

 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2020/0691
Address	5 Bruce Street ASHFIELD NSW 2131
Proposal	Demolition of the existing building and construction of a 4-storey residential flat building
Date of Lodgement	26 August 2020
Applicant	CD Architects
Owner	C-Corp Nominess Pty Ltd
Number of Submissions	Initial: 39 After Renotification: 17
Value of works	\$4,720,477.00
Reason for determination at Planning Panel	Number of submissions exceeds officer delegation Development to which SEPP 65 applies
Main Issues	Existing use rights, bulk and scale, ADG, heritage and view loss
Recommendation	Approval with Conditions
Attachment A	Recommended Conditions of Consent
Attachment B	Plans of Proposed Development
Attachment C	Existing Use Rights – Memorandum of Advice
	
LOCALITY MAP	
Subject Site	
Notified Area	
Objectors	
Supporters	
 N	
Note: Due to scale of map, not all objectors could be shown.	

1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of an existing building and construction of a 4-storey residential flat building at 5 Bruce Street, Ashfield. The application was notified to surrounding properties and 39 submissions were received in response to the initial notification. Following the submission of amended plans and additional information to Council, 17 submissions were received in response to renotification of the application.

The main issues that have arisen from the application include:

- The demonstration of existing use rights and compliance with the 'Redevelopment – existing use rights and merit assessment' Planning Principle, particularly having regard to bulk and scale;
- Compliance with the Apartment Design Guide (ADG);
- Impact of the proposed development on the surrounding Heritage Conservation Area; and
- View loss from properties to the south and compliance with the 'Views – general principles' Planning Principle.

Amended plans were received during the assessment process which seek to address the above concerns and the application is recommended for approval.

2. Proposal

The application seeks development consent for the following works:

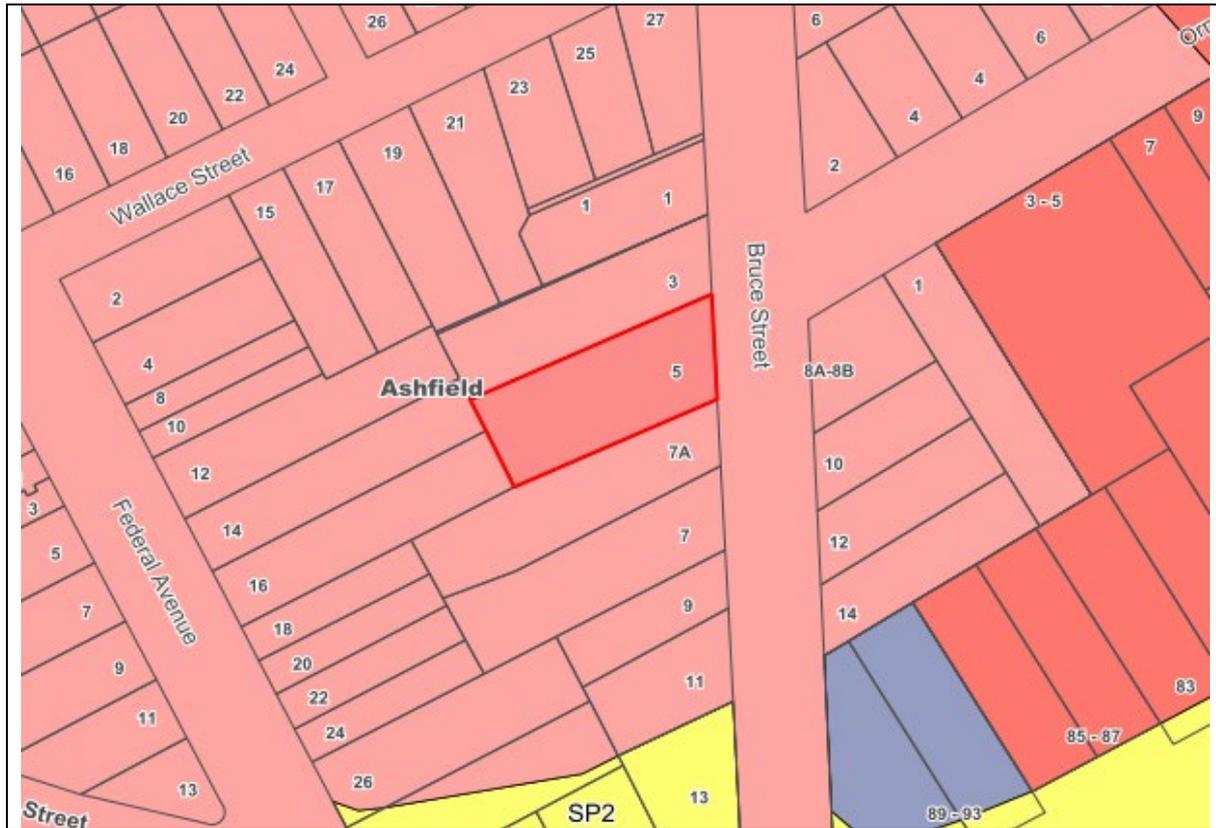
- Demolition of the existing flats and structures within the rear yard;
- Removal of one (1) site tree;
- Construction of a 4-storey residential flat building containing 16 apartments including two (2) levels of basement containing 17 car parking spaces, one (1) car wash bay, four (4) bicycle spaces, one (1) motorcycle space and waste storage areas accessed from Bruce Street;
- Construction of a communal open space area at the rear of the site; and
- Planting of 41 trees and palms with associated landscaping works.

3. Site Description

The subject site is located on the western side of Bruce Street, between Wallace Street and Elizabeth Street, Ashfield. The site has a total area of area 921.8sqm and is legally described as Lot 2 in Deposited Plan 656147.

The site has a frontage to Bruce Street of 21.6 metres. The site supports a two (2) storey building containing two (2) individual flats. The adjoining properties to the north, east and west support single storey dwelling houses. The sites immediately to the south contain 4-storey residential flat buildings. A 3-storey multi-dwelling housing development is currently under construction to the east of the site at 3 Ormond Street, Ashfield.

The site is located within the R2 – Low Density Residential zone. The property is located within the Federal Fyle Heritage Conservation Area.



4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site:

Subject Site

Application	Proposal	Decision & Date
6.1998.163.1	Amendment to 163/98b to replace garage with carport	Approved 13/07/1998
6.1988.75.1	Front fence	Approved 05/04/1988
6.1986.277.1	Additions to flats	Approved 07/04/1987
6.1985.421.1	Addition to flat building	Refused 15/04/1986
6.1984.104.1	Double garage	Approved 18/04/1984

4(b) Application history

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

Date	Discussion / Letter / Additional Information
26 August 2020	Application lodged with Council
12 October 2020	Site inspection undertaken
21 October 2020	Request for additional information issued to applicant (detailed below)
11 November 2020	Additional information submitted to Council (detailed below)
22 December 2020	Request for additional information issued to applicant (detailed below)

19 January 2021 | Additional information submitted to Council (detailed below)

A request for additional information was issued to the applicant on 21 October 2020 which required the following:

- Legal advice and further substantiation be provided regarding existing use rights;
- Raised concern that the development (should existing use rights be established) would not satisfy the 'Redevelopment – existing use rights and merit assessment' Planning Principle, particularly having regard to bulk, scale and solar access;
- Communal space be provided on the site in accordance with the ADG;
- The overall depth of apartment of a number of apartments be amended so as to not exceed the minimum requirements of the ADG;
- Apartment 304 be amended to meet the internal area requirements of the ADG;
- The basement storage areas clearly be designated to individual apartments;
- Photomontages be provided which demonstrate the impact of the proposed development on the Federal Fyle Heritage Conservation Area (HCA) and heritage items fronting Bruce Street;
- An additional 3m northern side setback be provided for the top floor to minimise the visual impact on the adjacent heritage item;
- The palette of materials be amended to not include dark colours and to be in keeping with the palette of materials used throughout the HCA;
- Raised concern regarding the amenity of the bedroom in Apartment G04 given the proximity to the driveway;
- Raised concern regarding the interface of the bin holding room with the adjacent neighbours and required the street presentation be free from bins expect for the time of collection. All doorways to the bin/bulky waste storage areas and transfer routes be amended to be 1,200mm wide;
- Further details of the fencing of the front courtyards be provided to ensure adequate privacy for the future residents;
- A Water Sensitive Urban Design (WSUD) design plan and supporting documentation be submitted;
- The Stormwater Plan be amended;
- A Preliminary Site Investigation be submitted (and potentially a Detailed Site Contamination Investigation depending on the findings of the PSI). Should this identify that the land is contaminated, and the land requires remedial works, a Remediation Action Plan to be submitted;
- One (1) motorbike parking space be provided;
- Details of the proposed mailbox be provided;
- Any communal external clothes drying area be shown on the plans;
- The location of all required boosters and substations be shown on the plans; and
- Raised concern regarding potential view loss from 7A Bruce Street.

Additional information (including amended plans) was submitted to Council on 11 November 2020 which generally satisfied the above, with the exception of the following matters raised in a further request for additional information issued to the applicant on 22 December 2020:

- Concern is still raised that the proposed development does not provide an appropriate transition between the single storey dwellings to the north and the 4-storey flat buildings to the south. Further consideration must be given to reducing the overall bulk and scale of the development to provide a transition when viewed from the streetscape and surrounding properties;
- Further consideration should be given to the presentation of the front ground floor apartment to the street including the provision of additional landscaping within the front setback to increase privacy;

- Further evidence should be obtained regarding the abandonment of existing use rights between 1986 and now;
- The matter of view loss must be addressed, having specific regard to the 'Views – general principles' Planning Principle.

Additional information was submitted to Council on 19 January 2021 which further recessed the fourth floor from the front building line, provided a declaration from the previous property owner that the existing building was occupied as two (2) individual flats between 1984 and 2020 and an assessment of proposed development against the 'Views – general principles' Planning Principle.

It is generally considered that the additional information and amended plans submitted to Council have adequately addressed all concerns raised by Council in the requests for additional information.

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) Existing Use Rights

5(a)(i) *Environmental Planning and Assessment Act 1979*

Division 4.11 (Part 4.65 – 4.68) of the *Environmental Planning and Assessment Act 1979* contains provisions that provide a framework for the definition of an 'existing use' and provides further limitation and regulation for the continuance and development of existing uses.

Firstly, Part 4.65 of the *Act* provides a definition of an existing use. In plain terms an existing use is defined in the following manner:

- It is a use that was lawfully commenced;
- It is a use that is currently prohibited; and
- It is a use that has not been abandoned since the time that it became a prohibited use.

At the request of Council, additional information was submitted to Council which demonstrated that the site benefits from existing use rights. Specifically, the following information was submitted:

- The residence called "Eureka" had been constructed on the site in 1885;
- Between 1904 and 1915 the residence was used as a school known as Katandra College;
- During the mid-1920's the residence was converted to flats, known as Katandra Flats as confirmed by the Sands Postal Directory entry for 1924 and repeated in 1925, 1926 and 1930;
- Building applications were lodged to Council in 1984 and 1985 for alterations and additions to flats. In the Council Officer's report for each application the premises is described as a 2-storey residential flat building. It is also noted in the 1985 report that "the premises has existing use rights as Class II (Res Flat Building)";
- A statutory declaration was obtained from the owner of the property between 1984 and 2020 which states the use as two (2) individual flats was continued throughout their ownership;

- Water, gas and electricity bills from 2019 and 2020 which state the buildings use as being flats;
- Residential flat buildings are prohibited on the site under the *Ashfield Local Environmental Plan 2013*. The site was previously zoned 2A under the *Ashfield Local Environmental Plan 1985*, of which residential flat buildings was a prohibited used.

In addition to the detailed site history provided in the legal advice submitted to Council, an assessment of recent case law regarding the characterisation of flats as residential flat buildings having regard to existing use rights was undertaken.

Given the above, it is considered that the application has satisfactorily demonstrated that the site benefits from existing use rights as a *residential flat building* in that it was lawfully commenced, is a use that is currently prohibited and is a use that has not been abandoned since the time that it became a prohibited used.

As existing use rights are enjoyed, the provisions contained in *ALEP 2013* do not strictly apply to the development. Rather, Division 4.11 of the *Act* enables the continuation of an existing use and refers to the relevant regulations (*Environmental Planning and Assessment Regulation 2000*) with respect to the property being enlarged, expanded or intensified, or being altered or extended for the existing use.

5(a)(ii) Environmental Planning and Assessment Regulation 2000

Clause 41-43 of the *EP&A Regulations 2000* are relevant to the development as they set out the matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for alterations and additions to an existing use.

The proposal involves alterations to the flats which is permitted by Clause 41(1) of the *EP&A Regulations 2000*.

The proposed development will result in an expansion of the existing use. It is therefore considered that the proposal results in an enlargement, expansion or intensification of the existing use. This enlargement, expansion or intensification relates to the existing use being carried out only on the land to which the use applies and Clause 42 is therefore satisfied.

The proposed works would be for the existing use of the building as flats, thereby satisfying Clause 43(2) of the *EP&A Regulations 2000*. A planning merits assessment is below.

5(a)(iii) Land and Environment Court Planning Principles – Existing Use Assessments

In Land and Environment Court proceedings *Fodor Investments v Hornsby Shire Council [2005] NSWLEC at 17*, Senior Commissioner Roseth established a planning principle for the assessment of existing use rights. The 'Redevelopment – existing use rights and merit assessment' Planning Principle developed as a result of that judgment is used hereunder to assess the merits of the development, specifically paragraph 17 which is reproduced below:

"17. Four questions usually arise in the assessment of existing use rights developments, namely:"

1. **How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

Height

A maximum building height of 8.5 metres applies to the land and the surrounding sites under Clause 4.3 of *ALEP 2013*. The proposed development has a maximum height of 14 metres which does not comply with the building height development standard. It is noted that the residential flat buildings to the south at 7 and 7A Bruce Street exceed the maximum building height permitted and are of a similar height to that proposed. An assessment of the proposed building height against the objectives of the Height of Buildings development standard has been undertaken to determine the suitability of the height. The objectives of the standard are as follows:

- (a) To achieve high quality built form for all buildings,*
- (b) To maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes,*
- (c) To provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings;*
- (d) To maintain satisfactory solar access to existing buildings and public areas.*

It is considered that the proposed development is of a high quality built form, and generally satisfies the nine (9) design quality principles to guide the design of residential apartment development.

Having regard to sky exposure, daylight and solar access to existing buildings, the proposed development will result in overshadowing to the north facing windows and balconies at 7A Bruce Street. With the exception of three (3) apartments on the first floor, all other apartments will continue to experience a minimum of two (2) hours of direct solar access between 9.00am and 3.00pm on 21 June. Given the east-west orientation of the site, it is considered difficult to retain solar access to every apartment. The proposed development satisfies the visual privacy objectives of the ADG and has been positioned so as to minimise any overshadowing impacts. As such, it is considered that the proposed development will maintain adequate sky exposure, daylight and solar access to the adjacent property.

A number of amendments were made throughout the assessment process to increase the setback of the fourth floor from the northern and eastern property boundaries. As a result, views of the fourth floor will be minimal from the street and the development will generally read as three (3) stories. Where visible from the street, the fourth floor will appear recessive. When viewed from the neighbouring properties, it is considered that the development has been sufficiently setback and an appropriate mix of materials and building articulation has been provided so as to minimise the visual bulk. As such, it is considered that the proposed development will provide an appropriate transition between the single storey heritage item to the north and to the 4-storey residential flat building to the south.

Given the above, it is considered that the proposed building height satisfies the objectives of the Height of Buildings development standard and is acceptable.

FSR

The site and surrounding sites are afforded an FSR of 0.5:1 in accordance with Clause 4.4 of *ALEP 2013*. The development has an FSR of 1.29:1 (1,189sqm) which does not comply with the FSR development standard. An assessment of the proposed floor space ratio against the objectives of the Floor Space Ratio development standard has been undertaken to determine the suitability of the floor space ratio. The objectives of the standard are as follows

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

- (b) to provide consistency in the bulk and scale of new development with existing development,*
- (c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
- (d) to protect the use or enjoyment of adjoining properties and the public domain,*
- (e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation*

It is considered that the proposed development is consistent in bulk and scale with the adjacent residential flat buildings to the south and maintains an appropriate visual relationship between the new development and the existing character of the area. The fourth floor has been recessed to provide a transition in scale, however the subject development has been afforded additional width given the width of the site in comparison.

The proposed development will result in minimal adverse environmental impacts on the surrounding heritage conservation area and adjacent heritage item to the north with appropriate setbacks provided. The existing building is ranked as a Contributory 4 (detracting) building and as such, no objection is raised to its demolition. The application was referred to Council's Heritage Advisor who raised no objection to the proposed works subject to the imposition of appropriate conditions regarding the materials, finishes and salvaging of existing materials.

It is considered that the proposed development will generally protect the use or enjoyment of adjoining properties. An assessment of the solar access impacts on the adjoining properties has been undertaken above. The proposed development satisfies the visual privacy objectives of the ADG. A further assessment of view loss for the adjoining properties is undertaken below.

Given the above, it is considered that the proposed floor space ratio satisfies the objectives if the Floor Space Ratio development standard and is acceptable.

Setbacks

The setbacks proposed are generally consistent with the building setbacks of surrounding properties. The proposed setbacks will not have an unreasonable impact on adjoining properties having regard to solar access, visual privacy, bulk and scale. The proposed development satisfies the visual privacy objectives of the ADG.

2. What is the relevance of the building in which the existing use takes place?

The existing building on site contains two (2) individual flats that is generally consistent in terms of bulk and form with the low density residential dwellings to the north and the south. The development would continue to be used for the current purpose (a residential flat building) and is of a scale and form that provides an appropriate transition between the neighbouring development.

It is noted that the existing building is ranked as a Contributory 4 (detracting) building and as such, no objection is raised to its demolition.

3. What are the impacts of the development on the adjoining land?

The development has minimal adverse impacts on adjoining land. The proposal is generally consistent with the relevant provisions of the ADG and CIWDCP 2016 relating to privacy,

overshadowing, visual bulk and general amenity. Significant concern was raised in the submissions regarding the loss of views from the north facing balconies at 7A Bruce Street.

The following is an assessment of the view loss in accordance with the planning principle established by Senior Commissioner Roseth in *Tenacity Consulting v Warringah (2004) NSWLEC 140*.

Step 1 - The first step is the assessment of views to be affected (Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.)

District land outlooks are currently experienced from the third floor and centre/rear of the second floor of 7A Bruce Street, whilst some partial outlooks are experienced from the middle of the second floor. The outlooks are generally across Ashfield and are not considered to be iconic or significant views. The outlook is depicted below:



Image 1: Outlook north from the third floor and centre of 7A Bruce Street.



Image 2: Outlook northwest from the third floor and centre of 7A Bruce Street.



Image 3: Outlook northwest from the second floor and centre of 7A Bruce Street.



Image 4: Partial outlook north from the second floor and centre of 7A Bruce Street.



Image 5: Obstructed outlook from the first floor and centre of the 7A Bruce Street.

Step 2 - The second step is to consider from what part of the property the views are obtained.

(For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.)

Outlooks are obtained across the side property boundary. Outlooks can be gained from a standing and sitting position on the balconies.

Step 3 - The third step is to assess the extent of the impact.

(This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.)

Given the height of the proposed development, it is expected that the north facing balconies at 7A Bruce Street (with the exception of the rearmost balconies) will experience the complete loss of outlook to the north and northwest. It is noted however that the east-facing balconies will retain outlooks to the northeast and east, however will lose outlook to the north and northwest.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact. (A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.)

It is acknowledged that the majority of north facing balconies at 7A Bruce Street will experience significant loss of outlook as a result of the proposed development, with the most affected properties being those currently experiencing unobscured land outlook towards the centre and rear of the second and third floors.

The proposed development satisfies the visual privacy objectives of the ADG. The proposed development does not comply with the maximum building height permitted on the site, however given the development relies on existing use rights, strict compliance is not required. As discussed above, it is considered that the proposed building height generally satisfies the objectives of the development standard.

As to whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours, it is considered that the only way to retain outlooks for the subject balconies would be through the deletion of a number of proposed apartments. Therefore, the same development potential would not be achieved.

However, when giving weight to the significance of the views, they are not considered to be significant or iconic, and are enjoyed across side property boundaries where they are traditionally more difficult to protect. Given the above, it is not considered reasonable to require modification of the proposal purely on the basis of view loss.

4. *What is the internal amenity?*

The development incorporates suitably sized internal spaces, facilities and a number of window openings for each apartment which is generally compliant with the ADG and resultant in acceptable internal amenity for this use.

Concluding remarks

The proposal has been assessed against the four (4) planning principles established by the NSW Land and Environment Court in relation to existing use rights. The proposal is unlikely to have any unreasonable impacts upon the adjoining properties and/or the streetscape.

The use was lawfully established and the development proposed seeks a continuation of the established use.

As such, the development is considered acceptable having regard to the provisions of Division 4.11 of the *Environmental Planning and Assessment Act 1979* and Council is satisfied the subject site benefits from existing use rights and the development proposed is a continuation of that existing use.

5(b) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Ashfield Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

5(b)(i) *State Environmental Planning Policy No 55—Remediation of Land*

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. CIWDPC2016 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

A Preliminary Site Investigation (PSI) was submitted which found that there is a Low Risk of Contamination that may affect the proposed development and that the site can be made suitable for the proposed development, subject to the implementation of a number of recommendations include the completion of a Detailed Site Investigation (DSI).

The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the DSI. To ensure that these works are undertaken, conditions are included in accordance with Clause 7 of *SEPP 55* including the undertaking of the recommendations provided in the PSI.

5(b)(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 nine (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 acceptable having regard to the nine (9) design quality principles.

Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the *SEPP* certain requirements contained within CIWDPCP 2016 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail. The following provides further discussion of the relevant issues:

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).

Comment: An area of communal open space is provided on the ground floor at the rear of the site which measures 253.6sqm, being 27.5% of the site, and will be provided with at least 50% direct sunlight for more than two (2) hours between 9am and 3pm on 21 June.

Deep Soil Zones

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

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
650m ² - 1,500m ²	3m	7%

Comment: 100sqm, being 10.8% of the site, is provided as deep soil zones.

Visual Privacy/Building Separation

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

Comment:

A minimum northern side setback of 3m is provided to the north and 3.1m to the south. The setback to the rear is 6m which complies

A minimum building separation of 3.6m is provide to the single dwelling to the north. The development otherwise generally maintains a 4.2m building separation to the north. A minimum building separation of 5.9m is provided to the residential flat building to the south with a maximum building separation of 8.7m.

Whilst strict compliance with Design Criteria 1 of Part 3F of the ADG is not achieved, it is considered that the development satisfies Objective 3F-1 in that adequate building separation distances are equitably shared with neighbouring sites to achieve reasonable levels of visual privacy for the following reasons:

- The dwelling house to the north maintains only a 660mm side setback and the residential flat building to the south maintains a minimum 2.1m side setback and maximum 3m side setback which makes compliance with the building separation requirements difficult;
- All side facing windows proposed are high-level windows which will not result in any unreasonable overlooking impacts to the adjacent properties with the exception of the windows opposite the lift on the northern elevation. The corridor windows do not serve habitable spaces and are setback an appropriate distance (8m) from the side property boundary to mitigate any overlooking impact to the adjacent properties;
- All other proposed windows are orientated towards the front or rear of the property and are located a sufficient distance from the property boundaries to mitigate any overlooking impacts; and
- All balconies proposed are orientated towards the front or rear of the property. All balconies on the northern side at the rear property have been provided with 1.6m high solid balustrades to minimise any overlooking impacts to the north whilst all balconies on the southern side are partly enclosed to the south by the apartment to which they are attached. All balconies are located a sufficient distance from the property boundary and as such, no concern is raised regarding overlooking impacts.

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.

Comment: 12 apartments, being 75% of the apartments, will receive a minimum of two (2) hours of direct solar access between 9.00am and 3.00pm on 21 June, whilst no apartments will receive no direct sunlight.

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.

Comment: All apartments have been designed to be naturally cross ventilated. With the exception of Apartment G03, the overall depth of each apartment does not exceed 18m. Apartment G03 is however a dual access apartment with adequate ventilation and solar access and of acceptable internal amenity. Apartment G03 is therefore considered to satisfy the intent of the design criteria.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

Minimum Ceiling Height	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres
Attic Spaces	1.8 metres edge of room with a 30 degree minimum ceiling slope

Comment: A minimum floor to ceiling height of 2.7m is provided throughout the development.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

Apartment Type	Minimum Internal Area
Studio apartments	35m ²
1 Bedroom apartments	50m ²
2 Bedroom apartments	70m ²
3 Bedroom apartments	90m ²

Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

Comment: All apartments have been designed to comply with the minimum apartment sizes.

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 10m² and other bedrooms 9m² (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.

Comment: All apartments have been designed to comply with the apartment layout requirements.

Private Open Space and Balconies

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

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m ²	-
1 Bedroom apartments	8m ²	2 metres
2 Bedroom apartments	10m ²	2 metres
3+ Bedroom apartments	12m ²	2.4 metres

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

The ADG also prescribes for apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3 metres.

Comment: All apartments have been designed with balconies that satisfy the minimum area and depth requirements.

Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

Comment: The maximum numbers of apartments off the circulation core on a single level is four (4).

Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m ³
1 Bedroom apartments	6m ³
2 Bedroom apartments	8m ³
3+ Bedroom apartments	10m ³

Note: At least 50% of the required storage is to be located within the apartment.

Comment: All apartments have been provided with compliant storage area with at least 50% of the required storage area located within the apartment.

5(b)(iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(b)(iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment or any open space and recreation facilities.

5(b)(v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer who raised no objection, subject to the planting of 41 trees and palms as proposed in the landscape plan.

5(b)(vi) Ashfield Local Environmental Plan 2013

Although the LEP zoning provisions and development standards do not technically apply to the development as it benefits from existing use rights, the application was assessed against the following clauses of the *Ashfield Local Environmental Plan 2013*:

- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 5.10 - Heritage Conservation

- Clause 6.1 - Earthworks
- (i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R2 – Low Density Residential under the *ALEP 2013*. The *ALEP 2013* defines the development as:

“Residential Flat Building”

Residential accommodation is prohibited under the zoning provisions applying to the land. However, the site benefits from existing use rights under Division 4.11 of the Environmental Planning and Assessment Act 1979 and is acceptable in this regard.

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

Standard	Proposal	Complies
Height of Building Maximum permissible: 8.5m	14m	No – See Part 5(a) of this report
Floor Space Ratio Maximum permissible: 0.5:1	1.29:1 (1,189sqm)	No – See Part 5(a) of this report

Clause 5.10 – Heritage Conservation

The site is located within the Federal Fyle Heritage Conservation Area (C13). Heritage Item No.49 is located immediately to the north of the site. A number of other heritage items are located within close proximity to the site. The application was accompanied by information addressing heritage management and impacts upon heritage significance. This documentation has been reviewed by Council’s Heritage Advisor who raised concern regarding the originally proposed form of the fourth floor, materials, finishes and salvaging of materials of the existing house.

Amended plans were received which increased the fourth floor northern setback to minimise the impact on the adjacent heritage item. Subject to appropriate conditions regarding the materials, finishes and salvaging of materials, the proposed development is not considered to result in significant adverse impact to the surrounding conservation area or adjacent heritage item and is acceptable having regard to Clause 5.10 of *ALEP 2013*.

(b) Draft Environmental Planning Instruments

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

- State Environmental Planning Policy No. 55—Remediation of Land
- State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development

5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 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 IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (CIWDCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

IWDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes – see discussion
4 - Solar Access and Overshadowing	Yes – see discussion in Part 5(a) of this report
6 - Safety by Design	Yes – see discussion
7 - Access and Mobility	Yes
8 - Parking	Yes – see discussion
14 - Contaminated Land	Yes
15 - Stormwater Management	Yes
C – Sustainability	
1 – Building Sustainability	Yes
2 – Water Sensitive Urban Design	Yes
3 – Waste and Recycling Design & Management Standards	Yes
4 – Tree Preservation and Management	Yes

The following provides discussion of the relevant issues:

Chapter A, Part 2- Good Design

The proposal was reviewed by Council’s Urban Design Advisor who raised concern regarding the amenity of Apartment G04 and the interface of the bin holding room with adjacent neighbours. Amended plans were received which satisfied these concerns. It is considered that the proposal demonstrates good design in accordance with Part 2 Chapter A of the DCP.

Chapter A, Part 6 – Safety by Design

In accordance with DS1.4 and 1.5, the development establishes a clear delineation between public and private and includes legible entries from Bruce Street. Extensive floor glazing is provided on the Bruce Street elevation providing good passive casual surveillance and street activation. The proposal complies with the CPTED principles subject to the imposition of appropriate conditions of consent.

Chapter A, Part 8 - Parking

General

The application is supported by a Traffic Impact Assessment Report which concludes that the proposal will not result in any unreasonable impacts on the local road network. The application was referred to Council's Engineers who raised no objection to the findings of the report.

Car Parking

CIWDCP 2016 does not stipulate car parking requirement for residential flat buildings within a R2 zone. As the site is within 800m of Ashfield railway station, the ADG dictates that the minimum car parking requirements and visitors is set out in the *RMS Guide to Traffic Generating Developments*. In accordance with the *RMS Guide to Traffic Generating Developments*, a total of 17 car parking spaces are required including three (3) visitor spaces. 17 spaces are proposed including three (3) visitor spaces. In addition, one (1) car wash bay is provided.

Bicycle Parking

CIWDCP 2016 requires one (1) bicycle space per 10 flats. Four (4) spaces are proposed, which exceeds this requirement..

Motorcycle Parking

CIWDCP 2016 requires one (1) motorcycle space per 25 car parking spaces. One (1) motorcycle space is proposed in compliance with this requirement.

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

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(g) Any submissions

The application was notified in accordance with Council's Policy for a period of 28 days to surrounding properties.

39 submissions were received in response to the initial notification. Following the submission of amended plans to Council, the application was renotified. 17 submissions were received in response to renotification of the application.

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

- Existing use rights and zoning – see Section 5(a)
- Bulk and scale – see Section 5(a)(iii)

- Solar access – see Section 5(a)(iii)
- Floor pace Ratio – see Section 5(a)(iii)
- View loss – see Section 5(a)(iii)
- Contamination – see Section 5(b)(i)
- Streetscape/urban design – see Section 5(b)(ii)
- Landscaping/deep soil zones – see Section 5(b)(ii)
- Setbacks/building separation – see Section 5(b)(ii)
- Visual privacy – see Section 5(b)(ii)
- Heritage impact – see Section 5(b)(vi)
- Parking and traffic – see Section 5(d)

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

Issue: The proposed development will result in the loss of property value to neighbouring properties.

Comment: The application has been considered against all relevant planning controls and objectives and is considered acceptable. There is no evidence to suggest that the development will result in a loss of property values.

Issue: The proposed development sets a precedent for high density development in the area.

Comment: The subject site is a unique site in the area in which existing use rights can be applied to obtain a higher density development. Given the zoning of surrounding properties, it is unlikely that these sites will be able to obtain the same density.

Issue: Illegal removal of street trees.

Comment: The unauthorised removal of the street trees in front of the site was reported to and resolved by Council's Regulatory staff prior to the lodgement of the application.

Issue: Pedestrian safety.

Comment: It is considered that there are sufficient sightlines in and out of the proposed driveway to maintain the existing pedestrian safety along the footpath.

Issue: Construction impacts on neighbouring development, particularly having regard to the extent of excavation.

Comment: Appropriate conditions of consent have been imposed regarding construction fencing, noise, dust, soil and erosion management. A Geotechnical Report was submitted with the application which includes recommendations for the safe excavation of the site. The Geotechnical Report was reviewed by Council's Engineers who raised no objections, subject to the imposition of appropriate conditions regarding the excavation.

5(h) 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 proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal officers:

- Engineer – No objection raised, subject to the imposition of appropriate conditions regarding stormwater, WSUD, parking and excavation.
- Health Officer – No objection raised, subject to the imposition of appropriate conditions regarding contamination and noise.
- Heritage Officer – No objection raised, subject to the imposition of appropriate conditions regarding colours, materials and salvaging of existing materials.
- Urban Design – No objection raised.
- Tree Management Officer – No objection raised, subject to the imposition of appropriate conditions regarding tree removal and planting.
- Waste Officer – No objection raised, subject to the imposition of waste storage, transfer and removal.

7. Section 7.11 Contributions

Section 7.11 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 \$161,669.79 would be required for the development under Ashfield Section 94/ 94A Contributions Plan 2014. The contribution has been calculated based on seven (7) additional residential units less than 60sqm GFA, seven (7) additional residential units between 60-84sqm GFA and two (2) additional residential units greater than 84sqm GFA with credit for two (2) existing residential units greater than 84sqm GFA.

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 *Ashfield Local Environmental Plan 2013* and Comprehensive Inner West Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

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

9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to approve Development Application No. DA/2020/0691 for demolition of the existing building and construction of a 4-storey residential flat building at 5 Bruce Street ASHFIELD NSW 2131 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA 1005 Rev C	Site Plan	18/01/2021	CD Architects
DA 1007 Rev A	Demolition Plan	05/06/2020	CD Architects
DA 1100 Rev B	Lower Basement Level Floor Plan	05/11/2020	CD Architects
DA 1101 Rev C	Upper Basement level Floor Plan	18/01/2021	CD Architects
DA 1102 Rev B	Ground Floor Plan	05/11/2020	CD Architects
DA 1103 Rev B	Level 01 Floor Plan	05/11/2020	CD Architects
DA 1104 Rev B	Level 02 Floor Plan	05/11/2020	CD Architects
DA 1105 Rev C	Level 03 Floor Plan	18/01/2021	CD Architects
DA 1106 Rev C	Roof Level Plan	18/01/2021	CD Architects
DA 2001 Rev B	North Elevation	05/11/2020	CD Architects
DA 2002 Rev C	South Elevation	18/01/2020	CD Architects
DA 2003 Rev C	East Elevation	18/01/2020	CD Architects
DA 2004 Rev B	West Elevation	05/11/2020	CD Architects
DA 3001 Rev C	Sections Sheet 1	18/01/2021	CD Architects
DA 3002 Rev B	Sections Sheet 2	05/11/2020	CD Architects
DA 5001 Rev B	Pre + Post Adaptable Unit Layout	05/11/2020	CD Architects

DA 7041 Rev A	Finishes Schedule	05/06/2020	CD Architects
DA 7051 Rev B	Unit Storage	18/01/2020	CD Architects

As amended by the conditions of consent.

FEES

2. 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:	\$20,000.00
Inspection Fee:	\$236.70

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 initial 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.

3. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate written evidence must be provided to the Certifying Authority that a monetary contribution of \$201,295.82 indexed in accordance with Ashfield Development Contributions Plan has been paid to the Council.

The above contribution is the contribution applicable as at 19 January 2021

***NB** Contribution rates under Ashfield Development Contributions Plan are indexed quarterly (for the method of indexation refer to Section 2.6 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.

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:

Community Infrastructure Type:	Contribution \$
Local Roads	5,006.79
Local Public Transport Facilities	8,358.57
Local Public Car Parking	0.00
Local Open Space and Recreation	134,541.61
Local Community Facilities	7,084.26
Plan Preparation and Administration	6,678.56
TOTAL	161,669.79

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>

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000).** It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a**

minimum of 2 business days for the invoice to be issued before payment can be accepted.

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

4. 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.

GENERAL CONDITIONS

5. Tree Protection

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.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

The trees identified below are to be retained and protected in accordance with the conditions of consent throughout the development.

Tree No.	Botanical/Common Name	Location
1	<i>Waterhousia floribunda</i> 'Green Avenue' (Weeping Lilly Pilly)	In road Bruce Street

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained

6. Works to Trees

Approval is given for the following works to be undertaken to trees after the issuing of a Construction Certificate:

Tree/location	Approved works
<i>Waterhousia floribunda</i> 'Green Avenue' (Weeping Lilly Pilly) In road Bruce Street	Minor crown lifting to clear driveway

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

7. Acid Sulfate Soils – Consultant’s Recommendations

The Preliminary Geotechnical Assessment by AssetGeoEnviro of Asset Geotechnical Engineering Pty Ltd Ref: 6191-G1 dated 20 August 2020 recommended further investigation is required to verify the Acid Sulfate Soils.

3.2 Acid Sulfate Soils

The site is in area designated as being Class 4 to Class 5 in regard to acid sulfate soils. This requires that works beyond 2m below natural ground surface or works by which the water table is likely to be lowered beyond 2m below natural ground surface need to assess the impact on acid sulfate soils or the potential to develop such soils. Further investigation to verify this will be required.

8. Noise – Consultant’s Recommendations

The recommendations contained in the acoustic report prepared by Acoustic Noise & Vibration Solutions Pty Ltd, Reference No.:2020-178 dated 13 July 2020 must be implemented, including the following:

- a. Section 5.0 Building Recommendations
- b. Section 6.0 Proposed Mechanical plant, Car Park Area and Garage Roller Door
- c. Section 8.0 Noise Control Recommendations

9. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

10. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

11. Dry-weather Flows

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be “tanked” preventing the ingress of seepage or groundwater. If this is not feasible, dry-weather flows will be treated at the site in accordance with relevant Australian standards before pumping into a rainwater tank. The rainwater tank shall be connected to all toilets and irrigation outlets. The sizing of the rainwater tank shall be at least 22.5 cubic metres. However, the rainwater tank size shall be tested based on supply and demand model.

12. Rock Anchors

This consent does not grant consent for any rock anchors on the road reserve or Council land.

13. Finishes and Materials

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with amended documentation that demonstrates:

The use of dark colours such as ‘Monument’ and greys are not in keeping with the palette of materials utilised throughout the HCA and are classified as being Dark under BASIX. The palette of materials utilised within Heritage Conservation Areas should continue the use of materials with a light or medium classification under BASIX.

Joinery and other building elements from the substantial residence at No 5 Bruce Street that is proposed to be demolished are to be salvaged. A photographic record, Salvage Methodology and Schedule of the Salvaged elements is to be prepared and submitted.

14. Salvaged Elements of the Existing Structures

Prior to the issue of an Occupation Certificate, the Certifying Authority is required to be provided with:

A report, including photographs, that demonstrates the joinery and other building elements from the nineteenth century residence identified in the Schedule of Salvaged Elements as suitable for reuse were salvaged and did not end up as landfill.

15. 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.

16. 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 and located away from the adjacent properties.

17. Residential Flat Buildings – Adaptable Dwellings

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate three (3) units are Adaptable units, being units G02, 102 & 202.

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

18. 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.

19. 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.

20. 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.

21. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**22. Resource Recovery and Waste Management Plan - Demolition and Construction**

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

23. 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.

24. Construction Traffic Management Plan – Detailed

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 Transport for NSW accreditation. The Certifying Authority must be approved 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.

25. 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.

26. 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.

PRIOR TO CONSTRUCTION CERTIFICATE

27. Bin Storage Area - Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Inner West Comprehensive Development Control Plan (DCP) 2016 and must include doorways/entrance points of 1200mm.

28. Bulky Waste Storage Area – Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Inner West Comprehensive Development Control Plan (DCP) 2016 and have minimum doorways of 1200mm wide to accommodate large items.

29. Waste Transfer Route

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.

Each Residential Level is to have Access to a Disposal Point for All Waste Streams

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

30. Noise General – Acoustic Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

31. Stormwater Drainage System – Major Developments

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention, re-use facilities and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) 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 Drawing Nos. D1 to D8 prepared by LMW Design Group and dated 9 November 2020, as amended to comply with the following;
- b. The submitted plans show the rainwater tank and OSD are combined that is not supported. The OSD and rainwater tanks must be separated systems. This is to ensure surface flows are not connected to the rainwater tank.
- c. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged by gravity to the kerb and gutter via the OSD tank;
- d. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of subsurface flows and surface flows from the driveway from the basement;
- f. The Drainage Plan must detail proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;

- g. The on-site detention system must be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event, with discharge to a Council controlled storm water system limited to pre-development conditions with the maximum allowable discharge to Council's street gutter limited to 25 litres/second (100years ARI);
- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- i. Rainwater tank (22.5 cubic meters) must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- j. Details of the 1 in 100-year ARI overflow route in case of failure\blockage of the drainage system must be provided;
- k. An overland flowpath must be provided within the setback to the side boundary;
- l. A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:
 - 1. Comply with all relevant Australian Standards;
 - 2. An overflow, flashing light and audible alarm is to be provided to warn of pump failure;
 - 3. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months;
 - 4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event;
 - 5. Subsurface flows must be collected at the point of ingress to the basement;
 - 6. The subsurface drainage system must have sufficient capacity to collect and convey all surface flows to the pump out system; and
 - 7. Inlet pits and drains for subsurface drainage must be designed to minimise potential for pollutants from cars or other sources to enter the subsurface drainage system. e.g.. isolate any subsurface drains at boundary walls, inspection pits with solid covers, etc.
- m. The design must make provision for the natural flow of stormwater runoff from adjacent properties;
- n. No nuisance or concentration of flows to other properties;
- o. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- p. A silt arrestor pit must be installed inside the property, adjacent to the boundary, for the stormwater outlet;

- q. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- r. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- s. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- t. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- u. Stormwater quality improvement devices must be installed such that stormwater flows leaving the site meet the following environmental targets:
- v.

Pollutant	Baseline Pollution (kg/ha/yr)	Annual Load	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

- w. A water balance model must be submitted to accompany the water re-use proposal;
- x. A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets;

- y. 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
- z. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be treated at site and fully reused via the rainwater tank. Alternatively, the basement must be fully “tanked” so as not to allow the ingress of seepage or groundwater.

32. Structural and Geotechnical Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The report and plans must be prepared/ amended to make provision for the following:

- a. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;
- b. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years;
- c. All components of the basement, including footings, must be located entirely within the property boundary;
- d. No adverse impact on surrounding properties including Council's footpath and road;
- e. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;
- f. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- g. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

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

(RPEng) 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 crossing and removal of the redundant vehicular crossing to the site;
- b. New concrete footpath and kerb and gutter (if damaged) 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 determine 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; and
- d. Installation of a stormwater outlet to the kerb and gutter.

All works must be completed prior to the issue of an Occupation Certificate.

34. 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.

35. 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 13 20 92

DURING DEMOLITION AND CONSTRUCTION

36. Tree Protection

To protect the following tree trunk and branch protection must be installed prior to any works commencing in accordance with Council’s *Development Fact Sheet—Trees on Development Sites*:

Tree No.	Botanical/Common Name/Location
1	<i>Waterhousia floribunda</i> "Green Avenue" (Weeping Lilly Pilly) in road street tree

37. Tree Protection Zone

To protect the following tree/s, no work must commence until its/their Protection Zone is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area in accordance with Council's *Development Fact Sheet—Trees on Development Sites*. The fence/s (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name	Radius in metres
2	<i>Cupressocyparis leylandii</i> (Leyland Cypress) Rear 16 Federal Avenue	4 metres

38. Canopy and Root Pruning

Canopy pruning of the following tree which is necessary to prevent damage to low limbs must be undertaken by, or directly supervised by a suitably qualified AQF Level 5 Arborist.

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Waterhousia floribunda</i> "Green Avenue" (Weeping Lilly Pilly)	3.5 m.

The person acting on this consent has approval under Council's Tree Management Controls to; crown raise the southern side of the canopy to achieve a clearance of the driveway and vehicles entering and exiting the site. Pruning is limited to those branches that will come into direct contact the vehicles and where branch diameter (at its point of attachment) does not exceed 50mm.

39. Documentation of Demolition and Construction Waste

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

40. Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

41. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

42. 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:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 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.

43. 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.

PRIOR TO OCCUPATION CERTIFICATE

44. Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be **provided with** certification from an AQF Level 5 arborist that the requirements of the conditions of consent related to the planting of 41 x canopy trees and palms, from 100 litre pots, as per the Landscape Plan prepared by Studio Botanica, dated 6/08/2020 and the conditioned tree protection measures have been complied with.

45. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of *the Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Noise Policy for Industry and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

46. Noise From Road, Rail & Aircraft – Compliance

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. *State Environmental Planning Policy (Infrastructure) 2007*;

- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of Acoustic Noise & Vibration Solutions Pty Ltd, Reference No.:2020-178 dated 13 July 2020.

47. Contamination – Disposal of Soil

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environmental Operations Act 1997*.

48. Contamination – Validation (No Site Audit Statement Required)

Prior to the issue of an Occupation Certificate, the Certifying Authority and Council must be provided with a Site Validation Report prepared by a suitably qualified environmental consultant with experience in land contamination.

The Validation report must be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines *Consultants Reporting on Contaminated Sites* and must confirm that the site has been remediated in accordance with the Remedial Action Plan and clearly state that the site is suitable for the proposed use.

49. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifier 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 at the vehicular access location;
- 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; and
- 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”.

50. No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifier 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.

51. Protect Sandstone Kerb

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

52. Undergrounding Power – Major development

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the existing overhead power cables in frontage of the site have been relocated underground with appropriate street lighting and new steel standard poles. The street lighting must be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet the lighting category required by Council and RMS. In addition the design must also comply with AS4282 to ensure that no injury is caused to the amenity of the surrounding area by light overspill or obtrusive light.

53. Parking Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) 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; and
- b. A notice has been clearly displayed at the Bruce Street frontage to indicate that visitor parking is available within the property with access from Bruce Street.

54. Public Domain - Major Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier 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.

55. Dilapidation Report – Post-Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey and structural conditions 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.

56. Stormwater Drainage and Road Works – Certification

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

- a. All works required to be undertaken on public roads were designed and constructed in accordance with Council's approved plans; and
- b. 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.

57. Works as Executed – Site Stormwater Drainage System

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

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- 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 and pumps 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 Certifier stamped Construction Certificate plans.

58. Easements, Restrictions on the Use of Land and Positive Covenants

Prior to the issue of an Occupation Certificate, the Principal Certifier 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 , rainwater tank and stormwater quality improvement devices;
 - b. Positive Covenant related to on-site stormwater detention and rainwater tank system; and
 - c. Positive Covenant related to stormwater quality improvement devices.
- The wording in the Instrument must be in accordance with Councils Standard wording.

59. Basement/Retaining Wall Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards and that the basement is fully tanked construction such that pump-out of subsurface flows is not required.

ON-GOING

60. Tree Establishment

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

61. Bin Storage and Bulky Waste Presentation

All bins are to be stored within the site. Bins are to be returned to the property within 12 hours of having been emptied. Bulky waste is to be presented no earlier than the night before the given collection date.

62. Noise General

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

63. Operation and Management Plan

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

64. Vehicles Leaving the Site

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

65. Loading/unloading on site

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

ADVISORY NOTES**Consent of Adjoining property owners**

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

Tree Pruning or Removal (including root pruning/mapping)

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

Notice to Council to deliver Residential Bins

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

Recycling / Garbage / Organics Service Information and Education

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

Mechanical Ventilation System Certification

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:

- a. Australian Standard AS 1668 Part 1 – 1998;
- b. Australian Standard AS 1668 Part 2 – 2012;
- c. Australian Standard 3666.1 – 2011;
- d. Australian Standard 3666.2 – 2011; and
- e. Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² 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 Class A 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 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Rock Anchors

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a. Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b. Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

Electrical Substations

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

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; and
- 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.

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

A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:

- c. The soundness of the storage structure;
- d. The capacity of the detention storage;
- e. The emergency overflow system being in place;
- f. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;

- g. 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;
- h. Basement car park pumps are class one zone two; and
- i. 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.

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.

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.

Prescribed Conditions

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

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; or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

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.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

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.

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

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 www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au
Dial Prior to You Dig	Enquiries relating to Owner Builder Permits and Home Warranty Insurance. 1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"

Long Service Corporation	Payments	131441	www.lspc.nsw.gov.au
NSW Food Authority		1300 552 406	www.foodnotify.nsw.gov.au
NSW Government			www.nsw.gov.au/fibro www.diyasafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	www.environment.nsw.gov.au
Sydney Water		13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)			www.waterrating.gov.au
WorkCover Authority of NSW		13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.
Street Numbering			
If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.			

NOTES:
 1. SHOWN TO BE IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE LOCAL PLANNING INSTRUMENT.
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Apartment Design Guide (ADG) Compliance Table

ADG DESIGN CRITERIA	%	DESCRIPTION	TARGET	PROPOSED	COMPLY
Overall Sunlight Access to Living Room & Private Open Space	75%	75% min 2-hour direct sunlight between 9 am and 3 pm at midwinter (21st June) in the living room and in the balcony and walkway (if applicable).	12 apartments out of 15	12 out of 15 units (80%)	Yes ✓
Natural Cross Ventilation	95%	Minimum 85% of units should be natural cross ventilated.	2 apartments out of 15	14	Yes ✓
Accessibility	25%	Minimum 25% of units require incorporating the Single Housing Standards saw level entrance design feature.	3 apartments out of 15	3 out of 15 units (20%)	Yes ✓
Living Room Internal Width	100%	Living room internal width shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Bedroom Dimensions (excluding storage)	100%	Bedroom dimensions shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Minimum Ceiling Height	100%	Minimum ceiling height shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Private Open Space (POS) Area	100%	Private open space area shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Minimum Storage Requirements	100%	Minimum storage requirements shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Construction	100%	Construction shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Building Depth	100%	Building depth shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Building Separation	100%	Building separation shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Deep Sky Glow	7%	Deep sky glow shall be in accordance with the ADG table below.	100%	100%	Yes ✓
Common Open Space (COS)	25%	Minimum 25% of units require incorporating the Single Housing Standards saw level entrance design feature.	3 apartments out of 15	3 out of 15 units (20%)	Yes ✓
Ratio of parking spaces to number of dwellings in the	100%	Ratio of parking spaces to number of dwellings shall be in accordance with the ADG table below.	100%	100%	Yes ✓

UNIT MIX

1 BR	10%
2 BR	10%
3 BR	10%
4 BR	10%
5 BR	10%
6 BR	10%
7 BR	10%
8 BR	10%
9 BR	10%
10 BR	10%

AREA CALCULATIONS - FLOOR SPACE RATIO

ZONE	R2
RTP AREA	82,164 m ²
PERMISSIBLE FLOOR SPACE (PMS)	1,027,170 m ²
PERMISSIBLE GFA	469,100 m ²
PROPOSED FLOOR SPACE RATIO	1.24
PROPOSED RESIDENTIAL GFA	1,081 m ²

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RESIDENTIAL FLAT BUILDING

5 Park Street (off B6/2/31)
 COMPLIANCE TABLE

DA
 Zone R2
 J20470 DA 1002 C
 Date 15/06/2020
 Drawn by [Name]
 Checked by [Name]
 Approved by [Name]
 Date 15/06/2020

NOTES

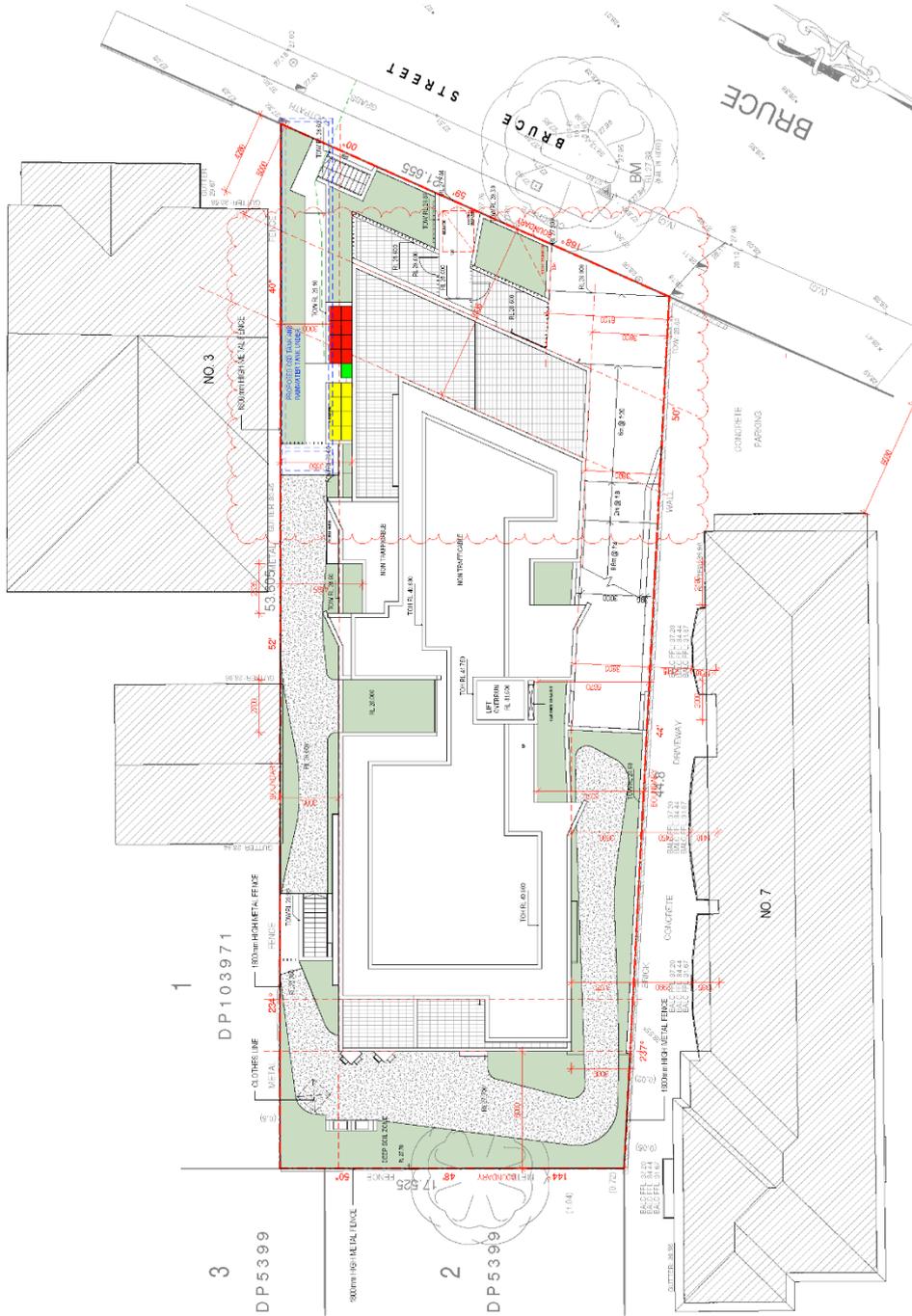
1. THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION WITHOUT THE APPROVAL OF THE LOCAL PLANNING PANEL.

2. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.

3. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE RELEVANT AUTHORITIES.

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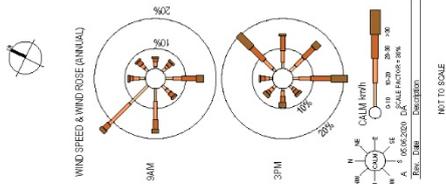
RESIDENTIAL FLAT BUILDING

5 Bruce Street (A1) 1:100
SITE PLAN

DA	Drawn by	Rev.
J20470	DA 1005	C
04	Checked by	Approval Date
		JUNE 2020

REFERENCES
 REFERENCED TO THE LOCAL PLANNING PANEL BY THE PANEL MEMBERS TO
 SUPPORT THE PROPOSAL FOR THE PROPOSED DEVELOPMENT. THE REFERENCES
 LISTED BELOW ARE FOR INFORMATION ONLY AND DO NOT CONSTITUTE A
 WARRANTY OR GUARANTEE OF ANY KIND.

NOTES
 1. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE LOCAL PLANNING PANEL
 APPROVAL. THE LOCAL PLANNING PANEL IS THE FINAL AUTHORITY IN
 ALL MATTERS AND ITS DECISIONS ARE FINAL. THE LOCAL PLANNING PANEL
 MAY, AT ITS DISCRETION, REQUEST FOR FURTHER INFORMATION OR
 REVISIONS TO THE PROPOSAL. THE LOCAL PLANNING PANEL IS NOT
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RESIDENTIAL FLAT BUILDING

5 Bruce Street Ashfield 2131
 Drawing No: **SITE ANALYSIS PLAN**

DA	Drawn by	Rev
J20470	DA 1006	A
DA	Checked	Date
	27	JUNE 2020



2 STREET VIEW A



3 STREET VIEW B



1 SITE ANALYSIS PLAN

REFERENCES
 1. BUILDING ACT 1993 (NSW) AND BUILDING REGULATIONS 2006 (NSW)
 2. LOCAL GOVERNMENT ACT 1995 (NSW)
 3. LOCAL GOVERNMENT (GENERAL PURPOSES) ACT 1996 (NSW)
 4. LOCAL GOVERNMENT (GENERAL PURPOSES) REGULATIONS 1997 (NSW)
 5. LOCAL GOVERNMENT (GENERAL PURPOSES) ACT 1996 (NSW) (AS AMENDED)

NOTES
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RESIDENTIAL FLAT BUILDING
 5 Bark Street (off) 50/2/31
 DRAWING NO
LEVEL 01 FLOOR PLAN

DA	Drawn by	Rev.
J20470	DA 1103	B
01	Checked by	Approved by
		DATE
		JUNE 2020



1 LEVEL 1 FLOOR PLAN
 1:100 at A1 1:200 at A3

REFERENCES
 1. BUILDING ACT 1993 (NSW) AND BUILDING REGULATIONS 2006 (NSW)
 2. LOCAL GOVERNMENT ACT 1995 (NSW)
 3. LOCAL GOVERNMENT (GENERAL PURPOSES) ACT 1995 (NSW)
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COLOUR LEGEND

1 BED	2 BED	3 BED	4 BED	WASTE	CANOPY	CHILLING
(Light Blue)	(Light Green)	(Light Yellow)	(Light Purple)	(Light Orange)	(Light Pink)	(Light Grey)



1 LEVEL 2 FLOOR PLAN
 1:100 at A1 1:200 at A3

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RESIDENTIAL FLAT BUILDING

5 Bank Street (off B602) '31
 DRAWING NO
LEVEL 02 FLOOR PLAN

DA	Drawn by	Rev.
J20470	DA 1104	B
04	Checked by	Approval Date
		31 JUNE 2020

NOTES:
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COLOUR LEGEND

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11 RED	12 RED
13 RED	14 RED
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17 RED	18 RED
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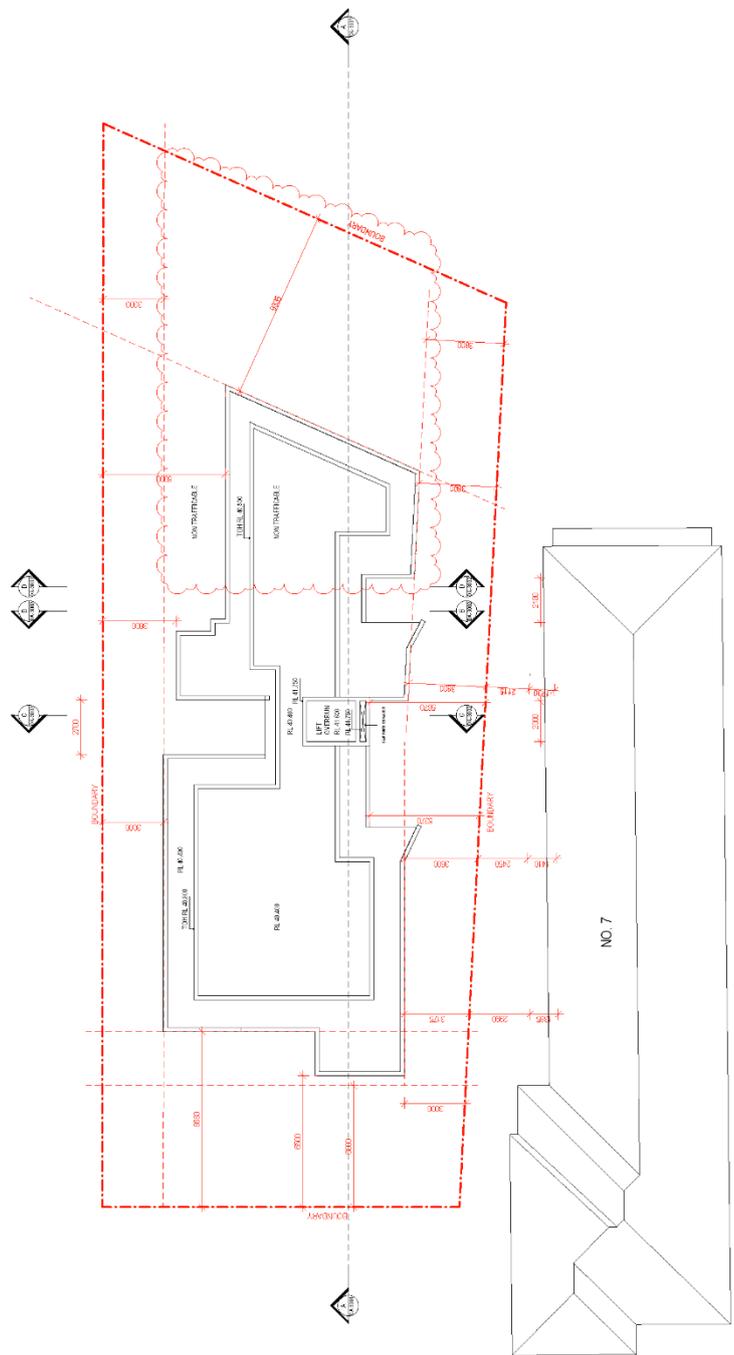
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RESIDENTIAL FLAT BUILDING
 5 Bank Street (off B602) 31
 DRAWING NO.
ROOF LEVEL PLAN

DA	Drawn by	Rev.
J20470	DA 1106	C
DA 1106	Quantity	Approval Date
31	31	JUNE 2020



1 ROOF LEVEL PLAN
 1:100 at A1 1:200 at A3

NOTES:
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MATERIAL LEGEND

AMD	ALUMINIUM FRAME WINDOWS & DOORS MONUMENT
ASB	ASBESTOS BRICKS, UNGLAZED
BRR	BRICKS, RECTANGULAR, RED OR SIMILAR
JHS	JANES HARBOR STONE, CALICIOUS
LF	LAP SCAP FENCE
PPT	PAINT FINISH, MONUMENT
PF2	PAINT FINISH, GULLUS TRANQUIL RETREAT OR SIMILAR
VF6	VERTICAL FLAT BAR FENCE MONUMENT

C 18/11/2017 GENERAL ENLARGEMENTS
 A 06/04/2020 DA
 1:100 @ A1 1:200 @ A3
 0 2 4 6
 1:100 @ A1 1:200 @ A3

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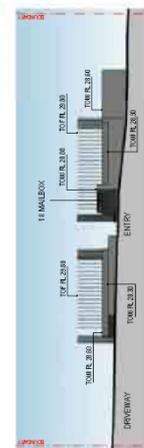


5 Bourke Street Ashfield 2121
 DRAWING NO: **EAST ELEVATION**

DA
 DATE: 06/04/2020
 DRAWN BY: J20470
 CHECKED BY: DA 2003
 APPROVED BY: C
 DATE: 27 JUNE 2020



1 EAST ELEVATION
 1:100 @ A1 1:200 @ A3



2 FENCE ELEVATION
 1:100 @ A1 1:200 @ A3

NOTES:
 DIMENSIONS AND FINISHES ARE SHOWN ON DRAWINGS BUT ARE SUBJECT TO THE REQUIREMENTS OF THE LOCAL GOVERNMENT. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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MATERIAL LEGEND

- AMPD ALUMINIUM FRAME WINDOWS & DOORS MONUMENT
- BRI BRICK - ROBERTSON - HAMPTON - RED OR SIMILAR
- IMS JAMES HARBOUR STERIL CLADDING - PAINT FINISH - MONUMENT OR SIMILAR
- LIF LAP SCAP FENCE
- PP1 PAINT FINISH - MONUMENT
- PP2 PAINT FINISH - DULUX TRANQUIL PE TIGHT OR SIMILAR
- VTB VERTICAL FLAT BARK FENCE MONUMENT

B. 0/1/2002 GENERAL AMENDMENTS
 A. 0/1/2003 DA
 50% USE 1:100 @ A1
 1:100 @ A1 1:200 @ A2

CDIDA ARCHITECTS
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 STONEY MOUNT
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RESIDENTIAL FLAT BUILDING
 5 Bourke Street Ashfield 2121
 Drawing No: WEST ELEVATION

DA
 J20470 DA 2004 B
 Date: 27 JUNE 2008



1 WEST ELEVATION
 1:100 @ A1 1:200 @ A2

REFERENCES
 SHADOWS TO BE CAST BY BUILDINGS AND OTHER STRUCTURES WILL BE LIMITED TO SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES. SHADOWS CAST BY TREES, LANDSCAPE PLANTS AND OTHER VEGETATION WILL NOT BE SHOWN.

NOTES
 1. SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES WILL BE LIMITED TO SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES. SHADOWS CAST BY TREES, LANDSCAPE PLANTS AND OTHER VEGETATION WILL NOT BE SHOWN.
 2. SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES WILL BE LIMITED TO SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES. SHADOWS CAST BY TREES, LANDSCAPE PLANTS AND OTHER VEGETATION WILL NOT BE SHOWN.
 3. SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES WILL BE LIMITED TO SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES. SHADOWS CAST BY TREES, LANDSCAPE PLANTS AND OTHER VEGETATION WILL NOT BE SHOWN.



SHADOW DIAGRAM LEGEND

- SHADOWS CAST BY EXISTING BUILDING
- SHADOWS CAST BY EXISTING SURROUNDING BUILDING
- SHADOWS CAST BY PROPOSED BUILDING

A. 06/06/2020 DA
 REV. DATE ENGINEER

NOT TO SCALE

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RESIDENTIAL FLAT BUILDING

5 Bruce Street Ashfield 2131
 Drawing No
SHADOW DIAGRAM - 09am, 21 JUNE

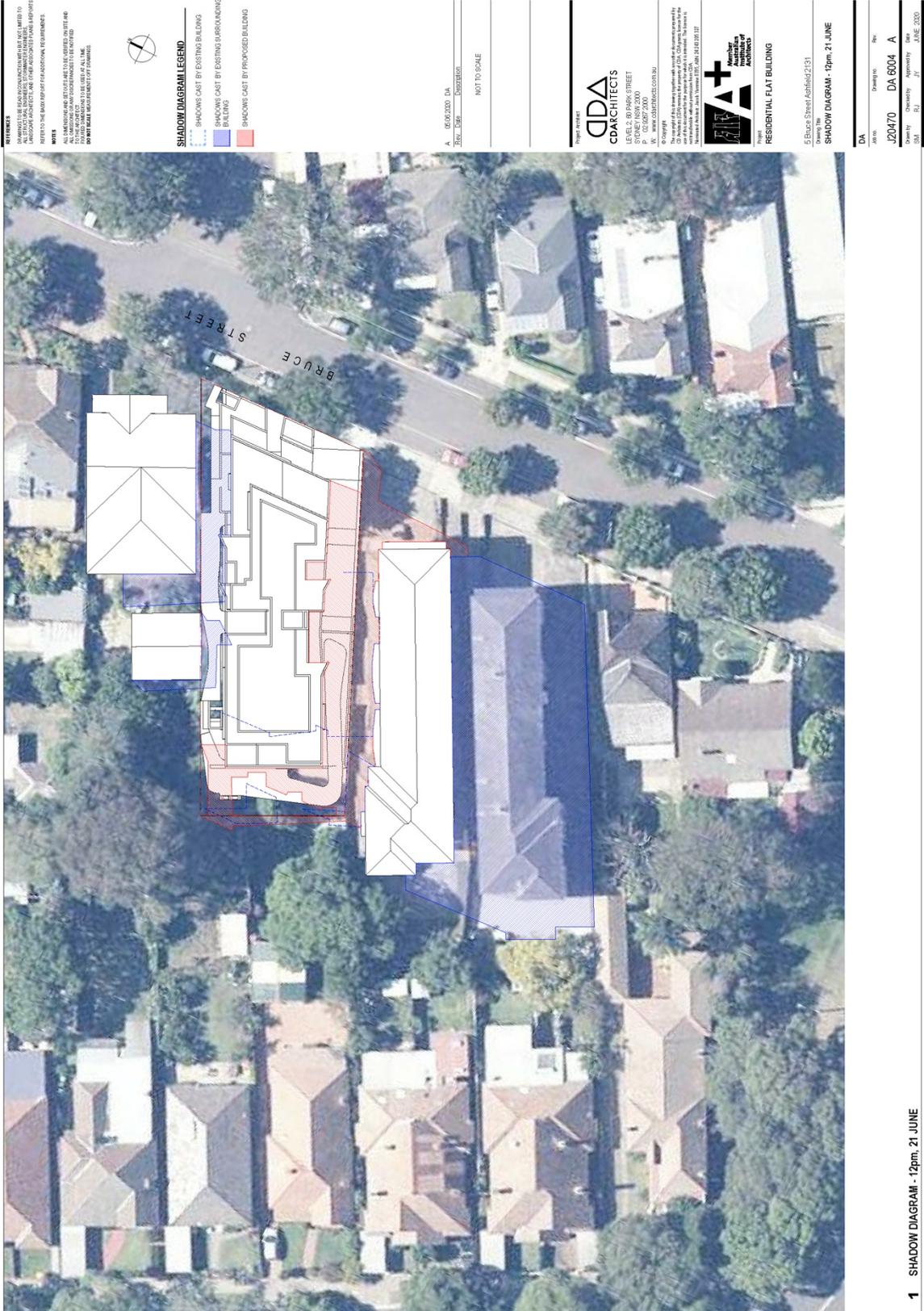


DA	Drawn by	Rev.
J20470	DA 6001	A
DA	DA	DA
DA	DA	DA

1 SHADOW DIAGRAM - 09am, 21 JUNE



1 SHADOW DIAGRAM - 11am, 21 JUNE



1 SHADOW DIAGRAM - 12pm, 21 JUNE

REFERENCES
 SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES WILL BE LIMITED TO LANDSCAPE ARCHITECTS AND OTHER PROFESSIONAL LANDSCAPERS REFERRED TO IN THE REPORT FOR INFORMATION, FOR ORIENTATION PURPOSES.

NOTES
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 2. ALL SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES WILL BE LIMITED TO LANDSCAPE ARCHITECTS AND OTHER PROFESSIONAL LANDSCAPERS REFERRED TO IN THE REPORT FOR INFORMATION, FOR ORIENTATION PURPOSES.
 3. SHADOWS CAST BY BUILDINGS AND OTHER STRUCTURES WILL BE LIMITED TO LANDSCAPE ARCHITECTS AND OTHER PROFESSIONAL LANDSCAPERS REFERRED TO IN THE REPORT FOR INFORMATION, FOR ORIENTATION PURPOSES.



SHADOW DIAGRAM LEGEND

- SHADOWS CAST BY EXISTING BUILDING
- SHADOWS CAST BY EXISTING SURROUNDING BUILDING
- SHADOWS CAST BY PROPOSED BUILDING

A. 06/06/2020 DA
 06/06/2020 DA
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 Australian Practice Number: 1515, ABN: 16 151 513 137



RESIDENTIAL FLAT BUILDING

5 Bruce Street Ashfield 2131
 Drawing No: SHADOW DIAGRAM - 01pm, 21 JUNE



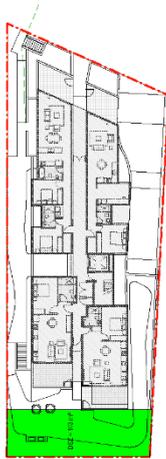
DA	Drawings	Rev.
J20470	DA 6005	A
DA	Drawings	Rev.
J20470	DA 6005	A
DA	Drawings	Rev.
J20470	DA 6005	A

1 SHADOW DIAGRAM - 01pm, 21 JUNE



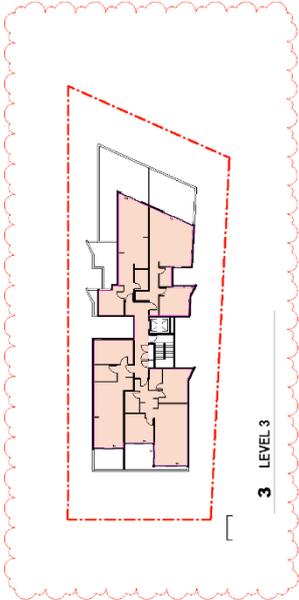
REFERENCES
 SHARED USE RESIDENTIAL DEVELOPMENT PERMITTED TO LANDSCAPE ARCHITECTS AND OTHER ASSOCIATED LANDSCAPE ARCHITECTS
 REPORT TO THE INTERIM PLANNING PROFESSIONAL COMMITTEE

NOTES
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED
 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED
 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED

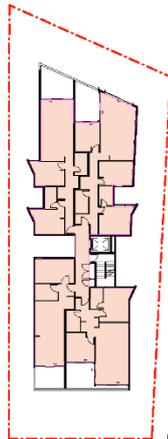


SEE PLAN FOR THE BUILDING FOOTPRINT AND PROPOSED SITE AREA (17.44m x 11.44m)

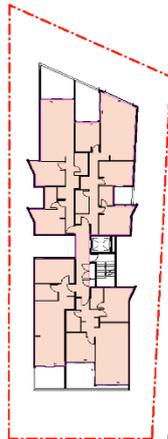
D DSZ



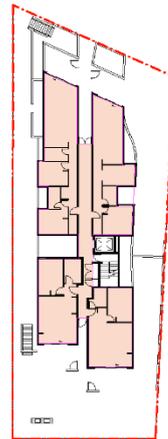
3 LEVEL 3



2 LEVEL 2



1 LEVEL 1



G GROUND LEVEL

C SUBJECT GENERAL REQUIREMENTS
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED
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RESIDENTIAL FLAT BUILDING
 5 Bank Street (off 6/27'31")
 GFA CALCULATION

DA
 DA No DA 7001 C
 J20470 DA 7001 C
 Date of Issue 21/06/2017
 Date of Approval 21/06/2017

UNIT MIX	
TYPE	TOTAL
1-BED	1
2-BED	5
3-BED	5
TOTAL	11

GFA CALCULATION	
LEVEL	GFA
GROUND LEVEL	284.17 m ²
LEVEL 1	284.17 m ²
LEVEL 2	284.17 m ²
LEVEL 3	284.17 m ²
OVERLAP #	1100.00 m ²

AREA CALCULATIONS - FLOOR SPACE RATIO

ZONE: R2
 SITE AREA: 201.91 m²
 PROPOSED FLOOR SPACE RATIO: 1.321
 PERMISSIBLE GFA: 266.51 m²

PROPOSED FLOOR SPACE RATIO: 1.321
 PROPOSED RESIDENTIAL GFA: 1192.51 m²

LOCAL ENVIRONMENTAL PLANS ASSIGNED LOCAL ENVIRONMENTAL PLAN (LEP) 23-2019

LAND ZONING: R2 - LOW DENSITY RESIDENTIAL (RUR 23-15/2019)
 SITE AREA: 201.91 m²
 FLOOR SPACE RATIO: 1.321
 MINIMUM LOT SIZE: 500 m²
 LAND RESERVATION ACQUISITION: NA
 FORESHORE BUILDING LINE: NA

REFERENCES
 STANDARDS FOR BUILDING SURVEILLANCE, AS SET OUT IN THE BUILDING SURVEILLANCE ACT 2003 AND THE BUILDING SURVEILLANCE REGULATIONS 2004.
 REPORT TO THE INTERIM PANEL FOR PROFESSIONAL PERFORMANCE
NOTES
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 4. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS.
 5. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS.



A. COUNCIL ID: DA7011
 TITLE: DA7011 - DA7011 - A
 DATE: 20/06/2023

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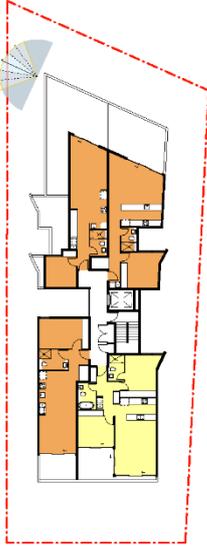
Member of the Institute of Architects
 Residential Flat Building
 5 Park Street (off B6/2/31)
 Sydney NSW

RESIDENTIAL FLAT BUILDING
 5 Park Street (off B6/2/31)
 Sydney NSW

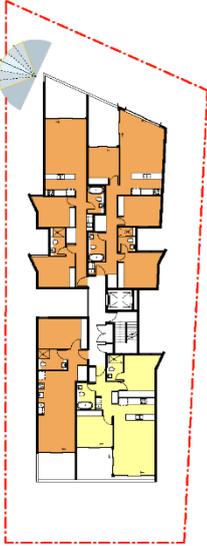
SOLAR ACCESS PLAN

DA 7011 - DA7011 - A
 20/06/2023

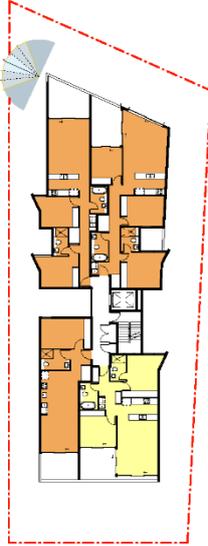
DA 7011 - DA7011 - A
 20/06/2023



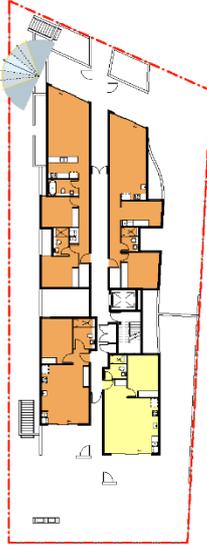
3 SOLAR ACCESS - LEVEL 3



2 SOLAR ACCESS - LEVEL 2



1 SOLAR ACCESS - LEVEL 1



G SOLAR ACCESS - GROUND FLOOR PLAN

SOLAR ACCESS LEGEND

TOTAL NUMBER OF UNITS	TARGET COMPLIANCE REQUIRED	PROPOSED UNITS RECEIVING COMPLIANCE	COMPLIANCE SHORTFALL
12 UNITS (30%)	12 UNITS (30%)	12 UNITS (30%)	0 UNITS (0%)
12 UNITS (30%)	12 UNITS (30%)	12 UNITS (30%)	0 UNITS (0%)
12 UNITS (30%)	12 UNITS (30%)	12 UNITS (30%)	0 UNITS (0%)
12 UNITS (30%)	12 UNITS (30%)	12 UNITS (30%)	0 UNITS (0%)

REFERENCES
 DRAWINGS TO BE USED IN CONNECTION WITH THIS PLAN ARE LIMITED TO THOSE SHOWN ON THESE PLANS AND ANY OTHER ASSOCIATED PLANS, AGREEMENTS AND PERMITS, AND OTHER ASSOCIATED PLANS, AGREEMENTS AND PERMITS.
 REFER TO THE REPORT FOR ADDITIONAL INFORMATION.

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 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

B 1:100 FOR GENERAL ARRANGEMENTS
 A 1:500 FOR SITE PLAN
 DATE: 06/06/2020 DA

Rev. No. Description
 01 Initial Design

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06/06/2020
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RESIDENTIAL FLAT BUILDING

5 Bruce Street Ashfield 2131
 Sydney NSW
 3D VIEWS

DA
 Title: Preliminary DA
 No: J20470 DA 7031 B
 Date: 06/06/2020
 Author: [Name]
 Checker: [Name]
 Approver: [Name]
 Date: 06/06/2020



REFERENCES:
 DRAWINGS TO BE SUBMITTED TO THE LOCAL COUNCIL FOR REVIEW SHALL BE LIMITED TO
 CONCEPT PLANS, EXTERIOR ELEVATIONS, AND OTHER ASSOCIATED PLANNING DOCUMENTS.
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B 16/05/2018 GENERAL AGREEMENTS
 A 05/11/2020 GENERAL AGREEMENTS
 DATE: 05/11/2020 DRAWN: 05/11/2020

Project Name: **RESIDENTIAL FLAT BUILDING**

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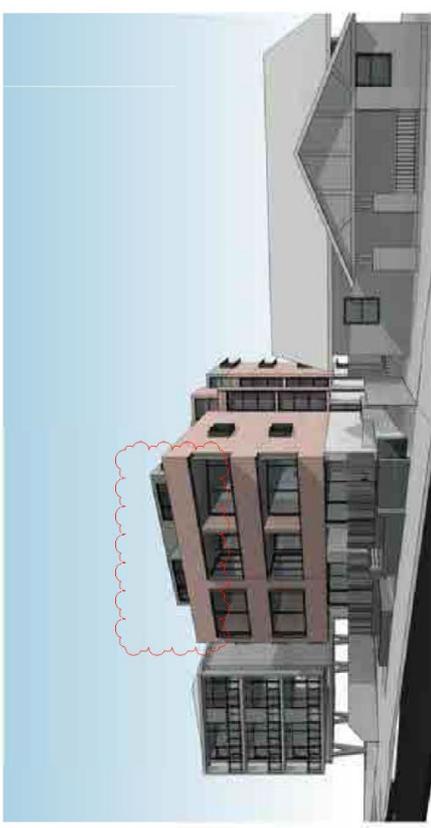
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Project Name: **RESIDENTIAL FLAT BUILDING**

5 Bruce Street Ashfield 2131
 Council File: **3D VIEWS WITH ADJOINING HERITAGE BUILDING**

DA
 Title: **3D VIEWS WITH ADJOINING HERITAGE BUILDING**
 Date:
 DA: **J20470 DA 7032 B**
 Council File: **DA 7032 B**
 Approved By: **DA 7032 B**
 Date: **JUNE 2020**



REFERENCES
 BRUNNEN & ASSOCIATES ARCHITECTS (PVT) PTY LTD
 ARCHITECTURAL SERVICES AND OTHER ADJACENT LAND SERVICES
 REPORT TO: INTERMEDIATE PROFESSIONAL CONSULTANT

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STREET VIEW FROM SOUTH OF BRUCE STREET



STREET VIEW FROM NORTH OF BRUCE STREET

A. SUBJECT GENERAL AGREEMENTS
 Title, Date, Description



STREET VIEW FROM SOUTH OF BRUCE STREET



STREET VIEW FROM NORTH OF BRUCE STREET

DA	Drawn by	Rev.
J20470	7033	A
SP	Rev.	DATE
		JUNE 2020

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 2. THIS PLAN IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION.
 3. THIS PLAN IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION.
 4. THIS PLAN IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION.
 5. THIS PLAN IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION.



AGS STORAGE REQUIREMENT:
 1 Bedroom Apartments - 6m³
 2 Bedroom Apartments - 8m³
 3+ Bedroom Apartments - 10m³
 At least 5% of the required storage to be located within the apartment.

UNIT STORAGE

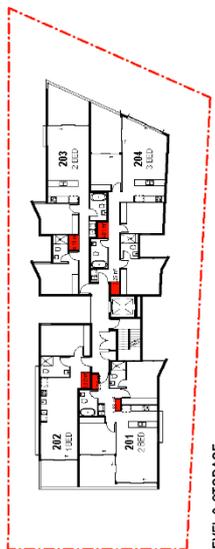
3. 50/100/1 GENERAL APARTMENTS
 4. 6/1/1/3/3 GENERAL APARTMENTS
 5. 1/1/1/1/1 GENERAL APARTMENTS
 6. 1/1/1/1/1 GENERAL APARTMENTS
 7. 1/1/1/1/1 GENERAL APARTMENTS
 8. 1/1/1/1/1 GENERAL APARTMENTS
 9. 1/1/1/1/1 GENERAL APARTMENTS
 10. 1/1/1/1/1 GENERAL APARTMENTS

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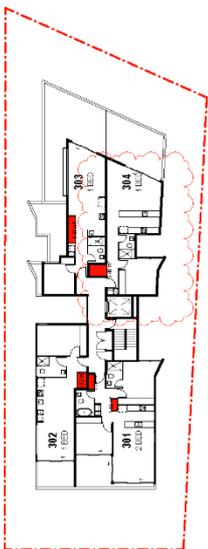


RESIDENTIAL FLAT BUILDING
 5 Bank Street (off B6/2/31)
 PARKS TW
 UNIT STORAGE

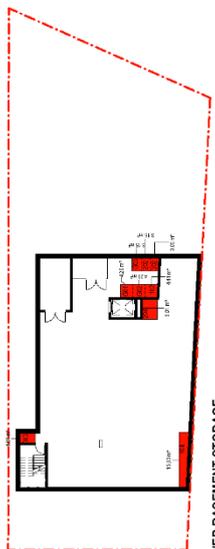
DA
 2020 DA 7051 B
 DATE: 20/06/2020
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]
 DATE: 20/06/2020



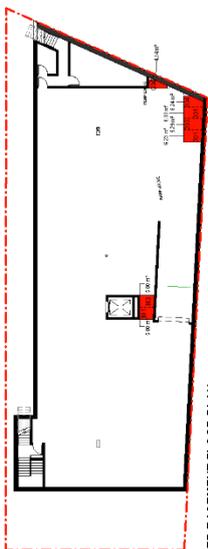
5 LEVEL 2 STORAGE
 1:200 @A1 1:400 @A3



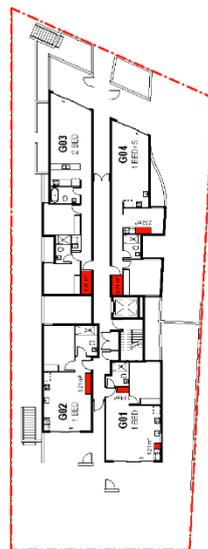
6 LEVEL 3 STORAGE
 1:200 @A1 1:400 @A3



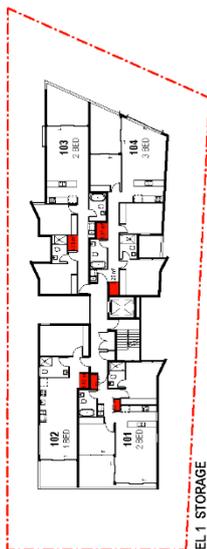
1 LOWER BASEMENT STORAGE
 1:200 @A1 1:400 @A3



2 UPPER BASEMENT FLOOR PLAN
 1:200 @A1 1:400 @A3



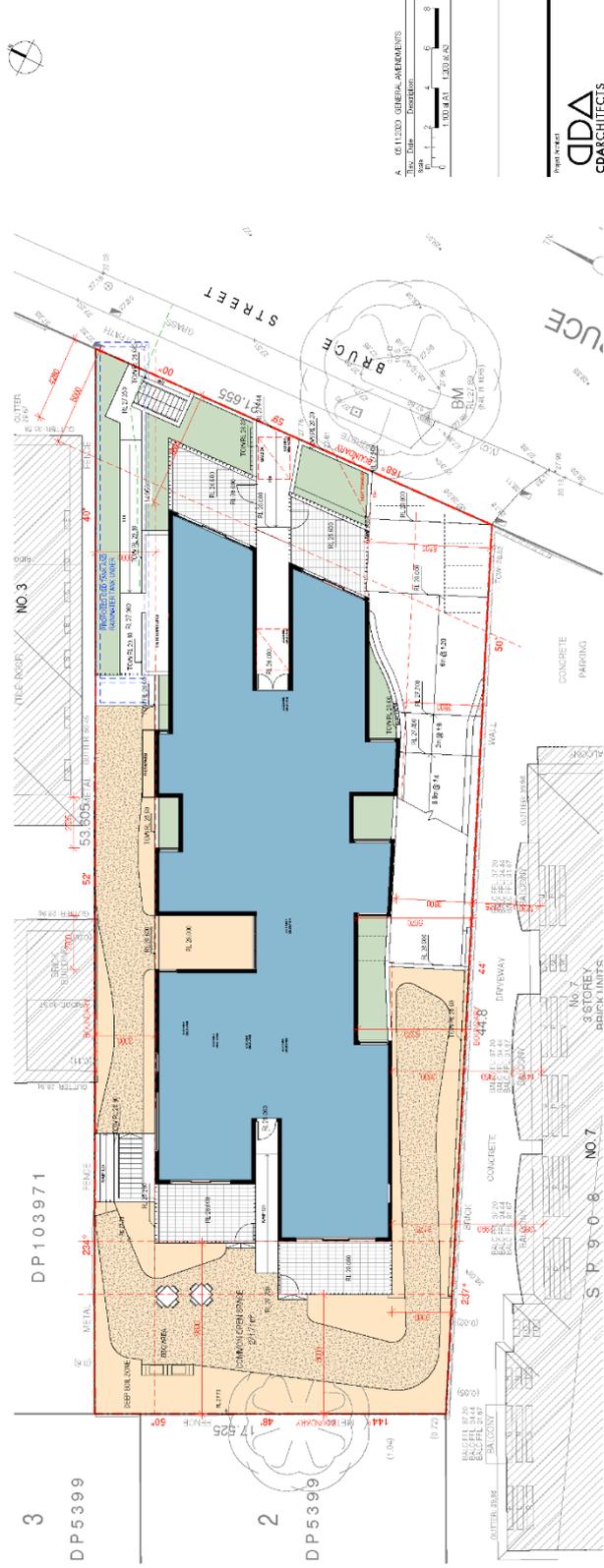
3 GROUND FLOOR STORAGE
 1:200 @A1 1:400 @A3



4 LEVEL 1 STORAGE
 1:200 @A1 1:400 @A3

ROOM NUMBER	UNIT STORAGE	BASEMENT STORAGE	TOTAL STORAGE
G01	3.05 m ³	4.20 m ³	7.25 m ³
G02	3.21 m ³	4.20 m ³	7.41 m ³
G03	6.41 m ³	3.15 m ³	9.56 m ³
G04	8.23 m ³	4.44 m ³	12.37 m ³
101	4.42 m ³	5.00 m ³	9.42 m ³
102	3.82 m ³	4.41 m ³	8.23 m ³
103	4.13 m ³	5.00 m ³	9.13 m ³
104	8.06 m ³	15.00 m ³	23.06 m ³
201	4.42 m ³	18.23 m ³	19.65 m ³
202	3.82 m ³	3.15 m ³	6.97 m ³
203	4.13 m ³	5.78 m ³	9.92 m ³
204	8.06 m ³	9.01 m ³	17.07 m ³
301	4.42 m ³	6.00 m ³	10.42 m ³
302	3.82 m ³	3.05 m ³	6.87 m ³
303	5.00 m ³	4.07 m ³	9.07 m ³
304	5.40 m ³	6.24 m ³	11.64 m ³

NOTES
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 3. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.
 4. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.
 5. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.



1 COMMON OPEN SPACE CALCULATION
 1:100 at A1 1:200 at A3

COMMON OPEN SPACE

SITE AREA	621.8m ²
PERMITTED FLOOR AREA	108,487m ²
PERMITTED FLOOR AREA PER COMMON OPEN SPACE	238.6m ²
PROPOSED AREA	257.0m ² (80%)
COMPUTED VALUE	

A. COLLECTED GENERAL REQUIREMENTS
 1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
 2. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.

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 FAX: (02) 9557 2001
 WWW.CDIDA.COM.AU



5 Bruce Street (A1) 1:100 at A1
 COMMON OPEN SPACE CALCULATION

DA	DA 7052	Rev.	01
Date	24/04/20	By	DA
Drawn by	J20470	Checked by	DA 7052
Approved by	DA	Authority	DA
Date	24/04/20	Project	J20470
Scale	1:100 at A1	Sheet	1 of 1

Attachment C- Existing Use Rights – Memorandum of Advice

C-CORP NOMINEES

v

INNER WEST COUNCIL

RE: 5 BRUCE STREET, ASHFIELD

MEMORANDUM OF ADVICE

1. My instructing solicitors act for C-Corp Nominees Pty Ltd, which is an applicant for development approval for a four-storey residential flat building at 5 Bruce Street, Ashfield.
2. The sole question posed for my consideration is whether or not the property at 5 Bruce Street enjoys existing use rights for the use (or purpose) of *residential flats*.
3. The subject land is zoned R2 Low Density Residential pursuant to the Ashfield LEP 2013, under which the use of “residential flat building” is prohibited. That prohibition is only avoided if it can be established that the subject site enjoys existing use rights.

Legislative Scheme

4. The *Environmental Planning and Assessment Act 1979* defines what type of use is an *existing use*, and what may contain its operation into the future:

“4.65 Definition of “existing use”

(cf previous s 106)

In this Division, “**existing use**” means--

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and
- (b) the use of a building, work or land--

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- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

4.66 Continuance of and limitations on existing use

(cf previous s 107)

(1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

(2) Nothing in subsection (1) authorises--

- (a) any alteration or extension to or rebuilding of a building or work, or
- (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
- (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
- (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or
- (e) the continuance of the use therein mentioned where that use is abandoned.

(3) Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

(4) During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months in subsection (3) is taken to be a reference to 3 years.

Regulations respecting existing use

4.67 Regulations respecting existing use

(cf previous s 108)

- (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to--
 - (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and
 - (b) the change of an existing use to another use, and
 - (c) the enlargement or expansion or intensification of an existing use.
 - (2) The provisions (in this section referred to as "**the incorporated provisions**") of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.
 - (3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.
 - (4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.”
5. The principles relating to an existing use, and characterising the *lawful purpose* of the purported object of the use, have been addressed and collated by judges of the Land and Environment Court on a number of occasions:¹
- (i) The *lawful purpose* either pursuant to a development approval, or a use which did not require consent; requires a process of characterisation, in the abstract.²
 - (ii) The purpose of existing use provisions is to allow continuation of a use of land for the purpose for which it was used immediately before a prohibition.

¹ See Biscoe J in *Warlam v Marrickville Council* (2009) 165 LGERA 184 [17]-[19]; and Hobson J in *Coastplan Consulting v Central Coast Council* [2018] NSWLEC 47 [19]-[24].

² See *Warlam, op cit*, at [17]

- (iii) Claimed *existing use rights* are to be construed broadly – as literally construed as the language in this context allows.³

There has been continuing emphasis upon is rights being *construed broadly*.⁴

- (iv) The characterisation of the purpose of the existing use is not to be done *through a meticulous examination of the details of the activity, but with regard to their purpose*.⁵
- (v) However, a broad interpretation is not to be *so general that the characterisation can embrace activities, transactions or processes which differ in kind from the use which the activities etc as a class have made of the land*.⁶
- (vi) The claimed existing use rights are to be construed by reference to the facts and context at the time of the grant of approval or the lawful commencement of the use.⁷
- (vii) It has been suggested that a useful criterion when enquiring into what is an appropriate characterisation of *purpose of the use* is one which would appeal “*to practical minds*”.⁸
- (viii) Once an existing use right is found to be enjoyed by identified land, the benefit of that *use* extends to the whole of the land and is not limited to any particular footprint upon which the use might have previously been carried out.⁹

³ *Warlam, op cit*, at [18](c)

⁴ *Jojeni Investments v Mosman MC* (2015) 89 NSWLR 76 at [75]

⁵ Per Robson J, *Coastplan Consulting, op cit*, at [21]; *Royal Motor Yacht Club v Northern Beaches Council* [2017] NSWLEC 56 at [19]-[20].

⁶ *Royal Agricultural Society v Sydney CC* (1987) 61 LGRA 305 at 310-311

⁷ Per *Coastplan, op cit*, referring to *Ashfield v Armstrong* [2002] NSWCA 269; *Grace v The Thomas Street Café* (2007) 159 LGERA 57 at [70].

⁸ *Warlam, op cit*, at [18](g), referring to well-established authority; and see *T & K Berry v Wollongong Council* [2018] NSWLEC 201 at [34].

⁹ *Saffioti v Kiama Council* [2018] NSWLEC 146; *Dosan v Rockdale Council* [2001] NSWLEC 252; *Doueih v Randwick Council* [2005] NSWLEC 527.

6. Hence there are two steps in assessing whether or not an existing use entitlement exists:
- (a) first, an identification of the purpose for which the land was used at the date of the planning regulation which first prohibited that use; and
 - (b) second, identifying whether the use after the introduction of the planning constraint (or prohibition) is either generally the same purpose; or whether the new proposed use also is categorised as the *same purpose*.

(Although I have reproduced the provisions of ss.4.66 and 4.67 above, their reference to and the consideration of “*enlargement, expansion or intensification*” is not the subject of the present Advice.)

The history of use

7. Inner West Council wrote to the architects for the applicant for consent on 21 October 2020 (Assistant Planner Mr Gray) raising issues with the claimed existing use rights. The Council asserted:
- (i) it had not been adequately demonstrated that the existing use sought was lawfully commenced;
 - (ii) it had not been adequately demonstrated that continuance of the existing use had been established; and
 - (iii) an existing use of flats “... *did not allow for the proposed use of a residential flat building*”.
8. Further, Council’s letter sought legal advice as to the same effect, *viz*:
- (a) establishing that the use was lawfully commenced;
 - (b) [to establish] it is a use that is currently prohibited; and

- (c) it has not been abandoned; and
- (d) it is a use *consistent with the proposed development*.

The structure and use at 5 Bruce Street

9. Mr Stephen Davies, a highly regarded and experienced heritage consultant, has provided a lengthy Heritage Impact Statement (Urbis, 30 July 2020). The following may be extracted from the contents of his report:
- (i) The original two-storey building was constructed somewhere in the 1880s.
 - (ii) There had been several additions to the building in the 1920s and in the 1980s/90s.
 - (iii) Internally the building is divided into two flats, one on the ground floor and one on the first floor.
 - (iv) Some of the photographs in the report show aspects or features of portions of the structure on the site, dating back to the 1880s.
10. As to the use of the site, the evolution of its history is set out in the HIS in considerable detail (pp.19-22):
- (i) By 1885 a residence called “*Eureka*” had been constructed on the site (this, by deduction from the photographs of the rear of the property, was the original two-storey construction), portions of which remain.
 - (ii) Between 1904 and 1915 the residence was used as a school known as Katandra Cottage.
 - (iii) Somewhere in the mid-1920s the residence was converted to flats, known as Katandra Flats. This designation for use as flats is confirmed by the Sands Postal Directory entry for 1924 showing “*Katandra Flats*”, which was repeated for 1925 and 1930.

- (iv) In 1926 the property was purchased by Ralph and Nelly Sewell, with them occupying one of the flats (again identified in the Sands Directory).
 - (v) In November 1927 there was an advertisement in the Sydney Morning Herald for the availability for lease of each of the flats.
 - (vi) After the deaths of Nelly and Ralph Sewell in 1946, the property passed to Ernest Sewell and Reginal Thornton, and subsequently to Christopher and Norman Whitty, both teachers; they owned the property until 1972 when it was transferred to Mary Kolman; then in 1977 it was transferred to Lucio and Grace Lo Surdo; and in 1984 to the Mokdassi family.
11. During the Mokdassi family ownership, Council's records contain plans of a variety of "*alterations and additions*" they sought approval for. Importantly, plans show proposed additions to the original structure – and more importantly for present purposes, their designation as separate dwellings/flats.

Prohibition

12. The subject property is zoned under the extant Ashfield LEP 2013 R2 Low Density Residential. A prohibited use in that zoning is "*Residential Accommodation*".
13. In the Dictionary to the LEP, *residential accommodation* includes, *inter alia*, "*residential flat buildings*"; they are defined as "*a building containing three or more dwellings but does not include an attached dwelling or multi-dwelling housing*".
14. This proscription on the now proposed use came into effect on the date on which Ashfield LEP 2013 was published on the NSW Legislation website. That would appear to have been 23 December 2013.
15. To answer the question of existence of existing use rights, one needs to identify the first point in time when the use of flats, or residential flats, became prohibited.

Presently, the only Instrument which can be identified prior to the Ashfield LEP 2013 is the Ashfield LEP 1985. Pursuant to that earlier LEP, the subject premises were zoned 2A, and the use of residential flat buildings under it was prohibited in that zoning.

At the time of preparing this Memorandum, Mr Betros, Town Planner, has been unable to source instruments earlier than the 1985 LEP.

However, the acceptance by Council in its records (see the detail in the following paragraphs) indicates that Council's officers with carriage of a variety of applications between 1984 and 1987 accepted through enquiries they made (which are not detailed) that between 1934 and 1961 the subject premises were used as *flats* – which can only refer, on a common sense interpretation or construction, to *residential flats*.

Hence, on that analysis, it is incontrovertible that there is a point in time prior to the 1985 LEP when the use for residential flats was lawful, and at a point sometime after either 1924 or 1934, that use became prohibited. Further, the use for residential flat dwellings/building has continued unabated up to the present.

The history of user

16. I am instructed that there is cogent evidence available from Mokdassi family, the proprietors of the subject property since 1984, of the use of the two flats as residential dwellings since that time. I have been briefed with a variety of invoices and bills for utilities and the like being supplied to the separate units at the subject property in recent times (gas, electricity, water and the internet).
17. At the earliest part of the time spectrum, we know that in 1924 the premises were converted into flats known as "*Katandra Flats*" (per the Sands Directory mentioned earlier); and that that use per the Sands Directory continued until 1930.
18. In respect of the interregnum from 1930 through to 1984, my instructing solicitors have provided copies of documents contained in the Council's file for the subject property. Council's own records identify and confirm the use of the subject premises

as “flats” or “residential flat building” from 22 August 1934 through to 27 March 1987:

- (i) In the Building Application lodged 23 March 1984 (104/84) (an application for the construction of garages), the property is described as *two-storey residential flat building* in the reporting officer’s notes on two occasions.
- (ii) In a further Building Application lodged 12 December 1985 (421/85) for alterations and additions, the premises are described as a “*two-storey cement rendered residential flat building...*”.

Importantly, Council’s notes record breach of fire safety requirements within the *residential flat building*, identifying rectification work to be done.

19. Of greater importance, however, is a note under the hand of the reporting officer (17 March 1986 (Application No 421/85)) which reads as follows:

*“The premises has existing use rights as Class II (Res Flat Building).
The following evaluation records are listed for c/s information:*

<i>Date</i>	<i>Description / improvements</i>
<i>1961</i>	<i>Flats</i>
<i>4/10/55</i>	<i>Flats</i>
<i>6/5/46</i>	<i>Flats (stamped 1947, 1948, 1949)</i>
<i>11/11/43</i>	<i>Flats (stamped 1944, 1945, 1946)</i>
<i>22/8/34</i>	<i>Flats”</i>

A further report on this Application again refers to the premises as an:

“existing two-storey residential building ... (zoned Residential 2(a) in the Ashfield LEP 1985) ... the subject premises has been previously converted into three separate occupancies and at present has two separate kitchens, one located on each floor...

A search of Council records has revealed that the subject premises has been used for the purposes of “flats” as early as August 1934 and is therefore considered to have “existing use rights”... (10 April 1986)

20. On 1 August 1986 a further Building Application was lodged (277/86) where the existing type of building is described as “two flats”, for the nominated purpose of “residential”.
21. The author of Council’s note (27 March 1987) attached to this Application recites the earlier history and conclusion of the premises enjoying existing use rights with the span of dates from 1934-1961 as nominated in the note of 17 March 1986. The author notes that under Ashfield LEP 1985, that use is a *non-conforming use*.

Further, the Council Officer’s note of 27 March 1987 records previous conversion “into three separate occupations and at present has two separate kitchens...” and notes an earlier report to the Principal Health and Building Surveyor of 12 March 1987 which confirmed that “the premises have been used for the purpose of residential flats as early as 1934 and therefore is considered to have “existing use rights””.

22. Hence, from Council’s own records, it can be concluded comfortably, to the requisite standard, that the subject premises have enjoyed existing use rights at least since 22 August 1934, and in all probability from the designation of *Katandra Flats* in 1924.

Flats and residential flat building

23. This inquiry or request on the part of the Council is simply answered.
24. There can be no argument that the subject premises have been used, either from 1934 or 1924, as flats for residential purposes. A literal and common sense construction would accept that the purpose now pursued for consent of residential flat building when contrasted or compared with the extant use or purpose, lead inexorably to the conclusion that the use and purpose was and is the same.
25. A similar circumstance obtained and was considered by the Court of Appeal in *Jojeni Investments v Mosman MC*.¹⁰ There two flats identified as “two separate residences” in a building had been so used for 80 years. It was sought to demolish the existing

¹⁰ (2015) 89 NSWLR 760

structure and construct three residential flats as a residential flat building – a use then prohibited under the Mosman LEP.

Leeming JA, when dealing with the characterisation of the existing use (and referring to the oft-cited authorities, some of which I have mentioned above) concluded:

“The appropriate level of generality to describe the existing use has a building containing “flats” as opposed to the Council’s submission of a building containing “two” flats...” [77]

His Honour rejected any analysis which pointed to the *number of flats*: [78]; rather, the use was *residential flats*, hence they were contained in a *residential flat building*: [78].

Leeming JA then referred to the (again oft-cited) High Court decision in *Woollahra MC v Banool Developments*.¹¹ This again supported construction or interpretation with a level of generality, without specificity: [83]. His Honour also rejected narrow characterisation by way of reference to the manner or style of user within the structure: [85].

Finally, his Honour noted that in *Ashfield MC v Armstrong*¹² it had been accepted that the characterisation should simply be of a *residential flat building*, rather than as a building containing four flats: [86].

In *Jojeni*, the Council’s argument based on s.4.70 (the previous s.109B) was rejected. The Court, to the contrary, concluded that the prohibition there raised did not run to prevent the continuation of an existing use entitlement otherwise established on the facts: [102] and [106].

By analogy, the same construction would be apposite in the present circumstances, leading to the same conclusion, namely, that the subject premises enjoy existing use rights as a residential flat building.

¹¹ (1973) 129 CLR 138

¹² (2002) 122 LGERA 105

Conclusion

26. In answer to the questions upon which the Council sought legal advice (paragraph 8 above), and which incorporates the issues raised by Council (paragraph 7 above):

- (a) As to lawful commencement, the use in all probability (bearing in mind the standard not beyond reasonable doubt but on the balance of probabilities) is that the use of the structure as separate residential flats, commenced in 1924; Council records that that use commenced in 1934, but the material upon which that or those observations by Council Officers was made is not available to us.

Whether the use of residential flats at the subject premises commenced in 1924 or 1934, it is clear that at that time, that was a lawful use.

- (b) As to the use of *residential flats* being currently prohibited, this is found in the Land Use Table for the zoning of the subject premises, viz the R2 Low Density Residential zoning. The prohibition in that zoning of “*Residential Accommodation*” incorporates, due to the definition in the Dictionary to the LEP, a residential flat building. Hence the use is presently prohibited under the 2013 LEP.
- (c) As to *abandonment* of the use of residential flats in the subject premises, all of the evidence points to that use having commenced in 1924 and has continued up until the present. Most importantly, Council has accepted that history in the notes I have referred to above, from 1934 to 1986.
- (d) The present proposal for residential flat building is a use which is consistent with, and replicates, the historical existing use entitlement.

PETER McEWEN SC

Chambers,
9 November 2020

C-CORP NOMINEES

v

INNER WEST COUNCIL

RE: 5 BRUCE STREET, ASHFIELD

MEMORANDUM OF ADVICE

Sanford Legal
Lawyers
DX 8501
BURWOOD

Attention: John Chidiac

Email: john@sanfordlegal.com.au

Statement

I, Badwa Mokdassi, do solemnly and sincerely declare that:

1. I was born on 20 May 1965.
2. I live at 88 Australia Street, Bass Hill NSW 2197, in the State of New South Wales.
3. I note C-Corp Nominees Pty Ltd ("C-Corp") is the registered proprietor of the property at 5 Bruce Street, Ashfield NSW 2131 ("**the Property**").
4. C-Corp has provided me a copy of a letter from Inner West Council ("IWC") dated 22 December 2020. Annexed hereto and marked with the letter 'A' is a copy of that letter.
5. I have been requested by C-Corp to confirm the "**use**" of the Property during the period requested by IWC, being 1986 to date.

Existing Use Rights

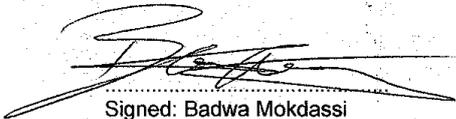
6. I set out below my response to the letter from IWC as follows:
 - a. On 22 March 1984, I purchased 5 Bruce Street, Ashfield together with my parents Joseph and Chahida Mokdassi and brothers Assia, Ghassen and Michael. At that time I was 19 years old.
 - b. My family purchased the Property at the time as it was a residential flat building comprising of one upper floor flat and one ground floor flat (2 flats in total). Our family purchased it because we wanted the benefit of renting the upper floor flat to earn extra income, whilst our family lived in the ground floor flat.
 - c. Our family lived in the ground floor flat from the time we purchased the Property until sometime in 1996, when my brothers got married and moved out. My father passed away in 2005, however my mother continued to live in the ground floor flat until she passed away in 2017. After she passed away, the ground floor flat was rented to Mr Augustinho Soares and his family which he has continuously rented and continues to do so.

- d. From 22 March 1984 until we sold the Property to C-Corp on 6 May 2020, we rented the first floor flat to many tenants over the time. The rent moneys were paid to my parents. My brother and I repaired the flats over time as and when they needed to be. My family paid their own electricity, gas and water bills. The tenants on the upper floor flat (first floor) paid their own electricity, gas, internet and water bills.
- e. After my parents passed away, my brothers and I inherited their interest in the Property.
- f. The flats had their own electricity and gas metres. The water bills issued by Sydney Water were addressed as "Accounts for Flats". I understand that the above gas, electricity, internet and water bills have been supplied to IWC as part of C-Corp's development application.
- g. I confirm that the flats during our time as registered proprietors of the Property were always:
 - i. In "use" as flats; and
 - ii. The "use" of flats was never abandoned. When a tenant vacated the first floor flat, it was advertised for lease/rent and a new tenant took up occupancy promptly.
- h. My brothers and I sold the Property to C-Corp on 6 May 2020. At the time the Property was sold, the first floor flat had been rented by Mr James Ryan and his wife since 20 October 2012 to date and continuing and the ground floor flat has been rented by Mrs Augustinho Saores and his family since 2017 to date and continuing.

Development Applications during the period My family owned the Property

7. During the period my family owned the Property, we submitted a variety of "alterations and additions" to Council for approval. The plans show proposed additions to the original structure – and more importantly for present purposes, the designation as separate dwellings/flats.
8. In respect of Building Applications I lodged on behalf of my parents, I can confirm that:

- (i) A Building Application was lodged on 23 March 1984 (104-84) (an application for construction of garages), the Property was described as "2-storey residential flat building".
 - (ii) In a further Building Application lodged 12 December 1985 (421/85) for alterations and additions, the Property was described as "2-storey cement rendered residential flat building".
 - (iii) I recall sometime after 1985 where council's officers attended the Property to record a breach of fire safety requirements within a residential flat building, identifying rectification work to be done.
 - (iv) Sometime in August 1986, my family lodged a further Building Application (277/86) where the existing type of building was described as "2 flats", for the nominated purpose of "residential".
9. In relation to the development applications referred to above, my parents have maintained copies of the Building Applications which I have retained copies of and am familiar with. The development applications are also within council's files/records.
10. The Property continues to be used as a residential flat building to date.



Signed: Badwa Mokdassi

Date: 23 December 2020.