





# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2022/0938
<b>Address</b>	35 Church Street BIRCHGROVE
<b>Proposal</b>	Alterations and additions to existing multi dwelling housing development, including to provide second floor additions to each of the five dwellings, and associated works
<b>Date of Lodgement</b>	10 November 2022
<b>Applicant</b>	The Owners of Strata Plan No 10138
<b>Owner</b>	The Owners of Strata Plan No 10138
<b>Number of Submissions</b>	Initial: 5
<b>Value of works</b>	\$1,960,833.00
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10%
<b>Main Issues</b>	Non-compliance with FSR development standard
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Section 4.6 Exception to Development Standards
<b>Attachment D</b>	Statement of Heritage Significance



**LOCALITY MAP**

Subject Site		Objectors		↑ N
Notified Area		Supporters		

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 alterations and additions to an existing multi dwelling housing development, including to provide second floor additions to each of the five dwellings and associated works at 35 Church Street Birchgrove.

The application was notified to surrounding properties and 5 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Non-compliance with Floor Space Ratio development standard.
- Potential impact to amenity of adjoining properties.

The non-compliances are acceptable as the proposal is considered to be compatible with the streetscape and the heritage conservation area and will not result in any adverse amenity impacts to the adjoining properties and therefore the application is recommended for approval.

## 2. Proposal

The proposal is for alterations and additions to each of the 5 townhouses including the following:

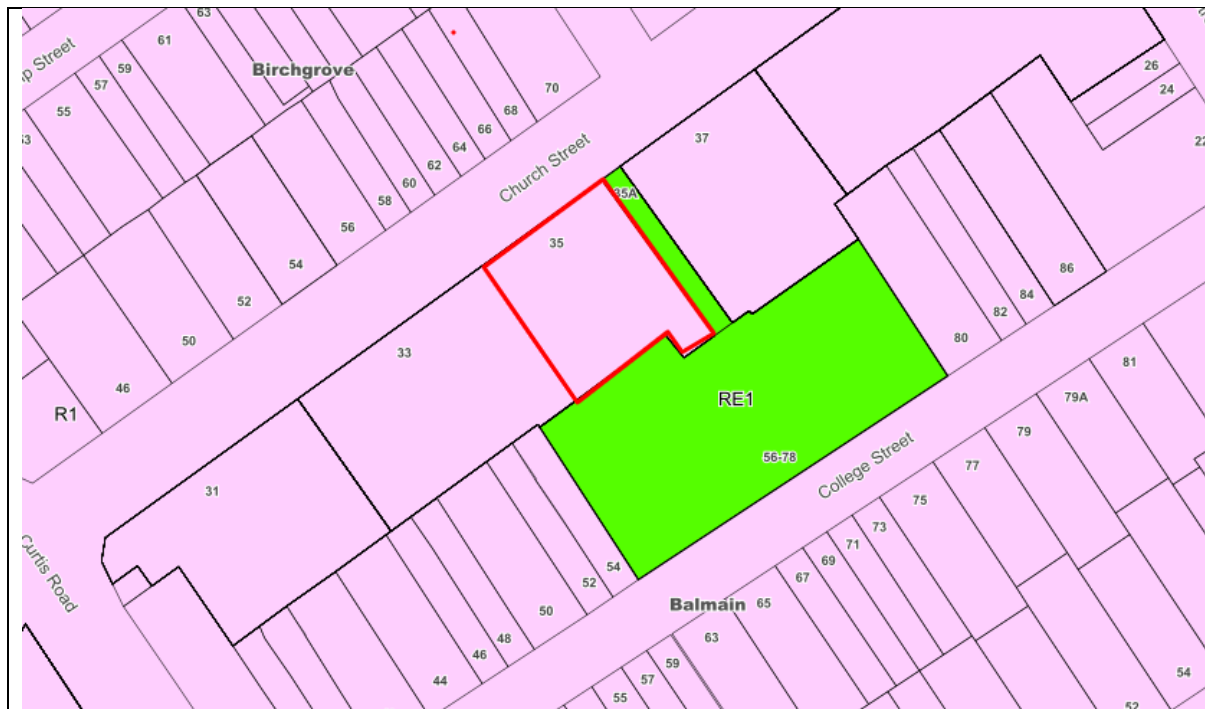
- Landscaping at front and rear
- A new external stair to the roof terrace of Dwelling 5, a timber posted and timber framed pergola trellis over part of each of the carport roof terraces at the front.
- The windows of the first floor bedrooms at the rear are to be replaced with sliding doors in addition to small balconies at the rear facing towards the reserve.
- New second floor additions to each of the dwellings for bedroom /study and bathroom within the attic roof space and dormer windows at the front and rear of the new roof of each dwelling with internal access from the existing first floor level.

## 3. Site Description

The subject site is located on the southern side of Church Street between Curtis Road and Cameron Street. The site consists of one allotment and is generally rectangular in shape with a total area of 650.4 sqm.

The site has a frontage to Church Street of 26.09 metres. The site supports five (5) x two storey townhouses. The adjoining properties support residential flat buildings to the east and the west and adjoins a reserve to the south (College Street playground)

The subject site is not listed as a heritage item. The property is located within a conservation area. The property is identified as a flood prone lot.



37 Church Street

Application	Proposal	Decision & Date
BA/1989/302	Building Application	18/06/1990 Approved

#### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
14 April 2023	Request for additional information letter sent to applicant requesting the following additional information: <ul style="list-style-type: none"> <li>• Additional shadow diagrams</li> <li>• Addition information required in relation to Visual Privacy</li> <li>• Additional information required in relation to Justification for non-compliance with FSR Development Standard</li> </ul>
8 May 2023	Additional information provided: <ul style="list-style-type: none"> <li>• Amended plans that entails addition of privacy measures on the north-east elevation to address visual privacy issues.</li> <li>• Additional shadow diagrams.</li> <li>• Streetscape analysis.</li> <li>• Amended Clause 4.6 exceptions.</li> </ul>

Renotification was not required in accordance with Community Engagement Framework as the changes proposed pose no greater impact than the original application that was notified.

### 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 (EPA Act 1979)*.

#### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

#### 5(a)(i) **State Environmental Planning Policy (Resilience and Hazards) 2021**

##### Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

“(a) it has considered whether the land is contaminated, and  
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and  
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

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

BASIX Certificates for each of the five town houses was submitted with the application and will be referenced in any consent granted.

#### **5(a)(ii) State Environmental Planning Policy (Transport and Infrastructure) 2021**

##### Chapter 2 Infrastructure

##### Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and has been referred for comment for 21 days.

Correspondence from Ausgrid had been received and Ausgrid does not raise any objections to the proposal.

#### **5(a)(iii) Inner West Local Environmental Plan 2022 (IWLEP 2022)**

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.5 - Additional permitted uses for land
- Section 2.7 – Demolition requires development consent
- Section 4.3C – Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 5.3 – Development near zone boundaries
- Section 5.4 – Controls relating to miscellaneous permissible uses
- Section 5.10 – Heritage conservation
- Section 5.21 – Flood planning
- Section 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R1 – General Residential under the *IWLEP 2022*. The *IWLEP 2022* defines the development as:

“**multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building”

The development is permitted with consent within the land use table. The development is with the objectives of the R1 – General residential zone.

Section 4 Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 0.7:1 or 455 sqm	1.02:1 or 663 sqm	207.7 sqm or 45.6%	No
<b>Landscape Area</b> Minimum permissible: 20% or 130 sqm	12.7% or 82.8sqm	47.3 sqm or 36.5%	No
<b>Site Coverage</b> Maximum permissible: 60% or 390 sqm	57% or 370sqm	Complies	Yes

Section 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard/s:

- Clause 4.4 – Floor Space Ratio
- Clause 4.3C(3)(a) – Landscaped areas for residential accommodation in Zone R1

Clause 4.3C(3)(a) – Landscaped areas for residential accommodation in Zone R1

The applicant seeks a variation to the Landscape development standard under Section Clause 4.4 of the *IWLEP 2022* by 36.5% (47.3 sqm). It should be noted that despite the non-compliance, the proposed landscaped area is an improvement to the existing situation where the existing development only provides approximately 29.2 sqm of landscaped area (4.5%).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposal will involve an increase in landscaping on the site and deep soil planning compared with the existing situation. Private open space in the form of balconies and ground level courtyards will be maintained.*
- *The amenity of the adjoining and adjacent properties and the locality will be unaffected by the existing breach of the landscaped area standard and considering even though there will continue to be a breach of the minimum landscaped area standard, this proposal will involve a net increase in landscaped area on the subject site by the removal of some hard surfaces, particularly at the rear of the site.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1- General Residential Zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposal provides for the housing needs of the community.
- The proposal contributes to providing for a variety of housing types and densities.
- The proposal provides additional floor area so as to improve opportunities to work from home.
- The proposal is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The landscape area provides for adequate amenity for residents of the site and is comparable with adjoining development.
- The proposal protects the amenity of existing and future residents and the neighbourhood.

It is considered the development is in the public interest because it is consistent with the objectives of the Landscaped Area and Site Coverage development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The site would continue to provide acceptable amount of landscaped areas for each dwelling and is an improvement to the existing situation.
- The proposal maintains the existing percentage of site coverage.
- The proposal maintains the character of the neighbourhood and is consistent with adjoining development
- The proposal maintains a reasonable level of private open space for occupants of each of the townhouses.

#### Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Section Clause 4.4 of the *IWLEP 2022* by 45.6% (207.7 sqm).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The building will remain compatible with the existing and desired future character of the area in terms of its height and bulk and size. The site is surrounded by four storey residential flat buildings on this side of Church Street and the attic roof addition will not be excessive in height and bulk and scale and the building will still be lower in height and scale compared with surrounding development. By comparison, the two adjoining residential flat developments at 33 Church Street and 37 Church Street are developed with four storey residential flat buildings. 31 Church Street and 39 Church Street are also development with similar four storey residential flat buildings.*
- *The adverse impacts from the development are minimised by the pitched roof form of the attic roof addition and the positioning of the roof above the existing ground and first floor building footprint. In this way the front and rear and side setbacks are maintained. Views and solar access and privacy of adjoining residential properties will be maintained. The bulk and scale of the building is also minimised by the in roof design of the upper level. This is a more skilful design for achieving additional floor space within a pitched roof, compared to the high and bulky, vertically proportioned four storey developments surrounding the site, on this side of Church Street.*
- *The amenity of the adjoining and adjacent properties will be unaffected by the proposed attic roof addition and there will be no adverse impact on the existing level of solar access, privacy and views of residents of the adjoining properties as a consequence of the breach of the floor space ratio standard*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1- General Residential Zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposal provides for the housing needs of the community.
- The proposal contributes to providing for a variety of housing types and densities.
- The proposal provides additional floor area so as to improve opportunities to work from home.
- The proposal is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposal protects the amenity of existing and future residents and the neighbourhood.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The density of the proposal reflects its adjoining context and locality, considering the lot size is significantly smaller than other lots within the locale.
- The proposal is an appropriate transition between development of different densities
- The proposal minimises adverse impacts on the locality



The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio and Landscaped Area development standards and it is recommended the Section 4.6 exception be granted.

Clause 5.10 – Heritage Conservation

As discuss in more detail in later section of the report under Section 5(d) of this report, the proposal is considered to have acceptable impacts on the Heritage Conservation Area, and is therefore consistent with the objectives under this clause.

5(c) Draft Environmental Planning Instruments

There are no draft environmental planning instruments that applies to this application.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

<b>LDCP2013</b>	<b>Compliance</b>
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	Yes
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and Additions	Yes – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes – see discussion
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes – see discussion
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A

C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Yes – see discussion
C1.21 Green Roofs and Green Living Walls	N/A
<b>Part C: Place – Section 2 Urban Character</b>	
C.2.2.2.5: Mort Bay Distinctive Neighbourhood and C2.2.2.5(a) Lower Slopes Sub Area	Yes – see discussion
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes – see discussion
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.1.5 Foreshore Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	N/A
E1.2.6 Building in the vicinity of a Public Drainage System	Yes
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	Yes

E1.3.2 Foreshore Risk Management	Yes

The following provides discussion of the relevant issues:

C1.3 Alterations and Additions, C1.4 Heritage Conservation Areas and Heritage Items, C.2.2.2.5: Mort Bay Distinctive Neighbourhood and C2.2.2.5(a) Lower Slopes Sub Area

The subject property at 35 Church Street, Birchgrove, is a neutral building located within the Town of Waterview Heritage Conservation Area (C31 in Schedule 5 of the Inner West LEP 2022).

*Clause 5.10: Heritage Conservation* from the Inner West LEP 2022 and *Parts C1.3: Alterations and additions, C1.4: Heritage conservation areas and heritage items, C.2.2.2.5: Mort Bay Distinctive Neighbourhood* and *C2.2.2.5(a) Lower Slopes Sub Area* from the Leichhardt DCP 2013 applies to the proposal.

The drawings prepared by COSO Architecture, dated 19 October 2022, and the Heritage Impact Statement prepared by Longitude Planning Pty Ltd, dated 29 August 2022, were reviewed as part of this assessment.

The proposal includes alterations and additions to an existing multi dwelling housing development, including second floor additions to each of the 5 dwellings, and associated works.

Pre-DA advice was sought for the proposed alterations and additions and associated works to the existing 2 storey multi dwelling housing development, including a second floor level to each dwelling at 35 Church Street, Birchgrove (PDA/2021/0397). The application was referred to Council's heritage specialist who supports the proposal subject to the amendments below. Additional commentary is provided in respect to the drawings submitted with the DA.

1. *It is recommended that the design be amended to incorporate the following design changes:*
  - a. *The proposed timber trellises proposed over the courtyards up to the front boundary are to be set back a minimum of 2.3m from the front boundary.*

**Comment:** Amended.

- b. *The trellises are to remain completely open to the sky, open frame, no roof to ensure they are not enclosed.*

**Comment:** Complies.

2. *The Proposed Materials Palette is to be amended in accordance with the following:*
  - a. *Replace the proposed copper sheeting with corrugated iron roofing (custom orb profile steel).*

**Comment:** The Proposed Materials Palette has not been amended and still proposes copper sheeting for the roofing material. Corrugated iron sheeting was requested because C18 of Part C2.2.2.5 of the DCP encourages the use corrugated iron roofing (custom orb profile steel). The proposed copper sheeting is considered acceptable in this instance because of the contemporary construction of the subject building, which is neutral, and the adjoining buildings

either side, which are also neutral. The patina of age will soften the copper finish and will blend into the surrounding context of the site.

In conclusion, the proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of the Town of Waterview Heritage Conservation Area and is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Inner West LEP 2022 and the relevant objectives and controls in the Leichhardt DCP 2013.

C1.11 Car parking

The following park rates applies to residential developments:

Parking Rates				
Land Use	Residents		Visitors	
	Minimum	Maximum	Minimum	Maximum
Residential				
Single dwelling house	Nil	2 spaces per dwelling house	Nil	Nil
Bed-sit / Studio	Nil	0.5 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
1 bedroom unit	1 space per 3 dwellings	0.5 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
2 bedroom unit	1 space per 2 dwellings	1 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
3+ bedrooms unit	1 space per dwelling	1.2 spaces per dwelling	1 space per 11 dwellings	0.125 spaces dwelling

The proposal will result in each of the dwellings having 3 bedrooms and 2 studies. While the proposal does not propose any additional parking spaces, the proposal will retain the existing 5 spaces which complies with the parking rates specified in C3.11.1 of this part.

C1.14 Tree Management

Council’s Urban Forest Advisor carried out an inspection of the subject property and made the following conclusions:

*“It is noted that the proposal is for alterations and additions to existing multi dwelling housing development, including to provide second floor additions to each of the five dwellings, and associated works.*

*Inspection of the site and a review of the plans has revealed no trees will be affected below ground.*

*However, one (1) Corymbia maculata (Spotted Gum) has been identified within the neighbouring property at 37 Church Street that overhangs the subject property. The tree will require minor pruning of approximately 5% of the total canopy to allow for the second-floor additions to be constructed. This amount of pruning is acceptable and will not have any long-term impacts on the tree.*

*A condition has been included allowing pruning to be undertaken in accordance with the Pruning Specification prepared by Arborliz dated 6 July 2022.”*

In summary, the proposal is satisfactory with regard to tree management subject to the imposition of conditions which have been included in the recommendation.

### C3.2 Site Layout and Building Design

#### *Building Location Zone*

The adjoining properties at 33 Church Street and 37 Church Street are 4 storey residential flat buildings and the proposed attic level will extend beyond the average front and rear alignments of these properties due to the proposed gable roof form.

Pursuant to Control C6 of this part of the Leichhardt DCP 2013, to gain support for the proposed additions, various requirements need to be demonstrated to be met. An assessment of the proposal against these tests is carried out below:

- The proposed building is consistent with the pattern of development in the immediate locality.

Comment: The adjoining properties are 4 storeys in scale and while some elements of the proposed works at the attic level will extend beyond the average front and rear alignments of the adjoining properties, the resultant proposal will result in a form that will be compatible with the existing pattern of development of the existing properties that front Church Street.

- Amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls is achieved.

Comment: As outlined in other parts of this report, the development has no undue adverse impacts on existing view corridors and is satisfactory with respect to solar access and visual privacy controls of the Leichhardt DCP 2013 (see below for a detailed assessment).

- The proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development.

Comment: The amended proposal is considered to be compatible with the existing streetscape, the scale of the surrounding developments and the desired future character of the area.

- The proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping.

Comment: The proposal satisfies this test and is compliant with applicable private open space (POS) controls.

- Retention of existing significant vegetation and opportunities for new significant vegetation is maximised.

Comment: No significant or prescribed trees will be adversely affected.

- The height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.

Comment: As below, the proposed ground floor additions do not comply with the side setback controls at the attic levels. However as the floor to ceiling heights are minimised at 2400mm and the additions will be setback approximately 2.2 metres from the western boundary and 1.4 metres from the eastern boundary, it is considered that there are no adverse visual bulk and scale impacts when viewed from the private open spaces of the adjoining properties.

*Side Setbacks*

The following table outlines compliance with the prescribed side boundary setbacks in relation to the proposed pavilion, which are determined based on the Side Boundary Setbacks Graph as prescribed in this part of the DCP.

Elevation	Wall height (m)	Required Setback (m)	Proposed Setback (m)	Complies (Y / N)
South West	8.3	3.3	2.3	N
North East	8.3	3.3	1.4	N

Pursuant to Clause C3.2 of the Leichhardt DCP 2013, where a proposal seeks a variation of the Side Setback Control Graph, various tests need to be met. These tests are assessed below:

- *The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the Leichhardt DCP 2013 and complies with streetscape and desired future character controls.*

Comment: As discussed in more detail in the heritage assessment in an earlier section of the report, the proposal is considered to be consistent with streetscape and desired future character controls of the Leichhardt DCP 2013.

- *The pattern of development is not adversely compromised.*

Comment: The side wall setbacks and heights of the proposed works will not be out of character with the existing pattern of development on the site, in the street and / or wider area as the surrounding properties that front Church Street are residential flat buildings that are similar or larger in scale to the proposed works.

- *The bulk and scale of the development has been minimised and is acceptable.*

Comment: The maximum internal floor to ceiling heights at the attic level have been minimised at 2400mm and therefore it is considered that the bulk and scale of the proposed attic level is acceptable.

- *The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.*

Comment: As discussed in more detail in later sections of the report, the proposal is acceptable with regard to the solar access and visual privacy controls and will not result in any undue adverse view loss implications.

- *The proposal does not unduly obstruct adjoining properties for maintenance purposes.*

Comment: Satisfactory, the additions will retain the existing available side setback to the eastern and western boundaries.

In light of the above, and in consideration of the development's impact upon the streetscape and amenity impacts for adjoining properties, the proposal is considered to be satisfactory with respect to the provisions and objectives of Part C3.2 of the Leichhardt DCP 2013.

C3.9 Solar Access

Shadow diagrams portraying the shadow cast by the existing structures and the proposed development for the winter solstice were submitted with the application.

The properties adjoining are north-south orientated, therefore the following controls are applicable.

#### **Impact to main living room glazing**

- *C13 Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9am and 3pm during the winter solstice*
- *C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

As the proposed additions will not have any impacts to any north-facing glazing, the proposal complies with the abovementioned controls.

#### **Impact to private open space**

- *C18 Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.*
- *C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

The submitted shadow diagrams indicate that the additional shadows will fall within the subject site, to the reserve that adjoins to the rear and the adjoining site at 33 Church Street between 9am and 3pm during winter solstice and there are no additional impacts to 52 and 54 College Street. Therefore the potential solar access impacts to the residential flat building at 33 Church Street needs to be considered.

#### **Impact to main living room glazing of the residential units at 33 Church Street**

The adjoining site at 33 Church Street shares a similar orientation with the subject site at 35 Church Street where the site is approximately 35 degrees west of the True North and therefore for the purposes of solar access assessment, the site is considered to be of north-south orientation. The front elevation facing the street would be considered as the northern elevation.

As outlined above, the living room north-facing glazing protected under C13 and the proposed works will not result in any additional overshadowing to the windows on the northern elevation so no north-facing glazing is impacted. Notwithstanding this, the shadow diagrams indicate that the only windows that would be impacted will be high level windows associated with bathrooms. Therefore the proposed works will not result in any adverse impacts with regard to impact to glazing.

#### **Impact to private open space of the residential units at 33 Church Street**

The shadow diagrams provided demonstrate that the proposed works will not generate any additional overshadowing to the balconies of the residential units and therefore the proposed works will not result in any additional overshadowing to the private open spaces of the residential units.

There is a communal open space/lawn at 33 Church Street that is located on the eastern portion of the site and additional overshadowing will be generated to this communal space. This communal open space is approximately 198 sqm and the communal open space will continue to receive solar access for more than 50% of its area between 1pm and 3pm and there are no additional impacts at 9am. There is an additional 8.8 sqm of overshadowing at 10am which results in approximately 56 sqm of solar access at 11am (28%)., There is an additional 21sqm of overshadowing which results in approximately 60sqm of solar access at 12pm (30%) and there is an additional 36sqm of overshadowing which results in approximately 72sqm of solar access at 12pm (36%). Therefore the proposal technically does not comply with C18 and C19 as the proposal only achieves solar access for 50% of the communal open space for 2 hours between 1pm and 3pm

***Assessing the impact of development on the solar access of neighbours:***

In assessing the reasonableness of solar access impact to adjoining properties, and in particular, in any situation where controls are sought to be varied, Council will also have regard to the ease or difficulty in achieving the nominated controls having regard to:

a. The reasonableness of the development overall, in terms of compliance with other standards and controls concerned with the control of building bulk and having regard to the general form of surrounding development.

Comment: As previously noted and mentioned in this report, the proposal is located next to 4 storey residential flat buildings and the proposal is considered to be compatible with the pattern of development of the properties in Church Street despite the non-compliance with Floor Space Ratio. The proposal development complies with Site Coverage and increases the amount of Landscaped Area. Overall, subject to conditions, the proposal is considered reasonable and will have acceptable bulk and scale impacts.

b. Site orientation;

Comment: The subject and adjoining sites have north-south orientation, but church street has an east-facing communal open space and due to the location of the communal open space any additions is likely to have some form of impact of overshadowing in mid-winter to this area as east-facing communal open spaces is prone to overshadowing.

c. The relative levels at which the dwellings are constructed.

Comment: The communal open space at 33 Church Street is approximately 600mm higher than the paved area of the western part of No.35 Church Street.

d. The degree of skill employed in the design to minimise impact and whether reasonably available alternative design solutions would produce a superior result.

Comment: The amended proposal is considered to be sensitively designed despite the non-compliance of Floor Space Ratio. The proposal will result in a three storey development which is lower in height to the 4 storey residential flat buildings directly adjoining to the east and the west and the form of the third level has been designed in the form of a gable-roof form to minimise the bulk and scale impacts from the front and the back and the additions will be located approximately 2.3 metres from the boundary shared with No. 33 Church Stret.

Despite the non-compliance in relation to the solar access controls, the communal open space at No. 33 Church will continue to receive solar access to 50% of its area between 1pm and 3pm for 2 hours. And despite the non-compliance, the affected communal open space will continue to receive solar access to at least 56 sqm between 10am and 12pm including 72 sqm at 12pm. Due the orientation of the affected site, the location and size of the affected communal space, it is considered that achieving solar access for more than 50% of the area for 2 hours and achieving solar access to at least 72 sqm of the communal for 3 hours is reasonable given the circumstances.



C3.10 View

Objection from the properties at 52, 54 College Street and 33 Church Street had been received in relation to potential view loss.

*52 and 54 College Street*

Submissions from 52 and 54 College Street had been received which states:

*“The proposal will have significant impact of the views from 52 & 54 College St blocking their only view of the rooftops and treescape of the neighbourhood. Remembering that all views to the rear are completely blocked by 33 Church St four story units”*

And the following image was provided as part of the submission.



Figure 2: View from 52 and 54 Church Street.

*9/33 Church Street*

The submission from 9/33 Church Street states that:

*“This new addition/development to these townhouses will obstruct our main view of the city skyline. This is our unique element to our apartment and main reason for purchase.”*

And the following image was submitted as part of the submission:



Figure 3: View from 9/33 Church Street.

Council considers the *following factors in the* assessment of reasonable view sharing:

- a. *“What views will be affected? In this Plan, a reference to views is a reference to water views and views of significant landmarks (e.g. Sydney Harbour, Sydney Harbour Bridge, ANZAC Bridge and the City skyline including features such as Centre Point Tower). Such views are more highly valued than district views or views without significant landmarks.*

- b. How are the views obtained and assessed? Views from private dwellings considered in development assessment are those available horizontally to an observer standing 1m from a window or balcony edge (less if the balcony is 1m or less in depth).*
- c. Where is the view enjoyed from? Views enjoyed from the main living room and entertainment areas are highly valued. Generally it is difficult to protect views from across side boundaries. It is also generally difficult to protect views from other areas within a residential building particularly if views are also available from the main living room and entertainment areas in the building concerned. Public views are highly valued and will be assessed with the observer standing at an appropriate point in a public place.*
- d. Is the proposal reasonable? A proposal that complies with all development standards (e.g. building height, floor space ratio) and planning controls (e.g. building setbacks, roof pitch etc) is more reasonable than one that breaches them."*

As stated in the objection from the properties at 52 and 54 College Street, the views that would be impacted are views of trees and buildings which are not significant views that are required to be protected under this part.

The property at 9/33 Church Street currently enjoys views of the City skyline which are considered to be views that need to be considered. As demonstrated from the image provided with the objection, the views of the city skyline is achieved over the top of the existing roof of No. 37 Church Street. The height of the gutter/eaves of the south-western elevation of No. 37 Church Street is RL24.26 and the maximum ridge height in the proposed attic level at 35 Church Street (subject site) is RL23.05, the entirety of the proposed works will be approximately 1.2 metres lower than the gutter level of the south-western elevation of No. 37 Church Street.

Therefore, the proposal will not result in any undue adverse impacts to views to the city skyline when viewed 9/33 Church Street. It is considered that the proposal responds appropriately to the principle of view sharing and will not result in any unreasonable view loss.

### C3.11 Visual Privacy

The following controls are applicable in C3.11 Visual Privacy:

*C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.*

*C5 The provision of landscaping may be used to complement other screening methods but cannot be solely relied upon as a privacy measure.*

*C7 New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms).*

*C9 Balconies at first floor or above at the rear of residential dwellings will have a maximum depth of 1.2m and length of 2m unless it can be demonstrated that due to the location of the balcony there will be no adverse privacy impacts on surrounding residential properties with the provision of a larger balcony.*

The property adjoins a reserve to the rear and adjoins a residential flat building the north-east (37 Church Street) and the south-west (33 Church Street), therefore the potential sightlines within 9 metres and 45 degrees of these residential flat buildings will need to be considered.

The proposed balconies are approximately 900mm in depth and approximately 2200mm in width. While the width of 2200 is slightly wider than the 2000mm specified in C9, however as the depth is only 900mm, it is considered that overall, the proposed balconies will have a similar impact to the 2000mm x 1200mm specified size in C9.

It is noted that objections in relation to visual privacy had been received from 52 and 54 College Street. As the closest balcony is proposed to be located at least 11 metres to the northeast boundary of No. 54 College Street, there will be no sightlines within 9 metres from the proposed balconies and therefore there are no adverse visual privacy impacts to the properties at 52 College Street and 54 College Street.

With regard to the proposed rear balconies at the first floor level, for townhouses 3, 4 and 5, the proposed screening which is approximately 1.9 - 2.6 metres in height measured from the finish floor level of the balconies will restrict sightlines from these balconies to mitigate visual privacy impacts. Notwithstanding a condition is included in the recommendation requiring the details of the screening devices.

With regard to the proposed balconies at townhouse 1 and townhouse 5, there appears to be no screening devices proposed and these balconies will have direct sightlines into the properties at No. 33 and No. 37 Church Street within 9 metres and 45 degrees. Therefore conditions are included in the recommendation requiring the balconies at townhouse 1 and townhouse 5 to provide adequate screening to the sides of the balconies that face the adjoining properties to ensure there are no adverse visual amenity impacts from these balconies.

#### 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 the Community Engagement Framework for a period of 14 days to surrounding properties. A total of 5 submissions were received in response to the initial notification.

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

- The increase in visual bulk from the development and impact to streetscape/heritage conservation area – see Section 5(d) - C1.3 Alterations and Additions, C1.4 Heritage Conservation Areas and Heritage Items, C.2.2.2.5: Mort Bay Distinctive Neighbourhood and C2.2.2.5(a) Lower Slopes Sub Area
- Car Parking impacts - see Section 5(d) – C1.11 – Car Parking
- Potential solar access impacts - see Section 5(d) – C3.9 – Solar Access
- Privacy implications from the proposal – see Section 5(d) – C3.11 – Visual Privacy

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

Issue:           Objection to the building height and as all of the strata buildings on the street

Comment: are too high and overbearing to a historic area  
As discussed in detail in section 5(d) in the report under the section in relation to C1.3 Alterations and Additions, C1.4 Heritage Conservation Areas and Heritage Items, C.2.2.2.5: Mort Bay Distinctive Neighbourhood and C2.2.2.5(a) Lower Slopes Sub Area, the proposed form and height is considered to be compatible with the existing streetscape and the heritage conservation area it is located in.

Issue: Inner West Council has not allowed dormer windows on many developments throughout the inner west.

Comment: Each application is assessed on its own merits and there are incidents that dormer windows may not be acceptable in situations where the dormer is being proposed to an original roof form to a contributory building. The subject site is not an original contributory building and the proposed dormers are considered to be contextually satisfactory.

Issue: Overlooking children's playground from proposed balconies

Comment: The reserve/play ground that adjoins the subject site is a public space and there are sightlines into this public space from the public the realm and as it is a public area, as such it does not require visual privacy protection.

Issue: Error in description, ground floor level should be referred to first floor level.

Comment: The first floor of a building is the floor immediately above the one at ground level. Therefore there is no error in description.

## 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 sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Heritage – no objection
- Urban Forest– no objection subject to conditions
- Development Engineers– no objection subject to conditions

### 6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid – no objection

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 levies 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 \$36,752.00 would be required for the development under the Inner West Local Infrastructure Contribution Plan 2023. 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 *Inner West Local Environmental Plan 2022* and *Leichhardt Development Control Plan 2013*.

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. The applicant has made a written request pursuant to the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio and Landscape Area standards is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. 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 Development Application No. DA/2022/0938 for Alterations and additions to existing multi dwelling housing development, including to provide second floor additions to each of the five dwellings, and associated works at 35 Church Street Birchgrove 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:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
DA01, Issue B	PROPOSED GROUND FLOOR PLAN	19/10/22	COSO ARCHITECTURE
DA02, Issue B	PROPOSED FIRST FLOOR PLAN	19/10/22	COSO ARCHITECTURE
DA03, Issue B	PROPOSED ATTIC FLOOR PLAN	19/10/22	COSO ARCHITECTURE
DA04, Issue B	PROPOSED ROOF PLAN	19/10/22	COSO ARCHITECTURE
DA05, Issue B	PROPOSED SECTION AA	19/10/22	COSO ARCHITECTURE
DA06, Issue B	PROPOSED SECTION BB	19/10/22	COSO ARCHITECTURE
DA07, Issue B	PROPOSED NORTH WEST ELEVATION	19/10/22	COSO ARCHITECTURE
DA08, Issue C	PROPOSED SOUTH WEST ELEVATION	03/05/22	COSO ARCHITECTURE
DA09, Issue B	PROPOSED SOUTH EAST ELEVATION	19/10/22	COSO ARCHITECTURE
DA10, Issue C	PROPOSED NORTH EAST ELEVATION	19/10/22	COSO ARCHITECTURE
DA15, Issue B	PROPOSED LANDSCAPE PLAN & CALCULATIONS	19/10/22	COSO ARCHITECTURE
DA18, Issue B	PROPOSED MATERIALS PALETTE	19/10/22	COSO ARCHITECTURE
21382A_DSP, ISSUE 2, Sheet 1 of 3 sheets	STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON	28 JULY 2022	KARL ROBERTSON

	PROPERTY IN SP 10138		
21382A_DSP, ISSUE 2, Sheet 2 of 3 sheets	STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138	28 JULY 2022	KARL ROBERTSON
21382A_DSP, ISSUE 2, Sheet 3 of 3 sheets	STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138	28 JULY 2022	KARL ROBERTSON
21382A_DSP, ISSUE 2, Sheet 1 of 3 sheets	STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138	28 JULY 2022	KARL ROBERTSON
21382A_DSP, ISSUE 2, Sheet 2 of 3 sheets	STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138	28 JULY 2022	KARL ROBERTSON
21382A_DSP, ISSUE 2, Sheet 3 of 3 sheets	STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138	28 JULY 2022	KARL ROBERTSON

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:	\$19,608.33
Inspection Fee:	\$350.00

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. 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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

**4. Section 7.11 Contribution**

In accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:

Contribution Category	Amount
Open Space & Recreation	\$26,277.00
Community Facilities	\$4,870.00
Transport	\$3,455.00
Plan Administration	\$337.00
Drainage	\$1,812.00
<b>TOTAL</b>	<b>\$36,752.00</b>

At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$$

Where:

$C_{\text{payment}}$  = is the contribution at time of payment

$C_{\text{consent}}$  = is the contribution at the time of consent, as shown above

$CPI_{\text{consent}}$  = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being [insert CPI value] for the [insert latest quarter and year].

$CPI_{\text{payment}}$  = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

**It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.**

Council's Plan may be viewed at [www.innerwest.nsw.gov.au](http://www.innerwest.nsw.gov.au) or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres on [insert email address and phone number] to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to [www.innerwest.nsw.gov.au/invoice](http://www.innerwest.nsw.gov.au/invoice); please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

**GENERAL CONDITIONS**

**5. 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.

**6. Stormwater Drainage System – Simple**

Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.

Any existing component of the stormwater system that is to be retained, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

**7. Works to Trees**

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

Tree/location	Approved works
<i>Corymbia maculata</i> (Spotted Gum) - within 37 Church Street, Birchgrove	Pruning in accordance with the Pruning Specification prepared by Arborliz dated 6 July 2022.

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*.

#### 8. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Windows 2F/U5-3, 2F/U5-4 AND 2F/U5-5 being amended in the following manner:

- a. Fixed and obscure glazing to a minimum level of 1.6 metres above the floor level; OR
- b. Suitable externally fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level;  
*Note: The louvers are to individual opening more than 30mm wide and a total area of opening that is less than 30% of the surface area of the screen and made of durable materials. Louvered screens must be securely fitted and may be able to be tilted open from a closed position to an angle of 45 degrees in a downward or upward position.*

#### 9. Balcony

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating the erection of a privacy screen on the south-western side of the first floor balcony of Townhouse 1 and north-eastern side of the first floor balcony of Townhouse 5 having a minimum block out density of 75% and a height of 1.6 metres above the finished floor level of the balcony.

#### 10. 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.

#### 11. 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.

#### 12. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

**13. Works Outside the Property Boundary**

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

**PRIOR TO ANY DEMOLITION****14. 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.

**15. 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****16. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

**17. Flood Risk Management Plan**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia

(CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The Plan must be prepared/amended to make provision for the following:

- a. The plan must be generally in accordance with the recommendations of the Flood Risk Management Plan prepared by Cohort Engineering and dated 20 October 2022;
- b. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
  - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris;
  - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections;
  - iii. Flood warning signs/depth indicators for areas that may be inundated;
  - iv. A flood evacuation strategy; and
  - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- c. All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below:
  - i. Building Code of Australia;
  - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level;
  - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood; and
  - iv. Flood hazard level (FHL) Flood Planning Level (FPL).

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

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

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

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

**19. Engineering Design - Structural Engineer Plans and Certification**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that incorporate the following recommendations of the Flood Risk Management Plan prepared by Cohort Engineering and dated 20 October 2022.

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

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

**20. Structural Certificate for retained elements of the building**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

**21. 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****22. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

**PRIOR TO OCCUPATION CERTIFICATE****23. 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.

**24. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

**ON-GOING****25. Bin Storage**

All bins are to be stored within the site.

**ADVISORY NOTES****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.

#### **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.

#### **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.

#### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

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

At least 7 days before any demolition work commences:

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

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

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

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

**Notification of commencement of works**

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

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

**Dividing Fences Act**

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

**Noise**

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

**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.

**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](http://www.basix.nsw.gov.au)

Department of Fair Trading	13 32 20	<a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a>	Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100	<a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>	
Landcom	9841 8660		To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441	<a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>	
NSW Food Authority	1300 552 406	<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>	
NSW Government		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a>	Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>	
Sydney Water	13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>	
Waste Service - SITA Environmental Solutions	1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>	
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>	

WorkCover Authority of NSW 13 10 50

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Enquiries relating to work safety and asbestos removal and disposal.

### **Street Numbering**

If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to [Street Numbering Application](#)

### **Asbestos Removal**

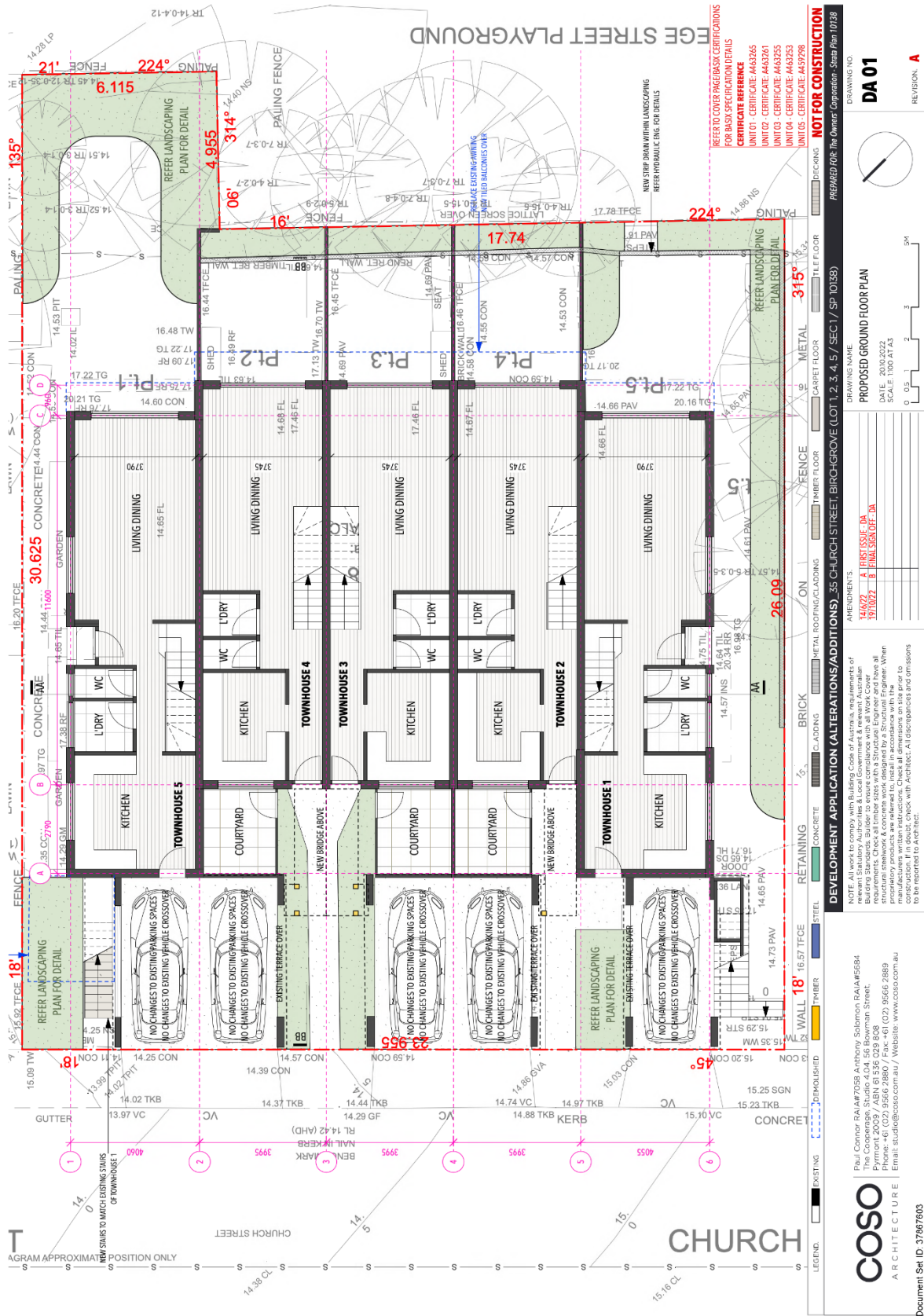
A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

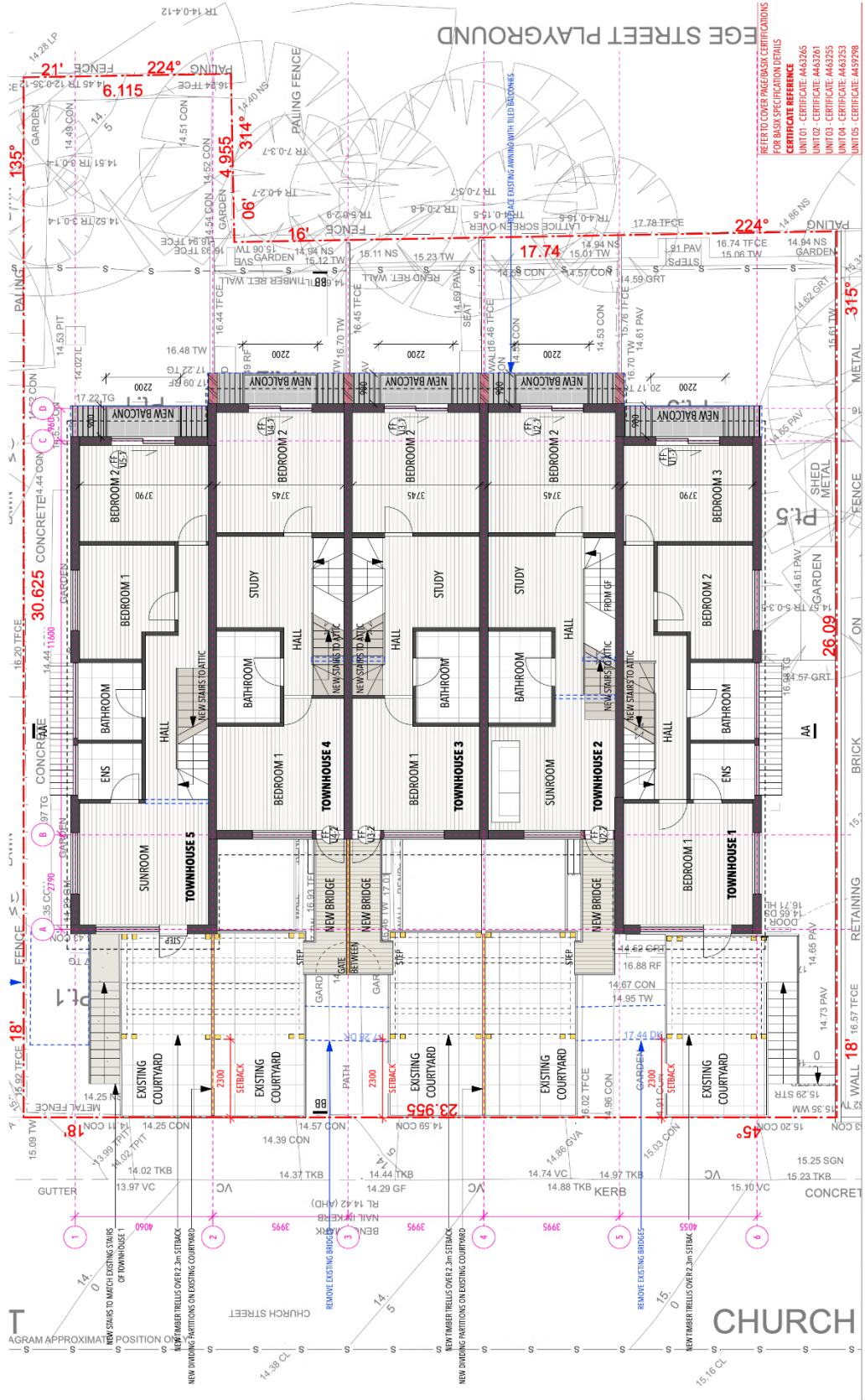
Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

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.

Attachment B – Plans of proposed development





**REFER TO COVER PAGE FOR CERTIFICATIONS FOR BLS SPECIFICATION DETAILS**  
 CERTIFICATE REFERENCE  
 UNIT 01 - CERTIFICATE: A432745  
 UNIT 02 - CERTIFICATE: A432741  
 UNIT 03 - CERTIFICATE: A432755  
 UNIT 04 - CERTIFICATE: A432753  
 UNIT 05 - CERTIFICATE: A432759

**NOT FOR CONSTRUCTION**

DRAWING NO: DA 02  
 REVISION: A

DRAWING NAME: PROPOSED FIRST FLOOR PLAN  
 DATE: 16.08.2023  
 SCALE: 1:100 AT A3

**DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS)\_35\_ CHURCH STREET/BIRK-GROVE (LOT 1, 2, 3, 4, 5 / SEC1) / SP 10188**

AMENDMENTS:  
 14/022 - A FIRST ISSUE: DA  
 19/10/22 - B FINAL SIGN OFF: DA

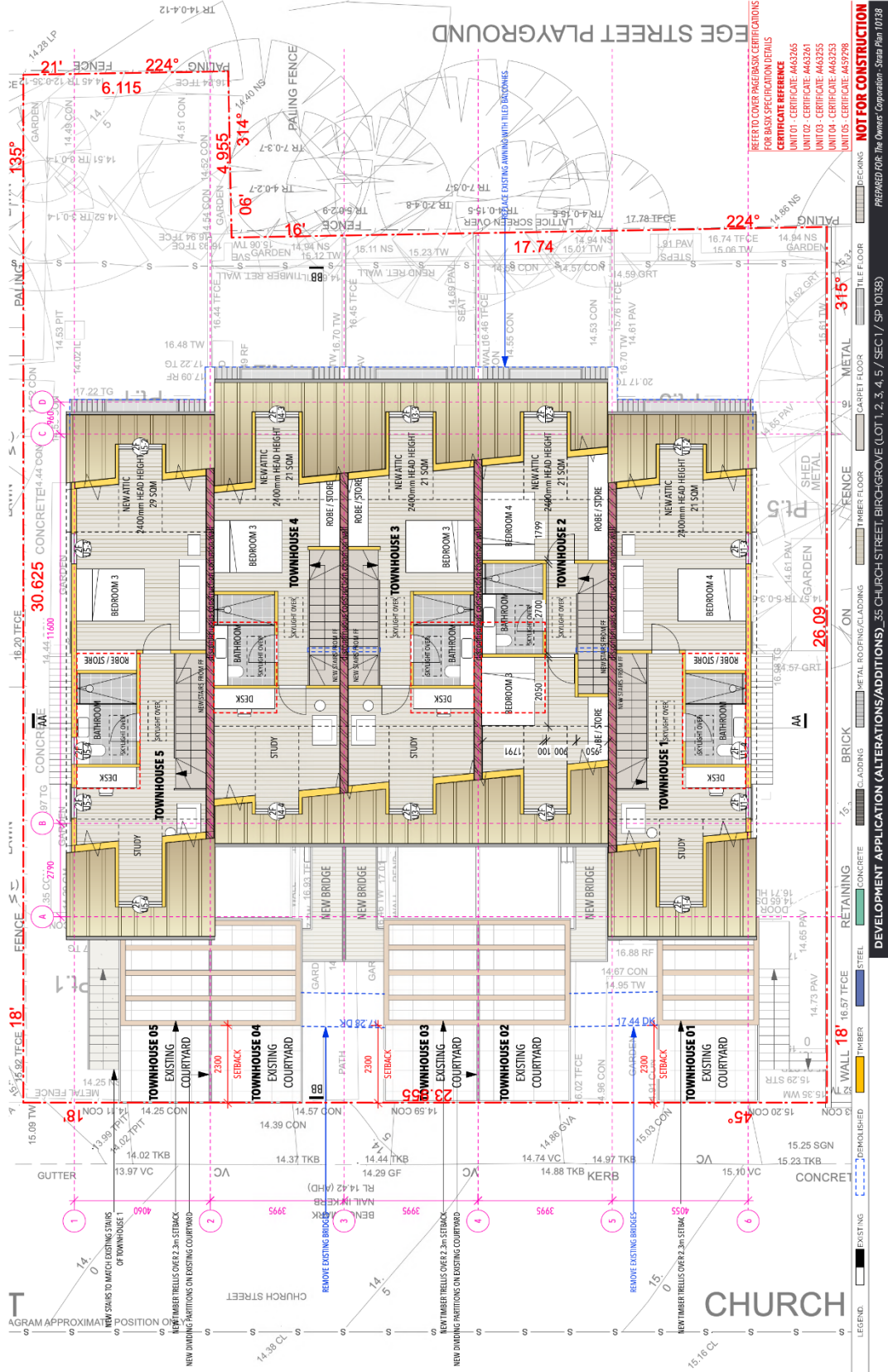
NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian standards. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. Where manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

Paul Connor RA (A#7059) Archibuty, Solomon RA (A#6584) The Coso Architects Pty Ltd, 104 Esplanade, Birkgrove Street, Pyrmont, 2009 / A/B/N 61 536 029 928  
 Phone: +61 (0)2 9566 2880 / Fax: +61 (0)2 9566 2889  
 Email: studio@coso.com.au / Website: www.coso.com.au

**CO SO** ARCHITECTURE

Document Set ID: 37667603  
 Version: 1, Version Date: 05/07/2023





**DA 03**  
DRAWING NO.

**NOT FOR CONSTRUCTION**  
REVISION: **A**

**PROPOSED ATTIC FLOOR PLAN**  
DATE: 14/02/22  
SCALE: 1:100 AT A3

**DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS) TO CHURCH STREET BIRCHGROVE (LOT 1, 2, 3, 4, 5 / SECT 1 / SP 10185)**

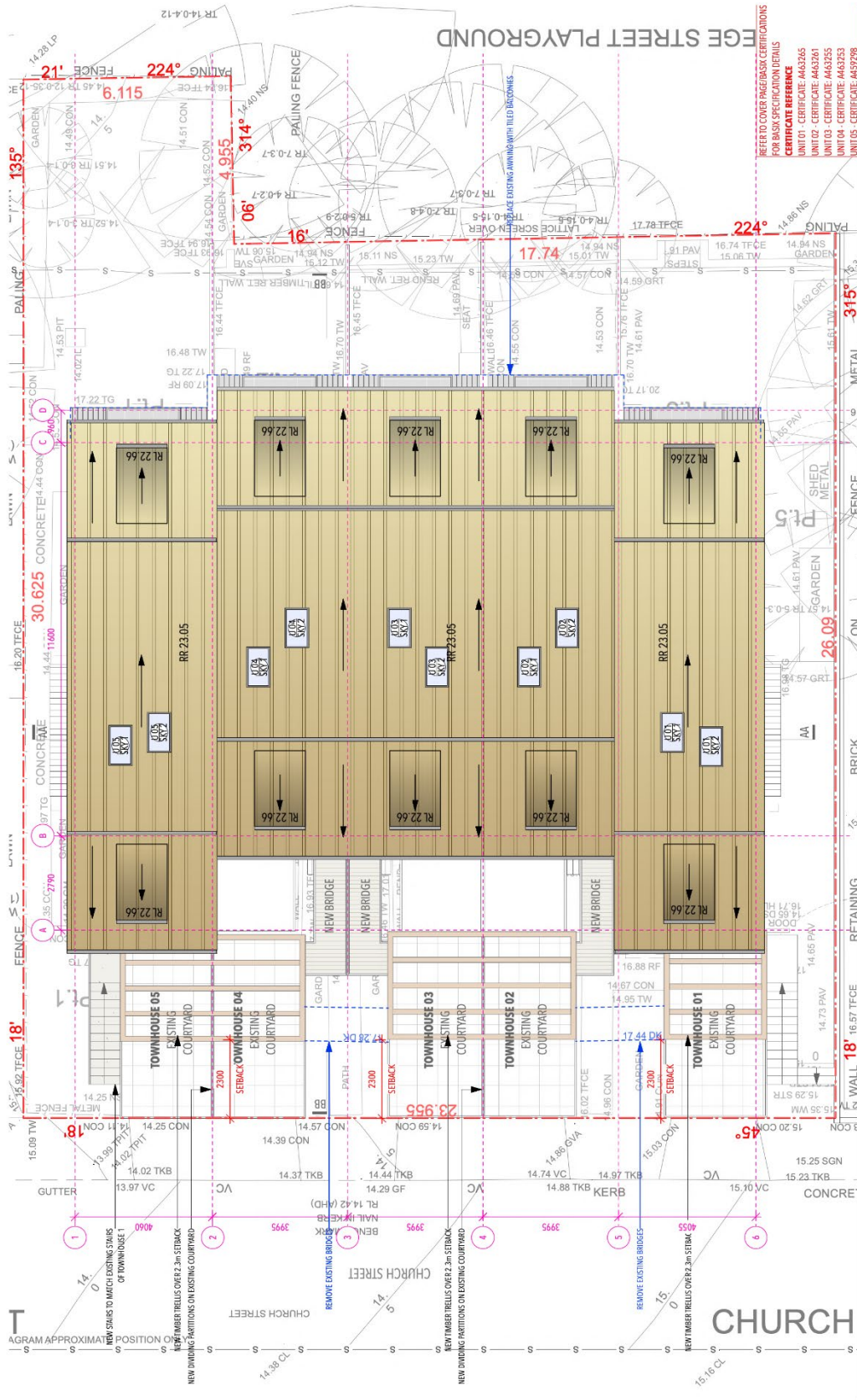
AMENDMENTS:  
 14/02/22 **A** FIRST ISSUE: DA  
 19/10/22 **B** FINAL SIGN OFF: DA

NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian standards. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. Where manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

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ARCHITECTURE

Document Set ID: 37667603  
 Version: 1, Version Date: 05/07/2023



**REFER TO COVER PAGE(S) SK CERTIFICATIONS FOR BLOCK SPECIFICATION DETAILS**

**CERTIFICATE REFERENCE**  
 UNIT 01 - CERTIFICATE: A432765  
 UNIT 02 - CERTIFICATE: A432761  
 UNIT 03 - CERTIFICATE: A432755  
 UNIT 04 - CERTIFICATE: A432753  
 UNIT 05 - CERTIFICATE: A432758

**NOT FOR CONSTRUCTION**

**LEGEND**

- EXISTING
- NEW
- CONCRETE
- BRICK
- METAL ROOFING CLADDING
- METAL FLOOR
- CARPET FLOOR
- TIMBER FLOOR
- STEEL
- PBRUSHED
- POLISHED
- TIMBER
- PLY
- FRONT SIGN OFF: PA
- FIRST ISSUE: DA

**DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS) - 35 CHURCH STREET BIRK-GROVE (LOT 1, 2, 3, 4, 5 / SEC 1 / SP 10188)**

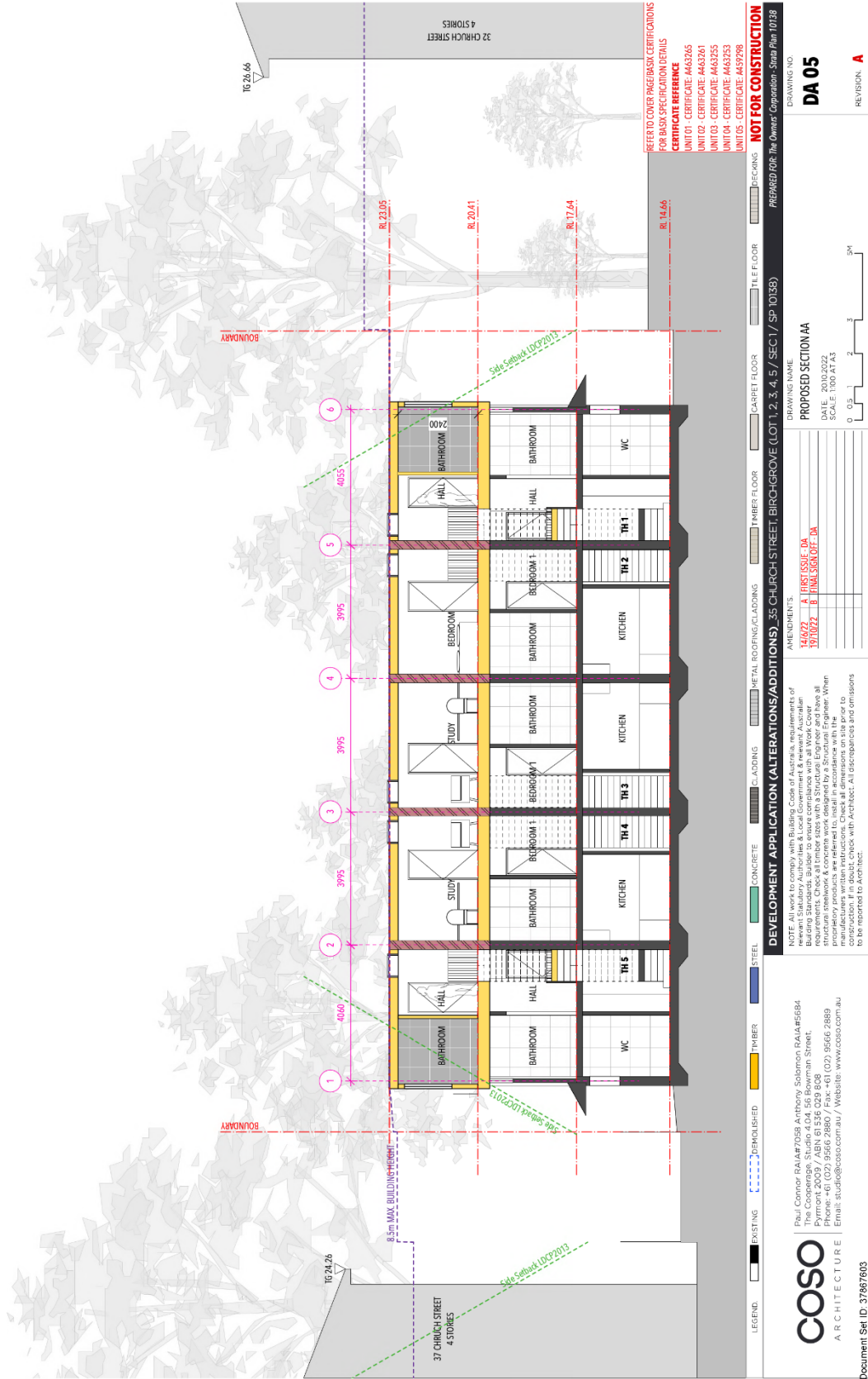
**AMENDMENTS:**  
 14/02/22 - A - FIRST ISSUE: DA  
 19/10/22 - B - FINAL SIGN OFF: PA

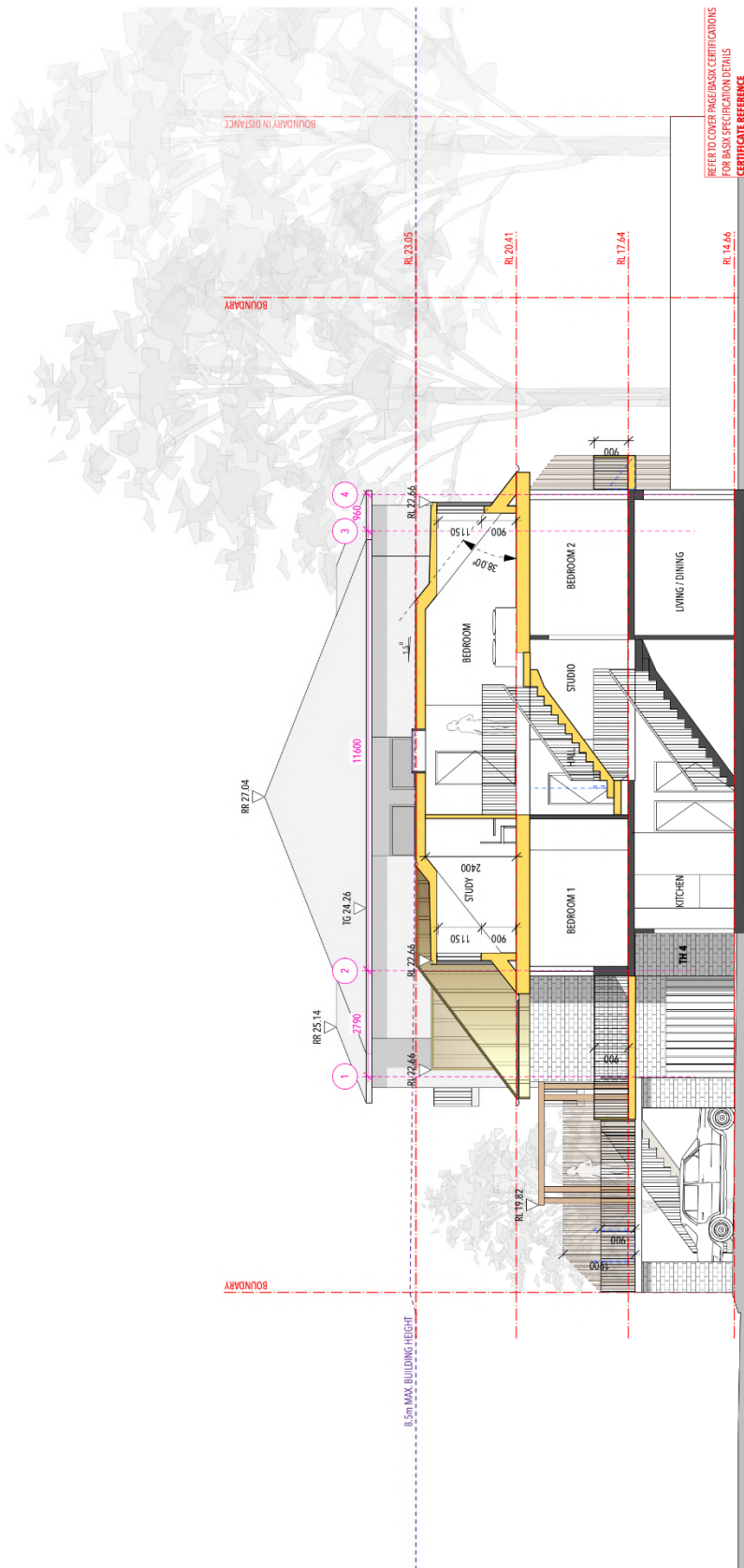
**PROPOSED ROOF PLAN**  
 DRAWING NO: DA 04  
 DATE: 14/02/22  
 SCALE: 1:100 @ 7.5

**NOTE:** All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian Standards. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. Where manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

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 Email: studio@coso.com.au / Website: www.coso.com.au

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 Version: 1, Version Date: 05/07/2023





REFER TO COVER PAGE (RISK CERTIFICATIONS FOR BLOS SPECIFICATION DETAILS)  
**CERTIFICATE REFERENCE**  
 UNIT 01 - CERTIFICATE: A432745  
 UNIT 02 - CERTIFICATE: A432761  
 UNIT 03 - CERTIFICATE: A432755  
 UNIT 04 - CERTIFICATE: A432753  
 UNIT 05 - CERTIFICATE: A432789

**NOT FOR CONSTRUCTION**

PREPARED FOR: The Owners' Corporation - Strata Plan 10158

DRAWING NO.  
**DA 06**

REVISION: **A**

PROPOSED SECTION BB

DATE: 14/02/22  
 SCALE: 1:100 AT A3

**DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS) - 35 CHURCH STREET BIRCHGROVE (LOT 1, 2, 3, 4, 5 / SECT 1 / SP 10158)**

AMENDMENTS:

14/02/22 - **A** FIRST ISSUE - DA  
 19/10/22 - **B** FINAL SIGN OFF - DA

NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian standards. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. Where manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

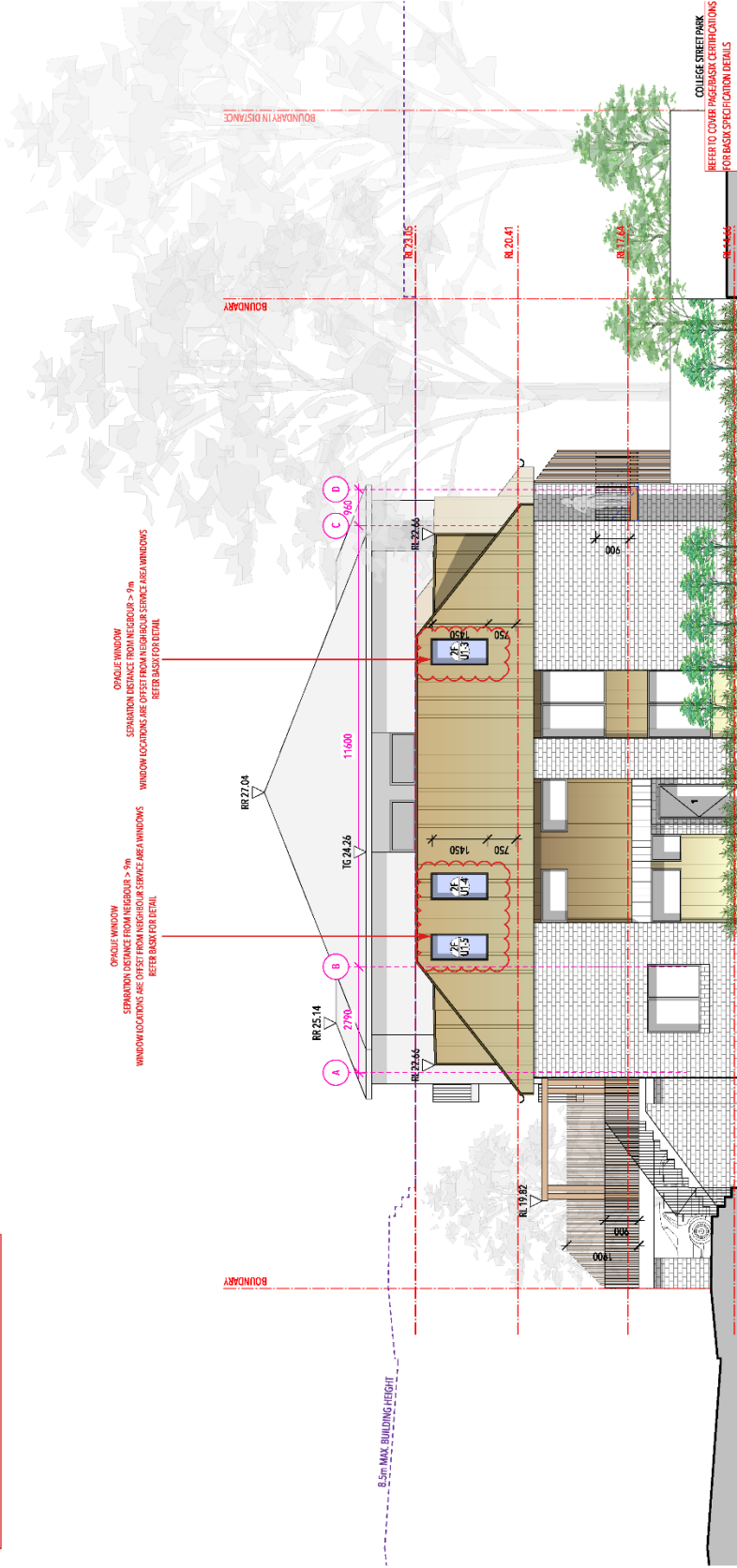
Paul Connor RA (A7705) - Archibutey, Solomon RA (A45684)  
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 35 Church Street, Birchgrove NSW 1585  
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**COSO**  
 ARCHITECTURE

Document Set ID: 378671603  
 Version: 1, Version Date: 05/07/2023



COUNCIL REF: 030523  
 DAB9 NOTE ADDED WINDOW 2F US-S, 2F US-4, 2F US-3  
 DW10 NOTE ADDED WINDOW 2F US-S, 2F US-4, 2F US-3  
 REFER NEW DRAWINGS REF 06, REF 10 FOR NEW DOCUMENTATION



**COLLEGE STREET PARK**  
 REFER TO COVER PAGE/BASKY CERTIFICATIONS  
 FOR BASKY SPECIFICATION DETAILS  
**CERTIFICATE REFERENCE**  
 UNIT 01 - CERTIFICATE: AA323A5  
 UNIT 02 - CERTIFICATE: AA32361  
 UNIT 03 - CERTIFICATE: AA32353  
 UNIT 04 - CERTIFICATE: AA32353  
 UNIT 05 - CERTIFICATE: AA52993

**NOT FOR CONSTRUCTION**

LEGEND:  EXISTING  DEVELOPMENT  IMBER  METAL ROOFING/CLADDING  CARPET FLOOR  T.I.F. FLOOR

**DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS) 35 CHURCH STREET, BIRCH GROVE (LOT 1, 2, 3, 4, 5 / SEC 1 / SP 10138)**  
 PREPARED FOR: The Owners Corporation - Strata Plan 10138

NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian requirements. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. When manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

DRAWING NO: **DA 08**

**PROPOSED SOUTH WEST ELEVATION**  
 DATE: 26.05.2023  
 SCALE: 1:100 AT A3

AMENDMENTS:  
 14/02/22 A FIRST ISSUE: DA  
 19/10/22 B FINAL SIGN OFF: DA  
 03/05/22 C COUNCIL OFF

REVISION: **A**

Document Set ID: 37667503  
 Version: 1, Version Date: 05/07/2023



REFER TO COVER PAGE (BASIS) CERTIFICATIONS FOR BASIS SPECIFICATION DETAILS

**CERTIFICATE REFERENCE**

UNIT 01 - CERTIFICATE: A432745  
 UNIT 02 - CERTIFICATE: A432761  
 UNIT 03 - CERTIFICATE: A432755  
 UNIT 04 - CERTIFICATE: A432753  
 UNIT 05 - CERTIFICATE: A432798

**NOT FOR CONSTRUCTION**

LEGEND: ■ EXISTING ■ UNFINISHED ■ TIMBER ■ CONCRETE ■ METAL ROOFING/CLADDING ■ TIMBER FLOOR ■ CARPET FLOOR ■ TILF FLOOR

DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS)\_35 CHURCH STREET BIRCHGROVE (LOT 1, 2, 3, 4, 5 / SEC1 / SP 10188)

AMENDMENTS:

14/022 - A FIRST ISSUE: DA  
 19/10/22 - B FINAL SIGN OFF: PA

DRAWING NAME:

PROPOSED SOUTH EAST ELEVATION  
 DATE: 14/02/22  
 SCALE: 1:100 AT A3



NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian standards. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. Where manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

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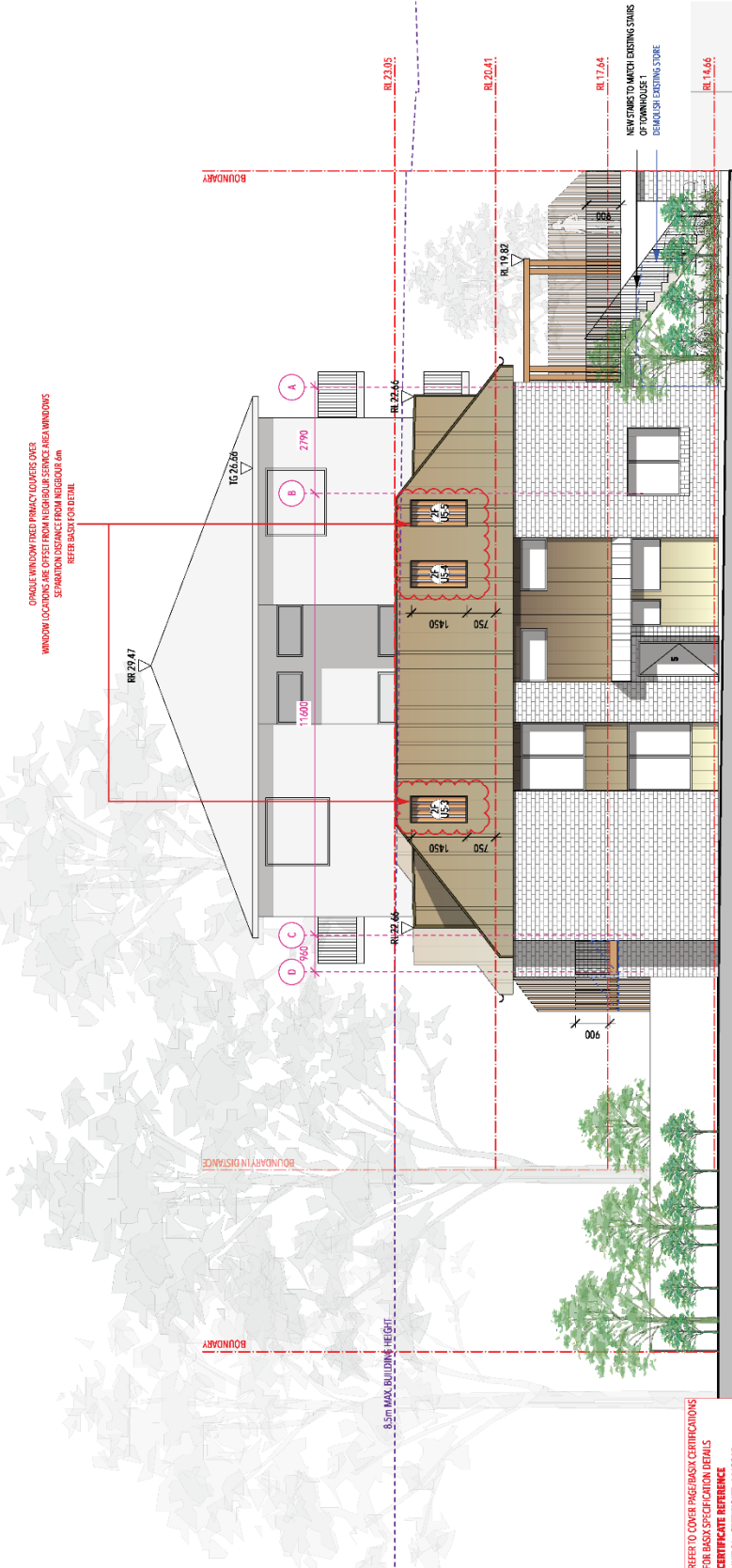
**COSO**  
 ARCHITECTURE

Document Set ID: 378671603  
 Version: 1, Version Date: 05/07/2023

DRAWING NO:  
**DA 09**

REVISION: **A**

COUNCIL REF: 030523  
 DAB9 NOTE ADDED WINDOW 2F US-S, 2F US-L, 2F US-3  
 DW10 NOTE ADDED WINDOW 2F US-S, 2F US-L, 2F US-3  
 REFER NEW DRAWINGS REF 06, REF 10 FOR NEW DOCUMENTATION



**REFER TO COVER PAGE/FRISKY CERTIFICATIONS FOR BASIC SPECIFICATION DETAILS**

**CERTIFICATE REFERENCE**  
 UNIT 01 - CERTIFICATE: A463245  
 UNIT 02 - CERTIFICATE: A463261  
 UNIT 03 - CERTIFICATE: A463255  
 UNIT 04 - CERTIFICATE: A463253  
 UNIT 05 - CERTIFICATE: A459298

**LEGEND:**  
 EXISTINGS  
 METAL ROOFING/CLADDING  
 CONCRETE  
 BRICK  
 STONE  
 G. ADDING  
 CARPET FLOOR  
 TIMBER FLOOR  
 T.F.F. GOR.  
 DECKING  
 NEW FOR CONSTRUCTION

**DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS)\_35\_ CHURCH STREET, BIRCH GROVE (LOT 1, 2, 3, 4, 5 / SEC 17 / SP 10138)**  
 PREPARED FOR: The Owners' Corporation - Strata Plan 10138

**AMENDMENTS:**  
 14/02/22 A FIRST ISSUE: DA  
 19/10/22 B FINAL SIGN OFF: DA  
 03/05/22 C COUNCIL UP

**PROPOSED NORTH EAST ELEVATION**  
 DRAWING NAME:  
 DRAWING NO: **DA 10**  
 DATE: 03/05/22  
 SCALE: 1:200 AT A3  
 REVISION: **A**

**NOTE:** All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian requirements. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. Where manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

**coso ARCHITECTURE**  
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 The Cosso Partnership: Suite 04, 50 Logan Street,  
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 Phone: +61 (0)2 9566 2880 / Fax: +61 (0)2 9566 2889  
 Email: stud@coso.com.au / Website: www.coso.com.au

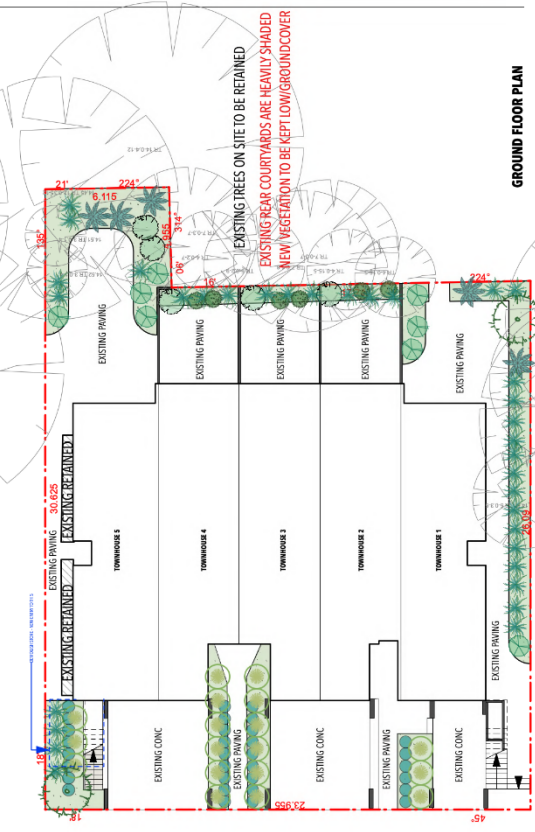
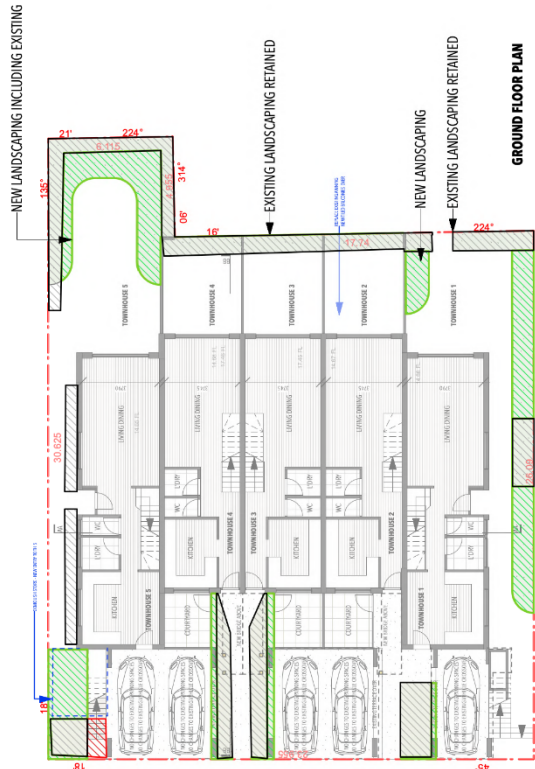
Document Set ID: 37667503  
 Version: 1, Version Date: 05/07/2023



REFER TO COVER PAGE/BASIX CERTIFICATIONS FOR BASIX SPECIFICATION DETAILS  
**CERTIFICATE REFERENCE**  
 UNIT 01 - CERTIFICATE: AA32365  
 UNIT 02 - CERTIFICATE: AA32361  
 UNIT 03 - CERTIFICATE: AA32355  
 UNIT 04 - CERTIFICATE: AA32353  
 UNITS - CERTIFICATE: AA32398

LANDSCAPE CALCULATIONS	
Site Area	650.4sqm
Minimum Landscaping	20% (130sqm)
Existing Landscaping	9% (59.9sqm)
Some of the existing landscaping is greater than 500mm in height	
Increased Landscaping (inc. existing)	16% (104.78sqm)
Proposed landscaping includes areas of > 1m and below 500mm in height	
Removed Landscaping	

LANDSCAPING LEGEND				
SPECIES	COMMON NAME	ORIGIN	HEIGHT	No.
	Elaeagnus reticulatus	Native	7 x 4 m	2
	Blueberry Ash	Native	0.5 x 0.5 m	42+
	Conchocarpus purpurascens	Native	0.5 x 2 m	7
	Native Dianella	Native	0.6 x 1 m	8
	Agave attenuata	Exotic	1 x 2 m	3
	Cycas revoluta	Native	1.5 x 1 m	if needed
	Condalia Sp.	Native	1.5 m	6
	Doryanthes excelsa	Native	1.5 m	34+
	Waxtail frutescens	Native	0.2m	20+
	Senecio serpens	Native		



**NOT FOR CONSTRUCTION**

PREPARED FOR: The Owners Corporation - Strata Plan 90388

DEVELOPMENT APPLICATION (ALTERATION/ADDITIONS)\_35 CHURCH STREET, BRIGHAM GROVE (LOT 1, 2, 3, 4, 5) / SEC 1 / DP 101388

AMENDMENTS:

14/02/22 A FIRST ISSUE: DA  
 19/10/22 B FINAL SIGN OFF: DA

DRAWING NAME: PROPOSED LANDSCAPE PLAN & CALCULATIONS

DATE: 19/10/22  
 SCALE: 1:100 AT A3

REVISION: B

LEGEND: EXISTING, POLISHED, TIMBER, STEEL, CONCRETE, GLASSING, METAL ROOFING CLADDING, CABINET FLOOR, TIMBER FLOOR, TILES FLOOR

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 Email: studio@coso.com.au / Website: www.coso.com.au

**COSO** ARCHITECTURE

Document Set ID: 37867603  
 Version: 1, Version Date: 05/07/2023

**LEGEND:** ■ EXISTING ■ UNFINISHED ■ TIMBER ■ STEEL ■ CONCRETE ■ G. ADDING ■ METAL ROOFING/CLADDING ■ TIMBER FLOOR ■ CARPET FLOOR ■ T.F. FLOOR ■ DECKING

**REFER TO COVER PAGE/ENSK CERTIFICATIONS FOR BASIS SPECIFICATION DETAILS**

**CERTIFICATE REFERENCE**  
 UNIT 01 - CERTIFICATE: A463265  
 UNIT 02 - CERTIFICATE: A463261  
 UNIT 03 - CERTIFICATE: A463265  
 UNIT 04 - CERTIFICATE: A463263  
 UNIT 05 - CERTIFICATE: A492788

**NOT FOR CONSTRUCTION**

**DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS)\_35 CHURCH STREET BIRCHGROVE (LOT 1, 2, 3, 4, 5 / SECT 1 / SP 10188)**

NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian standards. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. Where manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

**PROPOSED MATERIALS PALETTE**  
 DATE: 14/02/22  
 SCALE: 1:100 AT A3

**AMENDMENTS:**  
 14/02/22 - A - FIRST ISSUE - DA  
 19/10/22 - B - FINAL SIGN OFF - DA

**DRAWING NO:** DA 18

**REVISION:** A

**Paul Connor RA 147058** | Archibuy, Solomon RA1445684  
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**coso**  
 ARCHITECTURE

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Sheet 1 of 3 sheets

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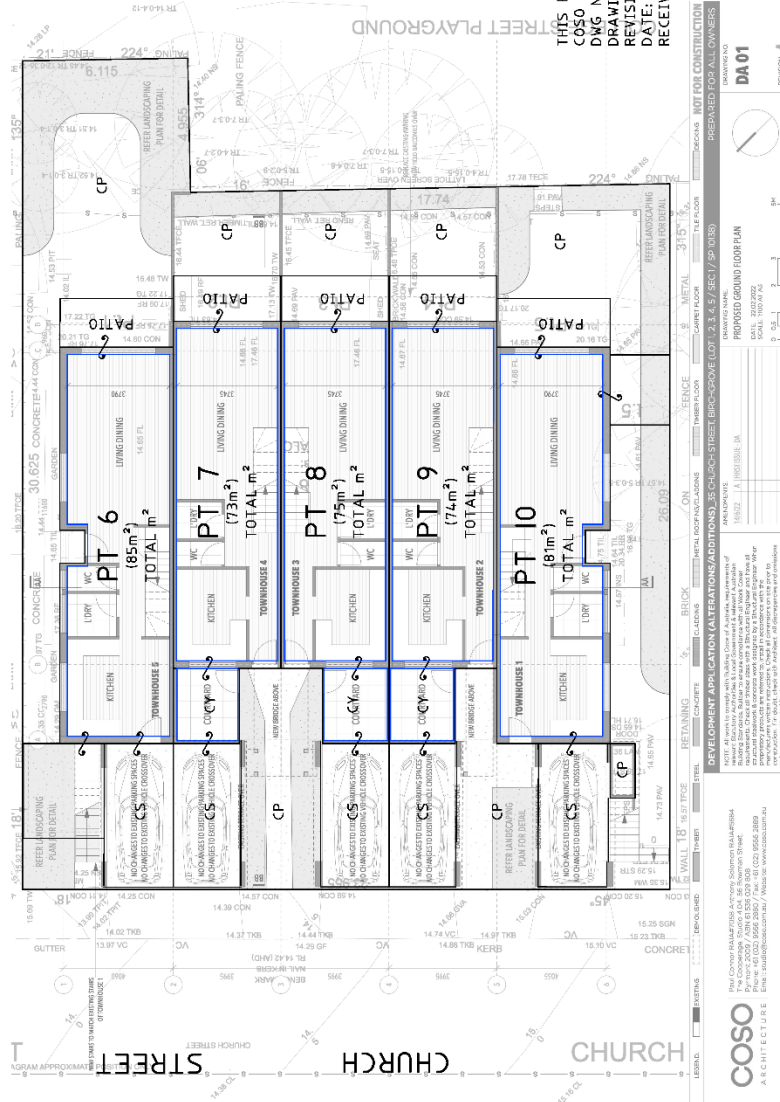
PLAN FORM 1 (A3)

**GROUND FLOOR**

AREAS SHOWN ON THE FLOOR PLAN HAVE BEEN CALCULATED FOR THE PURPOSE OF THE STRATA SCHEMES DEVELOPMENT ACT 2015 ONLY. THEY MAY DIFFER FROM FLOOR AREAS FOR OTHER PURPOSES. THOSE PARTS OF SERVICE LINES WHICH SERVICE ONE LOT ONLY AND ARE LOCATED OUTSIDE OF THAT LOT ARE COMMON PROPERTY. FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES ARE SHOWN.

CP - COMMON PROPERTY  
CS - CAR SPACE  
CY - COURTYARD

THIS PLAN IS BASED ON PLANS BY  
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DWG No: DA 01  
DRAWING NAME: PROPOSED GROUND FLOOR PLAN  
REVISION: A  
DATE: 14/06/2022  
RECEIVED: 20/06/2022



**COSO**  
14/06/2022  
14/06/2022

DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS) 35 CHURCH STREET BRICKWOOD (LOT 2, 3, 4, 5 / SP 1038)

DA 01

PROPOSED GROUND FLOOR PLAN

1:150

DATE: 14/06/2022

<p><b>SURVEYOR</b> Name: KARL ROBERTSON Date: Reference: 21382A_DSP</p>	<p>STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138</p>	<p>LGA: INNER WEST Locality: BALMAIN Reduction Ratio: 1: 150 Lengths are in metres.</p>	<p><b>DRAFT</b> PRINTED 28 JULY 2022 ISSUE 2</p>
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Version: 1, Version Date: 05/07/2023

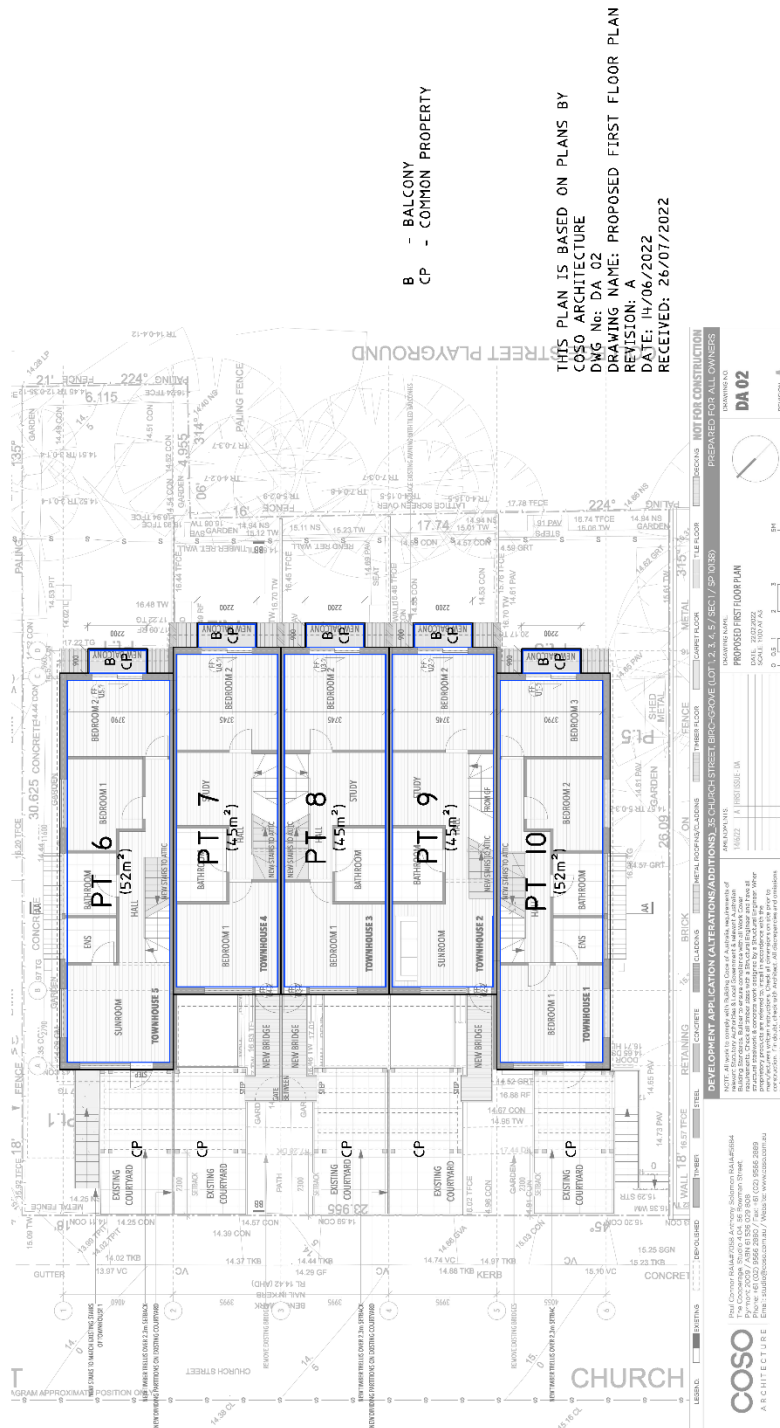
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PLAN FORM 1 (A3)

**LEVEL 1**

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DRAWING NAME: PROPOSED FIRST FLOOR PLAN  
REVISION: A  
DATE: 14/06/2022  
RECEIVED: 26/07/2022

**COSO**  
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Email: [info@coso.com.au](mailto:info@coso.com.au) Website: [www.coso.com.au](http://www.coso.com.au)

DEVELOPMENT APPLICATION (ALTERATIONS/ADDITIONS) 35 CHURCH STREET BRICKROVE (LOT 2, 3 & 4 / SEC 17 / SP 1085)

DA 02

PREPARED FOR ALL OWNERS

NOT TO BE USED FOR CONSTRUCTION

<p><b>SURVEYOR</b> Name: KARL ROBERTSON Date: Reference: 21382A_DSP</p>	<p>STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138</p>	<p>LGA: INNER WEST Locality: BALMAIN Reduction Ratio: 1: 150 Lengths are in metres.</p>	<p><b>DRAFT</b> PRINTED 28 JULY 2022 ISSUE 2</p>
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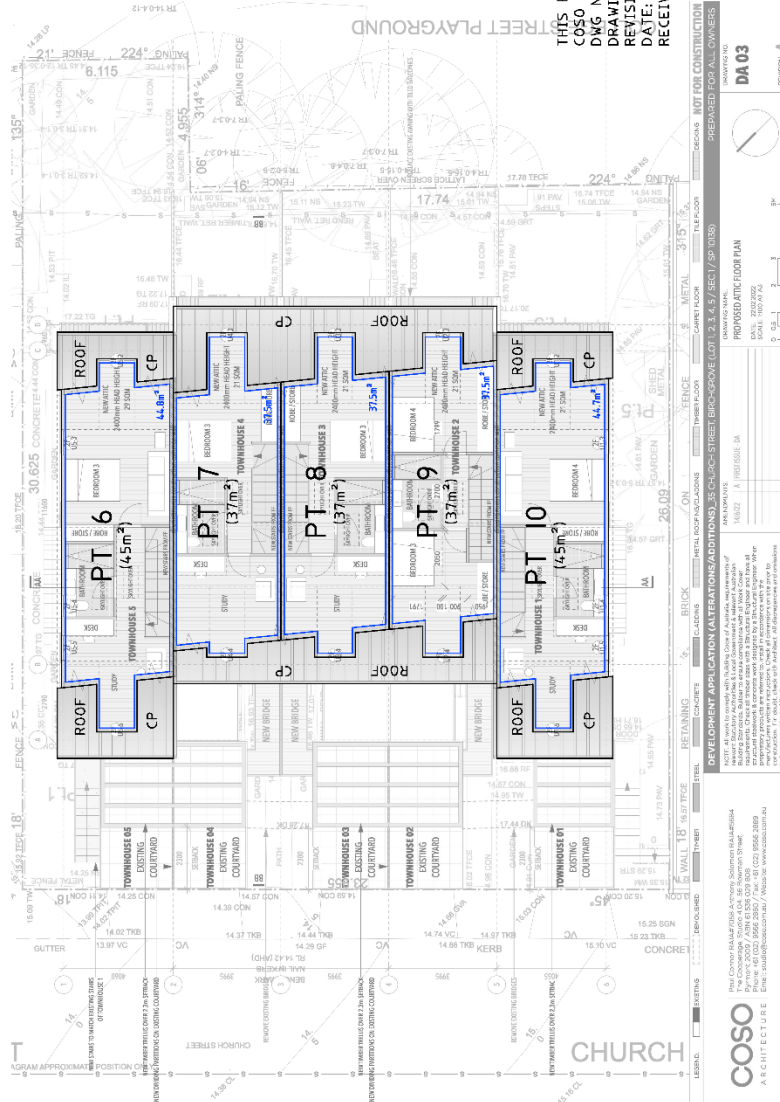
PLAN FORM 1 (A3)

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 DRAWING NAME: PROPOSED ATTIC FLOOR PLAN  
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 DATE: 14/06/2022  
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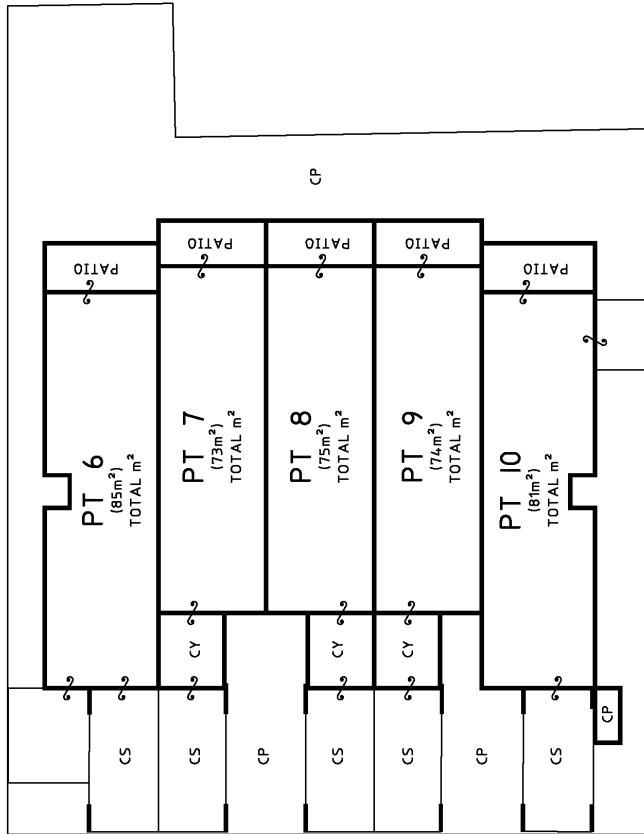


<p><b>SURVEYOR</b>                  Name: KARL ROBERTSON                  Date:                  Reference: 21382A_DSP</p>	<p>STRATA PLAN OF SUBDIVISION OF LOTS 1-5                  AND COMMON PROPERTY IN SP 10138</p>	<p>LGA: INNER WEST                  Locality: BALMAIN                  Reduction Ratio: 1: 150                  Lengths are in metres.</p>	<p><b>Registered</b>                  CONTRACT PLAN                  Plan compiled from                  architectural CAD data,                  which has not yet been                  surveyed after completion                  of construction.</p>
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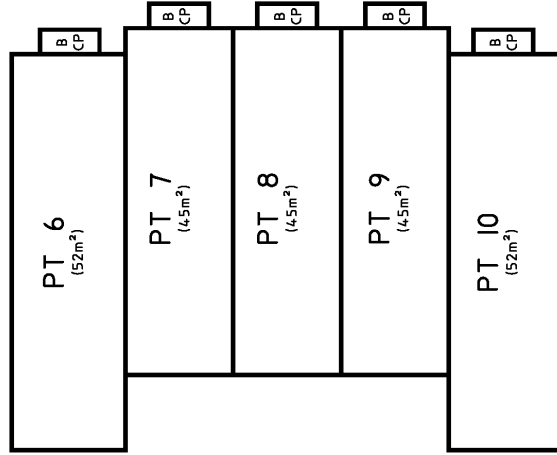
<p><b>SURVEYOR</b> Name: KARL ROBERTSON Date: Reference: 21382A_DSP</p>	<p>STRATA PLAN OF SUBDIVISION OF LOTS 1-5 AND COMMON PROPERTY IN SP 10138</p>	<p>LGA: INNER WEST Locality: BALMAIN Reduction Ratio: 1: 150 Lengths are in metres.</p>	<p>Registered CONTRACT PLAN Plan compiled from architectural CAD data, planimetry and field survey after completion of construction.</p>	<p><b>DRAFT</b> PRINTED 28 JULY 2022 ISSUE 2</p>
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PLAN FORM 1 (A3)

LEVEL 1

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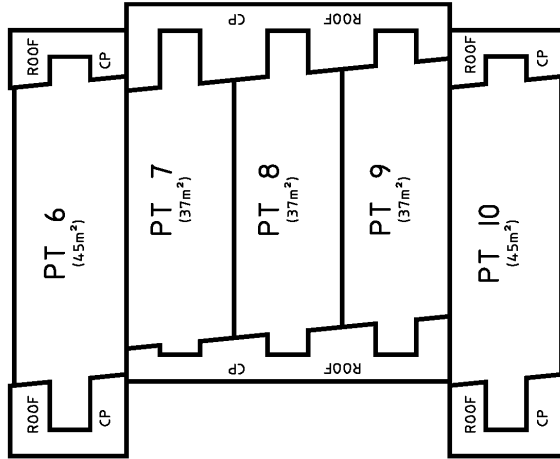
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## Attachment C- Section 4.6 Exception to Development Standards

exception statement

35 Church Street, Birchgrove

### **Clause 4.6 – Exceptions to Development Standards in relation to Clause 4.3C(3)(a)(ii), – Landscaped areas for residential accommodation in Zone R1 of the Inner West Local Environmental Plan 2022.**

#### **1. Introduction.**

This written request is made pursuant to the provisions of Clause 4.6 of the Inner West Local Environmental Plan 2022 (the LEP). A variation is sought in relation to the floor space ratio development standard of Clause 4.3C(3)(a)(ii), – Landscaped areas for residential accommodation in Zone R1, of the Inner West LEP, in relation to alterations and additions to the existing multi dwelling housing development, at 35 Church Street, Birchgrove.

This exception statement has been prepared having regard to the Land and Environment Court judgments in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, *Brigham v Canterbury Bankstown Council* [2018] NSWLEC 1406 and *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

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

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed*

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exception statement

35 Church Street, Birchgrove

*the matters required to be demonstrated by subclause (3), and  
(ii) the proposed development will be in the public interest  
because it is consistent with the objectives of the particular  
standard and the objectives for development within the zone in  
which the development is proposed to be carried out, and*

*(b) the concurrence of the Director-General has been obtained.*

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

*(a) whether contravention of the development standard raises any  
matter of significance for State or regional environmental planning, and  
(b) the public benefit of maintaining the development standard, and  
(c) any other matters required to be taken into consideration by the  
Director-General before granting concurrence.*

*(6) Development consent must not be granted under this clause for a  
subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape,  
Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6  
Transition, Zone R5 Large Lot Residential, Zone C2 Environmental  
Conservation, Zone C3 Environmental Management or Zone C4 Environmental  
Living if—*

*(a) the subdivision will result in 2 or more lots of less than the minimum  
area specified for such lots by a development standard, or  
(b) the subdivision will result in at least one lot that is less than 90%  
of the minimum area specified for such a lot by a development  
standard.*

*Note—When this Plan was made it did not include any of these zones.*

*(7) After determining a development application made pursuant to this clause,  
the consent authority must keep a record of its assessment of the factors  
required to be addressed in the applicant's written request referred to in  
subclause (3).*

*(8) This clause does not allow development consent to be granted for  
development that would contravene any of the following—*

*(a) a development standard for complying development,  
(b) a development standard that arises, under the regulations under  
the Act, in connection with a commitment set out in a BASIX certificate  
for a building to which State Environmental Planning Policy (Building  
Sustainability Index: BASIX) 2004 applies or for the land on which such  
a building is situated,  
(c) clause 5.4,  
(caa) clause 5.5,  
(ca) clause 6.27(4),  
(cb) clause 6.28,  
(cc) clause 6.29,  
(cd) clause 6.31.*

*Clause 4.6(1) provides:*

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exception statement

35 Church Street, Birchgrove

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

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of Clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

In *Initial Action* Justice Preston considered the proper interpretation of Clause 4.6 and found that:

- *Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial effect relative to a compliant development (at [87]);*
- *There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and*
- *One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]). That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.*

At [90] of Initial Action the Court held that:

*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in Initial Action is that Clause 4.6(1) is not an operational provision and that the remaining clauses of Clause 4.6 constitute the operational provisions.

Clause 4.6(2) provides:

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exception statement

35 Church Street, Birchgrove

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This clause applies to Clause 4.3C(3)(a)(ii), – Landscaped areas for residential accommodation in Zone R1 development standard of the Inner West LEP.

**2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?**

Clause 4.3C(3)(a)(ii), – Landscaped areas for residential accommodation in Zone R1 of the Inner West LEP sits within Part 4, which is titled 'Principal Development Standards'. Clause 4.3C(3)(a)(ii) is a development standard in relation to Landscaped areas for residential accommodation in Zone R1 where the site area exceeds 235m<sup>2</sup>, and the relevant standard is as follows:

**Clause 4.3C Landscaped areas for residential accommodation in Zone R1**

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

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- (b) to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) to ensure that development promotes the desired future character of the neighbourhood,*
- (d) to encourage ecologically sustainable development,*
- (e) to control site density,*
- (f) to provide for landscaped areas and private open space.*

*(2) This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential and identified as "Area 1" on the Key Sites Map.*

*(3) Development consent must not be granted to development to which this clause applies unless—*

*(a) the development includes landscaped area comprising at least—*

- (i) if the lot size is 235m<sup>2</sup> or less—15% of the site area, or*
- (ii) otherwise —20% of the site area, and*

*(b) the site coverage does not exceed 60% of the site area.*

*(4) For the purposes of subclause (3)—*

*(a) the site area is to be calculated in the way set out in clause 4.5, and*

*(b) the following areas must not be included as landscaped areas—*

- (i) a landscaped area with a length or a width of less than 1m, or*

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exception statement

35 Church Street, Birchgrove

- (ii) a landscaped area located more than 500mm above ground level (existing), and*
- (c) a deck, balcony or similar structure, whether enclosed or unenclosed, must not be included in calculating the site coverage if—*
  - (i) the underside of the deck, balcony or structure is at least 2.4m above ground level (existing), and the area below the structure is able to be landscaped or used for recreational purposes, or*
  - (ii) the finished floor level is 500mm or less above ground level (existing).*

The site has an area of 650.4m<sup>2</sup> and therefore a minimum landscaped area of 20% applies pursuant to Clause 4.3C(3)(a)(ii) of the LEP.

The existing landscaped area has been calculated to be 59.9m<sup>2</sup> which is 9% of the site area of 650.4m<sup>2</sup>, and therefore does not comply with the minimum 20% landscaped area standard.

The proposed landscaped area has been calculated to be 96.2m<sup>2</sup> or 14.7% of the site area, which excludes areas that are less than 1m wide but involves a substantial increase in landscaped area compared to the existing situation, even though it remains less than 20% of the site area. Refer to the amended Landscaped Plan and Calculations Drawing DA15.

The site coverage will be unchanged and has been calculated to be 370.71m<sup>2</sup> or 57.03% and therefore complies with the maximum 60% site coverage standard.

### **3. Is compliance with the development standard unreasonable or unnecessary?**

*Clause 4.6(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

As found by Justice Preston in *Initial Action*, compliance with the development standard will prima facie be unnecessary if it can be shown that there is an absence of environmental harm/adverse amenity impacts from the proposed development. The breach of the landscaped area standard does not have adverse amenity impacts for the reasons outlined in this written request.

Furthermore, the submission and consideration of Objections under State Environmental Planning Policy No. 1 and the issue of compliance being “unreasonable or unnecessary” was summarised in the Land and Environment

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exception statement

35 Church Street, Birchgrove

Court judgment *Wehbe v Pittwater Council [2007] NSWLEC 827*. While that judgment applied to SEPP 1 Objections and not Clause 4.6 variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 variation requests.

The onus lies upon the applicant to demonstrate this in a written request that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the *Wehbe* case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

- i. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or*
- ii. That the objectives of the standard are not relevant to the proposal; or*
- or*
- iii. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or*
- iv. The development standard in question has been "virtually abandoned" by the Council; or*
- v. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).*

This written request does not rely on pathways ii, iii, iv and v above.

Point i. is of primary relevance in this case, that is, that the objectives of the standard are achieved, notwithstanding the non-compliance and there would be no purpose served by requiring strict compliance with the standard.

The objectives of the Landscaped area standard for residential accommodation in Zone R1 standard are as follows:

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

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- (b) to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) to ensure that development promotes the desired future character of the neighbourhood,*
- (d) to encourage ecologically sustainable development,*
- (e) to control site density,*
- (f) to provide for landscaped areas and private open space.*

#### **Objectives of the standard**

Compliance with the numerical standard would be unreasonable and unnecessary because the proposal will be consistent with the objectives of the landscaped area standard for the following reasons:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents*

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exception statement

35 Church Street, Birchgrove

This objective will be met by the increased area of landscaping and that will enhance the enjoyment of residents.

*(b) to maintain and encourage a landscaped corridor between adjoining properties,*

The landscaped area between properties will be slightly increased and the existing landscaped corridors between properties will be maintained.

*(c) to ensure that development promotes the desired future character of the neighbourhood,*

The building will remain compatible with the existing and desired future character of the area in terms of its height and bulk and size. The site is surrounded by four storey residential flat buildings on this side of Church Street and the attic roof additions will not be excessive in height and bulk and scale and the building will still be lower in height and scale compared with surrounding development. It will not affect the provision of landscaping on the site and adjoining properties.

*(d) to encourage ecologically sustainable development,*

The proposed additions to the existing building and the landscaping proposed will not be inconsistent with this objective.

*(e) to control site density,*

The density of 5 townhouse dwellings on the site will be unchanged.

*(f) to provide for landscaped areas and private open space.*

The proposal will involve an increase in landscaping on the site and deep soil planning compared with the existing situation. Private open space in the form of balconies and ground level courtyards will be maintained.

For the reasons outlined, the proposal will be consistent with the objectives of the standard and strict compliance with the landscaped area standard on this presently developed site is unreasonable and unnecessary. There would be no purpose served by requiring strict compliance with the landscaped area standard, and compliance with the standard could only be achieved by the demolition of part of the existing building.

### **Objectives of the zone**

The objectives of the R1 General Residential Zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

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exception statement

35 Church Street, Birchgrove

The individual objectives of the R1 General Residential zone are addressed as follows:

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

The R1 General Residential Zone allows for a range of low intensity residential uses on the land. The housing needs of the community are provided for by the proposal to maintain a multi dwelling housing development on the subject land that is a permissible use in this general residential zone.

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

The proposal to maintain the existing 5 dwellings and for alterations and additions to the existing multi dwelling housing development will be consistent with this objective.

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

The proposal is neutral in relation to this objective.

*To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposed attic level addition to the existing two storey building will not alter the orientation and pattern of development and will actually enhance the presence of the building in the streetscape. The pitched metal clad roof is an identifiable character element of the Victorian dwelling houses opposite. It will improve the character and appearance of the building compared to the existing, sedentary two storey flat roofed building.

It will not affect any existing built or natural features in the surrounding area.

A variation to the landscaped area standard in this case would be in the public interest because the proposal achieves an acceptable outcome and an appropriate level of consistency with the objectives of the standard, particularly in relation to an increase in landscaped area on the site compared to existing.

***b) that there are sufficient environmental planning grounds to justify contravening the development standard?***

Of relevance is the judgment in the Land and Environment Court of NSW, *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009, NSWLEC 90, NSWLEC 248*, which raised the issue that the grounds should ideally relate to a site specific proposal, rather than generic reasons.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

The environmental planning grounds particular to this site and to this proposal relates to the existing breach of the landscaped area standard applying to the existing building containing 5 dwellings.

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Strict compliance with the standard could only be achieved by demolishing part of the existing building to increase landscaped area and that would be unreasonable and unnecessary considering the proposal involves a reduction in paved areas on the site to increase landscaped area.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in *Initial Action v Woollahra Council (2018) NSWLEC 118*.

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in *Randwick City Council v Micaul Holdings Pty Ltd at [34]*, in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

The amenity of the adjoining and adjacent properties and the locality will be unaffected by the existing breach of the landscaped area standard and considering even though there will continue to be a breach of the minimum landscaped area standard, this proposal will involve a net increase in landscaped area on the subject site by the removal of some hard surfaces, particularly at the rear of the site.

For the reasons outlined, there are sufficient environmental planning grounds particular to the circumstances of the site and the proposed alterations and additions to the existing multi dwelling housing development, to justify the departure from the landscaped area standard.

In terms of the Objects of the EP&AAct, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

**4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?**

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

*Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:*

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*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and  
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Director-General has been obtained.*

Clause 4.6(4)(a)(i) has been addressed in the previous section of this written request. The objectives of the standard (4.6(4)(a)(ii)) as well as the objectives of the R1 General Residential Zone have been previously addressed and are adopted (rather than repeated) for the purposes of this section of the written request.

In addressing each of the individual objectives of the landscaped area standard and the objectives of the zone, it has been demonstrated that the proposal will be in the public interest because it is consistent with the objectives of the landscaped area standard and the objectives for development in the R1 General Residential Zone.

The proposal for alterations and additions to an existing multi dwelling housing development is permissible in the zone with development consent. The requirement in Clause 4.6(4)(b) is also met, as outlined as follows in relation to the concurrence of the Director-General.

***Clause 4.6(4)(b) Concurrence of the Director-General***

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

In accordance with Clause 4.6(4)(b) the concurrence of the Director-General is assumed.

**5. Conclusion**

The height and bulk and size of the existing multi dwelling housing development comprising 5 townhouses style dwellings house and the proposed alterations and additions and increase in landscaped area on the site compared with the existing situation is acceptable, notwithstanding the continuing, but minor departure from the numerical landscaped area standard.

It will not result in environmental harm or adverse impacts on the present amenity of neighbouring properties particularly in relation to privacy, solar access and views.

This exception request to the landscaped area standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons

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outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

This written request pursuant to Clause 4.6(3) of the Inner West LEP 2022 is acceptable for the following reasons:

- (a) The written request adequately addresses the matters required to be demonstrated by sub-clauses 4.6(3)(a) and
- (b) The proposal will be in the public interest because it is consistent with the objectives of the landscaped area standard and the objectives for development within the R1 General Residential Zone; and
- (c) The concurrence of the Director General is assumed.

  
Warren Long  
MPIA Registered Planner  
Longitude Planning Pty Ltd

30 June 2023

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exception statement

35 Church Street, Birchgrove

**Clause 4.6 – Exceptions to Development Standards in relation to Clause 4.4(2B)(b), – Floor space ratios in residential zones of the Inner West Local Environmental Plan 2022.**

**1. Introduction.**

This written request is made pursuant to the provisions of Clause 4.6 of the Inner West Local Environmental Plan 2022 (the LEP). A variation is sought in relation to the floor space ratio development standard of Clause 4.4(2B)(b), of the Inner West LEP, in relation to alterations and additions to the existing multi dwelling housing development, at 35 Church Street, Birchgrove.

This exception statement has been prepared having regard to the Land and Environment Court judgments in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, *Brigham v Canterbury Bankstown Council* [2018] NSWLEC 1406 and *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

**Clause 4.6 Exceptions to development standards**

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

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

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

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest*

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*because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Director-General has been obtained.*

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

*(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

*Note—When this Plan was made it did not include any of these zones.*

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.27(4),*
- (cb) clause 6.28,*
- (cc) clause 6.29,*
- (cd) clause 6.31.*

*Clause 4.6(1) provides:*

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

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*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of Clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

In *Initial Action* Justice Preston considered the proper interpretation of Clause 4.6 and found that:

- *Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial effect relative to a compliant development (at [87]);*
- *There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and*
- *One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]). That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.*

At [90] of Initial Action the Court held that:

*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in Initial Action is that Clause 4.6(1) is not an operational provision and that the remaining clauses of Clause 4.6 constitute the operational provisions.

Clause 4.6(2) provides:

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development*

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*standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This clause applies to Clause 4.4(2B)(b) Floor space ratios in residential zones development standard of the Inner West LEP.

**2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?**

Clause 4.4A of the Inner West LEP sits within Part 4, which is titled 'Principal Development Standards'. Clause 4.4(2B)(b) is a development standard in relation to floor space ratio and the relevant standard is as follows:

**Clause 4.4 - Floor space ratios in residential zones**

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

- (a) to establish a maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity,*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

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

*(2A) The maximum floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential identified as "Area 1" on the Key Sites Map is 1:1.*

*(2B) The maximum floor space ratio for development for the purpose of residential accommodation is as follows—*

*(a) on land shown edged black or pink on the Floor Space Ratio Map —*

- less than 150m<sup>2</sup>—0.9:1,*
- 150m<sup>2</sup> or more but less than 300m<sup>2</sup>—0.8:1,*
- 300m<sup>2</sup> or more but less than 450m<sup>2</sup>—0.7:1, or*
- 450m<sup>2</sup> or more—0.6:1.*

*(b) on land shown edged red or green on the Floor Space Ratio Map is not to exceed—*

- less than 150m<sup>2</sup>—1.0:1, or*
- 150m<sup>2</sup> or more but less than 300m<sup>2</sup>—0.9:1, or*
- 300m<sup>2</sup> or more but less than 450m<sup>2</sup>—0.8:1, or*
- 450m<sup>2</sup> or more—0.7:1.*

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The site is shown coloured light blue as being in 'D' and Area 4 edged in green on the Floor Space Ratio Map. It has an area of 650.4m<sup>2</sup> and is therefore subject to a maximum floor space ratio (FSR) of 0.7:1, pursuant to Clause 4.4(2B)(b), which represents a maximum gross floor area of 455.28m<sup>2</sup>.

The gross floor area of the existing building has been calculated to be 467.5m<sup>2</sup>, which represents a floor space ratio of 0.72:1 and therefore exceeds the maximum FSR of 0.7:1 applicable to the site.

The proposed gross floor area comprising the attic roof addition to each of the 5 dwellings has been calculated to be 650m<sup>2</sup>, which represents a floor space ratio of 1:1 and also exceeds the maximum FSR of 0.7:1 applicable to the site.

### **3. Is compliance with the development standard unreasonable or unnecessary?**

*Clause 4.6(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

As found by Justice Preston in *Initial Action*, compliance with the development standard will prima facie be unnecessary if it can be shown that there is an absence of environmental harm/adverse amenity impacts from the proposed development. The breach of the floor space ratio standard does not have adverse amenity impacts for the reasons outlined in this written request.

Furthermore, the submission and consideration of Objections under State Environmental Planning Policy No. 1 and the issue of compliance being "unreasonable or unnecessary" was summarised in the Land and Environment Court judgment *Wehbe v Pittwater Council [2007] NSWLEC 827*. While that judgment applied to SEPP 1 Objections and not Clause 4.6 variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 variation requests.

The onus lies upon the applicant to demonstrate this in a written request that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the *Wehbe* case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

- i. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or*
  - ii. That the objectives of the standard are not relevant to the proposal;*
- or*

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- iii. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or*
- iv. The development standard in question has been "virtually abandoned" by the Council; or*
- v. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).*

This written request does not rely on pathways ii, iii, iv and v above.

Point i. is of primary relevance in this case, that is, that the objectives of the standard are achieved, notwithstanding the non-compliance and there would be no purpose served by requiring strict compliance with the standard.

The objectives of the floor space ratio standard are as follows:

**Clause 4.4 - Floor space ratio**

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

- (a) to establish a maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity,*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

**Objectives of the standard**

Compliance with the numerical standard would be unreasonable and unnecessary because the proposal will be consistent with the objectives of the floor space ratio standard for the following reasons:

- (a) to establish a maximum floor space ratio to enable appropriate development density,*

This objective reflects the intent of the standard.

- (b) to ensure development density reflects its locality,*

The building will remain compatible with the existing and desired future character of the area in terms of its height and bulk and size. The site is surrounded by four storey residential flat buildings on this side of Church Street and the attic roof addition will not be excessive in height and bulk and scale and the building will still be lower in height and scale compared with surrounding development.

- (c) to provide an appropriate transition between development of different densities,*

The site is not in an area containing different zonings and different densities.

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*(d) to minimise adverse impacts on local amenity,*

The adverse impacts from the development are minimised by the pitched roof form of the attic roof addition and the positioning of the roof above the existing ground and first floor building footprint. In this way the front and rear and side setbacks are maintained. Views and solar access and privacy of adjoining residential properties will be maintained.

*(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

The proposal will not affect the existing tree canopy and the use and enjoyment of adjoining properties and the public domain.

For the reasons outlined, the proposal will be consistent with the objectives of the standard and strict compliance with the floor space ratio standard is unreasonable and unnecessary. There would be no purpose served by requiring strict compliance with the floor space ratio standard.

### **Objectives of the zone**

The objectives of the R1 General Residential Zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The individual objectives of the R1 General Residential zone are addressed as follows:

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

The R1 General Residential Zone allows for a range of low intensity residential uses on the land. The housing needs of the community are provided for by the proposal to maintain a multi dwelling housing development on the subject land that is a permissible use in this general residential zone.

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

The proposal to maintain the existing 5 dwellings and for alterations and additions to the existing multi dwelling housing development will be consistent with this objective.

The additional floor area is proposed within the new attic roof space, that will achieve an additional bedroom and a bathroom for each of the 5 existing townhouse dwellings. The attic roof addition will enhance the appearance of the building in the streetscape and the heritage conservation area and it will not be excessive in height and bulk and size and will still be substantially smaller and lower in height compared to the surrounding four storey residential flat buildings.

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

The proposal is neutral in relation to this objective.

*To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposed attic level addition to the existing two storey building will not alter the orientation and pattern of development and will actually enhance the presence of the building in the streetscape. The pitched metal clad roof is an identifiable character element of the Victorian dwelling houses opposite. It will improve the character and appearance of the building compared to the existing, sedentary two storey flat roofed building.

It will not affect any existing built or natural features in the surrounding area.

A variation to the floor space ratio standard in this case would be in the public interest because the proposal achieves an acceptable outcome and an appropriate level of consistency with the objectives of the standard, particularly in relation to improved compatibility with the local area character, and minimising the effects of bulk and scale, and maintaining local amenity in particular solar access, privacy and views.

***b) that there are sufficient environmental planning grounds to justify contravening the development standard?***

Of relevance is the judgment in the Land and Environment Court of NSW, *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009, NSWLEC 90, NSWLEC 248*, which raised the issue that the grounds should ideally relate to a site specific proposal, rather than generic reasons.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

The environmental planning grounds particular to this site and to this proposal relates to the existing breach of the floor space ratio standard applying to the existing building and the proposal to add floor area within a pitched roof, attic roof space to provide additional accommodation for the each of the 5 dwellings. The new pitched roof is an important character element of the locality and the proposal will also improve the contribution of the site to the heritage significance of the conservation area.

Strict compliance with the standard could only be achieved by demolishing part of the existing building to reduce floor area and that would be unreasonable and unnecessary.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in *Initial Action v Woollahra Council (2018) NSWLEC 118*.

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This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in *Randwick City Council v Micaul Holdings Pty Ltd* at [34], in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

Of particular relevance is the objective of the floor space ratio standard --

*(a) to ensure that residential accommodation—*

*(iii) minimises the impact of the bulk and scale of buildings.*

The amenity of the adjoining and adjacent properties will be unaffected by the proposed attic roof addition and there will be no adverse impact on the existing level of solar access, privacy and views of residents of the adjoining properties as a consequence of the breach of the floor space ratio standard.

For the reasons outlined, there are sufficient environmental planning grounds particular to the circumstances of the site and the design of the proposed alterations and additions to the existing multi dwelling housing development, to justify the departure from the floor space ratio standard.

In terms of the Objects of the EP&AAAct, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

**4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?**

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

*Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular*

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exception statement

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*standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Director-General has been obtained.*

Clause 4.6(4)(a)(i) has been addressed in the previous section of this written request. The objectives of the standard (4.6(4)(a)(ii)) as well as the objectives of the R1 General Residential Zone have been previously addressed and are adopted (rather than repeated) for the purposes of this section of the written request.

In addressing each of the individual objectives of the floor space ratio standard and the objectives of the zone, it has been demonstrated that the proposal will be in the public interest because it is consistent with the objectives of the floor space ratio standard and the objectives for development in the R1 General Residential Zone.

The proposal for alterations and additions to an existing multi dwelling housing development is permissible in the zone with development consent. The requirement in Clause 4.6(4)(b) is also met, as outlined as follows in relation to the concurrence of the Director-General.

***Clause 4.6(4)(b) Concurrence of the Director-General***

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

In accordance with Clause 4.6(4)(b) the concurrence of the Director-General is assumed.

**5. Conclusion**

The height and bulk and size of the existing multi dwelling housing development comprising 5 townhouses style dwellings house and the proposed alterations and attic roof additions are acceptable, notwithstanding the continuing departure from the numerical floor space ratio standard.

It will achieve an equitable share of additional accommodation in the attic roof space for the residents of each of the 5 dwellings. It will enhance the design and appearance of the building in the streetscape in a very positive way and will also improve the contribution of the site and the building to the heritage significance of the Town of Waterview Heritage Conservation Area in which it is located. It will not result in environmental harm or adverse impacts on the present amenity of neighbouring properties particularly in relation to privacy, solar access and views.

This exception request to the floor space ratio standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because

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it is consistent with the objectives of the standard and the objectives of the zone.

This written request pursuant to Clause 4.6(3) of the Inner West LEP 2022 is acceptable for the following reasons:

- (a) The written request adequately addresses the matters required to be demonstrated by sub-clauses 4.6(3)(a) and
- (b) The proposal will be in the public interest because it is consistent with the objectives of the floor space ratio standard and the objectives for development within the R1 General Residential Zone; and
- (c) The concurrence of the Director General is assumed.

  
Warren Long  
MPIA Registered Planner  
Longitude Planning Pty Ltd

29 August 2022

## Attachment D – Statement of Heritage Significance

Godden Mackay Logan

### Area 15 Town of Waterview Conservation Area

#### Landform

The land in this conservation area is located around a small creek (known as Curtis Waterhole) that enters Waterview Bay (now Morts Bay) at its most western point. The area is generally sheltered and includes flat low-lying land near the bay (where Morts Dock was built) rising south to higher land along Darling Street and west to the prominent knoll of Dock Road and Bates Street.

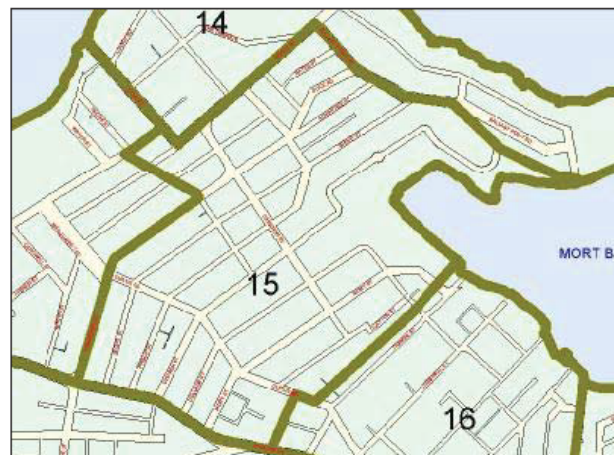


Figure 15.1 Town of Waterview Conservation Area Map.

#### History

The area that was later developed by Thomas Mort as the Town of Waterview included land originally purchased from Gilchrist's Balmain Estate in 1836 by Curtis and Lamb. In 1854 these two lots at the eastern end of the bay were purchased by Captain Rowntree and Thomas Holt for a slipway and dry dock. Thomas Mort was impressed with the sheltered bay and joined them in the enterprise.

Mort also accepted the transfer of most of the land around the dock area and commissioned Surveyor FH Reuss to lay out a township of 700 modest residential allotments. Initially Mort sought to provide rental accommodation near the dock to attract skilled labour and he indicated that a building society might be formed to assist purchasers, probably so that there would always be a pool of skilled workers living nearby. Allotments were 1/2 chain (33ft) wide with depths ranging from 84-109 feet, but subsequent resubdivision to allow two houses (terrace or semi) on one allotment occurred at the time of building and produced many smaller parcels. There were no back lanes for night soil disposal.

Small groups of similar houses suggest the area was constructed by small-scale building contractors, or by individual owner/builders.

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Mort purchased more land adjoining the original township and after his death in 1877 his trustees continued the dense subdivision and development of this area in response to the growth of Morts Dock Industries and the building boom of the 1880s.

It took forty years from 1857 for the town to be fully occupied. Just over half the allotments had been sold by 1878, but by 1896 the streets created within Mort's Town – Mort, Church, Phillip, Short, College, Rowntree, Curtis, Spring and Cameron Streets – were filled with an assortment of houses, 796 in all, 396 of brick, 348 of weatherboard, 51 of stone and one of iron. Small groups of corner shops and pubs served the community.

By 1861 the dock was leasing facilities to other maritime activities, and it developed its own associated engineering industries. Morts Dock and Engineering Co grew rapidly to become the largest private employer in Australia in a variety of maritime and engineering industries. During the 1940s it built corvettes, frigates and a floating dock. Economic fluctuations affecting the dock also affected its workers. The dock, the Town of Waterview and its pubs were the site of the beginnings of the urban labour movement. The dock closed in 1958; the site was levelled and used as a container terminal. More recently, the land was developed for residential purposes by the Department of Housing.

#### Sources

Solling, M and Reynolds, P 1997, 'Leichhardt: on the margins of the city', *Leichhardt Historical Journal*, Vol. 22, Allen and Unwin.

Reynolds, P 1985, 'The first 22 lots – an overview: Suburbanisation in Balmain', *Leichhardt Historical Journal*, Vol. 14.

Further research by Max Solling.

#### Significant Characteristics

- Regular street pattern made up of wider streets (about 50ft wide) marking the boundaries of the township (Rowntree, Mort, Curtis and Cameron Streets) or giving access to the dock (Church Street) with narrower streets filling the remainder.
- Lack of back lanes.
- A very regular streetscape resulting from:
  - regular width allotments of 33ft (or half 33ft) giving rise to uniform densely developed streets of single or double -fronted houses/terraces;
  - use of limited range of building materials – either rendered brick or painted weatherboard;
  - face brick houses of post c1890 and the fifty-odd stone buildings are noticeable for their different building materials; and
  - remarkably intact collection of single and two-storey attached and detached dwellings, many of them weatherboard.



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- Density of pubs.
- Corner stores and small groups of stores and pubs at some cross roads.

#### Statement of Significance or Why the Area is Important

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area, through the form and fabric of its houses, corner shops and pubs, its street layout and allotment shapes, demonstrates a remarkably intact area of early workers' housing from 1850s to 1890s with later infill development prior to World War II (ie pre-1939). It is significant for its surviving development prior to World War II.
- Demonstrates through the density of pubs (and former pubs) within the township area its close association with the growth of the urban labour movement. A number of these pubs are of national heritage significance for their historical and enduring social values as part of the history of unionism and of the Ships Painters and Dockers Union in particular.
- Demonstrates, through the nature of its housing, the important role played by Morts Dock as a magnet for workers and the location of their housing.
- Demonstrates, through its rendered and painted brickwork, the nature of construction in Sydney before the ready availability of hard pressed, face bricks.
- Demonstrates the work of Surveyor Reuss.
- Associated with prominent local entrepreneurs and land developers, some of whom were aldermen of Council.
- Demonstrates, with Bodalla Village on the New South Wales south coast, the role of Thomas Mort in providing 'appropriate' housing for his employees.

#### Management of Heritage Values

##### Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

##### Retain

- All pubs, preferably as public houses, or in related activities (boarding houses etc) or as small-scale commercial uses.
- All pre-1939 buildings, especially timber buildings, and all their architectural details. Replacement of lost detail, based only on evidence, should be encouraged.
- Original finishes, particularly rendered brick houses.

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- All remaining sandstone kerbs and gutter.

Avoid

- Diagonally placed chicanes, and other works that diminish the straight line of the original road layout.
- Alterations that change the shape (form) of the pubs – particularly the removal of verandahs or the creation of new verandahs for which there is no historical evidence.
- Alterations that change the shape of the building or original roof forms on the main part of the buildings.
- Removal of original detail. (Encourage restoration from evidence.)
- Additions of details not part of the original fabric of the building.
- Interruption to the almost continuous kerb and gutters.