




 DEVELOPMENT ASSESSMENT REPORT				
<b>Application No.</b>	DA/2023/0254			
<b>Address</b>	54 Church Street BIRCHGROVE			
<b>Proposal</b>	Alterations and additions to existing dual occupancy including associated demolition and landscaping and Torrens Title subdivision into 2 lots			
<b>Date of Lodgement</b>	19 April 2023			
<b>Applicant</b>	Andrew Ireland			
<b>Owner</b>	Mrs Anna-Louise Gavan Mr Timothy J Gavan			
<b>Number of Submissions</b>	Initial: 2			
<b>Value of works</b>	\$378,550.00			
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10%			
<b>Main Issues</b>	Heritage, Trees & Submissions			
<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>LOCALITY MAP</b>				
Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing dual occupancy including associated demolition and landscaping and Torrens Title subdivision into 2 lots at 54 Church Street Birchgrove.

The application was notified to surrounding properties and 2 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Bulk and scale
- Parking

The issues have been resolved by way of amended plans and therefore the application is recommended for approval subject to conditions.

## 1. Proposal

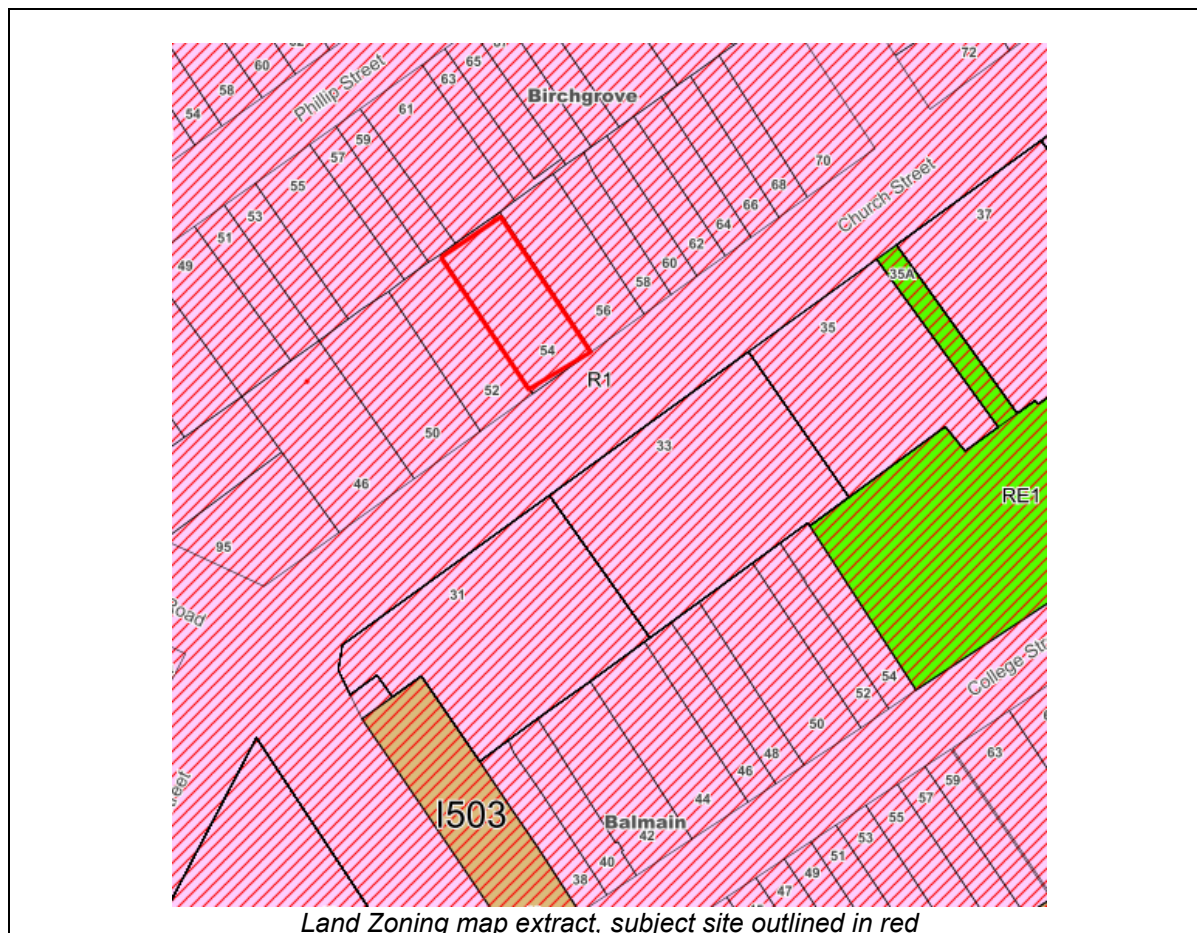
The proposal seeks approval for alterations and additions to an existing dual occupancy including associated demolition and landscaping and Torrens Title subdivision into 2 lots, with the following proposed work including:

- The existing dual occupancy is to be Torrens Title subdivided into two allotments.
- Each new dwelling on separate title is to have alteration and additions to the existing ground and first floor with associated landscaping.
- Ground floor alterations and addition to infill side setback to the southwest and northeast boundaries with new living areas and outside POS and paving
- Ground floor stair relocation, addition of living spaces and powder room to the ground floor
- First floor rear room chamfers to be infilled and squared off, master bedrooms to be increased in size.
- Removal of one tree

## 3. Site Description

The subject site is located on the northern side of Church Street, between Curtis Road and Spring Street. The site consists of one allotment and is generally rectangular shaped with a total area of 251.4sqm. The site has a frontage to Church Street of approximately 10 metres.

The site supports a two-storey dual occupancy. The adjoining properties support single and two-storey attached and detached dwellings. To the southeast of the site along the entire length of Church Street are a mix of three and two storey residential flat buildings with under croft parking with an effective rise of four storeys. The property is located within a heritage conservation area.



## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
PDA/2021/0083	PREDA – Subdivision	05/05/2021
BA/1992/301	Dual Occupancy	03/06/1992

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
16/05/2023	The notification letters were amended to address an administrative error and reissued before the commencement of the notification being the 19 May 2023.
01/06/2023	Request for amended plans to reduce bulk, scale and delete proposed off-street parking spaces.
30/06/2023	Applicant provided amended plans which are the subject of this

assessment.

## 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 (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.

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

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

#### 5(a)(iii) ***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

##### Chapter 2 Vegetation in non-rural areas

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

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer whose comments are summarised as follows:

*It is noted that the Consulting Arborist failed to assess the impact of the proposed stormwater management plans.*

*Tree 1 identified as a Syzygium paniculatum (Brush Cherry) exhibits poor condition and vitality. The Urban Forest Team raises no objections to the removal of Tree 1 subject to replacement planting which will be conditioned.*

*Tree 2 identified as a Corymbia maculata (Spotted Gum) located on the neighbouring property, there is no impact by the proposed alterations and additions.*

*Tree 3 identified as a Lophostemon confertus (Brush Box). It is noted that the AIA assessment failed to assess the impact of the proposed stormwater management plans. These works fall within the TPZ of the neighbour's tree and increase the extent of encroachment stated by the Arborist. Also canopy pruning is proposed to tree 3 to achieve altered roofline clearances. It is noted that no letter of consent from the neighbouring property owner as called for in the Request for Further Information letter was submitted. The species Lophostemon confertus have a good tolerance to root disturbance, conditions regarding stormwater excavation are attached.*

*Tree 4 is as a Archontophoenix cunninghamiana (Bangalow Palm). The AIA assessment failed to assess the impact of the proposed stormwater management plans which show a new stormwater pit offset ~1m and new stormwater drainage line within 0.5m of the palm. The plans show the palm to be removed. The palm is less critical for retention, the Urban Forest Team has no objections to the palms removal subject to planting an advanced replacement tree, conditions stating this are attached.*

*Tree 5 is a Lagerstroemia indica (Crepe Myrtle) street tree, the tree is not clearly marked on the architectural or AIA report and the Arborist has failed to assess the impact of the stormwater drainage line connecting to the kerb. It is estimated that the stormwater drainage line will be offset ~1.5m. Work methods to minimise root damage to install the stormwater drainage are conditioned.*

In addition, there is a tree located on the Southwestern boundary located on 52 Church Street (tree 3). No consent from the owner has been provided for removal or pruning (Crown or roots). The proposed development to the southwest will impacts the tree and a condition will be imposed to ensure that demolition and or construction does not commence until such time Council has approved any works to the tree, pruning or removal.

Overall, the proposal is considered acceptable with regard to the SEPP and DCP subject to the imposition of conditions, which have been included in the recommendation of this report.

## Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

### **5(a)(iv) 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 2.6 – Subdivision
- Section 2.7 – Demolition requires development consent
- Section 4.1 – Minimum subdivision lot size
- 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 5.10 – Heritage conservation
- 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 under the *IWLEP 2022*. The *IWLEP 2022* defines the proposed development as:

**semi-detached dwelling** means a dwelling that is on its own lot of land and is attached to only one other dwelling.

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

Section 4 Principal Development Standards

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

Lot 1

Standard	Proposal	Non compliance	Complies
<b>Minimum Subdivision Lot Size</b> Minimum 200sqm	125.95sqm	74.05sqm or 37%	No
<b>Floor Space Ratio</b> Maximum permissible: 1:1 or 125.95 sqm	0.82:1 or 103.4sqm	N/A	Yes
<b>Landscape Area</b> Minimum permissible: 15% or 18.8sqm	27% or 34.2sqm	N/A	Yes
<b>Site Coverage</b> Maximum permissible: 60% or 75.5 sqm	60% or 75.5 sqm	N/A	Yes

Lot 2

Standard	Proposal	Non compliance	Complies
<b>Minimum Subdivision Lot Size</b> Minimum 200sqm	125.39 sqm	74.61sqm or 37.3%	No
<b>Floor Space Ratio</b> Maximum permissible:	0.82:1 or 103 sqm	N/A	Yes

1:1 or 125.39sqm			
<b>Landscape Area</b> Minimum permissible: 15% or 18.8sqm	26% or 33.2sqm	N/A	Yes
<b>Site Coverage</b> Maximum permissible: 60% or 75.5 sqm	60% or 75.5 sqm	N/A	Yes

Section 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standards:

- Section 4.1 – Minimum Subdivision Lot size

*Section 4.1 – Minimum Subdivision Lot size*

The applicant seeks a variation to the Minimum Subdivision Lot Size development standard under Section 4.1 of the *IWLEP 2022 of 200sqm* by 37% (74.05sqm) to create Lot 1 at 125.95sqm and by 37.3% (74.61sqm) to create Lot 2 at 125.39sqm from the existing lot of 251.4sqm.

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 maintains, is consistent with and reinforces the remaining Mid-Victorian character, style, orientation, pattern of development, streetscapes and landscape area predominant within the HCA. The proposal protects, enhances, and improves the amenity of existing and future residents and the neighbourhood. The proposal reinforces the remaining Mid-Victorian semidetached form at the front streetscape and provides a sympathetic and considered infill addition to the rear. The rear building form is consistent with recent approvals and applications. The proposed subdivision does not affect the existing character of built and natural features in the surrounding area. The objective is met notwithstanding the numerical non-compliance.*
- *The proposed subdivision formalises a historical planning anomaly which resulted in a prohibited dual occupancy within an R1 residential zone. The subdivision releases tenure of existing single owned dual occupancy to 2 individual dwellings, providing better community social welfare outcomes via increased housing ownership availability and reduced entry costs without changing the existing development pattern.*

- *The proposed development pursuant to Clause 4.6(4)(a)(ii) of the LEP is in my opinion in the public interest because it is compliant with both the zone objectives and the objectives of the particular 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 Subdivision 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;
- The proposal is an appropriate transition between development of different densities;
- The proposed subdivision is a continuation of the existing subdivision pattern to the east of the site (being properties no 58 to 68 Church Street inclusive);
- The proposal minimises adverse impacts on the locality; and
- All other key development standards have been met.

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 Minimum Lot Size development standard and it is recommended the Section 4.6 exception be granted.

#### Section 5.10 – Heritage conservation

The subject property 54 Church Street is a neutral dwelling located within the Town of Waterview Heritage Conservation Area (C31 in Schedule 5 of the *IWLEP 2022*).

The amended plans are considered to satisfy the objectives of this Section subject to the inclusion of conditions with regard to the retention of the picket fence and the façade colour. As a result, and subject to those conditions the proposal is considered to have no adverse impact on the Town of Waterview Heritage Conservation Area having regard to the provisions of Section 5.10 of *IWLEP 2022*.

#### 5(b) Draft Environmental Planning Instruments



N/A

## 5(c) 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
<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
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.6 Subdivision	Yes – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.11 Parking	Yes – see discussion
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes – see discussion
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.2.6 Birchgrove Distinctive Neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes - see discussion
C3.3 Elevation and Materials	Yes – see discussion
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
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	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
<b>Part E: Water</b>	

Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required with Development Applications	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
<b>Part F: Food</b>	N/A
<b>Part G: Site Specific Controls</b>	N/A

The following provides discussion of the relevant issues:

C1.6 Subdivision

The proposed subdivision of the existing dual occupancy is considered to meet the objectives and relevant controls under this part. A Section 4.6 Exception has been submitted for merit assessment and is found to be supportable. As Dual Occupancy are no longer permitted under the *IWLEP 2022*, the Torrens Title subdivision will result in a permissible outcome (semi-detached dwellings) and formalise an existing built form situation which is consistent with dwellings to the east of the subject site.

C1.11 Parking

It is noted that the garages, hardstand and crossovers were originally submitted, however due to various objectives not being satisfied, they have been deleted from the proposal and are not included in the amended plans.

C1.14 Tree Management

As discussed in section 5(a)(ii) of this report under *State Environmental Planning Policy (Biodiversity and Conservation) 2021* subject to relevant conditions imposed for tree removal and protection on the site and adjacent to the southwest, the proposal meets the relevant objectives and controls of this Part.

C3.2 Site Layout and Building Design

The proposed changes to the side setback and building location zone of the additions to the existing two storey building are supported as the result environmental impacts are minimal and the relevant objectives and controls have been met. The built form and siting is considered to be in the public interest as amended.

Pursuant to Clause C3.2 of the LDCP2013, where a proposal seeks a variation of the side setback control graph and building location zone, various tests need to be met. These tests are assessed below:

Merit test	Comment
Building typology	Acceptable. The form and scale of the proposal and its architectural style, materials and finishes will be complementary with, and will remain consistent with the desired future character of the area
Pattern of development	Acceptable. The formalisation of the existing dual occupancy consisting of two dwellings to Torrens Title subdivision with new works are suitably located to remain consistent with the pattern of development within the HCA which include smaller blocks located to the North and East of the allotment. The alterations to the existing double storey dwellings proposed have been designed with consideration of the existing levels of the dwelling and the adjoining property to the northeast and the southwest.
Bulk and	Acceptable. The proposed development has been designed with

Merit test	Comment
scale	consideration to the objectives of the desired future character in addition to the development standards of the IWLEP 2022. The overall bulk of the development consistent with the existing scale of the double storey dwellings and has been minimised so as to not result in unreasonable visual bulk impacts to the adjoining dwellings
Amenity impacts	Acceptable. The proposal is considered to be satisfactory with respect to applicable solar access controls as well as the privacy controls of the DCP.
Maintenance of adjoining properties	Acceptable. The proposed development maintains some existing zero setbacks to the ground and first floor and proposes new zero setback to the ground floor to both the southwest and north east side boundaries and is acceptable subject to conditions imposed.  The adjoining buildings at 52 and 56 Church Street are setback from the proposed site and the proposal is unlikely to impede on the ongoing the maintenance both adjoining properties.

Accordingly, the proposed extension to the side boundary at the first floor level is acceptable.

### C3.3 Elevation and Materials

As a result of the changes to fenestration, height and first floor veranda roof form and street elevation to Church Street, the proposal is considered to meet the relevant objectives and controls of this Part and the overall design is more in keeping with the surrounding neighbourhood and HCA.

### C3.11 Visual Privacy

The western elevation, both ground and first floor, has the same proportion of glazing compared to the existing elevation, in addition the first-floor balconies are existing and no works are proposed with exception of an all-weather roof. It is considered that the first-floor glazing and balcony servicing low habitable rooms, is considered to meet the relevant objectives and controls of the part.

## 5(d) The Likely Impacts

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

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

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

## 5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days on the 17 May 2023 to commence from 19 May to 2 June 2023 to surrounding properties. 3 registered submissions were received in response to the initial notification, two of those were from the same property.

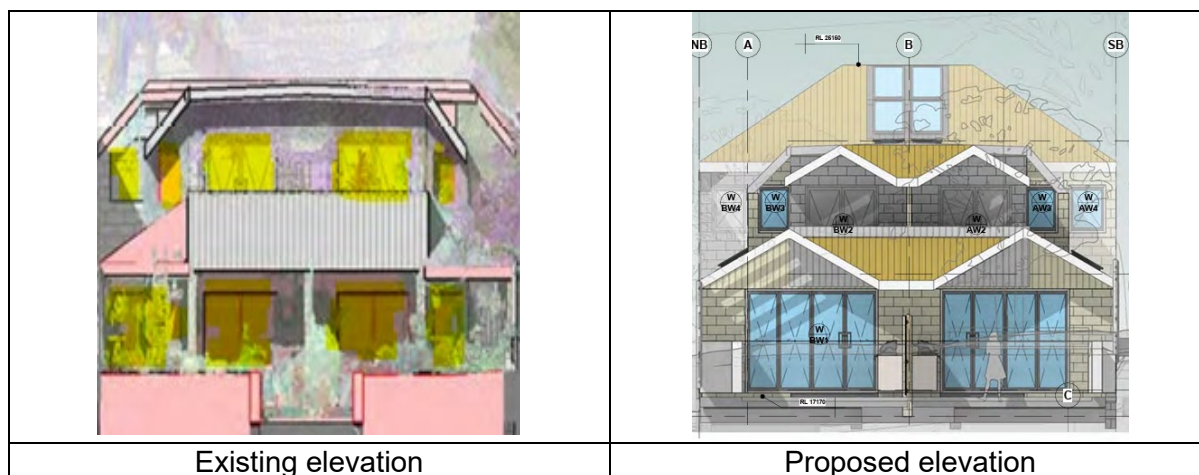
In addition to the issues addressed in the assessment report above, the submissions raised the following concerns which are discussed under the respective headings below:

On-site Parking

Comment: The assessment of the application against the relevant clauses of the Leichhardt DCP 2013 concluded that the originally proposed on-site parking would have a detrimental impact and the applicant provided amended plans with the removal of the garages, hardstands and proposed laybacks to Council’s satisfaction. Part C1.11 – Parking of LDCP 2013 does not require an on-site parking for a single dwelling.

West elevation windows

Comment: The ground and first floor western elevation windows are proportional to existing and are considered to have no additional impact to neighbouring properties.



Upper floor rear balconies

Comment: The rear first floor balconies located off bedrooms are existing and unchanged under the proposal apart from the addition of an all-weather roof cover. The matter of overlooking or privacy will remain unchanged as it is an existing situation.

Building Line Zone (BLZ)

Comment: As discussed, in the assessment against Part C3.2 of LDCP 2013 it is considered that the minor breach of BLZ ground and first floor rear alignment of the proposed additions is acceptable due to the northeast south west siting on of the block.

Tree Impacts

Comment: The proposal is recommended to be conditioned to ensure that any consent required for the removal or impacts to the TPZ of the tree located on the north east boundary of 52 Church Street is consented too prior to the issue of an Construction Certificate.

Notification

Comment: The matter of notification error was addressed when made aware.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- Heritage
- Development Engineers
- Urban Forest

## 7. Section 7.12 Levy

Section 7.12 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 \$3785.50 would be required for the development under the Inner West Contributions 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 Section 4.6 of 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 minimum subdivision lot size development standard 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/2023/0254 for alterations and additions to an existing dual occupancy including associated demolition and landscaping and Torrens Title subdivision into 2 lots at 54 Church Street BIRCHGROVE subject to the conditions listed in Attachment A.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

#### DOCUMENTS RELATED TO THE CONSENT

##### 1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
A02 Rev A	Site Plan	23/03/2023	a4Ad Architects
A07 Rev B	Demolition Plan	30/06/2023	a4Ad Architects
A11 Rev B	Landscape Plan	30/06/2023	a4Ad Architects
A12 Rev B	Ground & First Floor Plan	30/06/2023	a4Ad Architects
A13 Rev B	Roof Plan	30/06/2023	a4Ad Architects
A15 Rev B	Elevations (East & North)	30/06/2023	a4Ad Architects
A16 Rev B	Elevations (West & South)	30/06/2023	a4Ad Architects
A17 Rev B	Long Section 1 & 2	30/06/2023	a4Ad Architects
A18 Rev B	Long Section 3	30/06/2023	a4Ad Architects
A19 Rev B	Short Section 1 to 4	30/06/2023	a4Ad Architects
-	Waste Management Plan	23/03/2023	Andrew Ireland
A483850	BASIX Certificate	28/03/2023	Chapman Environmental Services P/L
A483852	BASIX Certificate	28/03/2023	Chapman Environmental Services P/L
23-2283-SW Sheet 1 to 5	Stormwater Plan	27/06/2023	Ross Engineers

23-2283-C1-A	Stormwater Certificate	27/06/2023	Ross Engineers
D10064-DRAFT	Draft Subdivision Plan		

As amended by the conditions of consent.

**DESIGN CHANGE**

**2. Design Change**

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

- a. The existing timber picket fence must be retained.
- b. The façade is to be finished in Taubman's 'Cloudburst' or similar.

**FEES**

**3. Security Deposit - Custom**

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

<b>Security Deposit:</b>	<b>\$5,600.00</b>
<b>Inspection Fee:</b>	<b>\$350.00</b>

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.

#### 4. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

#### 5. Section 7.12 Development Contribution Payments

In accordance with section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), a monetary contribution of **\$3785.50** shall be paid to Council for the purposes of the provision, extension or augmentation of local infrastructure identified in the Plan.

At the time of payment, the monetary contribution 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 9592 5000 or [council@innerwest.nsw.gov.au](mailto:council@innerwest.nsw.gov.au) 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 can 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**

### **6. 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.

### **7. Tree Protection**

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

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

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

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

The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :

Tree No.	Botanical/Common Name	Location
2	<i>Corymbia maculata</i> (Spotted Gum)	Neighbouring property
3	<i>Lophostemon confertus</i> (Brush Box)	Neighbouring property
5	<i>Lagerstroemia indica</i> (Crepe Myrtle)	Street Tree

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

- a. Green for trees to be retained;
- b. Red for trees to be removed;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

**NOTE:** Reference should be made to the *Arboricultural Impact Assessment Report prepared by Laurence & Co dated 24 June 2023 for tree numbering and locations*.

**8. Project Arborist**

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

**9. 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>Syzygium paniculatum</i> (rear of property)	removal
Archontophoenix cunninghamiana (front of property)	removal

The removal of any street tree approved by Council must include complete stump removal (to a minimum depth of 400mm) and the temporary reinstatement of levels so that no trip or fall hazards exist until suitable replanting occurs. These works must be completed immediately following the tree/s removal.

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*.

**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.

**14. Tree on 52 Church Street**

Prior to the issue of a Construction Certificate, demolition or commencement of works, whichever comes first, the Certifying Authority is required to ensure written consent from Council has been obtained in relation to either the removal or pruning (crown and or root) of

identified tree, Tree 3 – *Lophostemon confertus* , located on the southwestern boundary of No. 52 Church Street Birchgrove.

### **PRIOR TO ANY DEMOLITION**

#### **15. 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.

#### **16. Advising Neighbours Prior to Excavation**

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

#### **17. 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**

#### **18. 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.

**19. Stormwater Drainage System – Minor Developments (OSD is not required)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The Stormwater Drainage Concept plan on Drawing No. 22-2383-SW version (1) prepared by ROSS ENGINEERS and dated 30 June 2023, must be amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
- f. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- g. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- h. Inspection opening or junction pit must be designed at 90 degrees bend of stormwater drainage pipes;
- i. As there is no overland flow/flood path available from the rear and central courtyards to the Church Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
  1. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe;
  2. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building; and
  3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.

- j. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- k. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- l. No nuisance or concentration of flows to other properties;
- m. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- n. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- o. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- p. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- q. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- r. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- s. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- t. No impact to street tree(s).

#### **20. Changes to Levels**

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

- a. A 150mm step down must be provided between the finished floor level of the internal room and the finished surface level of the external area.

#### **21. 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.

**22. 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**

**23. Tree Protection Zone**

To protect the following tree/s, no work must commence until its/their Protection Zone is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area in accordance with the Tree Protection Plan prepared by Laurence and Co dated 24 June 2023. The fence/s (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name	Radius in metres
2	<i>Corymbia maculata</i> (Spotted Gum)	3m or approved TPP
3	<i>Lophostemon confertus</i> (Brush Box)	3m or approved TPP
5	<i>Lagerstroemia indica</i> (Crepe Myrtle)	2m

**24. Inspections by Project Arborist**

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

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
2. <i>Corymbia maculata</i> (Spotted Gum) - neighbouring property 3. <i>Lophostemon confertus</i> (Brush Box) - neighbouring property 5. <i>Lagerstroemia indica</i> (Crepe Myrtle) - Street trees	Prior to commencement of works	<ul style="list-style-type: none"> <li>Inspection and sign off installation of tree protection measures.</li> </ul>

	During Works	<ul style="list-style-type: none"> <li>• Supervise all site preparation and demolition works within the TPZ;</li> <li>• Supervise all works inside or above the TPZ;</li> <li>• Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ;</li> <li>• Supervise all tree work.</li> </ul>
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Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

**25. Limited Root Pruning**

No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s must be severed or injured in the process of any works during the construction period:

Tree No.	Botanical/Common Name	Radius in metres
2	<i>Corymbia maculata</i> (Spotted Gum)	4m
3	<i>Lophostemon confertus</i> (Brush Box)	4m
5	<i>Lagerstroemia indica</i> (Crepe Myrtle)	2m

All excavation within the specified radius of the trunk(s) of the above trees shall be excavated using either pneumatic or hydraulic tools **only** (e.g. *Airspade*® or hydro excavation) to a depth of one (1) metre under direct supervision of the Project Arborist and



then by mechanical means as agreed by the Project Arborist. If tree roots less than 30mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by a practicing Arborist.

#### **26. 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.

#### **27. Survey Prior to Footings**

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

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **28. 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.

#### **29. 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.

#### **30. Certification of Tree Planting**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of 2 x 100 litre size additional trees, which will attain a minimum mature height of 8 metres, must be planted in a more suitable location within the property at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape*. Trees listed as exempt species from Council's

Tree Management Controls, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

### **31. Torrens Title Subdivision to Occur before Construction & Demolition**

Prior to commencement of demolition or construction for any alterations to the existing dwelling on the site, the certifying authority is to be provided with evidence that the subdivision that forms part of this consent has been registered with the NSW Land Registry Services.

## **PRIOR TO SUBDIVISION CERTIFICATE**

### **32. Separate Drainage Systems**

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing that separate drainage systems must be provided to drain each proposed lot.

## **ON-GOING**

### **33. 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.

#### **Arborists standards**

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

**Tree Pruning or Removal (including root pruning/mapping)**

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

**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.

**Permits from Council under Other Acts**

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 verandah over footpath;
- h. Partial or full road closure; and

- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council’s Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

**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.

**Dial before you dig**

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

**Useful Contacts**

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

Long Service Corporation	Payments	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 - Environmental Solutions	SITA	1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)			<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW		13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

**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.

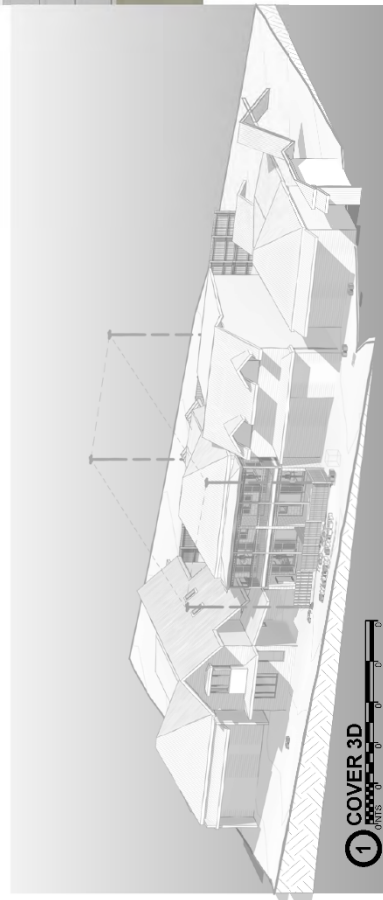
All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Attachment B – Plans of proposed development

# DA - RFI

NO	REV	TITLE	DATE	ISSUE
001	0	DA - RFI	30/06/21	ISSUE
002	0	DA - RFI	30/06/21	ISSUE
003	0	DA - RFI	30/06/21	ISSUE
004	0	DA - RFI	30/06/21	ISSUE
005	0	DA - RFI	30/06/21	ISSUE
006	0	DA - RFI	30/06/21	ISSUE
007	0	DA - RFI	30/06/21	ISSUE
008	0	DA - RFI	30/06/21	ISSUE
009	0	DA - RFI	30/06/21	ISSUE
010	0	DA - RFI	30/06/21	ISSUE
011	0	DA - RFI	30/06/21	ISSUE
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100	0	DA - RFI	30/06/21	ISSUE

**GENERAL NOTES:**  
 ALL WORKS TO COMPLY WITH APPLICABLE STANDARDS AND RELEVANT STANDARDS.  
 DO NOT SCALE OFF DRAWINGS.  
 ALL DIMENSIONS TO BE VERIFIED ON SITE.  
 BOUNDARIES, OFFSETS AND SETOUTS TO BE CONFIRMED BY A REGISTERED SURVEYOR PRIOR TO COMMENCEMENT.  
 STRUCTURAL, HYDRAULIC AND MECHANICAL WORK TO BE COORDINATED PRIOR TO CONSTRUCTION (AS REQUIRED).  
 INTERCONNECTED SMOKE ALARMS TO AS3786.



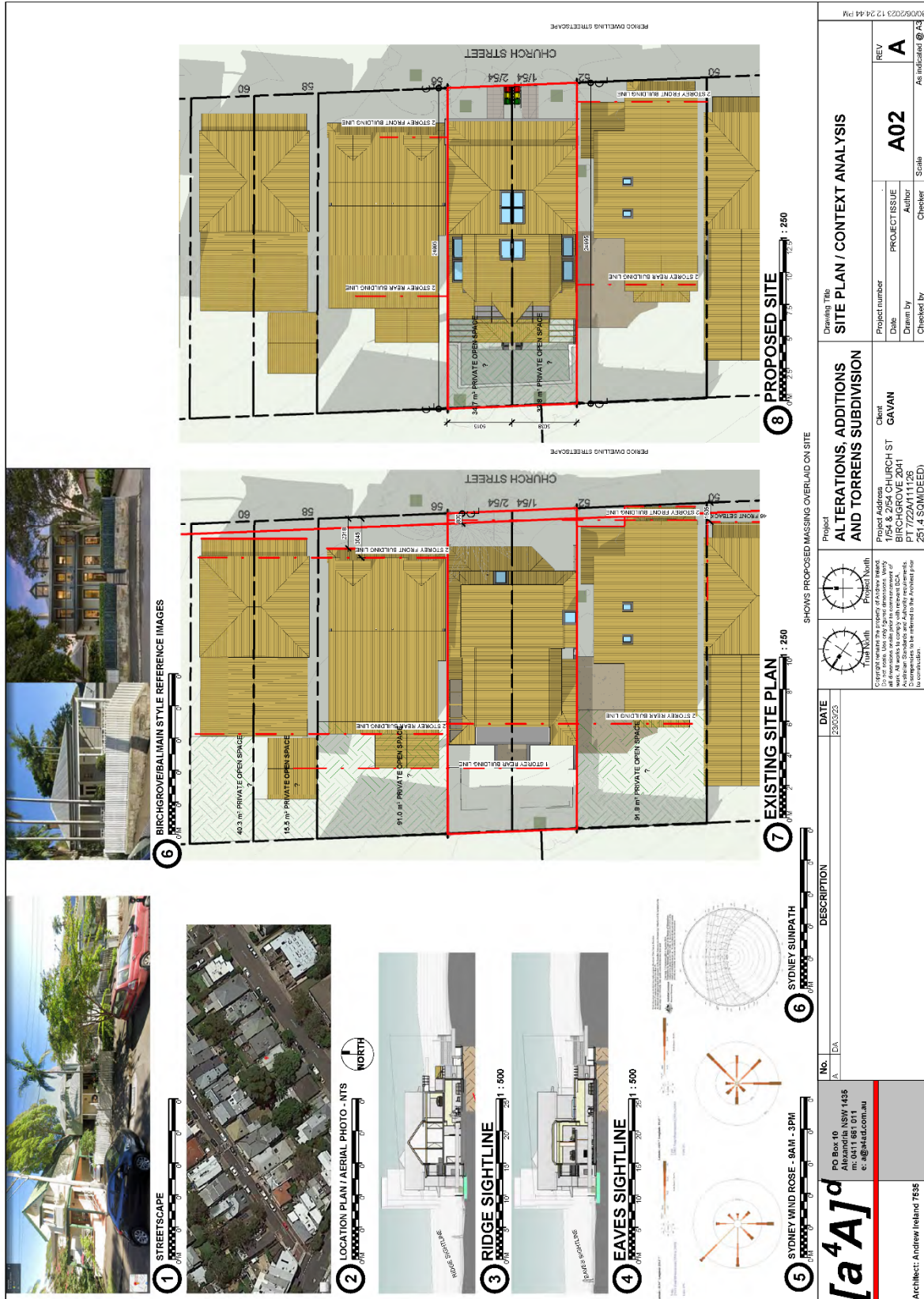
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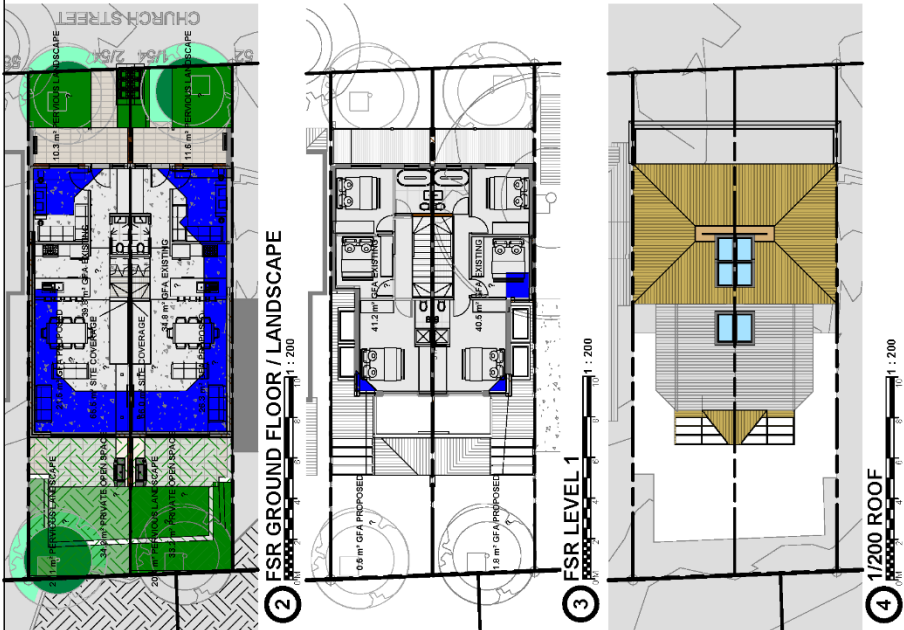
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**[a<sup>4</sup>A]<sup>d</sup>** 1/54 & 2/54 CHURCH ST BIRCHGROVE 2041 251.4 SQM(DEED)  
 ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION GAVAN

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 GAVAN ARCHITECTURE  
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 E: g@ga4a.com.au

30/06/2023 12:24 PM





**LEGISLATION DCP 2013**  
 C2.2.2.14 ALTERNATIVE MEDIATION  
 C2.2.2.15 Mutual Dispute Resolution

- 1. The parties shall agree to participate in mediation to resolve any dispute arising out of or in connection with the development of the site.
- 2. The mediation shall be conducted in accordance with the provisions of the Dispute Resolution Act 2013 (NSW).
- 3. The mediation shall be conducted in good faith and with mutual respect.
- 4. The mediation shall be conducted in a timely and cost-effective manner.
- 5. The mediation shall be conducted in private and confidentially.
- 6. The mediation shall be conducted in a neutral and impartial manner.
- 7. The mediation shall be conducted in a fair and equitable manner.
- 8. The mediation shall be conducted in a voluntary manner.
- 9. The mediation shall be conducted in a confidential manner.
- 10. The mediation shall be conducted in a binding manner.
- 11. The mediation shall be conducted in a final and conclusive manner.
- 12. The mediation shall be conducted in a legally binding manner.
- 13. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 14. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 15. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 16. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 17. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 18. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 19. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 20. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).

**C2.2.2.16.17 ALTERNATIVE MEDIATION**

- 1. The parties shall agree to participate in mediation to resolve any dispute arising out of or in connection with the development of the site.
- 2. The mediation shall be conducted in accordance with the provisions of the Dispute Resolution Act 2013 (NSW).
- 3. The mediation shall be conducted in good faith and with mutual respect.
- 4. The mediation shall be conducted in a timely and cost-effective manner.
- 5. The mediation shall be conducted in private and confidentially.
- 6. The mediation shall be conducted in a neutral and impartial manner.
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- 12. The mediation shall be conducted in a legally binding manner.
- 13. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 14. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 15. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 16. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 17. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 18. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 19. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 20. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).

**Department of Planning and Environment**  
 Project Name: 1/54 & 2/54 Church St (F) (2024) (DCP 2013)  
 Project Address: 1/54 & 2/54 Church St (F) (2024) (DCP 2013)  
 Client: GAVAN  
 Project Number: 251.4 SQM (DEED)

- 1. The parties shall agree to participate in mediation to resolve any dispute arising out of or in connection with the development of the site.
- 2. The mediation shall be conducted in accordance with the provisions of the Dispute Resolution Act 2013 (NSW).
- 3. The mediation shall be conducted in good faith and with mutual respect.
- 4. The mediation shall be conducted in a timely and cost-effective manner.
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- 18. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 19. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 20. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).

**LEGISLATION DCP 2013**

- 1. The parties shall agree to participate in mediation to resolve any dispute arising out of or in connection with the development of the site.
- 2. The mediation shall be conducted in accordance with the provisions of the Dispute Resolution Act 2013 (NSW).
- 3. The mediation shall be conducted in good faith and with mutual respect.
- 4. The mediation shall be conducted in a timely and cost-effective manner.
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- 15. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 16. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 17. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
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- 19. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).
- 20. The mediation shall be conducted in a manner that is consistent with the provisions of the Dispute Resolution Act 2013 (NSW).

**LEGISLATION DCP 2013**  
 C2.2.2.14 ALTERNATIVE MEDIATION  
 C2.2.2.15 Mutual Dispute Resolution

**LEGISLATION DCP 2013**  
 C2.2.2.16.17 ALTERNATIVE MEDIATION

**LEGISLATION DCP 2013**  
 C2.2.2.14 ALTERNATIVE MEDIATION  
 C2.2.2.15 Mutual Dispute Resolution

Project		
ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION		
Client: GAVAN		
Project Address: 1/54 & 2/54 CHURCH ST BIRCHGROVE 2041		
Project Number: 251.4 SQM (DEED)		
Drawing Title: FSR & DCP PLANS		
Drawing Number: A03		
Revision: B		
Scale: As indicated @ 1:200		

No.	DATE	DESCRIPTION
A	25/05/23	DA REF
B	30/05/23	DA REF

**[a4A]d**  
 PO Box 10  
 Ashby NSW 1435  
 Tel: 0411 664 011  
 Fax: 0411 664 011  
 E: a@4ad.com.au

Architect: Andrew Ireland / 535

**1** STREETSCAPE MASSING 1

**2** STREETSCAPE MASSING 2

**3** STREETSCAPE MASSING 3

**4** STREETSCAPE MASSING 4

<b>NO.</b>	<b>DESCRIPTION</b>	<b>DATE</b>
A	EA	23/07/23
B	EA/RFI	30/07/23

PO Box 10 NSW 1463  
 Ph: 0211 681 011  
 e: a@4ad.com.au

[a<sup>4</sup>A]<sup>d</sup>

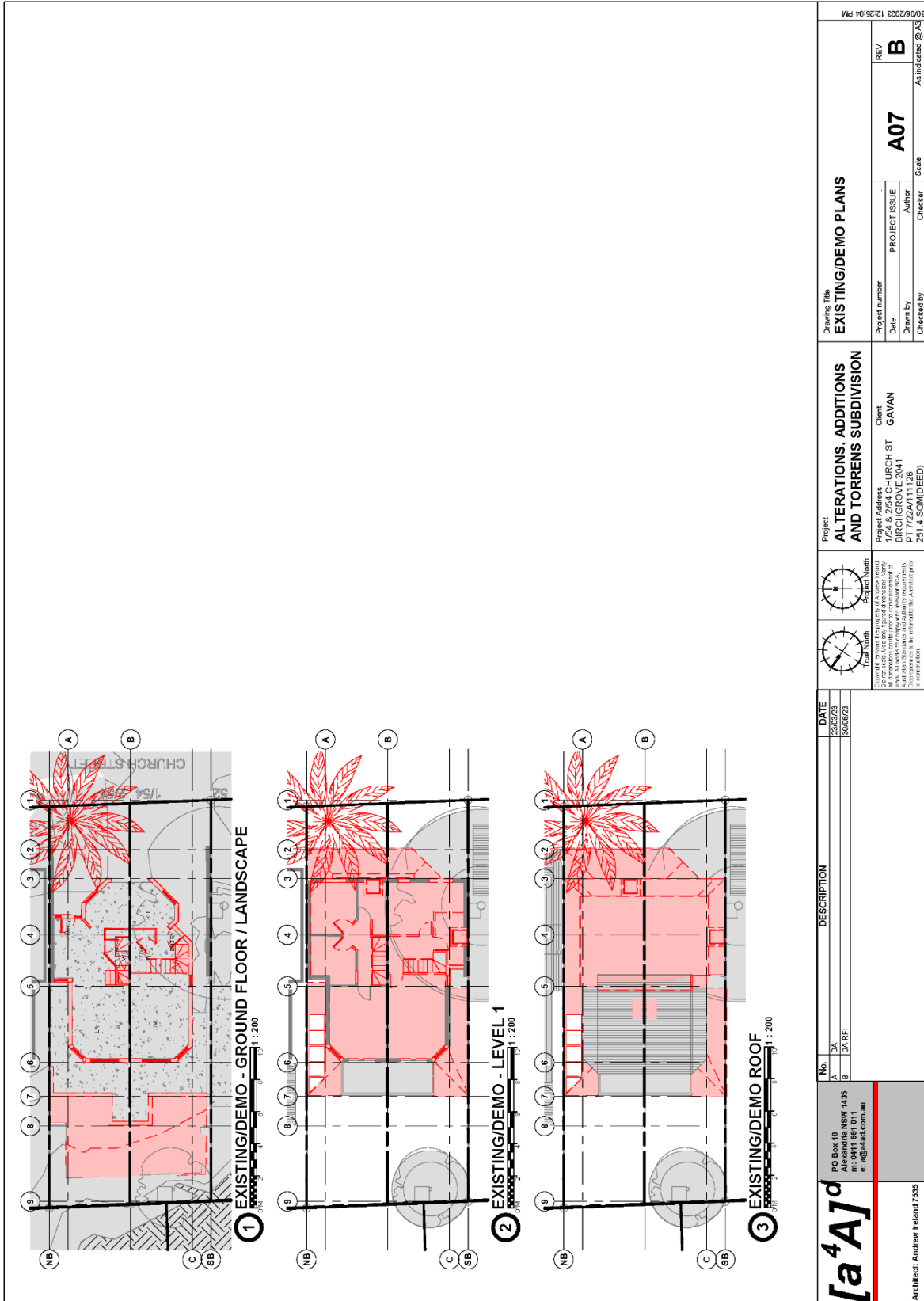
Architect: Andrew Ireland 7635

<b>Project</b> ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION	<b>Project Number</b> A04	<b>REV</b> B
<b>Project Address</b> 1/54 & 2/54 CHURCH ST BIRCHGROVE 2041 PT 7/22AM11726 Z31.4 (SOUNDDED)	<b>Client</b> GAVAN	
<b>Time North:</b>	<b>Project North:</b>	
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<b>Drawing Title</b> STREETSCAPE MASSING/VISIBILITY STUDIES	<b>Project number</b> A04	<b>REV</b> B
<b>Date</b>	<b>Author</b>	<b>Checked by</b>
<b>Drawn by</b>	<b>Author</b>	<b>Checked by</b>
<b>Scale</b>	<b>Scale</b>	<b>Scale</b>



<b>[a<sup>4</sup>A]<sup>d</sup></b> PO Box 10 Alexandria NSW 1535 t: 02 9550 2222 e: a4@ad.com.au		No. A B CA CA (RT)		DATE 23/03/23 30/06/25		DESCRIPTION		Project Title <b>ISO VIEWS</b>		Project number <b>A05</b>		REV <b>B</b>	
Architect: Andrew Ireland 7635		True North Project North		Project <b>ALTERATIONS, ADDITIONS                  AND TORRENS SUBDIVISION</b>		Client <b>GAVAN</b>		Project Address 1/54 & 2/54 CHURCH ST BIRCHGROVE 2041 PT 7/22AM11126 251.4 SQ(M) (DEED)		Project Date Drawn by Checked by		Project Issue Author Checker Scale @ A4	
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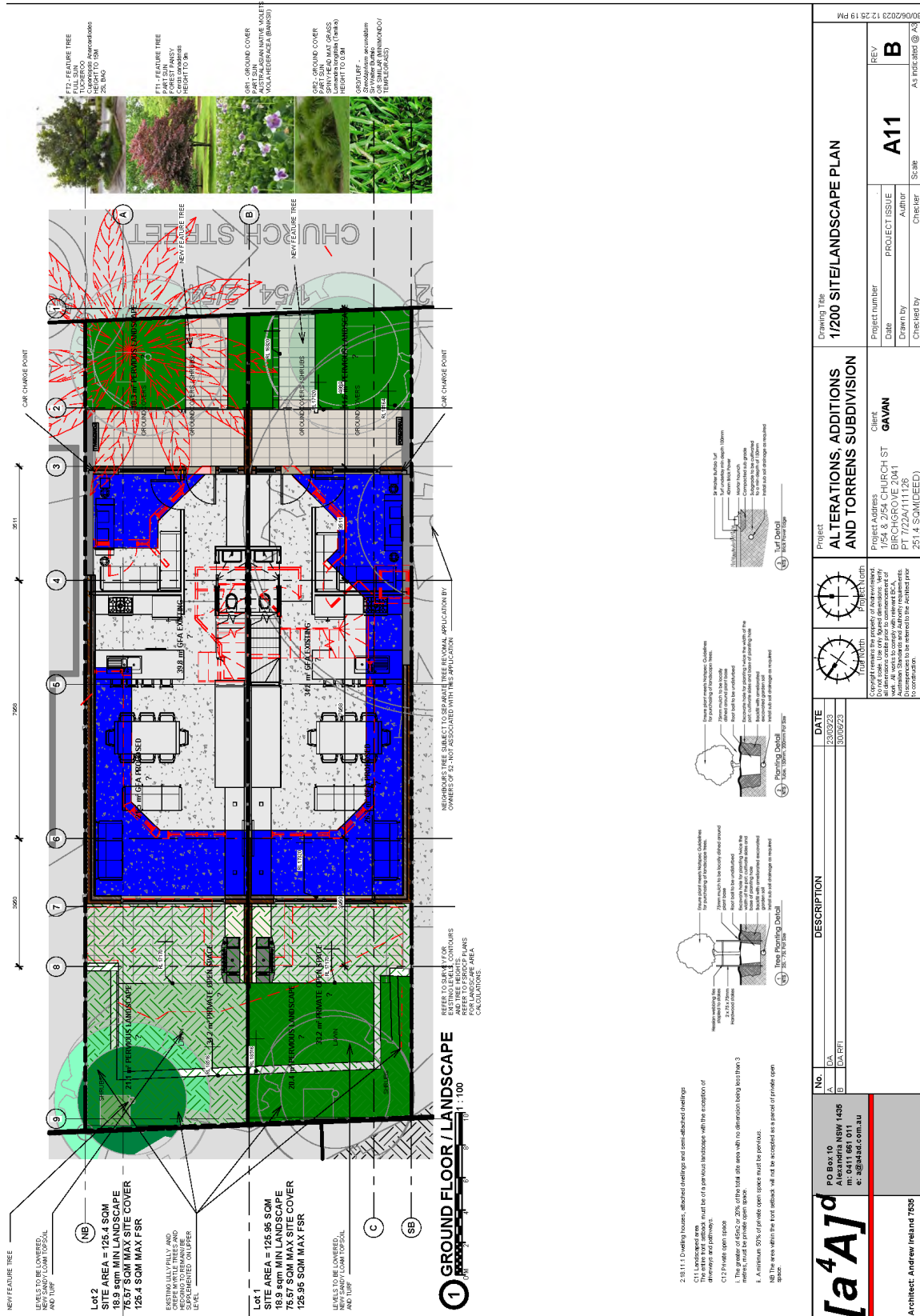


① STREETScape - EXISTING 1/200 - E

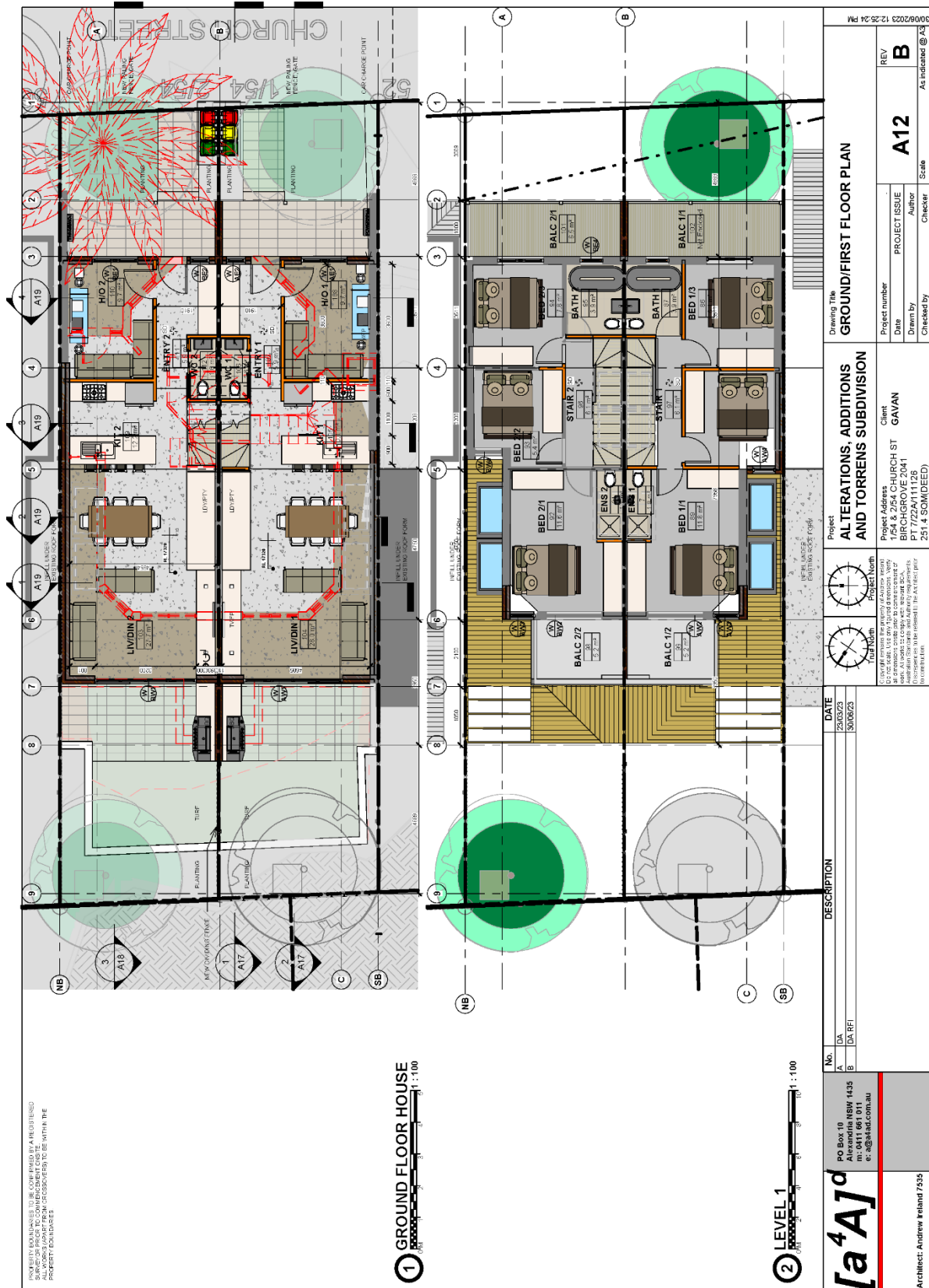
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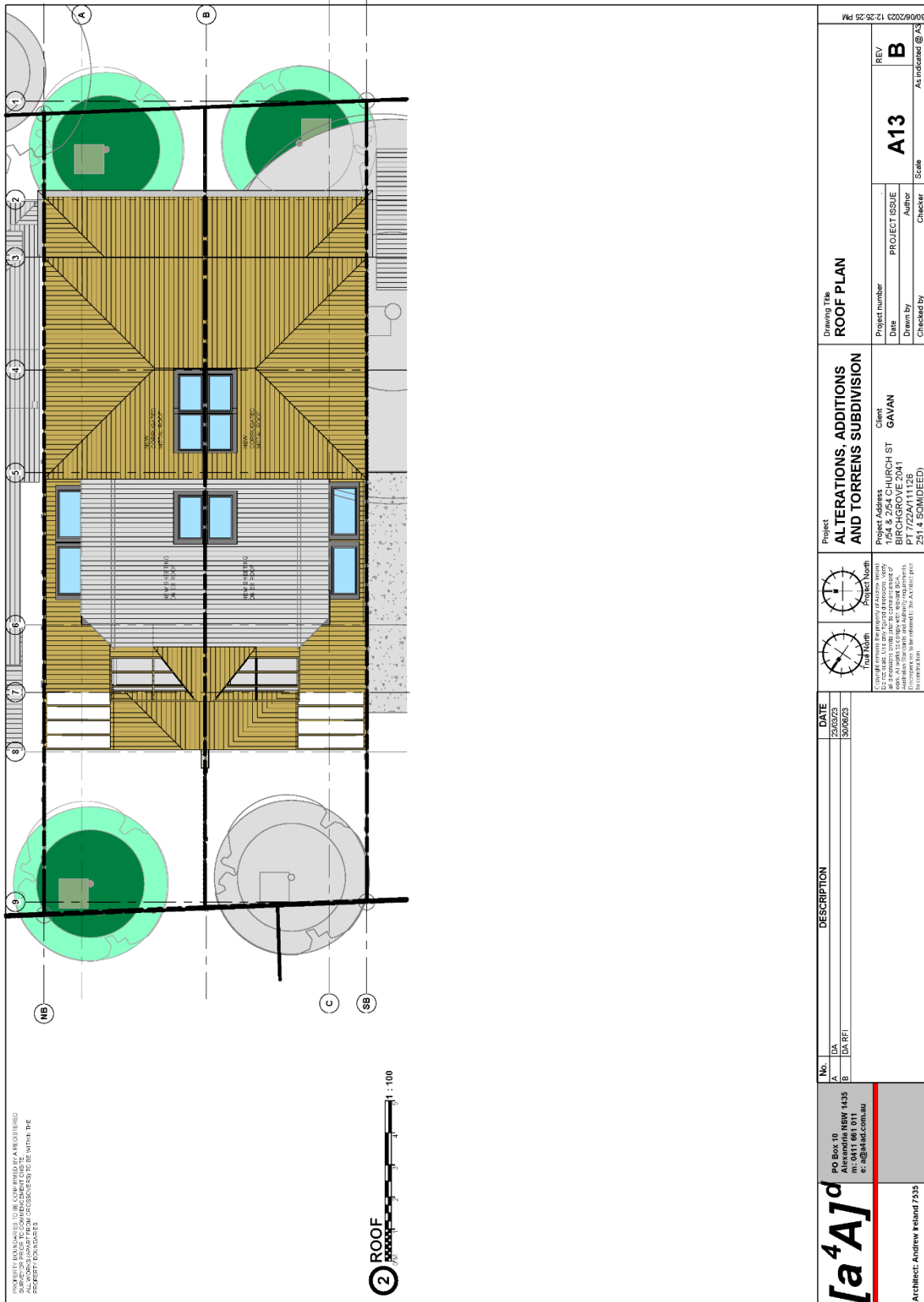
PO Box 10 NSW 1453 Sydney NSW 1510 m: 0811 881 011 e: a@4ad.com.au	<b>[a<sup>4</sup>A]<sup>d</sup></b> Architect: Andrew Ireland 7635		No. No. Description A EA B CA (P)		DATE 23/07/23 30/07/23	Project <b>ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION</b> Project Address 1/54 & 2/54 CHURCH ST BIRCHGROVE 2041 PT 7722M11126 Z31.4 (SANDDEED) Client GAVAN	Drawing Title <b>STREETScape ELEVATION</b>	
	Time North: Project North Copyright remains the property of Andrew Ireland and all information contained herein is confidential. All rights reserved. No part of this document may be reproduced without the prior written consent of the Architect. All dimensions are to be referred to the Architect prior to construction.		Project number <b>A10</b>	Date 30/07/23	REV <b>B</b>		Project number A10	Author Andrew Ireland





<p><b>[a4A]d</b>                  PO Box 10                  Alexandria NSW 1435                  m: 0411 861 011                  e: a@a4ad.com.au</p>		<p><b>Architect: Andrew Irelane 7506</b></p>	
No.	DA	DATE	DESCRIPTION
A	DA RFI	13/09/23	
B	DA RFI	13/09/23	
<p>Project: <b>ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION</b></p> <p>Client: <b>GAVAN</b></p> <p>Project Address: <b>1/54 &amp; 2/54 CHURCH ST PT 7/20A/111/26</b></p> <p>Project North</p> <p>Project South</p> <p>Copyright in this drawing or any part thereof, all dimensions, notes and to the extent of any amendments, is the property of [a4A]d. All rights are reserved. No part of this drawing may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of [a4A]d.</p>			
<p>Drawing Title: <b>1/200 SITE LANDSCAPE PLAN</b></p>		<p>Date: 13/09/23 12:25:19 PM</p>	
Project number	Project Issue	Drawn by	Checked by
	<b>A11</b>	Author	Checker
REV	<b>B</b>	Sc: AB	As indicated @ A11





**1** 1/100 EAST 1 50 1 : 100

**2** 1/100 NORTH 1 1 : 100

**[a4A]d**  
Architect: Andrew Ireland 7535

**DESCRIPTION**

No.	DATE	DESCRIPTION
A	23/07/23	CA
B	30/07/23	CA (RFL)

Project: **ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION**

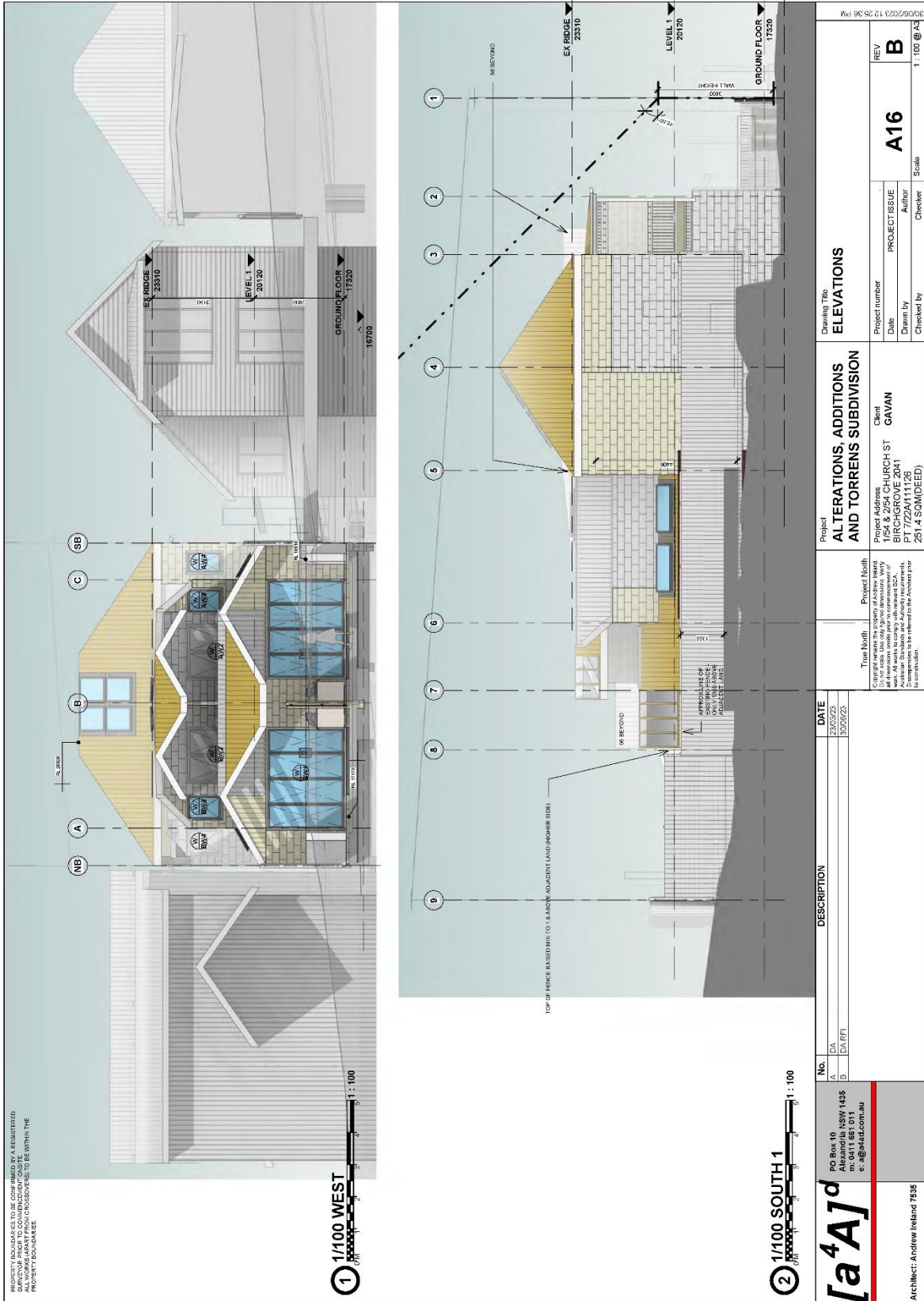
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Client: GAVAN  
Project Number: PT 7722AM11126  
2/1.4 (SOUND EED)

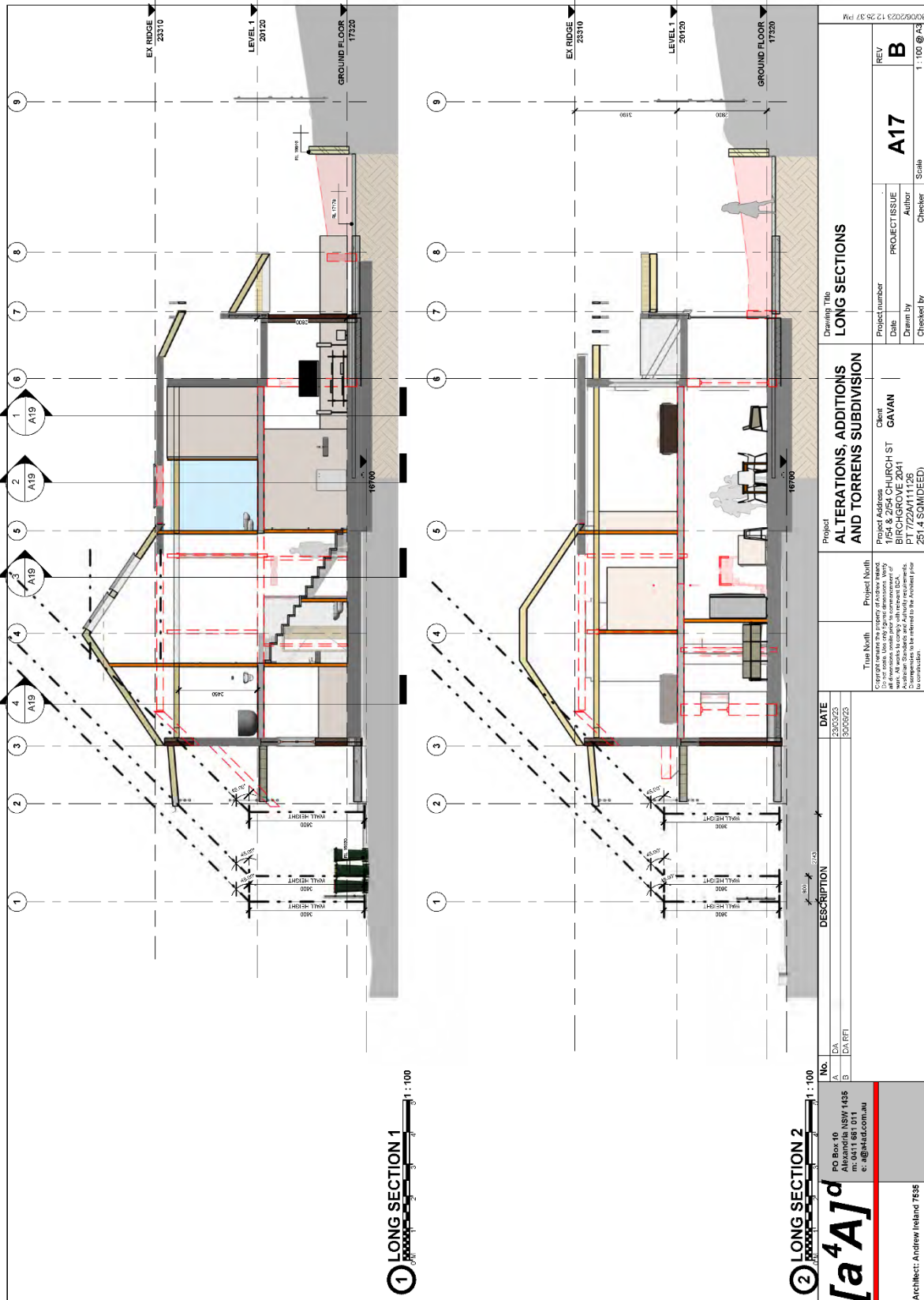
Time North: Project North  
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Project Title: **ELEVATIONS**

Project	Project Number	Project Issue	Author	Checker	Scale
ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION	A15	B			1 : 100 @ A3

Revised: 13/09/2023 12:52:32



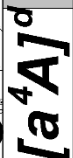


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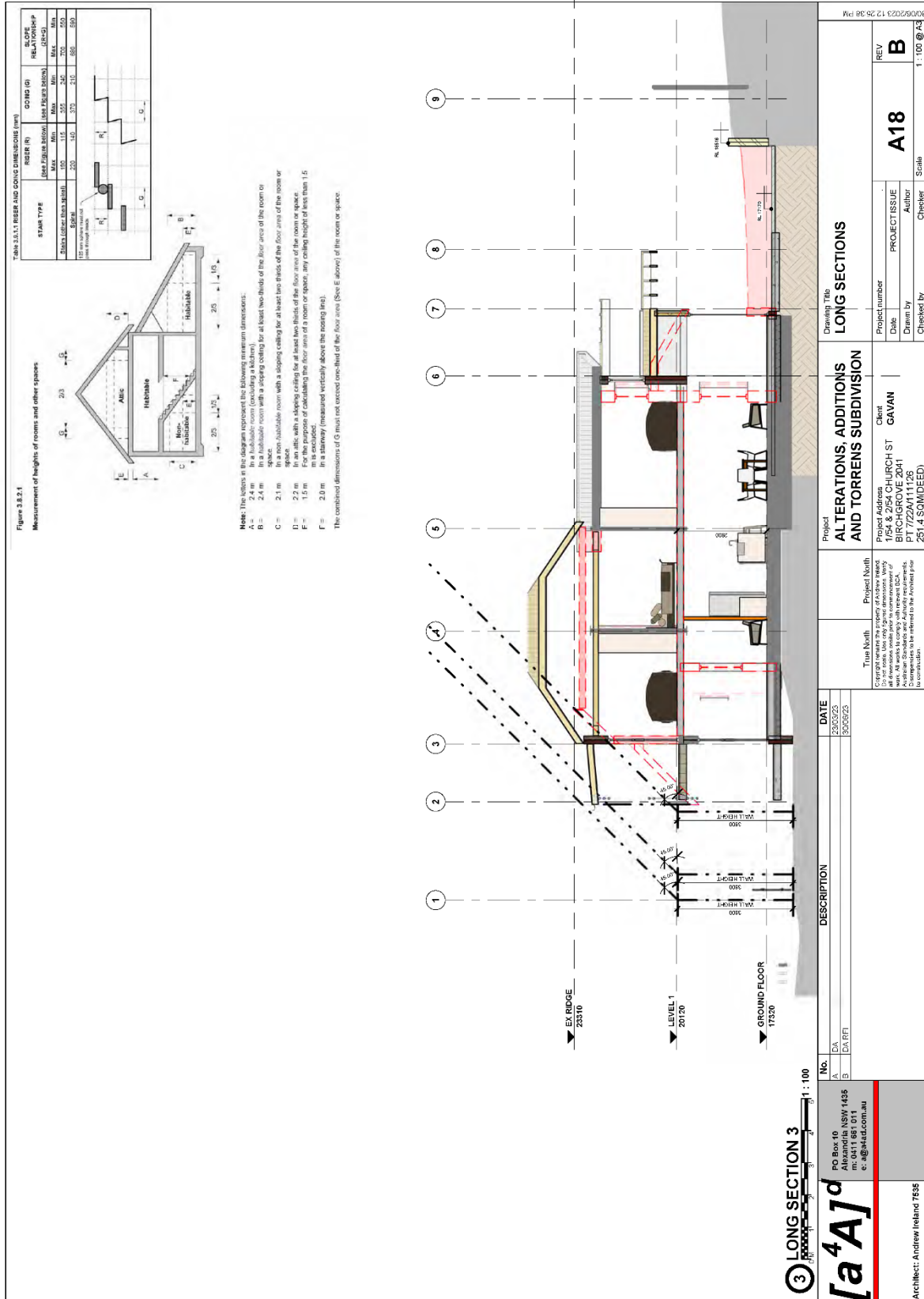
2 LONG SECTION 2  
1:100

No. A B CA CA (RT)	DATE 23/03/23 30/05/23	DESCRIPTION 1500 x 725	Project North Project South Copyright reserved for the property of Andrew Jackson All other content is the property of Andrew Jackson. Every use of this drawing is subject to the terms and conditions set out in the accompanying terms and conditions. All works to comply with relevant DCA, LGA, and other applicable laws and regulations. All responsibilities to be referred to the Architect prior to construction.	Project <b>ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION</b> Project Address 1/54 & 2/54 CHURCH ST BIRCHGROVE 2041 PT 7/22AM11126 Z51.4 (SOMI/DEED)	Client GAVAN	Drawing Title <b>LONG SECTIONS</b>	Project Number	Project Issue	Scale 1:100 @ A1
							Date	Author	Checked by

PO Box 10  
Alexandria NSW 1535  
t: 02 9550 1234  
e: ag@4aj.com.au



Architect: Andrew Ireland 7635



**1 SHORT SECTION 1** : 100

**2 SHORT SECTION 2** : 100

**3 SHORT SECTION 3** : 100

**4 SHORT SECTION 4** : 100

EX RIDGE 23310  
LEVEL 1 20120  
GROUND FLOOR 17320

A NB  
B  
C  
SB

Project Address: 1/54 & 2/54 CHURCH ST BIRCHGROVE 2041 PT 7/22A/11126 251.4 (SOUND EED)

Client: GAVAN

Project: ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION

Drawing Title: SHORT SECTIONS

Project number	PROJECT ISSUE	REV
Date	Author	B
Drawn by	Checker	A19
Checked by	Scale	As indicated @ A19

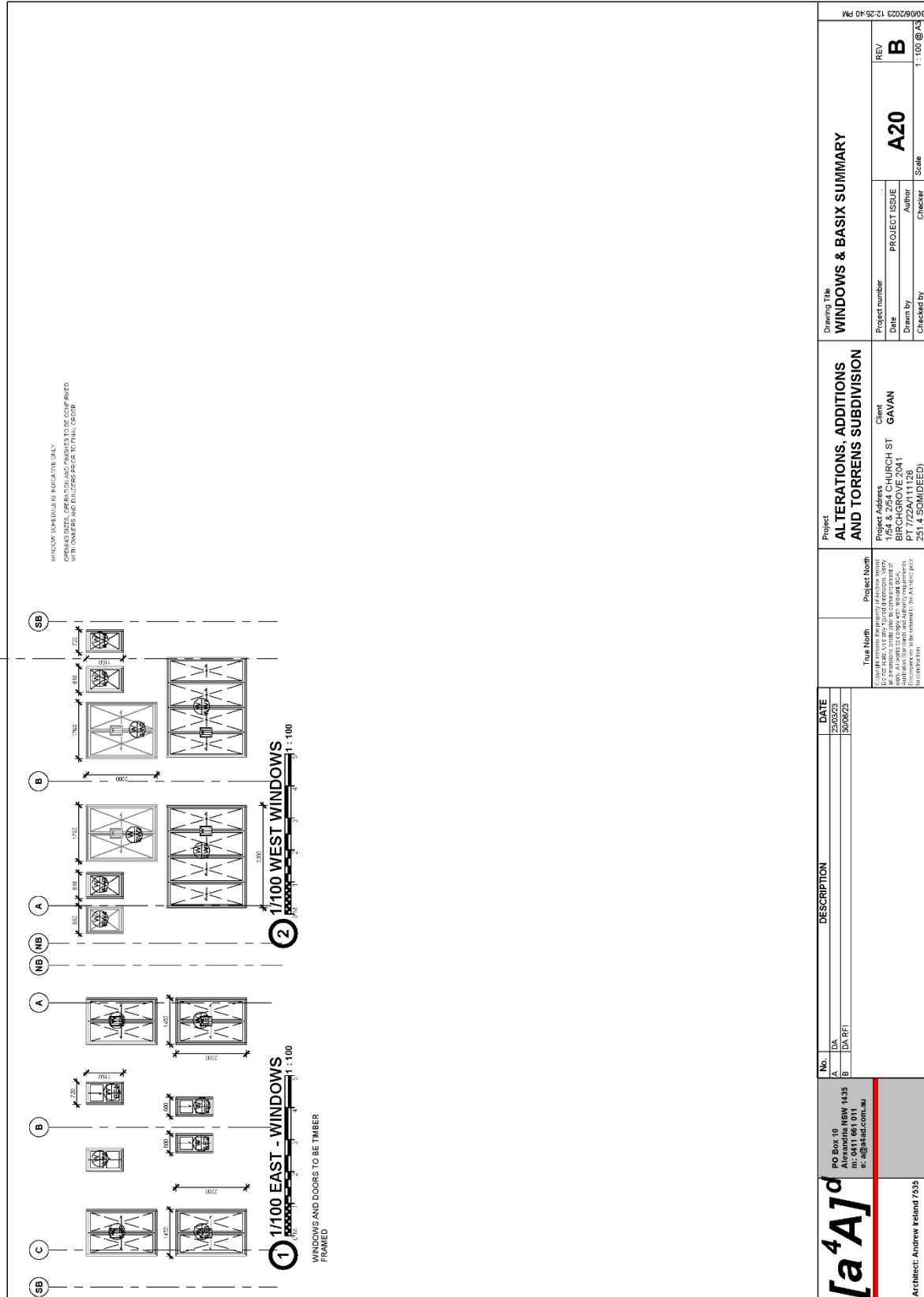
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No. A, B, DA, DA, RFI

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t: 02 9439 4444  
e: info@la4aj.com.au

Architect: Andrew Ireland 7636





<p>PO Box 10 Alexandria NSW 1535 t: 02 9550 2535 e: a@4ad.com.au</p>	<p>No. DATE</p> <p>A DA 25/05/23</p> <p>B DA RFI 30/05/23</p>		<p>Project <b>ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION</b></p> <p>Project Address 1/54 &amp; 2/54 CHURCH ST BIRCHGROVE 2041 PT 7/22AV/11126 Z51.4 (SOMI/DEED)</p> <p>Client GAVAN</p>	<p>Drawing Title <b>WINDOWS &amp; BASIS SUMMARY</b></p>	<p>Ver 01-23-21 220290605</p>
	<p>DESCRIPTION</p>				

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19	15.00 UTC-120°
20	15.00 UTC-120°

**LEGHARDT DCP SOLAR ACCESS CONTROLS**

C1 Where site orientation permits, new dwellings must be designed to maximise direct sunlight to the rear of the building.

C2 Windows and glazing shall be appropriately located, sized and shaded to reduce summer solar heat gain to the building.

C3 Private open space to be provided to maintain the hours of direct sunlight over 50% of the year.

C4 A minimum of 20% of the private open space shall be provided to be unobstructed by the provision of skylights or similar. Enough shall be provided to:

- a. a window depth is 30% of the depth of the building.
- b. a window depth is 30% of the depth of the building.
- c. a window depth is 30% of the depth of the building.
- d. a window depth is 30% of the depth of the building.

C5 The use, location and placement of solar collectors is to be taken into account in the potential for solar access to the building.

C6 The use of solar collectors is to be taken into account in the potential for solar access to the building.

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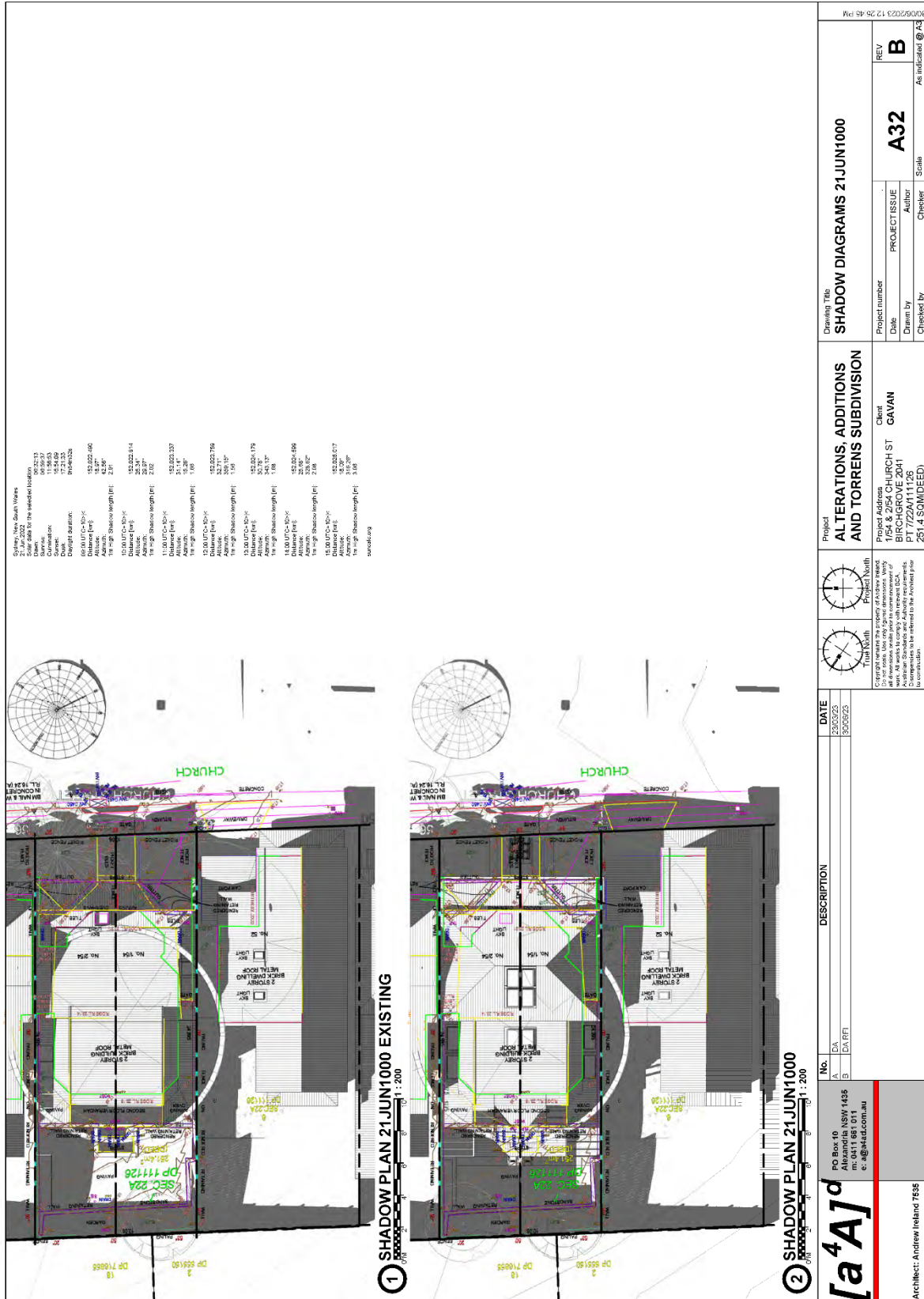
C49 The use of solar collectors is to be taken into account in the potential for solar access to the building.

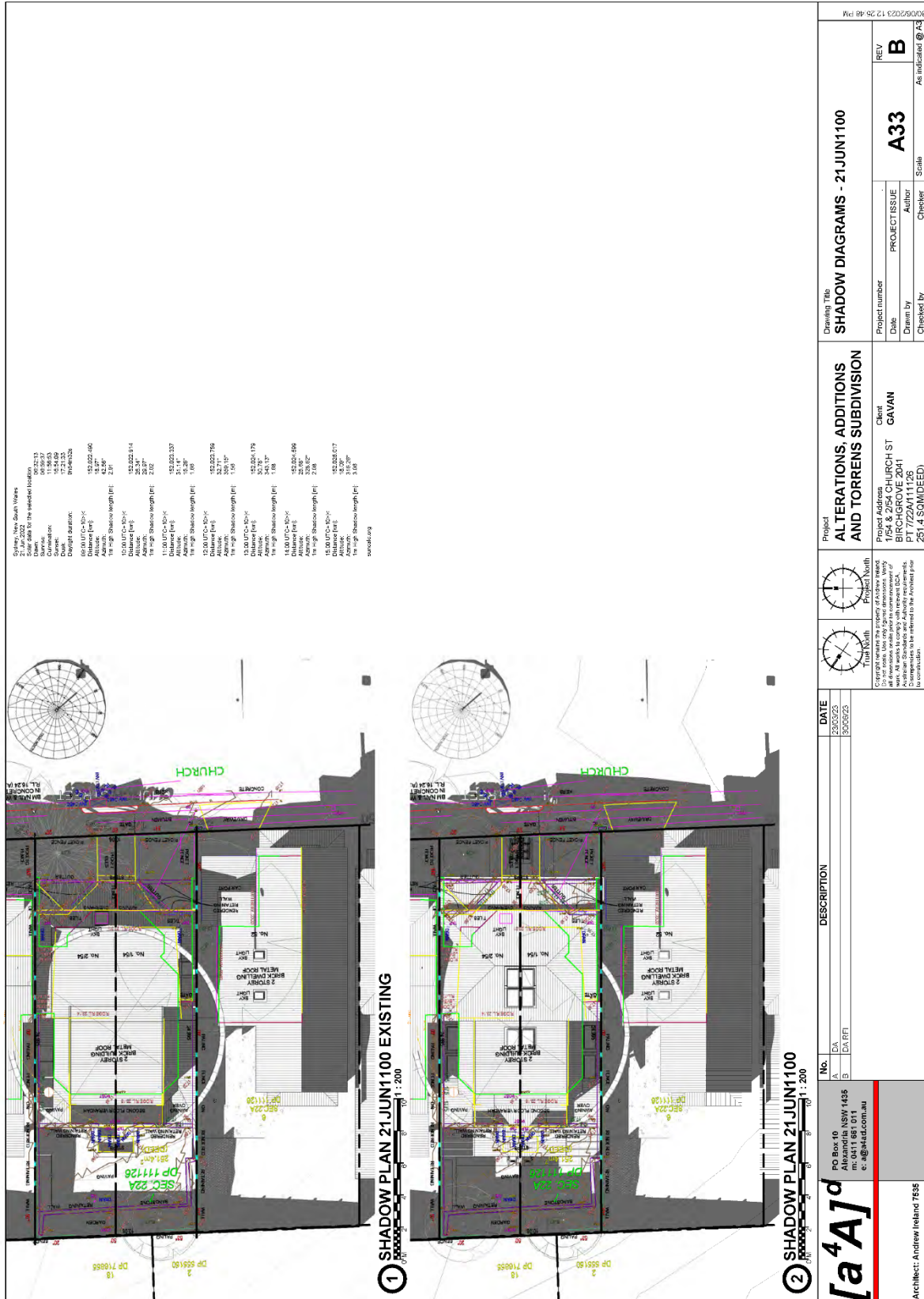
C50 The use of solar collectors is to be taken into account in the potential for solar access to the building.

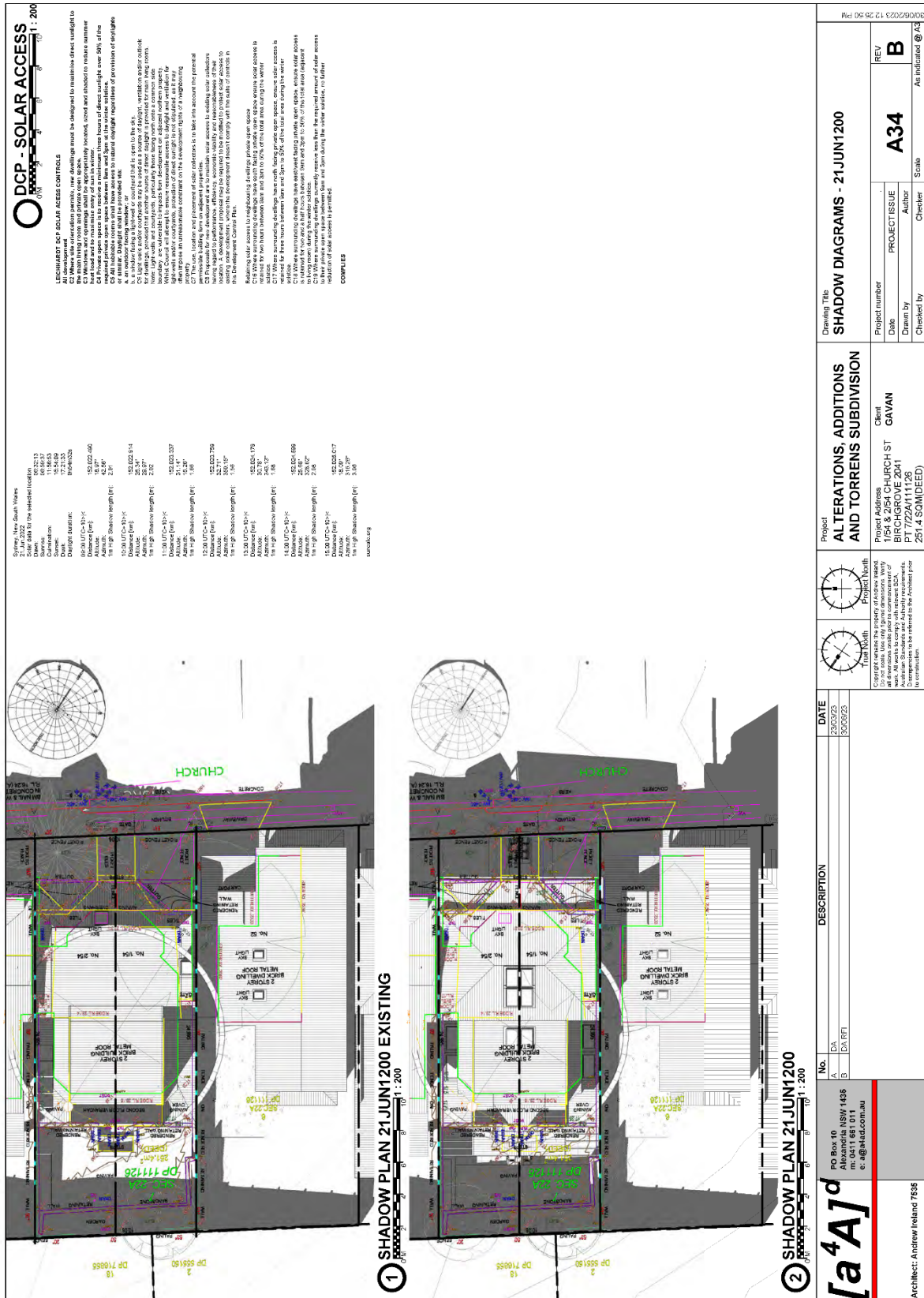
① SHADOW PLAN 21 JUN 0900 EXISTING

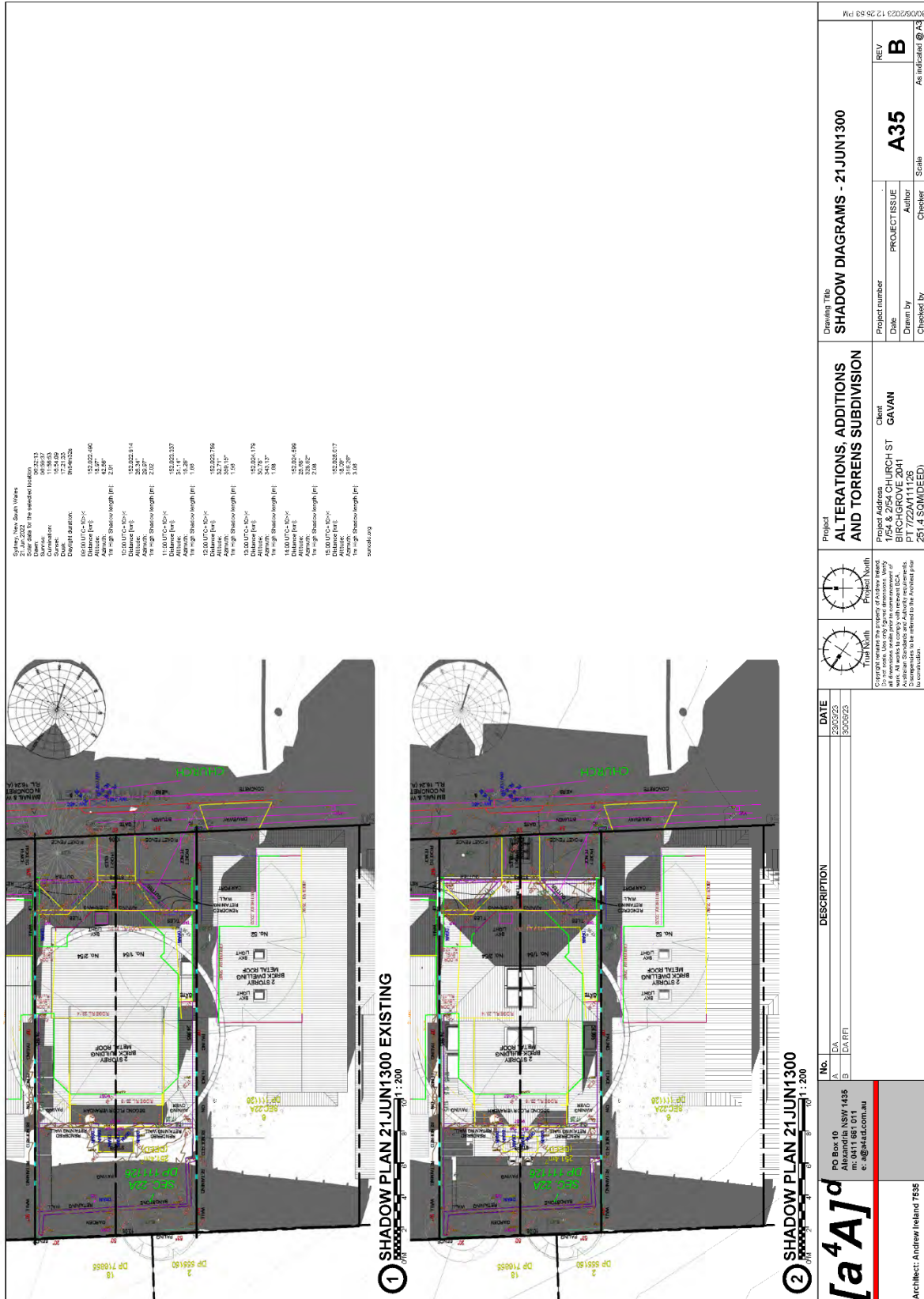
② SHADOW PLAN 21 JUN 0900

No.	DATE	DESCRIPTION
A	23/05/23	PRELIMINARY
B	30/05/23	REVISED









Refer to: Site, South Views

21 Jun 2022

Scale date for the shaded footprints: 01/12/13

Scale: 1:200

Drawn by: 19/06/22

Checked by: 19/06/22

Project location: 19/06/22

Project name: 19/06/22

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1 SHADOW PLAN 21 JUN 1300 EXISTING

2 SHADOW PLAN 21 JUN 1300

<p>Project</p> <p><b>ALTERATIONS, ADDITIONS AND TORRENS SUBDIVISION</b></p>		<p>Drawing Title</p> <p><b>SHADOW DIAGRAMS - 21 JUN 1300</b></p>	
<p>Client</p> <p>GAVAN</p>		<p>Project number</p> <p><b>A35</b></p>	
<p>Project Address</p> <p>1/54 &amp; 2/54 CHURCH ST BIRCHGROVE 2041 PT 7/22A/11126 251.4 SOM(DEED)</p>		<p>Date</p> <p>23/05/23</p>	
<p>Drawn by</p> <p>Author</p>		<p>Checked by</p> <p>Checker</p>	
<p>Scale</p> <p>As indicated @ A3</p>		<p>REV</p> <p><b>B</b></p>	

No.	DATE	DESCRIPTION
A	23/05/23	
B	30/05/23	

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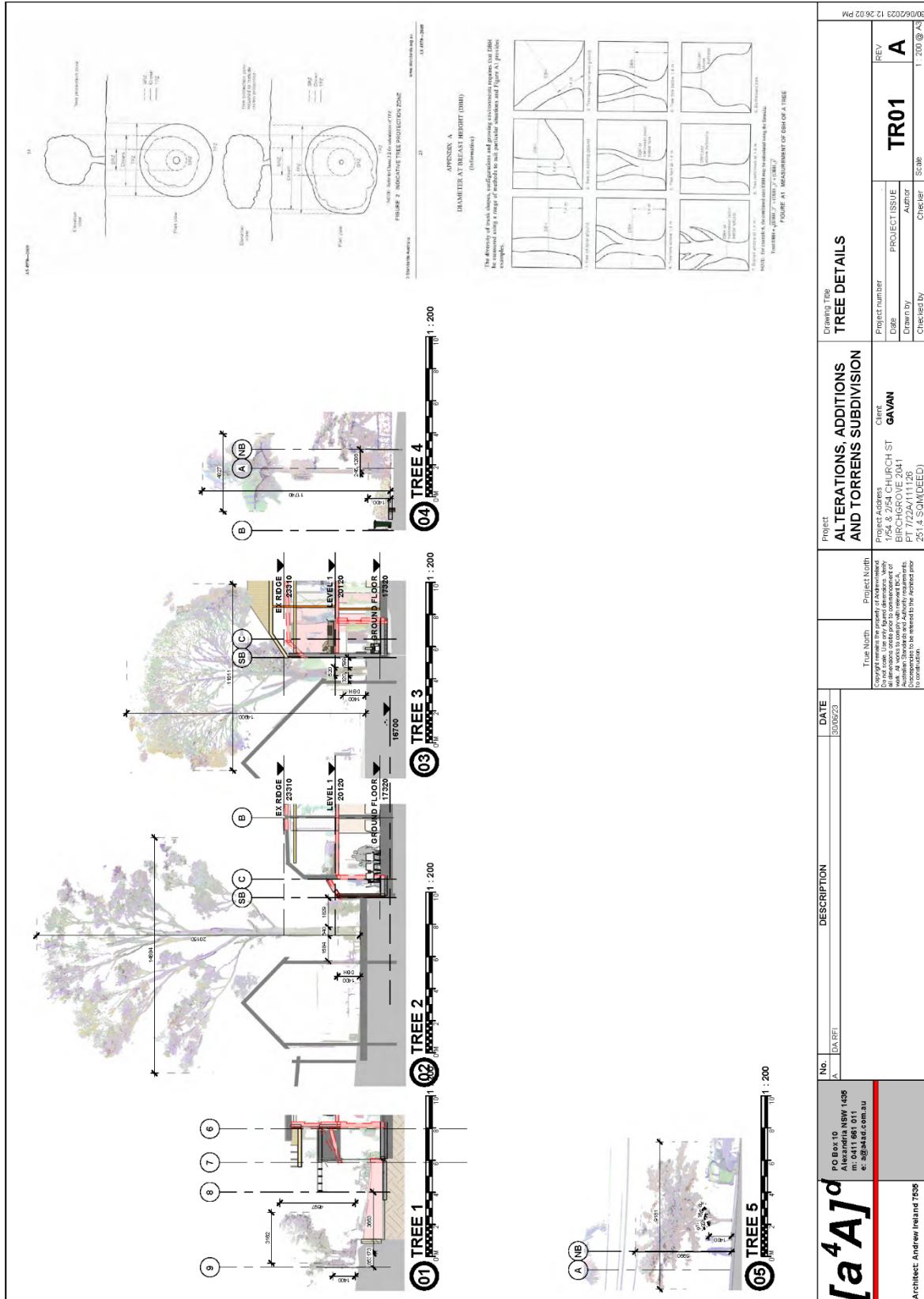
**[a4A]d**

Architect: Andrew Ireland 7635





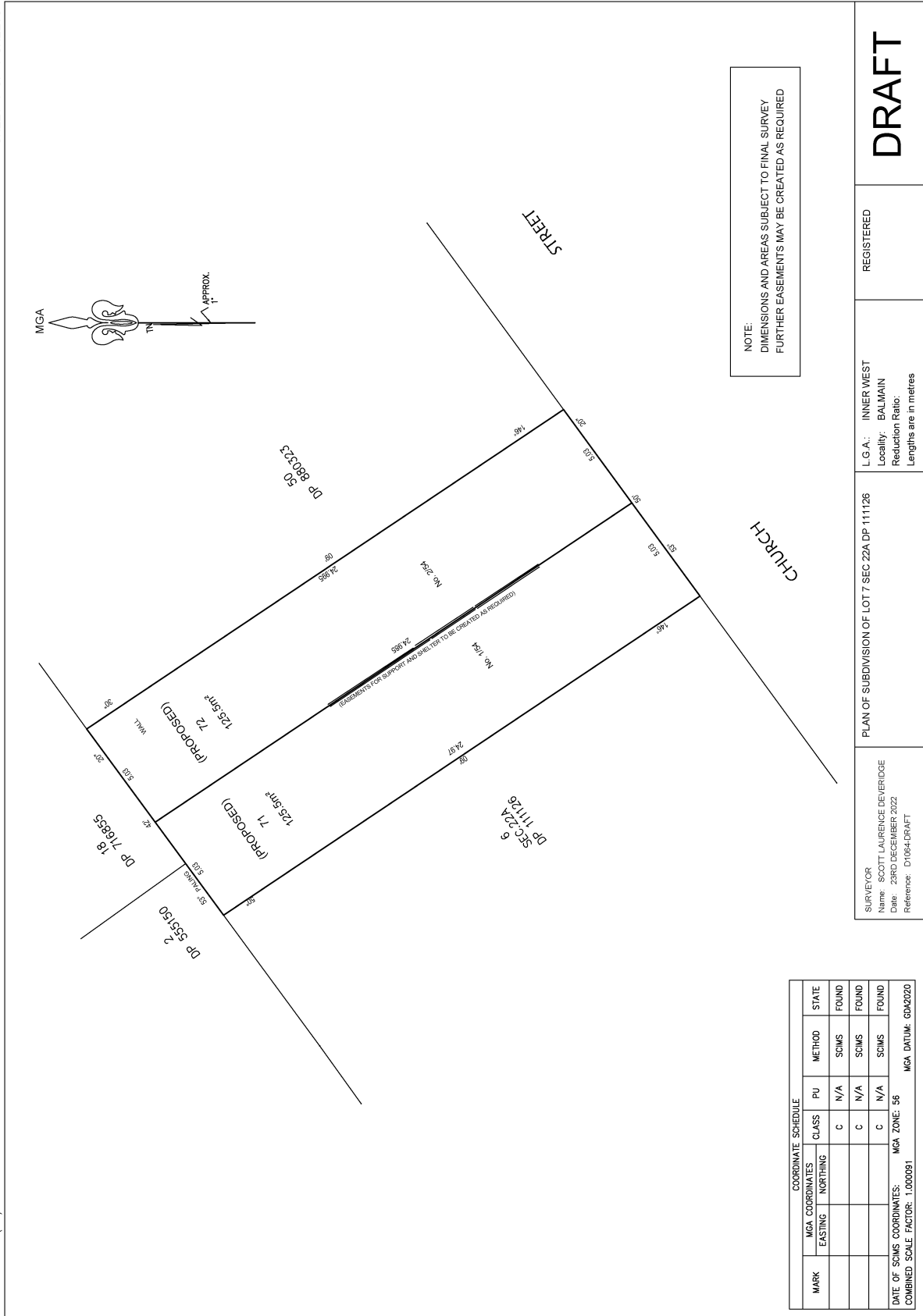




SHEET 1 OF 1 SHEETS

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 2 (A2)



NOTE:  
DIMENSIONS AND AREAS SUBJECT TO FINAL SURVEY  
FURTHER EASEMENTS MAY BE CREATED AS REQUIRED

MARK	MGA COORDINATES		COORDINATE SCHEDULE		METHOD	STATE
	EASTING	NORTHING	CLASS	PU		
			C	N/A	SCMS	FOUND
			C	N/A	SCMS	FOUND
			C	N/A	SCMS	FOUND

DATE OF SCMS COORDINATES: MGA ZONE: 56  
COMBINED SCALE FACTOR: 1.000091 MGA DATUM: GDA2020

SURVEYOR  
Name: SCOTT LAURANCE BEVERIDGE  
Date: 28RD/DECEMBER 2022  
Reference: D1084-DRAFT

PLAN OF SUBDIVISION OF LOT 7 SEC 22A DP 111726

L.G.A.: INNER WEST  
Locality: BALMAIN  
Reduction Ratio:  
Lengths are in metres

REGISTERED

**DRAFT**

Attachment C- Section 4.6 Exception to Development Standards

LEPIDCP COMPLIANCE  
 182 / 54 CHURCH ST BIRCHGROVE 2041  
 [A+A]© - ANDREW IRELAND - Architect (nsw) 7536 - 0411 661 0111

PURSUANT TO CLAUSE 4.6 OF INNER WEST LOCAL ENVIRONMENTAL PLAN 2022

**Clause 4.6 request – 4.1 Minimum subdivision lot size**  
 Request for exception under clause 4.6 of Inner West Local Environmental Plan 2022 to clause 4.1 Minimum subdivision lot size

**Address:** 1/54 & 2/54 Church Street, Birchgrove 2041  
 Lot/Sec/DP: 7/22A/DP111126

**Proposal:** Alterations and additions to existing semi-detached dual occupancy and Torrens title subdivision into 2 lots.

The existing site contains a semi-detached dual occupancy as approved under DA234/91/k on 23 Mar 1992.

Under IWLEP2022 Part 2 - a dual occupancy is prohibited within Zone R1.

The proposal is to Torrens Title Subdivide and formalise the title of the existing structure.

Local (nearby) historical precedent of similar sized small lots is evident and consistent with remaining original (C. 1879) Torrens title subdivided semi-detached dwellings (58/60, 62/64, 66/68).

**Control:** IWLEP(2022) 4.1 Minimum subdivision lot size

**Clause 4.1(3) of IWLEP 2022:**

*(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

MAP LSZ\_007 - B - min 200sqm  
 The existing lot size is 251.4 sqm.

Proposed Torrens Title subdivision will result in:

Lot 1 – 125.95 sqm

Lot 2 – 125.39 sqm



**Extent of variation:**

The proposal seeks a variation to the control as below:

**Proposed Lot 1/54 Lot Size**

Lot size =		
125.95 sqm	%	Sqm
Minimum =	100%	200
Proposed =	63.0%	125.95
Variation =	-37.0%	-74.05

**Proposed Lot 2/54 Lot Size**

Lot size =		
125.39 sqm	%	Sqm
Minimum =	100%	200
Proposed =	62.7%	125.39
Variation =	-37.3%	-74.61

1. Environmental Planning Instrument that applies to the land?  
Inner West Local Environmental Plan 2022

<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2022-0457#statusinformation>

2. Zoning and Zone Objectives of the land?

Zone R1 General Residential

- 1 Objectives of zone
  - To provide for the housing needs of the community.
  - To provide for a variety of housing types and densities.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
  - To provide residential development that maintains the character of built and natural features in the surrounding area.
- 2 Permitted without consent  
Home occupations.

3 Permitted with consent

**Attached dwellings:** Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Residential flat buildings; Respite day care centres; Roads; **Semi-detached dwellings;** Seniors housing; Shop top housing; Tank-based aquaculture; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Concretonal centres; Crematoria; Depots; **Dual occupancies;** Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Restrictied premises; Rural industries; Service stations; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Trunk depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies

3. Identify the Development Standard to which this Clause 4.6 Variation applies?

Inner West Local Environmental Plan 2022 - Part 4 - Section 4.1 Minimum subdivision lot size

Specifies requirements and seeks to control the area of land and density of development and is therefore defined as a development standard.

EP&A Act 1979 – cl 1.4 Definitions  
development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

4. What are the objectives of the development standard?

4.1 Minimum subdivision lot size

- (1) The objectives of this clause are as follows—
  - (a) to ensure lot sizes cater for a variety of development,
  - (b) to ensure lot sizes do not result in adverse amenity impacts,
  - (c) to ensure lot sizes deliver high quality architectural, urban and landscape design,
  - (d) to provide a pattern of subdivision that is consistent with the desired future character,
  - (e) to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.

The proposal includes the torrens title subdivision of an existing dual occupancy. The existing dual occupancy was approved in 1992, however is prohibited in the zone under IWLEP2022. The proposed subdivision:

- a) Provides a lot size to regularise an existing development;
- b) Regularises an existing built form with negligible adverse amenity impacts;
- c) Includes alterations and additions to improve the architectural, urban and landscape contributions of the site;
- d) Replicates the predominant surrounding subdivision pattern;
- e) Does not affect riparian or environmentally sensitive land.

**5. What is the numeric value of the development standard in the environmental planning instrument?**

**4.1 Minimum subdivision lot size**

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

MAP LSZ\_007 – B – min 200sqm

The existing lot size is 251.4 sqm.

Proposed Torrens Title subdivision will result in:

Lot 1 – 125.95 sqm

Lot 2 – 125.39 sqm



**6. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?**

**Existing Lot 1&2 / 54 Lot Size**

Lot size =	%	Sqm
251.4 sqm		
Minimum =	100%	200
Proposed =	125.7%	251.4
Variation =	+25.7%	+51.4

The existing lot contains a semi-detached dual occupancy as approved under DA234/91/K on 23 Mar 1992.

Under IWLEP2022 Part 2 - a dual occupancy is prohibited within Zone R1.

The proposal seeks a variation to the control as below:

**Proposed Lot 1/54 Lot Size**

Lot size =	%	Sqm
125.95 sqm		
Minimum =	100%	200
Proposed =	63.0%	125.95
Variation =	-37.0%	-74.05

**Proposed Lot 2/54 Lot Size**

Lot size =	%	Sqm
125.39 sqm		
Minimum =	100%	200
Proposed =	62.7%	125.39
Variation =	-37.3%	-74.61

**7. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?**

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests

**Test 1:**

*The objectives of the zone and relevant standard are achieved notwithstanding non-compliance with the standard:*

**Zone objectives**

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

The proposal specifically looks to improve the existing housing and to bring it up to a standard expected by the owners and the community and consistent with the LEP zone permitted use.

The proposed Torrens Title subdivision formalises an existing non-compliance and provides another title allowing multiple owners across the existing property, reducing the entry cost while retaining the existing density.

As the existing approved structure is a side by side dual occupancy terrace, the lot already operates as if the subdivision has occurred.

The objective is met notwithstanding the numerical non-compliance.

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

The proposed Torrens Title subdivision formalises an existing non-compliance and provides another title allowing multiple owners across the existing property, reducing the entry cost while retaining the existing density.

The objective is met notwithstanding the numerical non-compliance.

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

The proposal and subdivision is focused on residential dwelling. The proposal specifically looks to improve the existing housing and to bring it up to an acceptable standard. The existing dwelling does not have functional living spaces or opportunity for work from home and the poor layout restricts functional usage. The proposed alterations address these. The objective is met notwithstanding the numerical non-compliance.

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

The proposal maintains, is consistent with and reinforces the remaining Mid-Victorian character, style, orientation, pattern of development, streetscapes and landscape area predominant within the HCA.

The proposal protects, enhances and improves the amenity of existing and future residents and the neighbourhood.

The proposal reinforces the remaining Mid-Victorian semi detached form at the front streetscape and provides a sympathetic and considered infill addition to the rear.

The rear building form is consistent with recent approvals and applications. The proposed subdivision does not affect the existing character of built and natural features in the surrounding area.

The objective is met notwithstanding the numerical non-compliance.

The proposal achieves the principal and relevant zone objectives.

**Standard Objectives**

- (a) *to ensure lot sizes cater for a variety of development,*

The strict compliance with a minimum of 200sqm directly contradicts this objective as they limit lot sizes to larger than the existing predominant pattern.

The proposed lot sizes provide for additional variety within the existing subdivision pattern.

The proposed Torrens Title Subdivision is a regularisation of a planning anomaly which resulted in a prohibited use (dual occupancy) within an R1 Zone.

The objective is met notwithstanding the numerical non-compliance

- (b) *to ensure lot sizes do not result in adverse amenity impacts,*

The proposed Torrens Title Subdivision is a regularisation/formalisation of an existing planning anomaly which resulted in a prohibited use (dual occupancy) within an R1 Zone.

As the existing approved structure is a side by side dual occupancy terrace, the lot already operates as if the subdivision has occurred.

The proposed subdivision will not result in additional adverse amenity impacts on adjoining property.

The objective is met notwithstanding the numerical non-compliance

**LEP/DCP COMPLIANCE**  
 1&2 / 54 CHURCH ST BIRCHGROVE 2041  
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**(c) to ensure lot sizes deliver high quality architectural, urban and landscape design,**

The proposed Torrens Title Subdivision is a regularisation/formalisation of an existing planning anomaly which resulted in a prohibited use (dual occupancy) within an R1 Zone.

The proposed subdivision will not affect quality of architectural, urban or landscape design.

The objective is met notwithstanding the numerical non-compliance

**(d) to provide a pattern of subdivision that is consistent with the desired future character,**

The site is in a HCA with the desired future character controls heavily reliant upon integration within the existing historical pattern of development. The proposed Torrens Title Subdivision is a regularisation/formalisation of an existing planning anomaly which resulted in a prohibited use (dual occupancy) within an R1 Zone.

As the existing approved structure is a side by side dual occupancy terrace, the lot already appears and operates as if the subdivision has occurred.

Compliance with the desired future character is as described and addressed in the DCP and SEE under:

- C2.2.2.6 Birchgrove Distinctive Neighbourhood; and
- Appendix B – Building Typologies Section5 – Semi-detached house
- Statement of Significance for Town of Waterview Heritage Conservation Area (Godden Mackay Logan) Leichhardt DCP 2013.

The objectives are met notwithstanding the numerical non-compliance

**(e) to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.**

The proposed Torrens Title Subdivision is a regularisation/formalisation of an existing planning anomaly which resulted in a prohibited use (dual occupancy) within an R1 Zone.

The proposed subdivision does not affect siting, riparian or environmentally sensitive lands.

The objective is met notwithstanding the numerical non-compliance

The proposal achieves the principal and relevant standard objectives.

**Test 2:**

*The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary.*

The underlying objective of the standard is to conserve, control and maintain the existing historical pattern of subdivision and density of the area while providing adequate development opportunity, however the standard does not represent the historical diversity of lot sizes within the local zone and the Town of Waterview Heritage Conservation Area.

The standard also does not reflect the existing dual occupancy development on the lot.

Nearby sites which do not meet the 200sqm minimum lot size include (sizes from NSW Valuer General):

Church St	Title reference	Lot size	Lot dimensions
68	1/725446	126.5	5.09 / 5.36 X 24.675
66	1/713380	120.2	4.97 / 4.78 X 23.58 / 24.71
64	B/60761	123.3 (0.5x 246.6)	5.029 X 25.095 / 25.095
62	A/60761	126.25	5.03 / 5.03 X 25.1 / 25.1
60	B/163890	120.1	5.05 / 4.42 X 24.99 / 25.07
58	A/163890	120.1	4.98 / 5.64 X 15.07
42	K/928977	120	IRREGULAR / 24.99
40	J/928977	120.2	4.47 X 27.89 / 27.74
36-24	Lots A to I / 928977	Between 100 and 120 sqm	4.39 / 4.57 X 27.81 / 27.505
Phillip St (SE side)			
51	B/157878	132.8	5.47 / 5.39 X 24.8 / 24.71
53	A/157878	132.8	IRREGULAR
57	1/555150	126.5	5.5 / 5.15 X 24.71 / 24.67
59	2/555150	120.1	IRREGULAR
63	1/725430	124.5	5.11 / 5.18 X 24.99
65	1/725429	110.2	4.93 / 4.88 X 24.99
			4.87 / 9.25 X 24.77 / 29.73
			IRREGULAR
			4.85 / 4.39 X 23.75 / 23.85

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67	1/1255447	125.6	5.285 / 4.94 X 23.33 / 24.78
69	2/535940	120.1	4.78 / 5 X 22.18 / 24.84
83	1/195709	107.1	4.91 / 4.88 X 21.93 / 21.93
85	13/979488	106	4.875 / 4.875 X 21.945 / 21.945
87	1/199184	101.2	21.945
89	1/554954	107.5	4.88 / 4.88 X 21.95 / 21.94
99	1/745581	103.4	4.97 / 5.56 X 21.95 / 22.13
101	1/735960	109	IRREGULAR
103	1/986901	116	4.8 / 4.62 X 21.95
Phillip St (NW side)			4.97 X 21.95
46	1/211305	125.7	4.97 / 4.97 X 21.95 / 21.95
48	2/211305	125.7	5.03 X 24.99
62	3/520940	158.1	5.03 X 24.99
70	1/198393	135.6	6.3 / 6.78 X 24.21 / 24.74
72	1/744812	125.46	IRREGULAR
74	1/802285	125.1	4.92 / 5.74 X 27.92
76	2/802265	128.6	IRREGULAR / 25.45
78	1/1208727	129.6	4.93 / 5.11 X 25.45
80	1/1235701	125.4	IRREGULAR
82	2/1735454	254.4	5.17 / 4.86 X 25.25
96	2/211064	120.1	IRREGULAR / 25.22
98	1/211064	120.1	4.89 / 3.505 IRREGULAR
100	1/908855	122	X 25.43 / 25.285
102	2/908855	121	IRREGULAR
			5.28 / 5.28 X 25.31 / 25.815
			4.86 / 4.64 X 25.795
			IRREGULAR / 25.815
			IRREGULAR
			10.06 X 25.3
			4.95 / 5.11 X 24.26 / 24.31
			5.08 / 4.93 X 24.26
			4.98 / 4.9 X 24.21 / 24.23
			4.95 / 5 X 24.28 / 24.21

A similar exercise with similar results could be undertaken on Curtis Road, Short St, Rowntree St, Gipps St, Thomas St and Birchgrove Rd, College St, Mort St and Clayton St with a similar/higher proportion on lots not complying with the 200sqm minimum lot size.

These exercises demonstrate that the 200 sqm numerical control is simply a round number that does not reflect the historical pattern of subdivision that it applies to.

The existing approved dual occupancy virtually subdivides the lot as proposed and the lot sizes proposed after Torrens Title subdivision are consistent with the predominant pattern in the area.

The underlying purpose of the standard, to conserve, control and maintain the existing historical pattern of subdivision and density of the area while providing adequate development opportunity is not relevant to the development as the existing pattern is not perceivably altered, the proposed subdivision is consistent with the predominant pattern in the area and resolves a zone prohibited use planning anomaly.

**Test 3:** The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:

Compliance with IWLEP2022 - 4.1 Minimum subdivision lot size and with Part 2 Section 2.1 (prohibited development) would require demolition of the existing approved dual occupancy and construction of a single dwelling.

As shown in the previous table, if the compliance was required across the local area, it would require the demolition and amalgamation of a large proportion of the existing built environment.

The above actions would defeat or thwart the zone objectives:

- To provide for the housing needs of the community;
- To provide for a variety of housing types and densities;
- To provide residential development that maintains the character of built and natural features in the surrounding area.

This would defeat or thwart the standard objectives:

- (a) to ensure lot sizes cater for a variety of development,
- (d) to provide a pattern of subdivision that is consistent with the desired future character,

The above exercise demonstrates that a large proportion of lots affected by the control do not comply with the control and are of a similar size, or smaller, than the proposed subdivision lots.

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**Test 4:**

*The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

**Does Not Apply** as the majority of sites locally are already below 200sqm.

**8. Does non-compliance with the development standard raise any matter of significance for State or regional environmental planning?**

No

**Test 5:**

*The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Compliance with the development standard is unreasonable or inappropriate as;

- The existing approved dual occupancy virtually subdivides the lot as proposed.
- The lot sizes proposed after Torrens Title subdivision are consistent with the predominant pattern in the area.
- There is no difference in the streetscape reading of the existing lot and of the proposed Torrens title subdivided lot.
- The proposed subdivision complies with the predominant existing historical pattern of lot orientation, size (area) and dimensions.
- The development standard does not represent the predominant existing and historical pattern of lot size in the area.

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

Environmental Planning Grounds “refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.” (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [23].)

**Environmental Planning and Assessment Act 1979 No 203**

**Subject Matter of the Act:**

“An Act to institute a system of environmental planning and assessment for the State of New South Wales.”

**Relevant purpose and scope of the Act:**

To provide a framework to plan and control development.

*control, in relation to development or any other act, matter or thing, means—*

- (a) consent to, permit, regulate, restrict or prohibit that development or that other act, matter or thing, either unconditionally or subject to conditions, or
- (b) confer or impose on a consent authority functions with respect to consenting to, permitting, regulating, restricting or prohibiting that development or that other act, matter or thing, either unconditionally or subject to conditions.

**1.5 Meaning of “development”**

(1) For the purposes of this Act, **development** is any of the following—

- (a) the use of land,
- (b) the subdivision of land,
- (c) the erection of a building,
- (d) the carrying out of a work,
- (e) the demolition of a building or work,
- (f) any other act, matter or thing that may be controlled by an environmental planning instrument.

- (2) However, development does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).
- (3) For the purposes of this Act, the **carrying out of development** is the doing of the acts, matters or things referred to in subsection (1).

**Note—**

There are the following categories of development under this Act—

- (a) exempt development (development that is exempt from the assessment and consent or approval requirements of this Act),
- (b) development requiring development consent under Part 4, including the following—
  - (i) complying development (development that complies with pre-determined development standards and requires consent in the form of a complying development certificate by a consent authority or registered certifier),
  - (ii) development that requires consent by a council or other public authority specified as the consent authority (including by a local planning panel or delegated council staff on behalf of a council),
  - (iii) regionally significant development (development that requires consent by a Sydney district or regional planning panel),
  - (iv) State significant development (development that requires consent by the Independent Planning Commission or the Minister),
  - (v) designated development (development, other than State significant development, that requires an environmental impact statement for an application for consent),
  - (vi) integrated development (development that also requires approvals under other legislation that are integrated under general terms of approval),
- (c) development that is an activity requiring environmental assessment under Division 5.1 before it is carried out by a public authority or before a public authority gives approval for the carrying out of the activity,
- (d) State significant infrastructure (including critical State significant infrastructure) requiring approval under Division 5.2 by the Minister

The proposal for subdivision is development which requires consent by a public consent authority.

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The approved development as stands (dual occupancy) is prohibited within the zone. The proposed subdivision regularises the existing approved development to be “Permitted with Consent”.

**1.3 Objects of Act**

The objects of this Act are as follows—

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,

The proposed subdivision formalises a historical planning anomaly which resulted in a prohibited dual occupancy within an R1 residential zone. The subdivision releases tenure of existing single owned dual occupancy to 2 individual dwellings, providing better community social welfare outcomes via increased housing ownership availability and reduced entry costs without changing the existing development pattern.

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

The proposed subdivision formalises subdivision of an existing dual occupancy. The subdivision proposal relies on an administrative process to formalise the existing built form with resulting environmental benefit in waste reduction.

(c) to promote the orderly and economic use and development of land,

The proposed subdivision formalises a historical planning anomaly which resulted in a prohibited dual occupancy within an R1 residential zone. Once subdivided, the development will be compliant with the R1 Zone and consistent with the existing historical pattern of development and subdivision.

(d) to promote the delivery and maintenance of affordable housing,

The proposed subdivision formalises a historical planning anomaly which resulted in a prohibited dual occupancy within an R1 residential zone.

The existing dual occupancy relies on single party ownership of both dwellings with associated costs. The subdivision releases tenure of existing individual dwellings, providing better community social welfare outcomes via increased and more affordable

housing ownership availability and reduced entry costs without changing the existing development pattern.

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

The proposed subdivision formalises subdivision of an existing dual occupancy. The proposed subdivision does not rely on the demolition of the existing dwelling and construction of new dwellings. The subdivision proposal relies on an administrative process to formalise the existing built form with resulting environmental benefit in waste reduction.

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The environmental and social benefits of subdivision as explored above and the consistency of the proposal with the existing pattern of development and subdivision are examples of sustainable management of built and cultural heritage.

(g) to promote good design and amenity of the built environment,

The improved economic accessibility, simple logic and consistency of the proposed subdivision is well designed and provides good amenity consistent with the existing pattern of development and subdivision.

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

The proposed subdivision formalises an existing approved dual occupancy into 2 semi-detached Torrens title dwellings.

Compliance with the subdivision controls will require BCA/NCC upgrades as part of the works to protect the health and safety of the occupants.

As an independent part of the works but part of the same application, alterations and additions are proposed to improve the functionality and construction of both dwellings.

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

**10. Is the proposed development, despite the contravention to the development standard, in the public interest?**

Not Relevant

(j) *to provide increased opportunity for community participation in environmental planning and assessment*

As explored above, the proposed subdivision is consistent with;

Not Relevant

- The objectives of the development standard:

- 4.1 **Minimum subdivision lot size**
  - (1) *The objectives of this clause are as follows:—*
    - (a) *to ensure lot sizes cater for a variety of development,*
    - (b) *to ensure lot sizes do not result in adverse amenity impacts,*
    - (c) *to ensure lot sizes deliver high quality architectural, urban and landscape design,*
    - (d) *to provide a pattern of subdivision that is consistent with the desired future character,*
    - (e) *to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.*

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

- The objectives of zone, including the regularisation of a Prohibited Use.

Zone R1 General Residential

1 Objectives of zone

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

- The environmental planning grounds above, establish that, despite the contravention of the development standard, the proposed development is in the public interest.
- Public Interest will not be undermined or affected by contravention or variation of the standard.
- The proposed development promotes compact, orderly, economic and efficient land use and densities within and consistent with an existing established urban pattern.
- The reuse and renovation of the existing building fabric to meet modern housing requirements within an established community and infrastructure results in a reduced environmental cost (carbon footprint) and should be promoted for the public benefit to climate change.

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**11. Is there any other relevant information to be considered in order to justify varying the development standard?**

**LEC PLANNING PRINCIPLE –**

Small or narrow sites

**CSA Architects v Randwick City Council [2004] NSWLEC 179- at 15-17**

*Planning principle: development on small or narrow sites*

*15 Where the council has a policy for small or narrow sites, the Court should, where reasonable, apply that policy. (This is a valid principle for all matters before the Court.) In the absence of a council policy, the assessment of a proposal on a site that is below the preferred area or width should be considered both as a development on its own site as well as in the context of possible developments on neighbouring sites. The following questions should be asked:*

- *Would approval of the application result in the isolation of neighbouring sites?*  
 No. The existing subdivision pattern, access easements and pattern of development ensure neighbouring sites retain access and amenity.
- *Would it render the reasonable development of neighbouring sites difficult?*  
 No. The existing subdivision pattern, access, easements and pattern of development ensure neighbouring sites retain access, amenity and can contain reasonable future development. The proposal relates to the existing and historical pattern of dual occupancy / semi-detached dwellings on small lots which is repeated on adjoining sites with minimal impact.
- *Can orderly, economic and appropriate development of the subject site as well as neighbouring sites be achieved?*  
 Yes. The existing subdivision pattern, access easements and pattern of development ensure neighbouring sites retain access, amenity and can contain reasonable future development. The proposal relates to the existing and historical pattern of dual occupancy / semi-detached dwellings on small lots which is repeated on adjoining sites with minimal impact.  
 The proposal is consistent with existing and adjoining development and within the LEP and DCP controls and could be expected from precedence and interpretation of controls.  
 The proposal does not result in economic burden on the property or adjoining sites. As the proposal suits the existing pattern of development, the desired future pattern as defined by the LEP and DCP controls and does not cause undue impact or burden on adjoining sites, the proposal is considered to be suitable in the site specific circumstances.

*16 The main criterion for assessing the proposal on its own site is whether it meets other planning controls, eg.*

*Does the proposal meet density, setback and landscaping controls? The most critical control for small and narrow sites is that for setbacks.*

The proposal meets density and landscaping controls intended for larger lots. The proposed setbacks relate to the existing approved & heritage pattern of development. The relatively high density pattern of development of semi-detached dwellings with small/no side setbacks is key to the distinctive reading of the group, the HCA heritage significance, setting, streetscape and character.

*· Is its impact on adjoining properties and the streetscape worse because the development is on a small or narrow site?*

The proposed alterations and additions are independent of the subdivision. The proposed alterations and additions are largely within the existing footprint and improve the internal function and integration of the dwellings into the streetscape. The proposed additional impact on adjoining sites is minimal as occupancy (2 dwellings) and envelope remain largely unaltered. The existing subdivision pattern, pattern of development, lot width, lot size and orientation all play part in the impact on adjoining development.

The existing site is approx. 10m wide with each existing dwelling occupying approx. 5m in width. The site is approx. 25 m deep. As established in the previous table, the area has a majority of lots with dimensions similar to that proposed following subdivision.

If each dwelling of same development was on a 200 sqm site of the same depth (as per the LEP min lot size), then it would have a lot width of over 8m and side boundary setbacks greater than 2.5m and a greatly reduced impact.

In the existing subdivision and development pattern, this hypothetical question is better addressed by asking

*· Is the impact on adjoining properties and streetscape reasonable and expected considering existing pattern of subdivision, orientation, pattern of development, expected use and heritage considerations – or by impact on neighbouring properties - revised principle Davies v Pentrich City Council [2013] NSWLEC 1141- at [116] to [121]*

In this instance, the proposal includes minor alterations and additions primarily to infill the existing ground floor and improve internal function and the front facade integration into a HCA streetscape. The additional impact is considered minor and reasonable and not reliant or dependent upon the Torrens Title subdivision proposed.

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*17 Where an application meets other planning controls and the area and width of the site does not exacerbate its impacts, the failure of the site to meet the preferred area or width would usually not be a reason for refusal.*

The proposal is for the formal subdivision of an existing dual occupancy (1 lot, 2 dwellings) to provide 2 individual attached dwellings on their own lots (2 lots, 2 dwellings). The proposed alterations and additions are to read independently and are largely ground floor infill of existing footprint. Following subdivision, the dwellings will meet other planning controls as outlined in the Statement of Environmental Effects.

**12. Is the exception request well founded?**

As addressed above, the exception request is considered to be well founded.