




	
DEVELOPMENT ASSESSMENT PANEL REPORT	
Application No.	DA/2025/0263
Address	19A Wharf Road BIRCHGROVE
Proposal	Alterations and additions to existing multi-dwelling housing, works relate to Unit 4, including partial demolition of existing structures, construction of third floor addition.
Date of Lodgement	16 April 2025
Applicant	Mr Joseph Panetta
Owner	Mr Dorry Kordahi The Owners of Strata Plan 80784
Number of Submissions	Initial: Nil
Cost of works	\$59,400.00
Reason for determination at Planning Panel	<ul style="list-style-type: none"> Section 4.4 – Floor Space Ratio (FSR) Variation (over 10%)
Key Considerations	<ul style="list-style-type: none"> Section 4.4 – Floor Space Ratio (FSR) Variation (over 10%)
Recommendation	Approved with Conditions
Attachment A	Recommended Conditions of Consent
Attachment B	Plans of Proposed Development
Attachment C	Section 4.6 Exception to Development Standards
	
LOCALITY MAP	
Subject Site	
Notified Area	
Objectors	
Supporters	

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing multi-dwelling housing specifically works relate to Unit 4, including partial demolition of existing structures, and construction of third floor addition at No. 19A Wharf Road Birchgrove.

The application was notified to surrounding properties and zero (0) submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Section 4.4 – Floor Space Ratio (FSR) Variation (over 10%)

It is considered that the Section 4.6 Exception to Development Standards Request relied upon by the Applicant adequately demonstrates that compliance with the FSR Development Standard is unreasonable and unnecessary in the circumstances. Furthermore, there are sufficient environmental planning grounds provided by the Applicant to justify contravening the Development Standard. As a result, the application satisfies Section 4.6(4) within the Inner West Local Environment Plan 2022 (IWLEP).

Moreover, despite the non-compliances noted above, it is considered that the proposed development is capable of generally complying with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Inner West Local Environmental Plan 2022*, and the Leichhardt Development Control Plan 2013, subject to the imposition of conditions included in the recommendation.

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development, given the context of the site and the desired future character of the precinct, are considered acceptable.

Considering the above, subject to the imposition of appropriate terms and conditions, the application is considered suitable for approval.

2. Proposal

The following alterations and additions are proposed to the third floor of Unit four of the existing multi dwelling housing:

- Partial demolition to the existing balcony off BED 03, including demolition of existing glazing and metal balustrading; and
- Infill of the existing balcony to expand BED 03, including 3 x new glazed windows, brickwork and zinc roof sheeting.

It should be noted that the submitted architectural plans describe the location of the proposed works as being on Level 4 of the multi dwelling housing development. However, this is the third floor of the multi housing development and as such the location of the proposed works shall be referred to as the third floor of the multi dwelling housing development through this

report. It is also noted that the third floor of the multi dwelling housing development acts as the ground floor of Unit 4/19A Wharf Road, Birchgrove.

3. Site Description

The subject site is located on the northern side of Wharf Road, between Grove Street and Ronald Street. The site consists of one allotment, including four (4) strata allotments and is of an irregular rectangle shape with a total area of 907.1sqm and is legally described as being part of SP 80784.

The site has a frontage to Wharf Road of 15.7m and a secondary frontage of approximate 37.475m to the peninsula. The site is affected by a number of easements as detailed below:

- 0.4m - 1.33m wide easement for drainage of water;
- Variable width easement for public access; and
- Easement to permit encroaching structure to remain – 0.25m, 0.15m and 0.1m wide.

The site supports an existing multi dwelling housing complex, including three (3) buildings:

- Building One (1) is three (3) storeys and includes three (3) units;
- Building Two (2) is two (2) storeys and includes one (1) unit (Unit 4); and
- Building Three (3) is an ancillary single storey boat shed.

The site also includes a carport with four (4) x parking spaces, and a pool. The site slopes steeply from the southern frontage, accessible via Nicholson Street to the northern rear of the site adjoining the foreshore, with the buildings on site being positioned below street level.

The adjoining properties support one (1) to four (4) storey residential dwellings. With No. 19 Wharf Road to the east being a four (4) storey residential dwelling and No. 21 Wharf Road to the west being a four (4) storey semi-detached dwelling.

The subject site is listed as a Heritage Item, 'remnants of former Stannard's Marina, including interiors' (Item No. 1927) and is located within the Birchgrove and Ballast Point Road Heritage Conservation Area.

The property is identified as a foreshore flood control lot.



Figure 1: Photo of subject site as viewed from Wharf Road



Figure 2: Zoning Map (subject site in red)

4. Background

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	Date & Decision
D/2000/347	Demolition of existing buildings, remediation of site, construction of four (4) residential units with associated parking for eight (8) vehicles, landscaping works and dedication of land to Council for public access.	Approved (operational consent) – 10/08/2005
M//2005/206	Modification to Development Consent D/2000/347 to amend stormwater plans, carry out changes to windows and finished floor levels and new rooftop garden over approved shed.	Approved – 28/02/2007
D/2005/541	Strata Subdivision of the existing buildings into four (4) residential lots	Approved – 3/5/2006
M/2006/409	Modification of Development Consent D/2000/347 seeking change approved window arrangements and approved courtyard timber decks and enclosure of condensers.	Approved – 28/11/2006
M/2006/477	Modification of Development Consent D/2000/347 involving alterations to internal arrangements and external detail.	Approved – 15/02/2008
M/2007/160	Modification of Development Consent D/2005/541. Modification seeks to incorporate modifications to the development in the strata subdivision plan, notes the previous consolidation of foreshore land into a new property Title for the site DP1110815.	Approved – 12/12/2007
D/2010/377	Construction of an in-ground swimming pool.	Approved – 16/11/2010
D/2013/314	Alterations and additions to existing residence including enclosure of existing glass walkway to include a dining room.	Approved – 12/11/2013

Surrounding propertiesNo. 8 Wharf Road Birchgrove NSW 2041:

Application	Proposal	Date & Decision
D/2013/583	Alterations and additions to existing heritage listed dwelling and associated studio, and associated works including deck and ramp and removal of tree	Approved – 25/07/2014
M/2016/14	Section 96 modification of D/2013/583 which approved alterations and additions to the existing heritage-listed dwelling and studio and associated works. Modification seeks construction of a timber fence and amendment to the roof over the rear parking space and associated deletion of Condition No. 12 (which required a minimum headroom of 2.2m in the car parking area).	Approved – 23/03/2016

No.10 Wharf Road Birchgrove NSW 2041:

Application	Proposal	Date & Decision
DAREV/2012/10	Section 82A Review application of D/2012/204 which refused alterations and additions to existing dwelling; construction of a new detached garage and gym; demolition of existing swimming pool; construction of new swimming pool toward the western boundary, and removal of five trees. This application includes amended plans which entail alterations and additions to an existing dwelling, demolition of the existing pool and the construction of a new pool and the removal of two trees in association with new landscaping.	Approved – 4/12/2012
D/2013/315	Demolition of the existing garage and construction of a new garage and workshop, side gate and bin area added plus removal of trees.	Approved – 3/12/2013
M/2013/160	Modification to approved works - modification involves repair and replacement of existing slate roof and frame.	Approved – 15/1/2014
M/2013/216	Reinstate front verandah	Approved – 19/3/2014

D/2014/626	Construction of an in-ground swimming pool in the rear yard of the site. Variation to Site Coverage development standard.	Approved – 9/2/2015
DA/2025/0268	Alterations and additions to an existing detached dwelling, including construction of a lift	Approved – 30/06/2025

No. 17 Wharf Road Birchgrove NSW 2041:

Application	Proposal	Date & Decision
DA/2020/0319	Demolition of an existing single dwelling house, subdivision of the land into two lots and construction of a new dwelling house and pool on each lot.	Rejected – 12/05/2020
DA/2020/0461	Demolition of an existing single dwelling house, subdivision of the land into two lots and construction of a new dwelling house and pool on each new lot, with remediation of both lots.	Approved – 15/06/2021
MOD/2021/0269	Modify consent for demolition, subdivision and two dwellings as follows: delete Condition 2(d) which was imposed in error	Approved – 29/07/2021
MOD/2021/0451	Modify approval for demolition of existing dwelling house, subdivision into two lots, construction of a new dwelling house and pool on each new lot, with remediation of both lots. Modifications include additional excavation, new dormer windows and additional floor area.	Approved – 05/07/2022
REV/2022/0025	S8.2 Review of Development Application DA/2020/0461 as last modified by MOD/2021/0451 seeking to review Condition No. 2(c) relating to the glazed balustrades and Condition No. 2(j) relating to the proposed dimensions of the upper ground level rear; terraces for both Nos. 17 and 17A Wharf Road.	Approved – 16/12/2022
MOD/2022/0491	Section 4.55(2) Modification of Development Consent DA/2020/0461 (as last modified by DAREV/2022/0025) seeking to modify the shapes and sizes of the upper-level ground floor rear balcony areas at both Nos. 17 and 17A Wharf Road	Refused – 25/05/2023

MOD/2025/0127	Section 4.55(1a) Modification to DA/2020/0461 dated 08/06/2021, modification involves internal reconfiguration and deletion of a balcony on the north-western elevation of Lot 2, by incorporating it into the dwelling floor plate, and new window to this space.	Approved – 06/06/2025
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No. 19 Wharf Road Birchgrove NSW 2041:

Application	Proposal	Date & Decision
D/2007/132	Alterations and additions to dwelling house and waterfront sheds, new swimming pool, retaining walls, terraces, landscaping and removal of 1 tree. Please note: Amended plans have been submitted.	Approved – 08/04/2008
D/2007/276	Remediation of contaminated land in rear garden and removal of tree.	Approved – 27/12/2007
M/2008/288	Modification to D/2007/132 including the following: addition of opening to ensuite bathroom to lower ground floor, reduction in extent of balustrade to north balcony and changes to the north east and west elevations.	Approved – 06/03/2009

No. 21 Wharf Road Birchgrove NSW 2041:

Application	Proposal	Date & Decision
HEC/2018/24	Heritage Exemption Certificate - construction interior wall and exterior glass `parapet`	Issued – 28/06/2018
BC/2018/44	Construction of gyprock wall to create two distinct smaller spaces. Glass parapet to sea facing deck, as a safety measure	Issued – 09/08/2018

Application history

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

Date	Discussion / Letter / Additional Information
06/06/2025	A Request for Further Information letter was sent to the Applicant requiring an amended Section 4.6 Exception to Development Standards Request.

18/06/2025	Amended plans and supporting documentation were received. Renotification was not required in accordance with Council's Community Engagement Strategy 2025-2029. The amended plans and supporting documentation are the subject of this report.
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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* (EP&A Act 1979).

A. Environmental Planning Instruments

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 2 Coastal management

The *Resilience and Hazards SEPP* aims to ensure that future coastal development is appropriate and sensitive to its coastal location and category. The site is categorised as a coastal environment and a coastal use area pursuant to Sections 2.10 and 2.11 of the *Resilience and Hazards SEPP* as identified on the maps to the *Resilience and Hazards SEPP*.

However, these specific provisions do not apply to land located within the Foreshores and Waterways Area within the meaning of *SEPP (Biodiversity and Conservation) 2021*, Chapter 6.

In general terms, it is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not be likely to cause increased risk of coastal hazards on the land or other land.

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards 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.

SEPP (Sustainable Buildings) 2022

Chapter 2 Standards for residential development - BASIX

The application is accompanied by a BASIX Certificate (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EP&A Regulation 2021*.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water Catchments

Section 6.6 under Part 6.2 – Development in Regulated Catchments of the *Biodiversity and Conservation SEPP* provides matters for consideration which apply to the proposal. The subject site is located within the designated hydrological catchment of the Sydney Harbour Catchment and is subject to the provisions contained within Chapter 6 of the above *Biodiversity Conservation SEPP*.

The subject site is located within the Foreshores and Waterways Area and the nearest adjoining waterway is Zone 6 – Scenic Waters: Active Use. Section 4.5 – Designation of Consent Authority of the *Environmental Planning and Assessment Act 1979* means that a *State Environmental Planning Policy* is no longer able to designate Councils as a consent authority. Therefore, the *Biodiversity and Conservation SEPP* instead identifies the Minister for Planning for this role. The Minister for Planning has delegated these consent authority functions to Councils through an Instrument of Delegation.

Notwithstanding, the proposal is best defined as land-based and is positioned above Mean High Water Mark (MHWM). Therefore, no development is proposed within a designated zone of the *SEPP (Biodiversity and Conservation) 2021*.

An assessment has been made of the matters set out under Part 6.28 – General of the *Biodiversity and Conservation SEPP*. As demonstrated below, it is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration and would not have an adverse effect on environmental heritage, the visual environment, the natural environment, or any open space and recreation facilities:

- The proposal, being related to the enclosure of an existing balcony, is set below the ridge line of the existing building and will not limit the ability for the public to use or enjoy Sydney Harbour and will protect and not impact upon the natural assets of Sydney Harbour;
- The proposed addition is of a sympathetic design and will not result in unacceptable impacts of views to and from Sydney Harbour from surrounding sites given that it is of a scale, massing, materially and fenestration which is similar to the existing Heritage Item building;

- The proposed development is located at an RL between 9.385 and 12.680, atop the existing building and is not susceptible to rising sea levels or flooding;
- The proposal being located to an approved balcony area and enclosing this space will not cast significant shadows or impact upon ecological communities and will protect / maintain the surrounding watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity; and
- The proposal will not impact upon commercial operations associated with Sydney Harbour.

Inner West Local Environmental Plan 2022

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

Part 1 – Preliminary

Section	Proposed	Complies
Section 1.2 Aims of Plan	<p>The proposal satisfies this Section as follows:</p> <ul style="list-style-type: none"> • The proposal encourages development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles; • The proposal conserves and maintains the natural, built and cultural heritage of Inner West; • The proposal prevents adverse social, economic and environmental impacts on the local character of the Inner West; and • The proposal prevents adverse social, economic and environmental impacts, including cumulative impacts. 	Yes

Part 2 – Permitted or prohibited development

Section	Proposed	Complies
Section 2.3 Zone objectives and Land Use Table <i>R1 - General Residential Zone</i>	<ul style="list-style-type: none"> • The application proposes alterations and additions to a unit which forms part of multi dwelling housing which is permissible with consent in the R1 – General Residential zone. Multi dwelling housing is permissible with consent in the R1 zone; and • The proposal is consistent with the relevant objectives of the zone, as it will assist to provide for the housing needs of the community. 	Yes
Section 2.7 Demolition requires development consent	<p>The proposal satisfies this Section as follows:</p> <ul style="list-style-type: none"> • Demolition works are proposed, which are permissible with consent; and • Standard conditions are recommended to manage impacts which may arise during demolition. 	Yes, subject to conditions

Part 4 – Principal development standards

Section	Proposed		Complies
Section 4.3C (3)(a) Landscaped Area	Minimum	20%	No Change* – The proposal does not seek to alter the existing Landscaped Area on-site.
	Proposed	No Change*	
Section 4.3C (3)(b) Site Coverage	Maximum	60%	No Change* – The proposal does not seek to alter the existing Site Coverage on-site.
	Proposed	No Change*	
Section 4.4 Floor space ratio	Maximum	0.7:1 or 634.97sqm	No – See Section 4.6 Exceptions to Development Standards of this report.
	Proposed	0.85:1 or 774.7sqm	
	Variation	139.73 sqm or 22.01%	
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.		Yes
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.4 – Floor Space Ratio. See below for a detailed discussion regarding this variation.		See discussion below

Section 4.6 – Exceptions to Development Standards**Section 4.4 – Floor Space Ratio Development Standard**

The Applicant seeks a variation to the above mentioned under Section 4.6 of the *IWLEP 2022* by 139.73 sqm or 22.01%. Section 4.6 allows Council to vary Development Standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the Development Standard. 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.

Whether compliance with the Development Standard is unreasonable or unnecessary

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the Development Standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of Section 4.4 – Floor Space Ratio Development Standard are achieved notwithstanding the numeric non-compliance.

The **first objective of Section 4.4** is “to establish a maximum floor space ratio to enable appropriate development density”. The written request states that the proposal seeks to vary the FSR Development Standard to accommodate a modest breach to the existing approved Gross Floor Area (GFA) for the site. It is noted that the existing approved GFA is approximately

760.7 sqm or 0.838:1 FSR, and that the proposed total GFA is 14sqm greater than the existing GFA. The scale of the development proposed at Unit 4, 19A Wharf Road is modest, with the alteration and addition limited to the increase in floor area of a bedroom. The proposal presents to the street as contained within compliant setbacks and generally in alignment with the heights of comparable established dwellings surrounding the property. The alteration at the site provides commensurate bulk and scale to that of adjacent developments and will deliver an appropriate (compatible) architectural outcome. Notwithstanding the FSR variation, the proposed scale, bulk and massing of the alteration to the dwelling is compatible with the surrounding area and will enhance the residential character of the subject site. Accordingly, the breach is consistent with the first objective.

The **second objective of Section 4.4** is *“to ensure development density reflects its locality”*. The written request states that Wharf Road is characterised by a mixture of Victorian / Federation dwellings with modern infill residential dwellings on a waterfront street. Larger housings from the 19th Century with their orientation to the water are scattered throughout the streetscape. A range of Victorian houses are evident such as No. 21 Wharf Road, although the subdivision of large lots has allowed for infill development of a modern style such as Nos. 15A and 19A Wharf Road. The site is situated in a medium-density residential neighbourhood which is characterised by single to three storey buildings which reflects a majority of R1 zoned precincts across the Inner West of Sydney. The density of the existing approved development at No. 19A Wharf Road includes a total GFA of 760.7m². This provides for four (4) x units split across two (2) buildings. The form, layout and design of the development is consistent with other such dwellings in the locality and Wharf Road. The proposed increase in GFA of 14m² is modest and ensures the site remains consistent in terms of its existing setbacks, parking arrangements, on-site landscaping, courtyard and height, ensuring an appropriate built form fit within the established streetscape. Accordingly, the breach is consistent with the second objective.

The **third objective of Section 4.4** is *“to provide an appropriate transition between development of different densities”*. The written request states as the development is surrounded on all sides by residential zoned land which typically supports one (1) to three (3) storey dwellings, including detached and semi-detached homes. Accordingly, no transition of building form is strictly necessary to neighbours. Given that the proposal maintains existing side setbacks and does not increase the maximum height of the existing buildings on the subject site, it will maintain an adequate transition and visual separation from development densities on adjoining properties. Accordingly, the breach is consistent with the third objective.

The **fourth objective of Section 4.4** is *“to minimise adverse impacts on local amenity”*. The written request states that amenity impacts resulting from the proposed development are negligible. Overshadowing impacts are largely avoided to neighbouring properties. The overall bulk, scale and height of the dwelling as a result of the alteration of the balcony to habitable space for the enlargement of the bedroom is not considered overbearing as it replaces like for like space, for example, covered balcony area converted to habitable living space. The development and proposed FSR breach do not create any unreasonable impacts by way of acoustic, overshadowing or visual privacy to neighbouring properties. Accordingly, the breach is consistent with the fourth objective.

The **fifth objective of Section 4.4** is *“to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain”*. The written request states that no

changes are proposed to the existing tree canopy or the public domain because of the alterations and additions. It is considered that while the subject site does not include any substantial plantings, that this is a result of existing site conditions. Further, the proposal will not result in a reduction in tree canopy cover on adjacent land and does not seek to reduce available areas for tree plantings on the subject site. Accordingly, the breach is consistent with the fifth objective.

As the proposal achieves the objectives of Section 4.4 – Floor Space Ratio Development Standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant provides the following environmental planning grounds to justify contravening the Section 4.4 – Floor Space Ratio Development Standard:

Environmental Planning Ground 1 - *The breach of the standard in this instance is relatively modest in the broader context of the existing approved GFA for the site, this results in a 1.84% variation to the existing site GFA. It reflects the modest proposed development of alterations and additions to an existing dwelling on the site.*

The proposed additional GFA is contained within the existing building footprint of the dwelling and does not result in an increase to site coverage, being the result of the proposed enclosure of the existing balcony. The variation largely is a result of the existing approved GFA on the subject site and will have minimal amenity implications upon both public and private domains. As such this environmental planning ground is accepted.

Environmental Planning Ground 2 - *The surrounding built form character and exhibited densities (are) such that any excess bulk and scale is not discernible from Wharf Road or surrounding residential properties and does not contribute to the creation of an additional storey of element which sits outside of an anticipated building envelope for the site.*

Given that the proposed addition is set below street level, is for the enclosure of an existing balcony, does not reduce side setbacks and is located between the rear and front alignments of the existing multi dwelling development on the subject site, the proposal will not result in excessive bulk and scale from existing. As such, this environmental planning ground is accepted.

Environmental Planning Ground 3 - *The use of pressed brickwork and materials to complement the existing dwelling ensures the alteration and addition assimilates with the existing built form.*

Given that the proposal is of a materiality and design which matches the existing building and that the proposed addition is obscured from views by the existing built form of Building One (1) and Building Two (2) on the subject site, it will be visually harmonious with the existing built form on the subject site when viewed from the harbor and adjoining sites. Whilst the materials are considered appropriate, this is not considered an environmental planning ground in of itself that justifies a variation to the development standard.

Environmental Planning Ground 4 - *No significant adverse impact on neighbouring properties or the streetscape by way of overshadowing, view loss to primary living spaces, solar access, privacy, visual bulk, scale, massing, separation or inadequate landscaping.*

The proposal will not result in any adverse impacts in terms of views, visual and acoustic privacy and remain compliant solar access for surrounding properties. And the proposal is compliant with both Chapter 6 – Water Catchments of the *Biodiversity and Conservation SEPP* and Section 6.5 Limited Development on Foreshore of the *Inner West LEP 2022*. As such, the environmental planning ground is accepted.

Environmental Planning Ground 5 - *The additional FSR has not translated to the creation of additional, unreasonable density. The site is capable of accommodating the alteration to the existing dwelling which will present a comparable height, scale, form and layout.*

The proposal will maintain the existing buildings use as a residential dwelling and is located to the rear and below street level, and below the height of other structures located on the subject site. The proposed works are in a location where development can reasonably be expected to be carried out to the existing residential dwelling in the Heritage Conservation Area. As such, this environmental planning ground is accepted.

Environmental Planning Ground 6 - *Proposed development has acceptable visual fit having regard to the immediate context and has had due regard to massing and building heights and its interfaces to neighbouring properties along Wharf Road.*

The subject site is an existing multi dwelling housing development of which buildings sit below the heights of adjoining properties on Wharf Road. The existing buildings on the subject site are generally visually unobtrusive given their existing heights and side setbacks. The proposed addition will maintain the existing heights, and side setbacks and will not have undue visual or amenity impacts to the Heritage Item, adjoining properties, streetscape or to the harbour. As such, this environmental planning ground is accepted.

Environmental Planning Ground 7 - *Proposal provides high quality residential accommodation for the occupants and makes best use of the site.*

This is not considered an environmental planning ground which justifies the variation to the development standard.

Environmental Planning Ground 8 - *Additional GFA does not reduce the POS of areas directly linked to active areas of the dwelling.*

Whilst the above statement is accepted, this is not considered an environmental planning ground in of itself that justifies a variation to the development standard.

Environmental Planning Ground 9 - *Ability to satisfy the R1 zone objectives.*

These constitute separate preconditions under Section 4.6 – Exceptions to Development Standards of the *IWLEP 2022* and as such are not considered environmental planning grounds.

Environmental Planning Ground 10 - *A development that complies with the land use zoning of the site (R1 General Residential) satisfies the objectives of under S1.3 EP&A Act 1979.*

These constitute separate preconditions under Section 4.6 – Exceptions to Development Standards of the *IWLEP 2022* and of the EP&A Act 1979 and as such are not considered environmental planning grounds.

While not all the grounds have been adequately made out, sufficient grounds have been established to justify contravening the Development Standard.

Part 5 – Miscellaneous provisions

Section	Proposed	Complies
Section 5.10 Heritage conservation	See discussion below.	Yes
<p>The subject site is identified as a Heritage Item (Item No. 1927 'Remnants of former Stannard's Marina, including interiors', 19A Wharf Road Birchgrove in Schedule 5 of the <i>IWLEP 2022</i>. Further, the site is located within the Birchgrove and Ballast Point Road Heritage Conservation Area (HCA) (C30) in Schedule 5 of the <i>IWLEP 2022</i>.</p> <p>The subject site is also within the vicinity of the following Heritage Items:</p> <ul style="list-style-type: none"> • Semi-detached flats "Maybank", including interiors, No. 23 Wharf Road, Birchgrove WHARF ROAD BIRCHGROVE 2041 (Item No. 1931) • House and remnants of former Stannard's Marina, including interiors, No. 19 Wharf Road, Birchgrove 2041 (Item No. 1926) • House, "Wyoming", including interiors, No. 25 Wharf Road, Birchgrove 2041 (Item No. 1932) • House, including interiors, No. 8 Wharf Road, Birchgrove 2041 (Item No. 1922) • Timber house, including interiors, No. 6 Wharf Road, Birchgrove 2041 (Item No. 1919) • Terrace, "Ellerslie", including interiors, No. 35 Ballast Point Road, Birchgrove 2041 (Item No. 1832) • Terrace, "Ellerslie", including interiors, No. 37 Ballast Point Road, Birchgrove 2041 (Item No. 1833) • Terrace, "Ellerslie", including interiors, No. 39 Ballast Point Road, Birchgrove 2041 (Item No. 1834) • Terrace, "Ellerslie", including interiors, No. 41 Ballast Point Road, Birchgrove 2041 (Item No. 1835) • Terrace, "Ellerslie", including interiors, No. 43 Ballast Point Road, Birchgrove 2041 (Item No. 1836) • Terrace, "Ellerslie", including interiors, No. 45 Ballast Point Road, Birchgrove 2041 (Item No. 1837) • Terrace, "Ellerslie", including interiors, No. 47 Ballast Point Road, Birchgrove 2041 (Item No. 1839) <p>As such, the relevant provisions of Section 5.10 Heritage Conservation of <i>IWLEP 2022</i> are applicable to the proposal. An assessment of the proposal against Section 5.10 of <i>IWLEP 2022</i> (C1.4 Heritage Conservation Areas and Heritage items and Section 5 – Wharf Road, Birchgrove of Part G- Site Specific Controls from the Leichhardt DCP 2013 applies to the proposal) has been carried out. The proposal achieves the objectives of this Section as follows:</p> <ul style="list-style-type: none"> • The proposed minor extension to the north elevation of Unit 4 (Building Two (2)) of No. 19A Wharf Road, Birchgrove, is to an area of the site which was built outside of the period of significance of the item and HCA and has negligible heritage value to the listing or HCA; 		

Section	Proposed	Complies
	<ul style="list-style-type: none"> The scale and massing are appropriate to the dwelling and the brickwork will match the existing and as such have minimal visual impact; The windows are proposed to match the existing in their material, proportion and format; The works will not impact the heritage significance of the Item; and The development has been designed to respond to the significance of the conservation area and preserve contributory elements and fabric of the existing building. <p>Given the above the proposal preserves the environmental heritage of the Inner West.</p>	
Section 5.21 Flood planning	The site is located in a flood planning area. The development is considered to be compatible with the flood function and behaviour on the land now and under future projections. The design of the proposal and its scale will not affect the flood affectation of the subject site or adjoining properties and is considered to appropriately manage flood risk to life and the environment.	Yes

Part 6 – Additional local provisions

Section	Proposed	Complies
Section 6.1 Acid sulfate soils	<ul style="list-style-type: none"> The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable. 	Yes
Section 6.3 Stormwater Management	<ul style="list-style-type: none"> The development maximises the use of permeable surfaces, includes on site retention as an alternative supply and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment. 	Yes, subject to conditions
Section 6.5 Limited development on foreshore	<ul style="list-style-type: none"> The subject site is partially located within the foreshore building area. However, the proposed works are confined to the enclosure of a balcony to a Unit within the existing multi dwelling housing, and themselves are located outside of the foreshore building line, and hence raises no issue that will be contrary to the provisions of this Section of the <i>IWLEP 2022</i>. 	Yes
Section 6.6 Development on foreshore must ensure access	<ul style="list-style-type: none"> The subject site is in private ownership. The proposal does not impact on any future foreshore access; and Furthermore, as the proposed works are located on level three (3) of the existing multi dwelling complex the proposal does not impact on any future foreshore access and will not be affected by sea level rise of changing flood patterns. 	Yes

B. Development Control Plans

Summary

The application has been assessed and the following provides a summary of the relevant Development Control Plans:

- Leichhardt Development Control Plan 2013; and
- Sydney Harbour Foreshores Area Development Control Plan 2005

Leichhardt Development Control Plan 2013

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

LDCP 2013	Complies
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part C	
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
C1.14 Tree Management	Acceptable – see discussion
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Yes
C1.20 Foreshore Land	Yes
Part C: Place – Section 2 Urban Character	
C2.2.2.6 – Birchgrove Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Acceptable – see discussion
C3.3 Elevation and Materials	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes – see discussion
C3.11 Visual Privacy	Acceptable – see discussion
C3.12 Acoustic Privacy	Yes
Part D: Energy	

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
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.5 Foreshore Risk Management Report	Yes – see discussion
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	Yes
E1.3.2 Foreshore Risk Management	Yes – see discussion
Part G: Site Specific Controls	
G5 Wharf Road, Birchgrove	Yes
G5.1 Heritage	Yes – see discussion
G5.2 Landscaping	Yes
G5.3 Built Form and Urban Design	Yes
G5.4 Additions	Yes
G5.9 Views	Yes

The following provides discussion of the relevant issues:

Leichhardt Development Control Plan 2013

The application was assessed against the following relevant parts of the Leichhardt Development Control Plan 2013 (LDCP 2013).

Part C – Section 1 – General Provisions

Control	Assessment	Complies
C1.1 Site and Context Analysis	<ul style="list-style-type: none"> The development is well designed and appropriately considers context, scale, built form, density and resource, energy and water efficiency, streetscape, travel networks and connections, social dimensions, and aesthetics. 	Yes
C1.2 Demolition	<ul style="list-style-type: none"> The proposed development includes the demolition to part of an existing balcony and glazing. The extent of demolition works is deemed to be acceptable, subject to standard demolition conditions being imposed as part of any consent granted. 	Yes

Control	Assessment	Complies
C1.3 Alterations and additions	<ul style="list-style-type: none"> The proposal complements the scale, form and materials of the streetscape and neighbourhood character. The proposed balcony enclosure will appear as a sympathetic addition to the existing building; maintains views from the public domain and reasonably protects views obtained from surrounding development. 	Yes
C1.4 Heritage Conservation Areas and Heritage Items	<ul style="list-style-type: none"> The development is compatible with the Heritage Conservation Area in terms of scale, form, roof form, materials, detailing and colour, architectural detail, and fenestration. Refer to discussion under Section 5.10 of the <i>IWLEP 2022</i> contained within Part 3A of this report. 	Yes, see discussion above
C1.14 Tree Management	<ul style="list-style-type: none"> No prescribed trees were found on the property. Given the site area is 907.1sqm, two (2) tree planting/s are required as per C12 of this Part. However, the subject site includes limited areas of appropriate dimensions to accommodate new tree plantings given the slope of the site and the existing approved built form. It is also noted that the proposal is not a major redevelopment of the existing multi dwelling housing and relates to the enclosure of an existing balcony, which does not seek to increase the existing approved site coverage. As such, no new tree plantings are recommended and a variation from C12 is acceptable regarding the provisions of C1.14 of the LDCP 2013. 	Acceptable, on merit
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	<ul style="list-style-type: none"> The proposal will not impact the existing rock wall located on the northern boundary of the subject site facing Snails Bay. 	Yes
C1.20 Foreshore Land	<ul style="list-style-type: none"> Although the subject site is part within the Foreshore Area, the proposed modification does not involve any works forward of the Foreshore Building Line, and hence, raises no issues that will be contrary to the provisions of Part C1.20 of the LDCP 2013. 	Yes

Part C – Section 2 – Urban Character

Control	Assessment	Complies
C2.2.2.6 – Birchgrove Distinctive Neighbourhood	<ul style="list-style-type: none"> The proposal is considered to be a satisfactory response to the Distinctive Neighbourhood controls under this Part. 	Yes

Part C – Section 3 – Residential Provisions

Control	Assessment	Complies
C3.1 Residential General Provisions	<ul style="list-style-type: none"> The proposal will not have an adverse effect on the amenity, setting or cultural significance of the place and the relationship of any Heritage Item or Heritage Conservation Area. 	Yes

Control	Assessment	Complies
C3.2 Site Layout and Building Design	<ul style="list-style-type: none">See discussion below.	Acceptable – see discussion below

C3.2 Site Layout and Building Design

Building Location Zone (BLZ):

The proposal entails an addition at the ground floor of Unit 4/19A Wharf Road (Building Two (2)) (it is noted that this Unit is located on the third floor of the multi dwelling complex). The proposal includes a rear setback of 20.5-23.6m.

Control C5 of this Part of the DCP states that the BLZ is to be determined by the location of the building on the adjacent property that most resembles the orientation, frontage width and site layout of the subject site. There is no immediate adjoining property on Wharf Road with a similar orientation, frontage width and site layout as the subject site in accordance with Control C5. Given this, and the proposal is for the infilling of a rear balcony and is located between two existing buildings on the subject site and that will have acceptable scale, and amenity impacts on adjoining properties, the proposal is deemed to raise no issues that are contrary to the BLZ provisions and objectives of this Part of the DCP.

Side Setbacks:

The proposed development does not include any changes to the existing eastern and western wall heights to the lower ground floor of Unit 4/19A Wharf Road. However, the ground floor addition will have wall heights above 2.8m, and Control C7 calls for side boundaries relative to the proposed wall height.

The table below assesses the proposed attic level addition against the Side Boundary Setbacks Graph prescribed in this Part of the DCP.

Wall	Height	Required Setback	Proposed Setback
Ground East	6.4 m	2.08 m	16 m -18.5 m
Ground West	6.4 m	2.08 m	1.8 m

Control C7 at Section C3.2 of the LDCP 2013 relates to side setback requirements and applies a sliding scale to setbacks, in conjunction with the relative wall heights. The proposed ground floor works include an extension to the bedroom, by infilling an existing balcony towards the rear setback. The proposal seeks a wall height of 6.4m to its western boundary, as such the ground floor is required to be setback 2m, however a 1.8m side setback is proposed.

Pursuant to Clause C3.2 of the LDCP 2013, where a proposal seeks a variation of the side setback control graph, various tests need to be met. These tests are assessed below:

Merit Test	Comment
Building typology	The proposal is a satisfactory response to the relevant Building Typology Statement in the DCP.
Pattern of Development	The development is not contrary to the pattern of development of this locality.
Bulk and Scale	The proposal is for an infilling of a balcony on the existing building. As such the proposed side setbacks will not contribute to undue bulk and scale.
Amenity Impacts	As discussed in this report, the development will result in acceptable amenity impacts on adjoining properties in terms of solar access, views and privacy.

Control	Assessment	Complies
	The proposed ground floor addition will not have undue adverse bulk and scale impacts on adjoining properties given the addition will be at a height which is street level and not higher than the existing dwelling.	
Maintenance of adjoining properties	Acceptable. The alterations and additions will not cause any obstruction to adjoining properties for maintenance purposes.	
Accordingly, the proposed side boundary at the ground floor level is acceptable.		
C3.3 Elevation and Materials	<ul style="list-style-type: none"> Colours, materials, and finishes are compatible with those prevailing in the streetscape and the period of construction of the dwelling. 	Yes
C3.7 Environmental Performance	<ul style="list-style-type: none"> A BASIX Certificate has been submitted as part of this application. In addition, the proposal allows for adequate sun and daylight access, and natural ventilation. 	Yes
C3.8 Private Open Space	<ul style="list-style-type: none"> The proposal does not result in changes to the existing private open space arrangements for Units 1-3 on the subject site; and The proposal results in private open space (POS) area with a minimum dimension of 3m and a minimum total area of 16sqm located at the rear of and accessible by the occupants of Unit 4 and therefore satisfies the control. 	Yes
C3.9 Solar Access	<ul style="list-style-type: none"> The proposal will have a satisfactory impact in terms of solar access and overshadowing to the surrounding properties; A minimum of two (2) hours direct solar access is retained to the main window of principal living area and POS area of Nos. 19 and 21 Wharf Road between 9:00am and 3:00pm on 21 June; and The development will not result in adverse amenity impacts as a result of overshadowing. 	Yes
C3.10 Views	<ul style="list-style-type: none"> The development is designed to promote view sharing by appropriately addressing building height, bulk and massing and including building setbacks and gaps between buildings. Refer to the discussion below for a detailed assessment. 	Acceptable, on merit – See discussion below
<p>C3.10 Views</p> <p>It is noted that the proposal has not received any submissions relating to view sharing or view loss. However, given the location (adjacent to the waterfront) and the elevation of the proposed works (between RL 9.605 and RL 12.68), and the extent of views available from surrounding properties, Section C3.10 of the LDCP 2013 is applicable in this instance. It is noted that the proposed alterations and additions will be visible from various vantage points in the Sydney Harbour and from surrounding properties, including Nos. 21-23 Wharf Road, Birchgrove located west of the proposal.</p> <p>However, it is noted that the proposed alterations and additions account for an enclosure of an existing balcony to Unit 4/19A Wharf Road, which currently includes a retractable awning over its extent. The proposal will amount to an increase of 14sqm of total floor space to the subject site and is not a substantial redevelopment of the existing site. The proposed works have a setback of 1.8m to the eastern side boundary, and 17-21.5m to the front southern boundary. Given that the existing balcony includes wall heights of approximately 0.9m, the proposal will account for an increase in building height and bulk of a height of 2.1m, a length of 2.9m and a width of 4.88m to the third floor of the existing multi dwelling housing development (or to the ground floor of Unit 4). In saying this, the existing awning includes a similar height and extent which is proposed to be replaced.</p>		

Control	Assessment	Complies
<p>Given that the proposed works are located below street level which includes an RL of 13.89 and below the existing carport structure of the subject site, which includes an RL between 15.17 and 16.00 and the proposal does not seek to increase existing side setbacks, the proposed properties located to the east, further westward along Wharf Road and to the south on the opposite side of Wharf Road are unlikely to be able to view the proposed addition. As such the proposal is unlikely to have any implications for view sharing or view loss implications on surrounding properties.</p> <p>While surrounding properties located to the east, south and west of the subject site include Iconic views (including that of the Harbour Bridge), land and water interface views of North Sydney, water views of Sydney Harbour and views of Goat Island, the proposal is not likely to have an impact on these existing views given that the proposal is cited at a height, location and dimensions similar to that which is existing. As such a planning principal assessment of view sharing is not required in this instance given the above and the proposal is considered acceptable regarding the objectives and controls of Section C3.10 of the LDCP 2013.</p>		
C3.11 Visual Privacy	<ul style="list-style-type: none"> The development is designed to protect the visual privacy of adjoining properties. See below for a detailed discussion. 	Acceptable, on merit – See discussion below
<p><u>C3.11 Visual Privacy</u></p> <p>The proposal includes a third-floor extension to the multi dwelling housing (or ground floor extension of Unit 4) as well as additions of glazing including Bed-01, Bed-02 and Bed-03 (refer to the BASIX Certificate for window numbers and locations).</p> <p>Bed-01, proposed on the ground floor rear northern elevation of the rear addition serves a bedroom (BED 03).</p> <p>Bed-02 proposed on the ground floor eastern side elevation of the rear addition serves a bedroom (BED 03).</p> <p>Bed-03 proposed on the ground floor western side elevation of the rear addition serves a bedroom (BED 03).</p> <p>As a result, the following controls apply:</p> <ul style="list-style-type: none"> <i>C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway. Measures for screening or obscuring will include one or more of the following:</i> <ol style="list-style-type: none"> <i>offsetting of opposing windows so that they do not directly face one another;</i> <i>offset windows from directly facing adjoining balconies and private open space of adjoining dwellings;</i> <i>screening of opposing windows, balconies and private open space with fixed louvered screens, window hoods, shutters;</i> <i>reduced window areas, subject to compliance with the Building Code of Australia;</i> <i>window sills at or above 1.6m above the finished floor level;</i> <i>use of fixed, obscure glass, subject to adequate ventilation complying with the Building Code of Australia;</i> <i>consistent orientation of buildings;</i> <i>using floor level in design to minimise direct views; and</i> 		

Control	Assessment	Complies
	<p>i) <i>erection of screens and fencing to limit sightlines including dividing fences, privacy screens, projecting blade screens.</i></p> <ul style="list-style-type: none"> <i>C6 Screening is not required to ground floor windows where any sight lines are obscured by a 1.8m dividing fence. Such sightlines shall be measured from a height of 1.6m above the finished floor level.</i> <i>C7 New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms).</i> <p>Bed Window-01, serves a bedroom and not a living / entertainment area. As a result, the window mentioned will generally comply with C1 of this Provision. Given that the location of the subject window is to a low use space, a certain level of privacy will be sought after by the occupant. The proposed window will provide improved ventilation to BED 03 and will not likely present privacy concerns as the window faces back into the site, and over the roof of Building One (1) on the site containing units, 1-3 of No. 19A Wharf Road and is not alighted with a window on an adjoining site within 9 metres and 45 degrees. The window however does have a sill height less than 1.6m above finished floor level, with sill heights being 0.9m above finished floor level. Nevertheless, given that the glazing in question does not directly face the adjoining sites to the east and west, and is set level above the other units with No.19A Wharf Road a variation from this Part is acceptable.</p> <p>Bed Window-02, has a sill height of 0.75m and faces the side boundary. Notwithstanding it replaces an existing balcony, it provides opportunities for overlooking of neighbouring properties, and as such a condition of consent is recommended requiring a 1.6m sill height.</p> <p>Bed Window-03, has a sill height of 0.75m and faces the side boundary. Notwithstanding it replaces an existing balcony, it provides opportunities for overlooking of neighbouring properties, and as such a condition of consent is recommended requiring a 1.6m sill height.</p> <p>For the reasons mentioned above, subject to conditions the proposal is acceptable in regard to the provision C3.11 Visual Privacy of LDCP 2013.</p>	
C3.12 Acoustic Privacy	<ul style="list-style-type: none"> The proposal has been appropriately designed to avoid significant impacts of acoustic privacy for neighbouring dwellings. Any acoustic impacts from the proposal are expected to be in-line with that of a typical residential dwelling in the residential zone. 	Yes

Part E – Water

Control	Assessment	Complies
E1.1.5 Foreshore Risk Management Report	<ul style="list-style-type: none"> The subject site is identified as a foreshore flood control lot. Given the proposal meets the following criteria, a Foreshore Risk Management Report is not required for the following reason: <ul style="list-style-type: none"> There are no new works proposed below RL 3.5m Australian Height Datum (AHD). 	Yes
E1.3.2 Foreshore Risk Management	<ul style="list-style-type: none"> The proposal has been reviewed by Council's Engineer who has found that it is satisfactory with regard to the provisions of E1.3.2 of the LDCP 2013. 	Yes

Part G – Site Specific Controls

Control	Assessment	Complies
G5 Wharf Road, Birchgrove	<ul style="list-style-type: none"> The proposal has been assessed against this Part and is considered to comply with its provisions. 	Yes
G5.1 Heritage	<ul style="list-style-type: none"> The proposal has not been accompanied by Heritage Management document. However, the proposal is not for a major redevelopment of the site and is proposed to an area of the site which was built outside of the period of significance of the Item and HCA and has negligible heritage value to the listing or HCA. As such a Heritage Management document is not required to support this proposal and a variation from C3 of this Part is acceptable given that the structures, namely the jetty on the subject site which contributes to the heritage significance of Wharf Road is conserved and unaffected by the proposal. 	Acceptable on merit

Sydney Harbour Foreshores and Waterways Areas Development Control Plan 2005 (SHDP 2005)

The subject site is located in a Foreshore and Waterways Area, and therefore, the Sydney Harbour Foreshores and Waterways Area Development Control Plan (SHDCP) 2005 applies to the proposal.

The SHDCP 2005 prescribes design guidelines and visual impact assessment and criteria for natural resource protection. The application was assessed against the following relevant parts of this DCP:

Part 2 – Ecological Assessment

In accordance with the SHDCP 2005 the site is located within an area defined as 'Urban development with Scattered Trees', which is regarded as a terrestrial ecological community of low conservation value. The proposal is considered acceptable with regard to the performance criteria of the ecological community it is located within.

Part 3 – Landscape Assessment

The subject site is designated within a Landscape Type 7 area. These areas have been identified as having:

high level of development with a mixture of waterside industrial, residential and maritime uses. The mixture of land uses and the pattern of the built environment contribute to the character of this area.

Development is suitable for these areas provided the character of the area is retained and the performance criteria are met.

The proposal is considered to satisfy the statement of character and intent, and performance criteria for this landscape type, for the following reasons:

- The proposal seeks visual changes to the design of the approved multi dwelling housing, which is considered to be appropriately integrated in the landscaped setting / character in which the development is proposed.
- The proposal is considered to be consistent with the general aims under Section 3.2.
- The proposal is considered to be consistent with the statement of intent and performance criteria for the Landscaped Character Type 7.

Part 5 – Design Guidelines of Land-Based Developments

Part 5 of the SHDCP 2005 applies to development located above the mean high-water mark. The following table provides an assessment of the proposed modification against the relevant sections of Part 5:

Section	Assessment	Complies
5.2 Foreshore Access	The proposal does not involve any works that effect foreshore access.	Yes
5.3 Siting of Buildings and Structures	The proposal maintains existing views and vistas from public places to the waterway and does not obstruct views of landmark. Furthermore, proposed additions are setback from existing native vegetation.	Yes
5.4 Built Form	The proposal is generally sympathetic in design and the proposal does not impact significant view corridors of surrounding residents.	Yes
5.6 Planting	The proposal does not propose changes to or, nor impact the landscape of the site.	Yes

In consideration of the above, the proposal does harmonise with surrounding built form and is considered to appropriately transition between the overall height of adjoining buildings when viewed from the adjacent waterway. As such, the proposal is considered to be consistent with the 'Design Guidelines of Land-Based Developments' under Part 5 of the SHDCP 2005 and the application is recommended for approval.

C. The Likely Impacts

- These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed.

E. Submissions

The application was notified in accordance with Council's Community Engagement Strategy 2025-2029 between 29 April 2025 to 13 May 2025.

No submissions were received.

F. 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.

This has been achieved in this instance.

6. Section 7.11 / 7.12 Contributions

Section 7.11 contributions are / 7.12 levies are not payable for the proposal as the cost of works is valued under \$200,000 and the carrying out of the development would not result in an increased demand for public amenities and public services within the area.

7. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Heritage Specialist;
- Development Engineer;

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 premises/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. In relation to the proposal in Development Application No. DA/2025/0263 to contravene the FSR development standard in Section 4.4 of *Inner West Local Environmental Plan 2022* the Inner West Local Planning Panel is satisfied that the Applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- 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/2025/0263 for alterations and additions to existing multi-dwelling housing to unit 4 which includes partial demolition of existing structures, construction of third floor addition at 19A Wharf Road BIRCHGROVE NSW 2041 subject to the conditions listed in Attachment A below.

Attachment A – Recommended Conditions of Consent

CONDITIONS OF CONSENT

GENERAL CONDITIONS

	Condition
1.	<p>Stormwater Drainage System – Simple</p> <p>Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, down pipe, pits and pipelines discharged by gravity to the existing site drainage system.</p> <p>Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.</p> <p>If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally.</p> <p>Reason: To ensure adequate disposal of stormwater.</p>
2.	<p>Permits</p> <p>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:</p> <ul style="list-style-type: none"> • 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; • A concrete pump across the roadway/footpath; • Mobile crane or any standing plant; • Skip Bins; • Scaffolding/Hoardings (fencing on public land); • Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.; • Awning or street veranda over the footpath; • Partial or full road closure; and • Installation or replacement of private stormwater drain, utility service or water supply. <p>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.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>

3.	<p>Insurances</p> <p>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.</p> <p>Reason: To ensure Council assets are protected.</p>																																												
4.	<p>Documents related to the consent</p> <p>The development must be carried out in accordance with plans and documents listed below:</p> <table><tr><th>Plan, Revision and Issue No.</th><th>Plan Name</th><th>Date Issued/Received</th><th>Prepared by</th></tr><tr><td>A102 A</td><td>Site Plan</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A103 A</td><td>Level 4</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A104 A</td><td>Roof Plan</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A105 A</td><td>North Elevation</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A106 A</td><td>East Elevation</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A107 A</td><td>West Elevation</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A108 A</td><td>Sections</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A109 A</td><td>Materials + Finishes</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A113</td><td>Concept Stormwater Plan</td><td>11/06/2025</td><td>Habitation Design Interiors +</td></tr><tr><td>A1791366</td><td>BASIX Certificate</td><td>10/04/2025</td><td>Chen Wang</td></tr></table> <p>As amended by the conditions of consent.</p> <p>Reason: To ensure development is carried out in accordance with the approved documents.</p>	Plan, Revision and Issue No.	Plan Name	Date Issued/Received	Prepared by	A102 A	Site Plan	11/06/2025	Habitation Design Interiors +	A103 A	Level 4	11/06/2025	Habitation Design Interiors +	A104 A	Roof Plan	11/06/2025	Habitation Design Interiors +	A105 A	North Elevation	11/06/2025	Habitation Design Interiors +	A106 A	East Elevation	11/06/2025	Habitation Design Interiors +	A107 A	West Elevation	11/06/2025	Habitation Design Interiors +	A108 A	Sections	11/06/2025	Habitation Design Interiors +	A109 A	Materials + Finishes	11/06/2025	Habitation Design Interiors +	A113	Concept Stormwater Plan	11/06/2025	Habitation Design Interiors +	A1791366	BASIX Certificate	10/04/2025	Chen Wang
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A104 A	Roof Plan	11/06/2025	Habitation Design Interiors +																																										
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A106 A	East Elevation	11/06/2025	Habitation Design Interiors +																																										
A107 A	West Elevation	11/06/2025	Habitation Design Interiors +																																										
A108 A	Sections	11/06/2025	Habitation Design Interiors +																																										
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A113	Concept Stormwater Plan	11/06/2025	Habitation Design Interiors +																																										
A1791366	BASIX Certificate	10/04/2025	Chen Wang																																										

5.	<p>Works Outside the Property Boundary</p> <p>This development consent does not authorise works outside the property boundaries on adjoining lands.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
6.	<p>Storage of materials on public property</p> <p>The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.</p> <p>Reason: To protect pedestrian safety.</p>
7.	<p>Other works</p> <p>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 <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
8.	<p>National Construction Code (Building Code of Australia)</p> <p>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.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
9.	<p>Notification of commencement of works</p> <p>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:</p> <ol style="list-style-type: none"> In the case of work for which a principal contractor is required to be appointed: <ol style="list-style-type: none"> The name and licence number of the principal contractor; and The name of the insurer by which the work is insured under Part 6 of that Act. In the case of work to be done by an owner-builder: <ol style="list-style-type: none"> The name of the owner-builder; and If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit. <p>Reason: To ensure compliance with legislative requirements.</p>
10.	<p>Bin Storage - Residential</p> <p>All bins are to be stored within the property. Bins are to be returned to the property within 12 hours of having been emptied.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>

11.	<p>Asbestos Removal</p> <p>Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
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BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
12.	<p>Dilapidation Report – Pre-Development – Minor</p> <p>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.</p> <p>Reason: To ensure Council assets are protected.</p>
13.	<p>Structural Certificate for retained elements of the building</p> <p>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.</p> <p>Reason: To ensure the structural adequacy of the works.</p>
14.	<p>Design Change</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:</p> <p style="margin-left: 40px;">a. The east-facing and west-facing windows of Bed 03 must have sill heights of at least 1.6m above the FFL of the associated room.</p> <p>Reason: To ensure that the design changes protect the amenity of the neighbourhood.</p>

BEFORE BUILDING WORK COMMENCES


	Condition
15. Waste Management Plan	<p>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.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
16. Erosion and Sediment Control	<p>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.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
17. Construction Fencing	<p>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.</p> <p>Reason: To protect the built environment from construction works.</p>

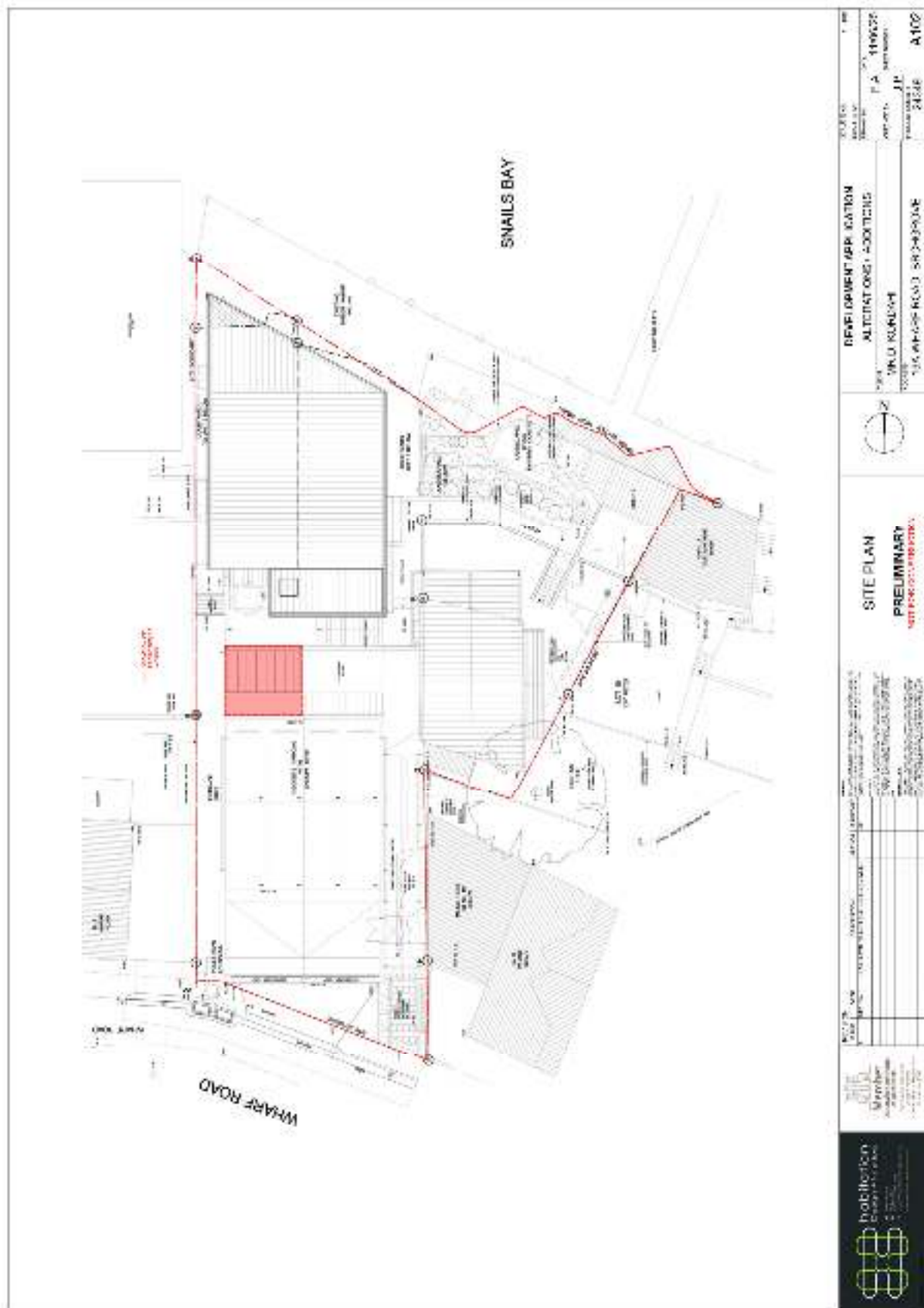
DURING BUILDING WORK

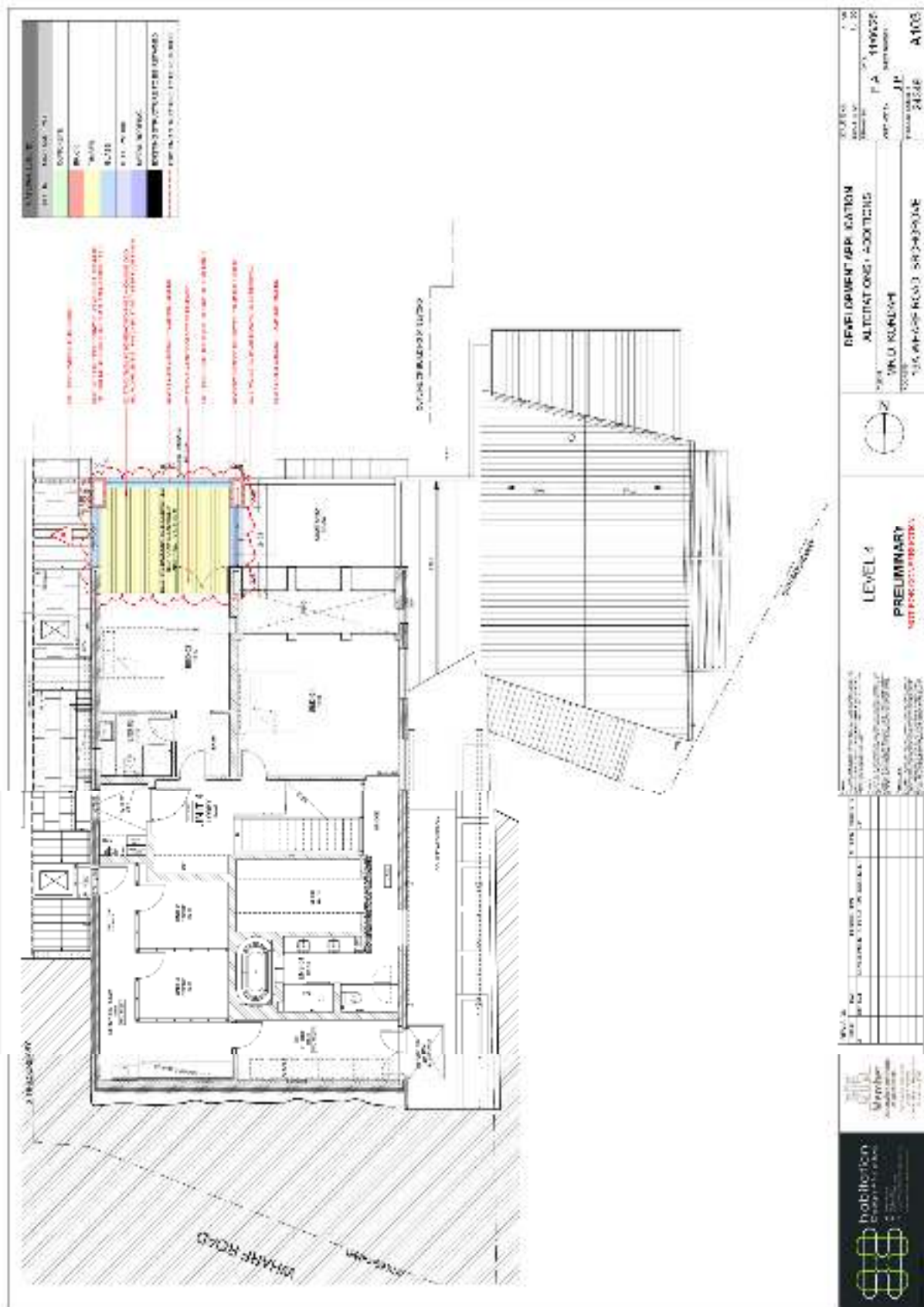
	Condition
18. Construction Hours – Class 2-9	<p>Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>

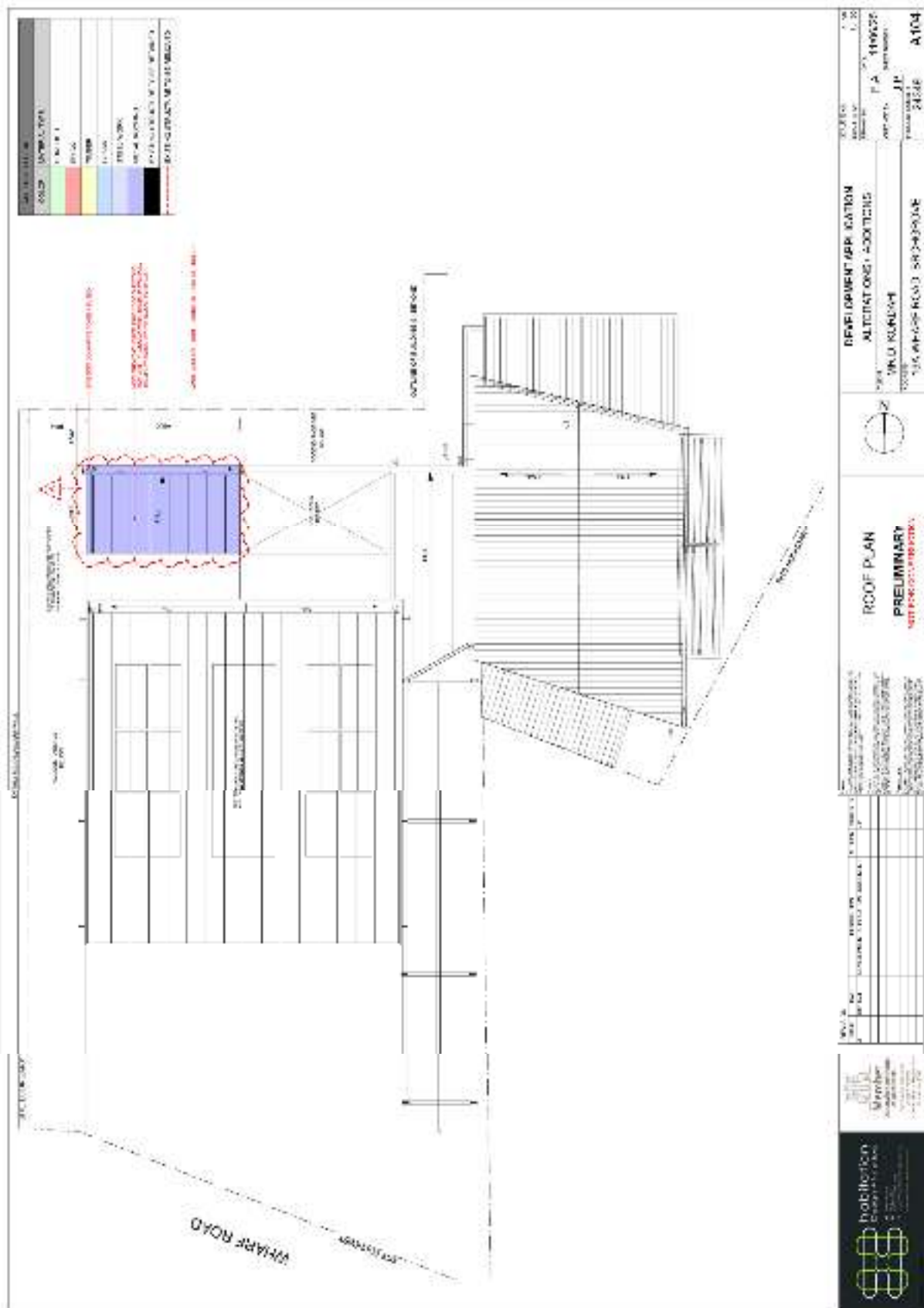
Attachment B – Plans of Proposed Development

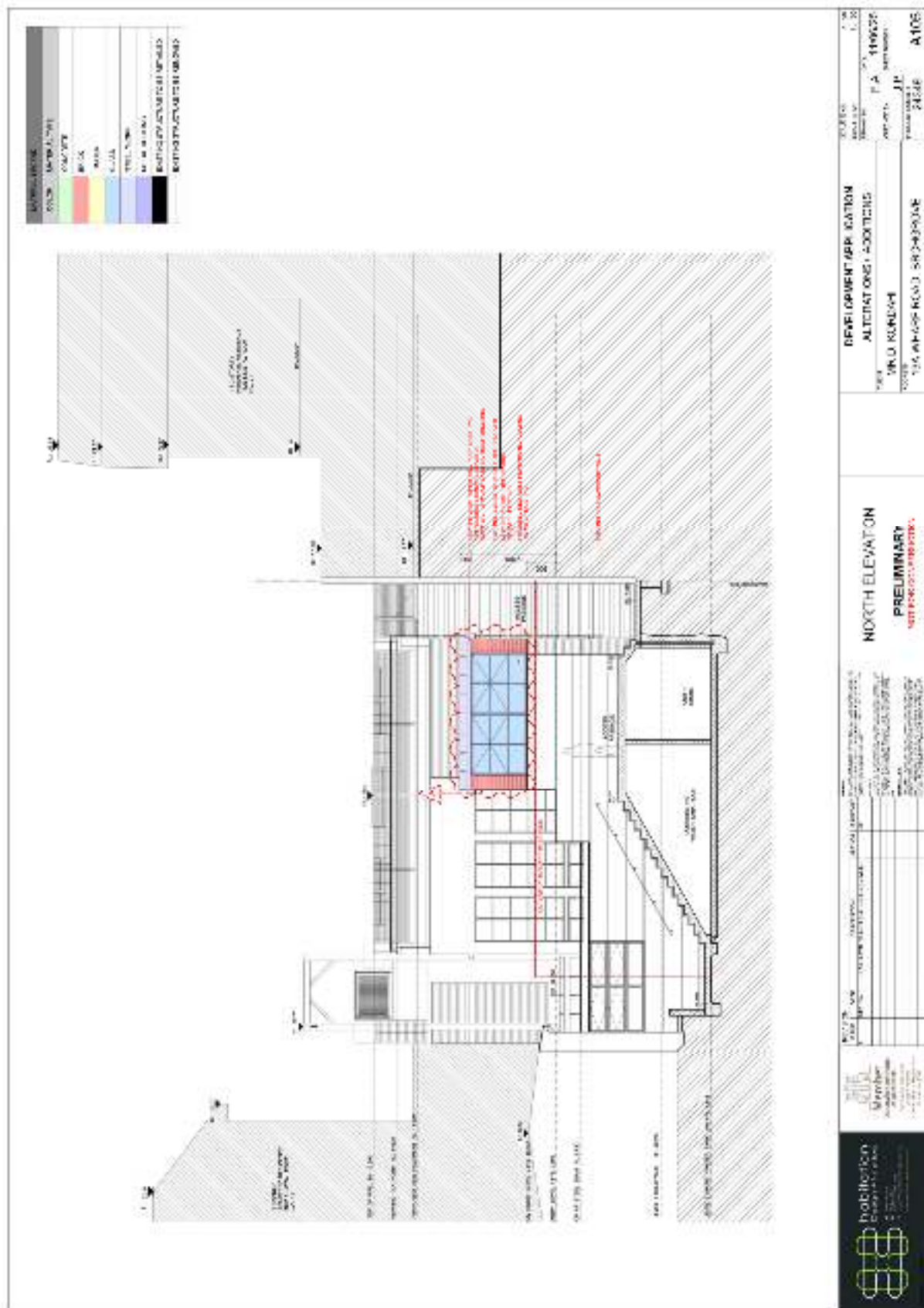
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Sheet Name	Sheet Number
COVER PAGE	A101
SITE PLAN	A102
LEVEL 4	A103
ROOF PLAN	A104
NORTH ELEVATION	A105
EAST ELEVATION	A106
WEST ELEVATION	A107
SECTION	A108
MATERIALS & FINISHES	A109
SHADOW DIAGRAMS	A110
3D PERSPECTIVE	A111
CALCULATION SHEET	A112
CONCEPT STORMWATER PLAN	A113
NOTIFICATION PLAN	A114

	<p>Member Name: [Name] Address: [Address] Phone: [Phone] Email: [Email]</p>	<p>Project Name: [Project Name] Project Address: [Project Address] Project Description: [Project Description]</p>	<p>COVER PAGE PRELIMINARY SET FOR 10/10/2023</p>	<p>REVELOPMENT APPLICATION ALTERNATIVE ADDITIONS WILL KUNDE 10/10/2023</p>	<p>Project Number: [Project Number] Project Name: [Project Name] Project Address: [Project Address] Project Description: [Project Description]</p>
					<p>Project Number: [Project Number] Project Name: [Project Name] Project Address: [Project Address] Project Description: [Project Description]</p>

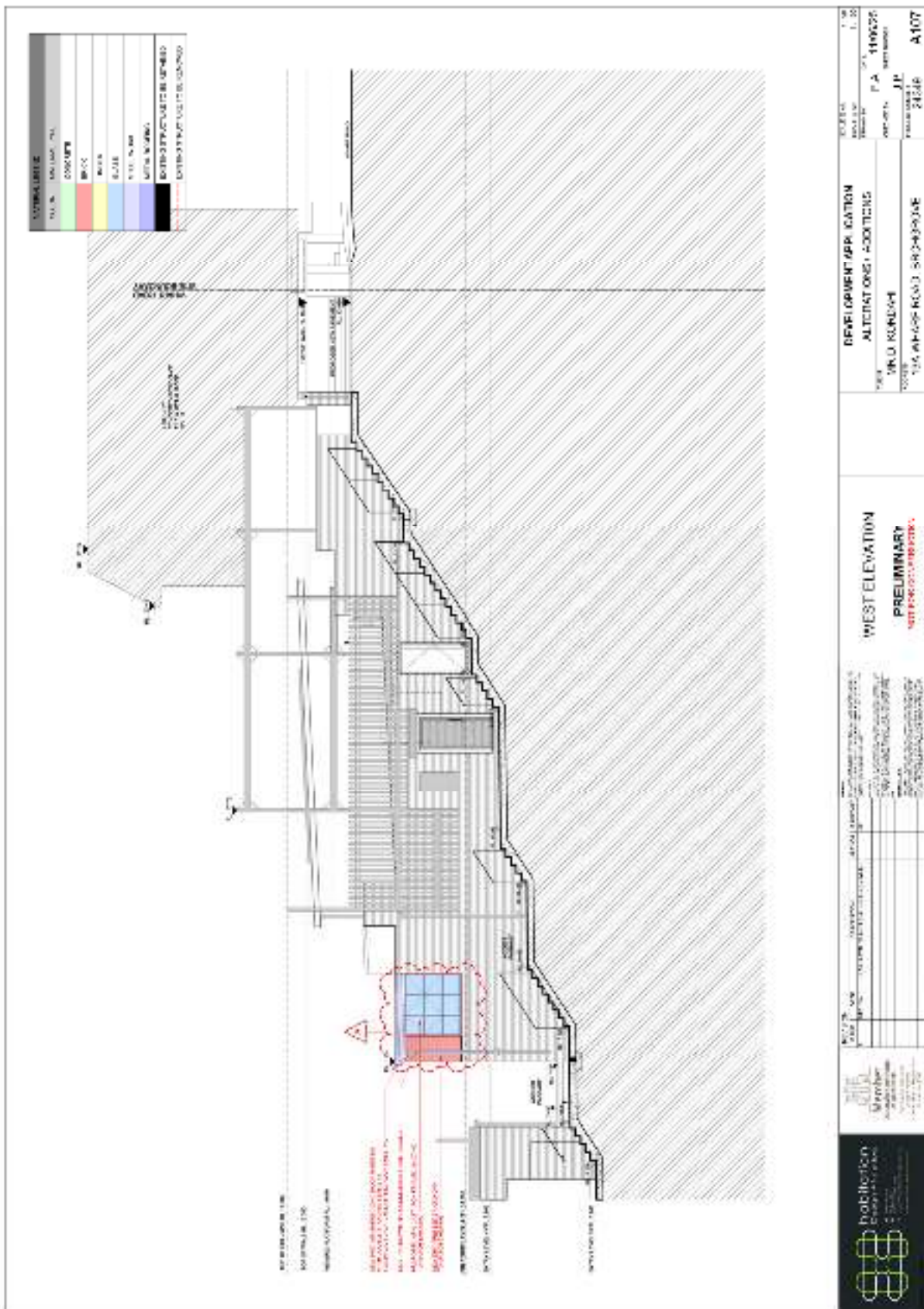


















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SUITABLE TO MATCH EXISTING



Inner West Council
Member
Name: [Name]
Address: [Address]
Phone: [Phone]
Email: [Email]

Project Name: [Project Name]
Project Address: [Project Address]
Project Description: [Project Description]

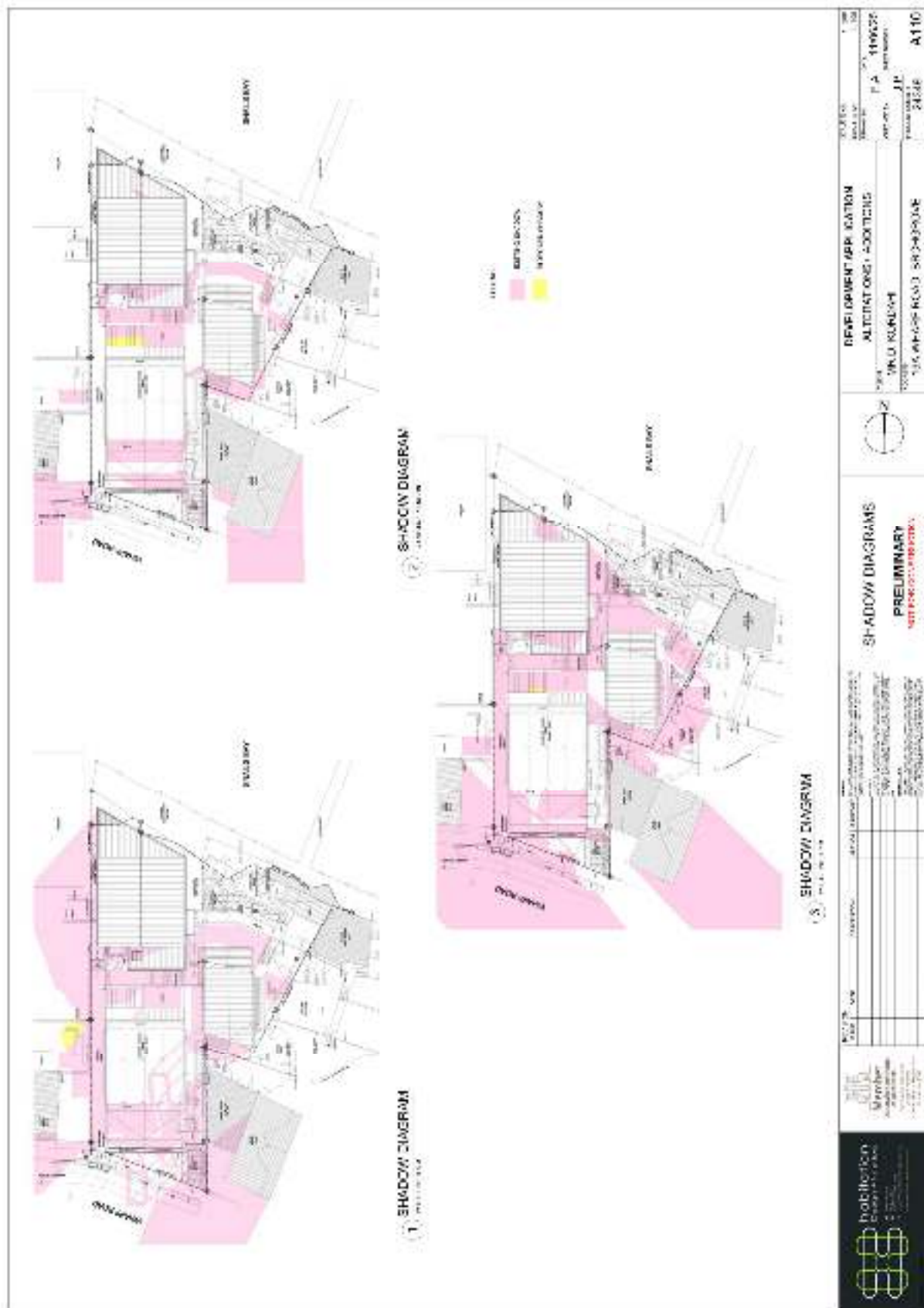
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Project Date: [Project Date]
Project Status: [Project Status]

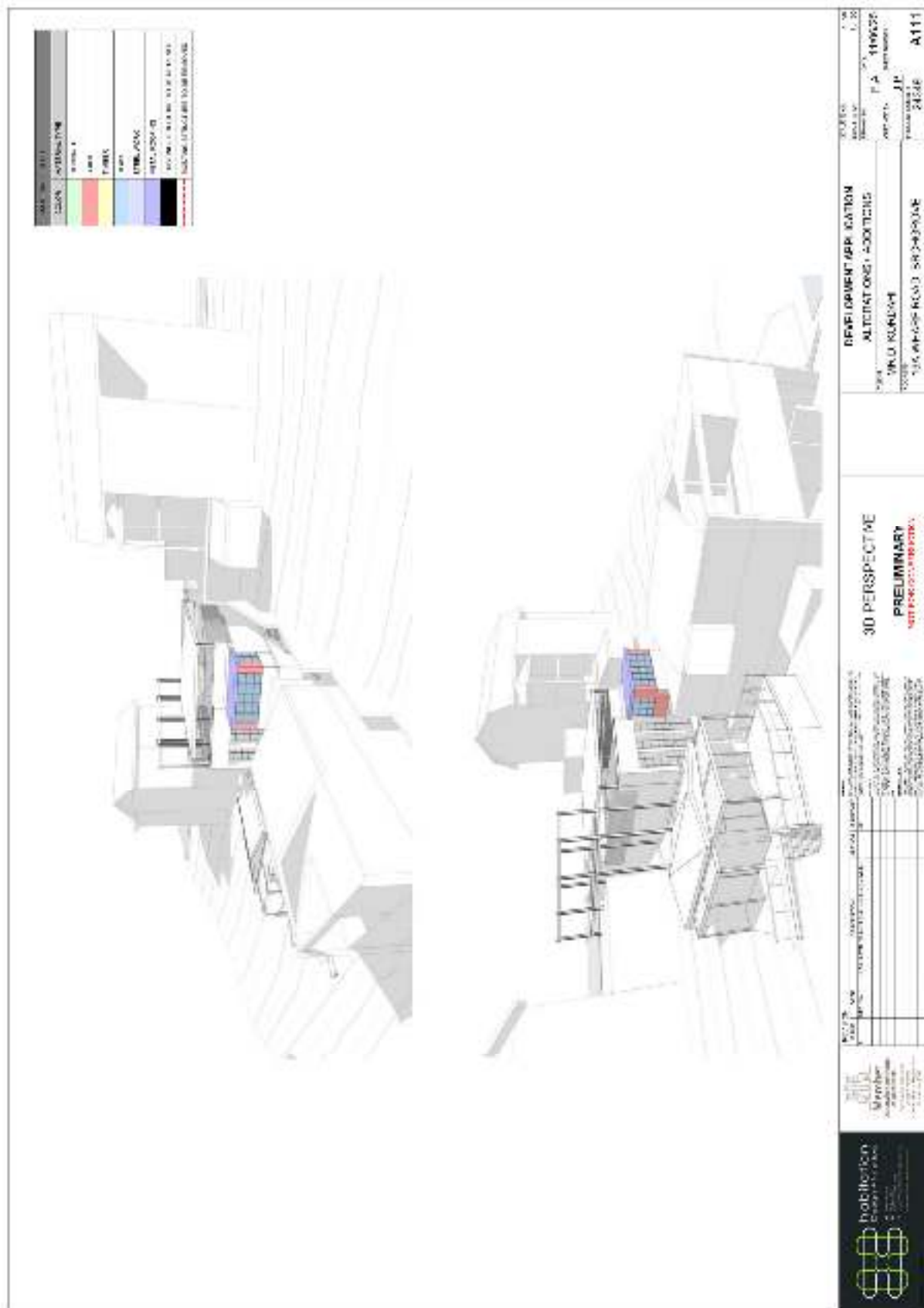


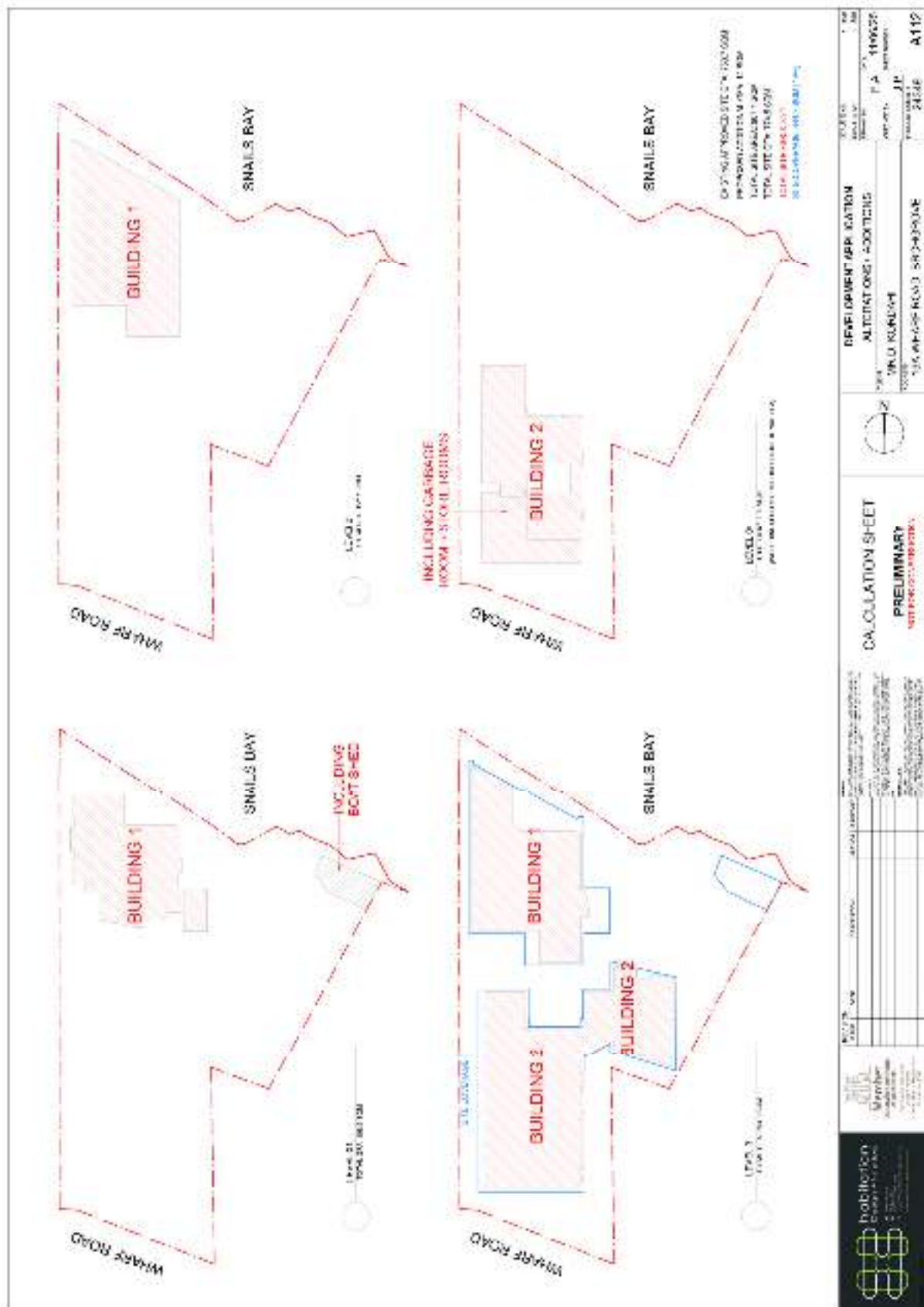
Inner West Council
Member
Name: [Name]
Address: [Address]
Phone: [Phone]
Email: [Email]

Project Name: [Project Name]
Project Address: [Project Address]
Project Description: [Project Description]

Project Number: [Project Number]
Project Date: [Project Date]
Project Status: [Project Status]

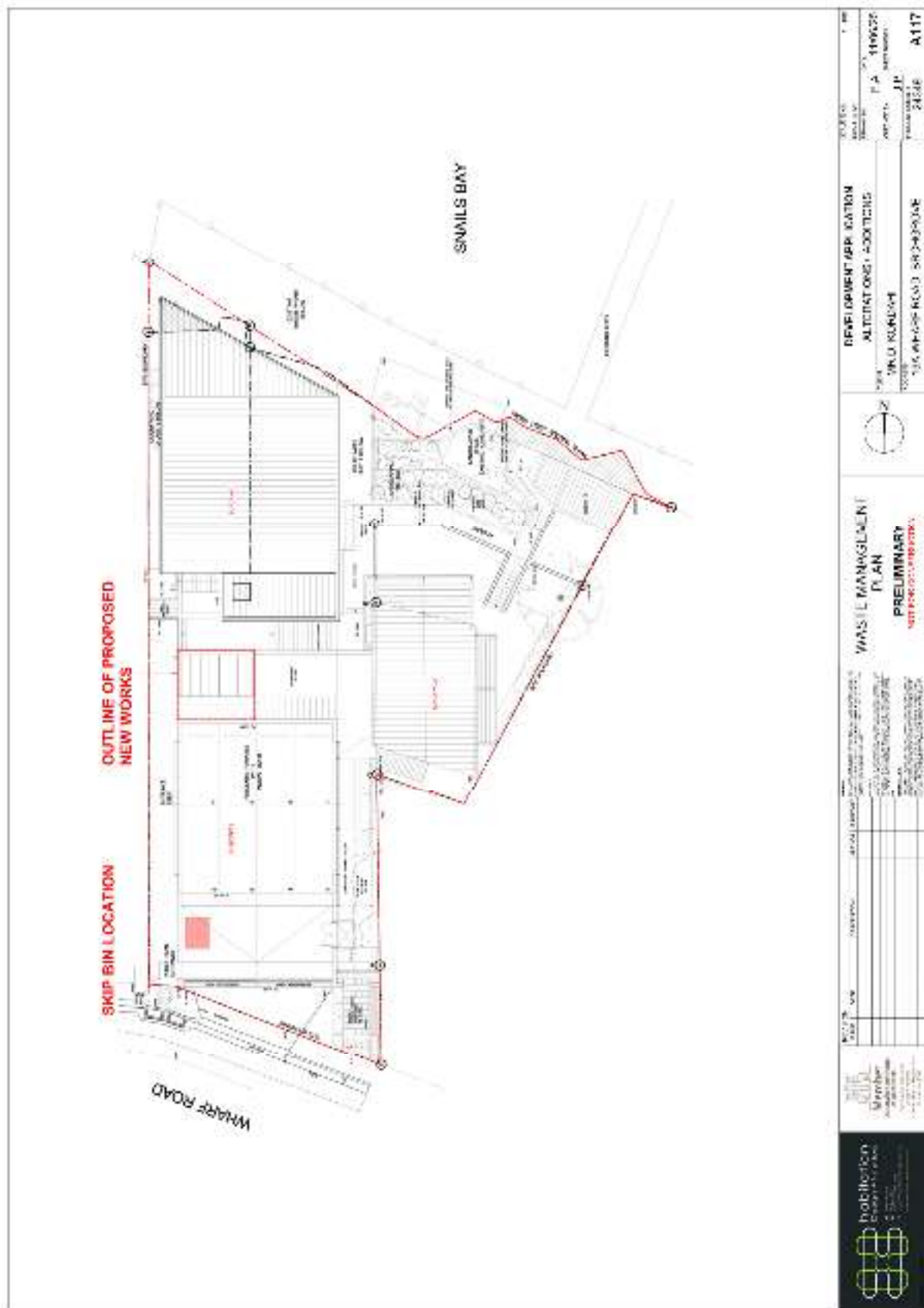












Attachment C – Section 4.6 Exception to Development Standards



CLAUSE 4.6 REQUEST FOR VARIATION TO CLAUSE 4.4(2B) (B) (FLOOR SPACE RATIO) OF INNER WEST LOCAL ENVIRONMENTAL PLAN 2022 (IWLEP)

**Unit 4, 19A Wharf Road
BIRCHGROVE**

APRIL 2025 (Update June 2025)



Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



1.0 Introduction

This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Inner West Local Environmental Plan 2022 (IWLEP 2022), the relevant clause being Clause 4.4(2B)(b) Floor Space Ratio (FSR).

This written variation request has been provided to support the proposed alterations and additions to an existing dwelling at Unit 4, 19A Wharf Road, Birchgrove (the site). The relevant plans relied upon are those identified as the plans prepared by Habitation Design & Interiors, dated 11.6.2025.

Unit 4 sits in a Strata Title, the site has a total area of 907.1m². The relevant maximum Floor Space Ratio (FSR) for the site is 0.7:1. The site has an existing approved GFA of 760.7m² (FSR of 0.838:1). The proposed GFA for the site is 774.7m², equivalent to an FSR of 0.854:1. Overall a 22% variation is proposed to the base 0.7:1 FSR standard noting that the existing building currently varies the FSR standard by 20.16%. The proposed variation for the alteration works is 1.84%, or 14m². Accordingly, this Clause 4.6 seeks to vary the maximum FSR standard for the alterations and additions of the existing dwelling at Unit 4, 19A Wharf Road, Birchgrove.

The maximum FSR control under Clause 4.4(2B)(b) of the IWLEP 2022 is a development standard for the purposes of the EP&A Act 1979.

This request to vary the FSR development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 119 (‘Initial Action’), *Wehbe v Pittwater Council*, *Big Property Pty Ltd v Randwick City Council* [2021] and *SJD DB2 Pty Ltd v Woollahra Council* [2020] NSWLEC 1112 (SJD DB2).

The request addresses those relevant provisions of Clause 4.6 under IWLEP 2022 and sets out the reasons for why strict application of the maximum FSR standard in this instance is unreasonable and unnecessary. Further, it demonstrates:

- That the development remains consistent with the objectives of the development standard under Clause 4.1; and
- That the proposal is consistent with the objectives of the R1 General Residential zone; and
- That there are sufficient environmental planning grounds to justify the variation; and
- That the variation resultant development is consistent with the established residential character.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



2.0 Development Standard to be Varied – Maximum Floor Space Ratio

The relevant standard under IWLEP 2022 to be varied is Clause 4.4(2B)(b). This clause relates to the maximum FSR allowable under IWLEP 2022 as it applies to the subject site. *Clause 4.4(2B)(b) minutely provided.*

4.4 Floor space ratio

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

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

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

(2A)

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

(a)

(b) on land identified as 'Area 3' or 'Area 4' on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m ²	1.0:1
≥ 150 < 300m ²	0.9:1
≥ 300m ² < 450m ²	0.8:1
≥ 450m ²	0.7:1

The relevant FSR map is identified below:



Figure 1: Extract of FSR Map Inner West LEP 2022

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



3.0 Nature of Variation Sought

The requested variation is as follows:

Site area (No. 19A Wharf Road): 907.1m²

Development standard: 0.7:1 based on site area > 450sqm

Existing approved site GFA: 760.7m² or 0.838:1 FSR

Proposed site GFA: 774.7m² or 0.854:1 FSR

The proposed total GFA is 14m² greater than the existing GFA.

The variation from the approved GFA is 1.84%.

The maximum permissible GFA is $0.7 \times 907.1\text{sqm} = 634.97\text{sqm}$

The proposal represents a total GFA of 774.7sqm being a variation of 139.73sqm or 22%

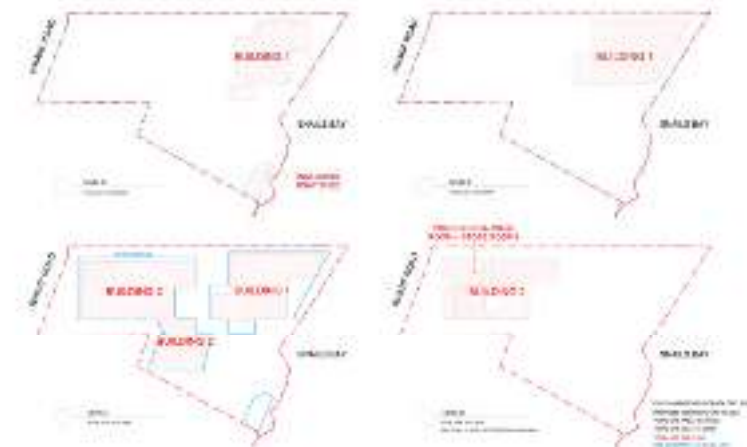


Figure 2: Site layout plans showing proposed GFA and FSR calculations dated 17.6.2025

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



4.0 Maximum FSR – Development Standard

A development standard is defined in S1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"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 omission of pollution and means for its prevention or control or mitigation,
and
(o) such other matters as may be prescribed."

The 0.7:1 maximum floor space ratio standard under CI 4.4(2B)(b) of the IWLEP 2022 is a development standard as defined under the EP&A Act 1979.

5.0 Clause 4.6 of Inner West Local Environmental Plan 2022

Clause 4.6 relevantly provides:

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows—*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchmead



- The *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
- (5) *(Repealed)*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) *(Repealed)*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development.
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 5.27(4),
- (cb), (cc) *(Repealed)*
- (cd) clause 5.31.

The following provides a response to the Clause 4.6 provisions under IWLEP 2022:

1. We deal with Clause 4.6 (1)(a) and (b) below:

The objectives of this clause are as follows—

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

The purpose of Clause 4.6 of IWLEP 2022 is to provide flexibility in the application of development standards.

Justification within this written request demonstrates that an appropriate degree of flexibility should be applied to this particular application.

The proposal, whilst exceeding the Clause 4.4(2B)(b) FSR development standard provides an acceptable planning outcome with regard to the following:

- The proposal is for dwelling alteration and additions to convert a balcony off an existing bedroom into habitable space to enable the enlargement of the bedroom.
- The proposed development is a natural extension to the existing dwelling, materials such as the brick, zinc roof sheeting and iron framed glazing have been carefully considered to ensure the alteration blends with the existing dwelling and overall character of the area.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



- The proposal is for a modest alteration to the existing dwelling that does not exceed the existing maximum building height of the dwelling ensuring it remains compatible with the surrounding character and does not significantly burden neighbouring sites by way of overshadowing, view loss to Snells Bay or privacy impacts. The views are across a side boundary.
- The design of the alteration to the dwelling respects the original qualities of the established surrounding built form whilst introducing an efficient improvement to the habitable living space of the Unit.
- The proposed alteration is compatible with the desired character of the locality, particularly with regards to its overall scale, architectural treatments and massing.
- Proposal provides high quality residential accommodation for the occupants.
- The development is consistent with the objectives of the R1 General Residential Zone.
- Proposal maintains adequate intra and external site solar access.

2. Clause 4.6(2) provides that:

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

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted. In summary clause 4.6(2) is addressed and is satisfied because:

- a) Clause 4.6(2) requires the control to be a development standard.
- b) The 0.7:1 maximum FSR control is a development standard and therefore is capable of being varied by a written request.

3. Clause 4.6 (3) requires the making of a written request to justify the contravention of a development standard and states as follows:

"Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated:

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

The proposed development exceeds the 0.7:1 maximum FSR control under Clause 4.4(2B)(b) of the IWLEP. Strict compliance with the 0.7:1 maximum FSR development standard is considered to be 'unreasonable and unnecessary in the circumstances of this case' as justified in this written variation request.

The relevant justification dealing with Clause 4.6 (3)(a) criteria is contained in Section 7 and 8 of this written variation request. This written variation request demonstrates that strict compliance is unreasonable and unnecessary in the circumstances of this case (see Section 7) and sufficient environmental planning grounds exist to justify contravening the development standard as detailed in this written request (see Section 8).

Clause 4.6(4) is an administrative provision requiring the consent authority to keep records of its assessment.

Clause 4.6(6) is not relevant to the subject site and proposal.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



Clause 4.6(8) stipulates certain types of development and provisions elsewhere in the IWLEP 2022 that cannot be varied under Clause 4.6. None of these provisions apply to the subject development.

6.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. There is no provision in IWLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebsimH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [83].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

Big Property Pty Ltd v Randwick (Big Property)

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The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council* [2021] (herein '*Big Property*'). This decision was also followed by *HPG Moanan Projects Pty Ltd v Moanan Municipal Council* [2021] (herein '*HPG*').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by *Big Property* against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced SJD, and went on to hold that:

"The assumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPs that realisation of particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate context for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" (p144)

Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments, such as that for Affordable Rental Housing, 'incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site'. This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
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7.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

In dealing with the 'unreasonable and unnecessary' Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the unreasonable and unnecessary test under Cl 4.6(3)(a).

Preston CJ at states as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Based on the above the following identifies the first method identified in *Wehbe*:

"Ways of establishing that compliance is unreasonable or unnecessary"

42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: (our emphasis)

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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

Having considered the above the Applicant relies upon the first method demonstrating that compliance is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding a variation to the standard.

In dealing with the standard, it is necessary to identify the purpose of the FSR control and then progress to dealing with the consistency or otherwise with the FSR objectives.

The first consideration relates to the overall scale of a building given that both FSR and height determines the scale of a building to another building or natural feature.

In this instance, there is no applicable maximum height standard under Clause 4.3, however, the two storey form is directly consistent with the prevailing 1-3 storey residential forms in the surrounding area. In particular, the dwellings along Wharf Road typically are stepped across three levels, with the highest point at Wharf Road, decreasing in height towards the northern boundary to Snails Bay.

The overall built form proposed is comparable in its scale, height, layout, architectural features and general appearance to other dwellings in the surrounding area and the streetscapes along Wharf Road.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
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The 14m² GFA variation to the site, resulting in an FSR of 0.854:1 compared to the development standard of 0.7:1 is not visually bulky or excessive in scale given its stepped form. The built form is also broken into 3 distinct modules. Specifically Building 2 is broken into two forms. The built form is consistent with the prevailing built form character of the area.

In this instance, the additional FSR of 14m², representing a 1.84% variation to the existing approved GFA on site is deemed relatively modest. The proposed development alters the existing balcony and converts the space into a habitable room by enlarging the existing bedroom (Figure 3). The proposed works retain key architectural features and finishes that underpin the existing dwellings on the site.

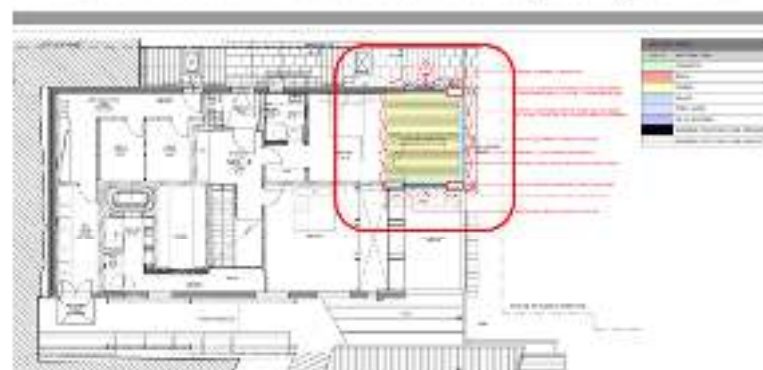


Figure 3 – Floor plan (level 2), area in red indicates the proposed works (Source: Habitation Design & Interiors)

Figure 3 – Floor plan (level 2), area in red indicates the proposed works (Source: Habitation Design & Interiors)

The amenity impacts arising from the proposal are negligible and the resultant FSR for the site due to the alteration of the balcony has not contributed to significant adverse impacts to neighbouring properties by way of overshadowing, view loss or privacy as demonstrated in the application. The view to the water from neighbours is across a side boundary.

Notwithstanding the non-compliant FSR, the proposed development provides improved housing efficiency by increasing the habitable space of the dwelling. Accordingly, the proposal demonstrates alignment with the R1 General Residential zone objectives.

Further insight into the purpose of the standard can be obtained by investigating the objectives of the FSR development standard.

The relevant objectives are as follows and a comment is provided in relation to each objective demonstrating the adequacy of the proposal and the requested variation.

The objectives of clause 4.4(2B)(b) are contained within the FSR provisions.

The following justification is provided.

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

Clause 4.5 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



The proposal seeks to vary the FSR development standard to accommodate a modest breach to the existing approved GFA for the site.

The scale of the development proposed on Unit 4, 19A Wharf Road is modest, with the alteration and addition to the bedroom. It presents to the street as contained within compliant setbacks and generally in alignment with the heights of comparable established dwellings surrounding the property. The alteration at the site provides commensurate bulk and scale to that adjacent developments and will deliver an appropriate (compatible) architectural outcome.

Notwithstanding the FSR variation the proposed scale, bulk and massing of the alteration to the dwelling is compatible and will enhance the residential character.

(b) to ensure development density reflects its locality

Wharf Road is characterised by a mixture of Victorian/Federation dwellings with modern infill residential dwellings on a waterfront street. Larger housings from the 19th century with their orientation to the water are scattered throughout the streetscape. A range of Victorian houses are evident such as 21 Wharf Road although the subdivision of large lots has allowed for infill development of a modern style such as no. 15A and 19A Wharf Road.

The site is situated in a medium-density residential neighbourhood which is characterised by single to three storey buildings which reflects a majority of R1 zoned precincts across the Inner West of Sydney.

The density of the existing approved development at 19A Wharf Road includes a total GFA of 760.7m². This provides for 4x units split across 2 buildings. The form, layout and design of the development is consistent with other such dwellings in the locality and Wharf Road. The proposed increase in GFA of 14m² is modest and ensures the site remains consistent in terms of its existing setbacks, parking arrangements, modest on-site landscaping, courtyard and height, ensuring an appropriate built-form fit within the established streetscape.

This objective is reasonably satisfied.

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

This objective is not relevant to the subject site as the development is surrounded on all sides by residential zoned land which typically supports 1-3 storey dwellings, including detached and semi-detached homes. Accordingly, no transition of building form is strictly necessary to neighbours.

(d) to minimise adverse impacts on local amenity

Amenity impacts resulting from the proposed development are negligible overall and are of a level contemplated by the IWDGP. Overshadowing impacts are largely avoided to neighbouring properties.

The overall bulk, scale and height of the dwelling as a result of the alteration of the balcony to habitable space for the enlargement of the bedroom is not considered overbearing as it replaces like for like space e.g. covered balcony area converted to habitable living space.

The development and proposed FSR breach does not create any unreasonable impacts by way of acoustic, overshadowing or visual privacy to neighbouring properties.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



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

No changes are proposed to the existing tree canopy or the public domain as a result of the alterations and additions.

8.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The variation relates to FSR and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R1 General Residential Density.

The environmental planning grounds justification for the FSR variation is provided as follows:

- The breach of the standard in this instance is relatively modest in the broader context of the existing approved GFA for the site, this results in a 1.84% variation to the existing site GFA. It reflects the modest proposed development of alterations and additions to an existing dwelling on the site.
- The surrounding built form character and exhibited densities such that any excess bulk and scale is not discernible from Wharf Road or surrounding residential properties and does not contribute to the creation of an additional storey of element which sits outside of an anticipated building envelope for the site.
- The use of pressed brickwork and materials to complement the existing dwelling ensures the alteration and addition assimilates with the existing built form.
- No significant adverse impact on neighboring properties or the streetscape by way of overshadowing, view loss to primary living spaces, solar access, privacy, visual bulk, scale, massing, separation or inadequate landscaping.
- The additional FSR has not translated to the creation of additional, unreasonable density. The site is capable of accommodating the alteration to the existing dwelling which will present a comparable height, scale, form and layout.
- Proposed development has acceptable visual fit having regard to the immediate context and has had due regard to massing and building heights and its interfaces to neighbouring properties along Wharf Road.
- Proposal provides high quality residential accommodation for the occupants and makes best use of the site.
- Additional GFA does not reduce the POS of areas directly linked to active areas of the dwelling.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchmead



- Ability to satisfy the R1 zone objectives.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to the minimum subdivision lot size. Clause 1.3 of the EP&A Act 1979 relevantly provides:

"1.3 Objects of Act (of previous s 5)

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,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

A development that complies with the land use zoning of the site (R1 General Residential) satisfies the objectives of under S1.3 EP&A Act 1979.

The plans by Habitation Design & Interiors and specifically the maximum FSR variation satisfies the objectives in bold given that:

- The development provides for improved use of the site as a residential land use (dwelling houses) in line with Council's strategic planning intent and the IWLEP 2022.
- The development offers better and proper management of the State's land resources by providing a more efficient use of private land that is well positioned to take advantage of its proximity to public transport, jobs, services and local and regional leisure, recreation, retail and cultural activities.
- The site has the capacity to support the proposed alteration to the existing dwelling and residential density sought.
- The proposal will not cause significant adverse environmental impacts to neighbouring properties as outlined in Section 7 and detailed in the Statement of Environmental Effects.
- The proposal exhibits an acceptable standard of internal and external amenity for the resident(s) and represents a considered in-fill development which fits well within the urban context.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



Clause 4.6(4)(a)(i) The proposed development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the maximum FSR standard, to reasonably satisfy the stated objectives of the zone.

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 following provides a review of the zone objectives:

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

The development provides an improved use of the existing dwelling, by altering the covered balcony off the bedroom into habitable space to enlarge the adjoining bedroom. The efficiency of the dwelling is improved, providing larger family space to the residents. The built form, design, massing and overall density is compatible with the existing dwelling, the site and surrounding residential properties in the street. An improved housing choice is achieved by enlarging the habitable living space.

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

The proposal increases the habitable living space of the dwelling, providing greater flexibility in how the residents use the existing dwelling. The density and overall scale of the development is comparable to other similar developments in the surrounding area.

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

Not relevant.

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

The proposed additions and alterations are compatible with the character, style and pattern of dwellings in the area.

The overall scale is modest, yet the resultant detailing of the new bedroom's facade is of a high architectural standard and integrates well into the existing dwelling and streetscape. The materials include utilising dry pressed brickwork, zinc roof sheeting, iron framed glazing and retaining the existing brick balustrade to complement the existing dwelling.

Clause 4.6 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



The design bedroom enlargement has an acceptable visual fit and the design outcome has not been compromised in any negative way as a result of the overall GFA proposed and resulting FSR.

9.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice (the Notice) under cl. 84 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the IWLEP before Nov 2023.

The Court has power to grant development consent to the proposed development even though it contravenes the minimum subdivision lot size development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

The proposed contravention of the maximum FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in this written submission the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the FSR development standard.

The proposed development contravenes the FSR development standard under **Clause 4.4(2B)(b) of IWLEP 2022** is a development standard and is not excluded from the application of cl4.6.

Clause 4.5 Variation to Maximum Floor Space Ratio Standard
19A Wharf Road, Birchgrove



10.0 Conclusion

The proposed development contravenes the maximum FSR development standard under c4.4(2B)(b) of IWLEP 2022 is a development standard and is not excluded from the application of c4.8.

This written request to vary the development standard has been prepared in accordance with c4.6(3) of the IWLEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to c4.4(2B)(b) of the IWLEP 2022 and is consistent with the relevant objectives of the R1 General Residential zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed development will not result in adverse environmental harm in that the amenity of neighbouring properties and the surrounding area will be reasonably maintained.

A handwritten signature in black ink that reads 'A Martin'.

Andrew Martin MP/A
Planning Consultant