local Environmental Plan 2011 (MLEP11), which relates to the floor space ratio development standard.

This submission should be read in conjunction with the amended architectural plans prepared by Benson McCormack Architecture and follows detailed communication with Council Officers.

### 1. Introduction

This statement has been prepared in relation to the redevelopment of Nos. 11 – 13 Dibble Avenue, Marrickville as a four storey residential flat building comprising of 16 units.

The proposed development meets the requirements as prescribed under Clause 4.6 of the MLEP11, as detailed in this written request for a variation to the maximum floor space ratio control.

Clause 4.6 states the following:

***"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 a development even though the development would contravene a*

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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.
- (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 all of these zones.
- (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  
(ca) clause 6.17 or 6.18".*

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

*(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*

The Environmental Planning Instrument to which these variations relate to is the Marrickville Local Environmental Plan 2011.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio, which reads as follows:

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

*(a) to establish the maximum floor space ratio,*

*(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*

*(c) to minimise adverse environmental impacts on adjoining properties and the public domain.*

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

*(2A) Despite subclause (2), development for the purposes of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land labelled "F" on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.*

<b>Site area</b>	<b>Maximum floor space ratio</b>
$\leq 150$ square metres	1.1:1
$> 150 \leq 200$ square metres	1:1

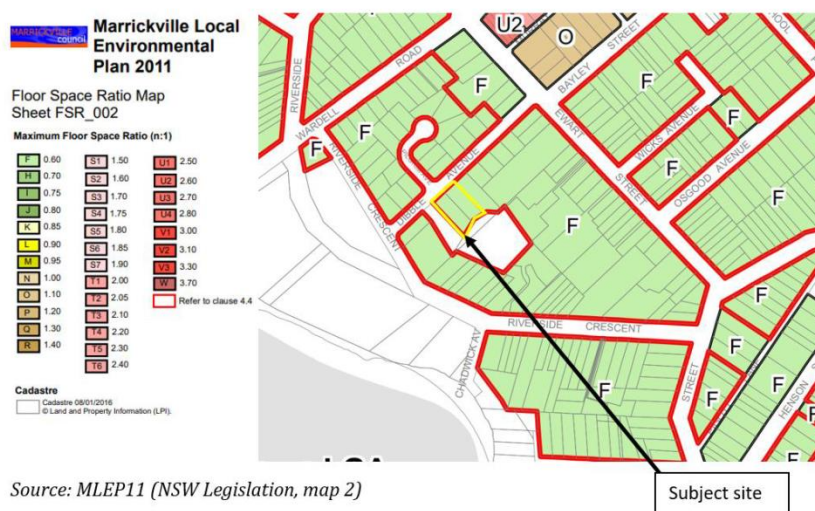
> 200 ≤ 250 square metres	0.9:1
> 250 ≤ 300 square metres	0.8:1
> 300 ≤ 350 square metres	0.7:1
> 350 ≤ 400 square metres	0.6:1
> 400 square metres	0.5:1

(2B) Despite subclause (2), development for the purposes of residential flat buildings on land identified with a thick red line and labelled “F” on the Floor Space Ratio Map may exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map by no more than 0.25:1.

Council’s maps identify a maximum floor space ratio on the site of 0.6:1. However in accordance with Clause 4.4(2B) above, an additional 0.25:1 of floor space ratio is permissible. A maximum floor space ratio of 0.85:1 is therefore available to the site.

Refer to Figure 1 below.

**Figure 1: Floor Space Ratio Map**



Source: MLEP11 (NSW Legislation, map 2)

This submission seeks a gross floor area of 1,198.18m<sup>2</sup>, being an FSR of 0.88:1. A variation of 48.89m<sup>2</sup> or 4.25% is proposed.

A written justification is therefore required for the proposed variation to the maximum floor space ratio development standard, in accordance with Clause 4.6 of the MLEP11.

## 2. Site Background

The subject site is commonly known as 11 – 13 Dibble Avenue, Marrickville and is legally defined as Lots 6 and 7 in Deposited Plan 20459. The site is generally rectangular in its shape, with an oblique angle to its rear boundary. The site has a 30.48 metre frontage to

Dibble Avenue. The length of the site ranges between 47.465 metre (south-western boundary) and a 44.935 metre (north-eastern boundary). The overall site area is 1,352.1m<sup>2</sup>. The site currently contains a single storey detached brick dwelling and detached rear studio over Lot 6 and a single storey brick dwelling with front verandah and brick garage on Lot 7. Adjoining the site to the south-west is a public reserve known as A.B. Croft's Playground. The site adjoins to its rear a waterhole, known as Dibble Avenue Waterhole, which is an item of local heritage under the Marrickville Local Environmental Plan 2011 (Item I12 in Schedule 5).

Development in the area is residential in nature with a mix of established single and double storey dwellings together with townhouses and other residential flat buildings.

A drainage easement measuring 2.285m wide runs across the middle of the site from north-east to south-west. The easement runs through other lots along Dibble Avenue and in some instances, there are existing buildings built over this easement.

The proposed design, as will be detailed, protects this easement. Council has confirmed, as part of earlier pre-da advice received with respect to 13 Dibble Avenue in 2015, that the design is acceptable in this regard.

#### Refer to Figure 2: Site Location Map



Source: <https://maps.six.nsw.gov.au/>

### 3. Extent of Non-Compliance

As noted above, Clause 4.4 of the MLEP 2011 states that the subject land has been determined to have a maximum floor space ratio of 0.6:1. Under subclause 4.4(2B) an additional FSR of 0.25:1 is available. Therefore, an FSR of 0.85:1 is permissible.

As the site area is 1,352.10m<sup>2</sup>, a maximum floor space permitted under Council's controls would be 1,149.29m<sup>2</sup>.



The application proposes a gross floor area of 1,231.52m<sup>2</sup> which results in a floor space ratio of 0.91:1. A variation of 82.23m<sup>2</sup> or 7.15% is proposed.

It is worthy to note that the original submission sought a gross floor area of 1,478.637m<sup>2</sup> or an FSR of 1.09:1. This represented a variation of 329.64m<sup>2</sup> or 28.7%.

The current design therefore represents a significant reduction in gross floor area.

With respect to the breezeways at Levels 2 and 3, following discussions with Council Officers these areas have now been included as part of the gross floor area calculation.

Notwithstanding the numerical variation is sought, the proposed habitable floor areas have been carefully designed within the maximum height control afforded to the site. The proposal has also made regard to the varying environmental constraints which affect the site including its flood affectation, a drainage easement which passes through the centre of the site and the requirement for a 10m buffer zone to the Dibble Avenue Waterhole located to the rear of the site.

#### **4. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?**

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

*"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

<b>First</b>	<p><i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i></p> <p><i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i></p>
<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to</i>



	<i>the development with the consequence that compliance is unnecessary. (not applicable)</i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that 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. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the floor space ratio standard, the first method is invoked.

The objectives supporting the floor space ratio control identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

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

- (a) to establish the maximum floor space ratio,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) to minimise adverse environmental impacts on adjoining properties and the public domain".*

#### Objective

- (a) to establish the maximum floor space ratio,*

#### Comment

The subject site is burdened by a number of constraints including a flood affectation, a drainage easement through the centre of the site and a 10m buffer zone to the Dibble Avenue Waterhole. The proposal has nonetheless endeavoured to ensure that all of the habitable floor area associated with the development is within the maximum building height control ensuring that the proposed bulk of the building will be consistent with the desired future character of the area.

The proposal also responds to local context with the revised architectural plans nominating corner balconies and increased glazing to the southern elevation activating this façade when viewed from A.B. Croft's Playground whilst ensuring appropriate visual and acoustic privacy is maintained to the northern neighbour.

#### Objective

- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*

Comment

Notwithstanding the additional gross floor area sought on the site, the proposal provides for a balance of built form and open space through generous planting along all of the proposed boundaries and at roof level through the introduction of a green roof.

The dense planting, particularly along the front setback and within the 10m buffer zone to the Dibble Avenue Waterhole will complement the setting of the subject site adjacent to both the waterhole and adjacent playground.

The proposed building envelope has also made regard to the established streetscape as detailed in the comments below.

As acknowledged in the cover letter prepared by Benson McCormack Architecture dated the 23<sup>rd</sup> of June 2019, the proposed development provides for a front setback of 5m. Although forward of the adjoining site by 0.95m, the siting of the proposed development does not detract from the streetscape particularly given that the average front setback along Dibble Avenue is just 3.8m.

Furthermore, the proposed setback line as it relates to the internal habitable area actually sits behind that of the adjacent building noting that it is the proposed balconies which project further into the front setback.

The revised plans provide for increased setbacks to both side boundaries and includes a setback of more than 4.5m to Tree 3 located in the south west of the site reducing the extent of intrusion into its Tree Protection Zone.

A varied side setback (minimum 3m) is also proposed to the northern boundary shared with No. 9 Dibble Avenue, to facilitate and improve upon the interface with neighbouring balconies.

To the rear, design amendments have also been made to ensure that no part of built form is within the 10m buffer zone protecting its ecological integrity.

The presentation of the development is further modulated through the redesign of the front façade as four vertical bays to reflect a narrow design reminiscent of the freestanding dwelling widths that are predominant in the current streetscape. The proposed material palette remains unchanged from the original submission, with the proposed render and cladding elements in line with newer developments in the area, particularly along Riverside Crescent. The materials and finishes proposed will blend in well the locality and is sympathetic to the natural surroundings being neutral in tone and colours.

Objective

*(c) to minimise adverse environmental impacts on adjoining properties and the public domain*

Comment

The revised architectural plans nominate a green roof to the building promoting green building design principles. It is envisaged that the proposed green roof will assist in achieving biodiversity outcomes on the site by providing for a habitat for local wildlife. It is worthy to note that all areas of proposed planting at roof level will be non-trafficable.

With regards to solar access, reference should be made to the submitted shadow analysis plans prepared by Benson McCormack Architects. The plans show both the existing and additional shadows cast by the development in plan. There is no detrimental impact on surrounding residential properties.

Due to the orientation of the site, the majority of overshadowing at June 21 by the proposed development will fall to the south upon the Council owned public open space being the A.B. Croft's Playground and the Dibble Avenue Waterhole. These areas are already overshadowed by the dense canopy trees located on the site and surrounds. There will be no overshadowing impacts upon the neighbouring residential flat building to the north east. Nonetheless, the proposal has sought to minimise the potential for overshadowing through increased setbacks to the southern boundary.

In terms of privacy, the increased setbacks to the southern side boundary will also act to improve the interface with neighbouring balconies, reducing privacy impacts and improving the amenity of neighbouring residents.

#### **5. Are there Sufficient Environmental Planning Grounds?**

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The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The application proposes a gross floor area of 1,198.18m<sup>2</sup> which results in a floor space ratio of 0.88:1. A variation of 48.89m<sup>2</sup> or 4.25% is proposed.

It is important to reiterate that the amenity of the site and its surrounds is in no way negatively impacted through the proposal. The proposed development is in keeping with the land use table provided by the R1 General Residential controls and has made regard to the context of the site. This is evident in the provision of a 10m buffer zone to the waterhole to maintain the ecological health of the waterhole. The development will further contribute to the environmental vitality and significance of the waterhole through the provision of recommended riparian plantings to the sides and rear boundaries to synergise with the ecology of the waterhole.

These aspects are reinforced through the provision of a green roof. The area of planting at roof level has been specifically designed to be non-trafficable in nature allowing for habitats to be created and supported for local wildlife.

The additional floor space ratio allows for the efficient and economic use of the land.

Overall, the perceived bulk and scale of the development will be improved when viewed from the public domain or surrounding development, due to a reduced building width fronting Dibble Avenue and increased side setbacks.

In this case, strict compliance with the development standard for floor space ratio in the MLEP 2011 is unnecessary and unreasonable.

#### **6. Is the Variation in the Public Interest?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out. It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

The proposed application is considered to be consistent with the desired future controls and when assessed against Council's provisions maintains compliance with general design and amenity outcomes, solar access, privacy and landscaping provisions.

The building contextually has regard to its surrounding properties and provides excellent amenity to residents that is further enhanced through the additional area of communal open space proposed at roof level.

Furthermore, it is important to also consider the objectives of the R1 General Density Residential zone in relation to the development, which are as follows:

***Zone R1 General Density Residential***

***Objectives of zone***

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*
- *To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.*

In response to the above, the following is provided:

Objective

- *To provide for the housing needs of the community.*

Comment

The proposal will provide for the housing needs of the community through the redevelopment of the site to provide for 16 residential units, replacing the existing two detached dwellings.

Objective

- *To provide for a variety of housing types and densities.*

Comment

Of the 16 proposed units, 8 units have been designed as 1 bedroom units, 6 units as 2 bedroom units (including adaptable designs) and 2 units as 3 bedroom units. The proposal therefore caters to varying housing types. With respect to density, it is worthy to acknowledge that the adjoining site to the east is currently developed as a residential flat building and accordingly the proposal is not considered to be out of context with the existing streetscape.

Objective

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment

There are no other land uses sought under this application.

Objective

- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*

Comment

The application before Council solely seeks development consent for residential development. There are no retail/commercial premises proposed.

Objective

- *To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.*

Comment

The proposal does not include office premises.

The proposed development therefore meets the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

**7. Public Benefit of Maintaining the Standard**

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It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high-quality residential flat building in keeping with the residential zoning.

Given the site's orientation, location and context it is considered that the site is well suited for the development.

The development is generally consistent with the current planning controls.

The provision of a green roof reinforces green building design principles and complements the natural environment to the rear of the site, being the Dibble Avenue Waterhole. It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the floor space ratio control within the MLEP11 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

### 8. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the MLEP11 in that:

- ☐ Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- ☐ There are sufficient environmental planning grounds to justify the departure from the standards;
- ☐ The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the R1 General Residential zoning of the land;
- ☐ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ☐ The breach does not raise any matter of State or Regional Significance; and
- ☐ The development submitted aligns with the predominantly residential nature of the neighbourhood.

Based on the above, the variation is considered to be well founded.

### 9. General

Clause 4.6 also states that:

- “(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 all of these zones.*



- (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,*
  - (ca) clauses 6.17 or 6.18."*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A revised BASIX certificate was provided as part of the amended plans.

Clauses 5.4, 6.17 and 6.18 of the MLEP11 do not apply to the proposal.

#### **10. Conclusion**

The proposal does not strictly comply with the maximum floor space ratio controls as prescribed by Clause 4.4 of the MLEP11. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the MLEP11 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the MLEP11 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

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