

INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2021/0655
Address	110 Prospect Road SUMMER HILL NSW 2130
Proposal	Torrens title subdivision of existing dual occupancy
Date of Lodgement	23 July 2021
Applicant	Corona Projects
Owner	Mr Shi M Bao Ms Hong W Li
Number of Submissions	Initial: 0
Value of works	\$10,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Variation to Minimum Subdivision Lot Size Development Standard
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



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INNER WEST COUNCIL

Created on 23/11/2021
Map Scale: 1:1250

LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for Torrens title subdivision of existing dual occupancy at 110 Prospect Road SUMMER HILL NSW 2130. The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Variation to Minimum Subdivision Lot Size Development Standard

The non-compliance is acceptable given that the proposed subdivision will have no significant adverse amenity impacts to the adjoining properties or impacts on the public domain, and therefore the application is recommended for approval.

2. Proposal

The proposal seeks consent for the following works:

- Torrens title subdivision of the existing dual occupancy to create two semi-detached dwellings.
- Minor alterations to the existing toilet/storage room of the dwelling located at No. 110 Prospect Road to formalise the subdivision boundaries.

3. Site Description

The subject site is located on the eastern side of Prospect Road, between Herbert Street and Seaview Street. The site consists of 1 allotment and is rectangular shaped with a total area of 787.3 sqm and is legally described as Lot B, DP 314183 or 110 Prospect Road, Summer Hill.

The site has a frontage to Prospect Road of 17.22 metres and a secondary frontage of approximate 45.72 metres to Herbert Street.

The site supports a single storey attached brick dual occupancy and garage. The adjoining properties support single and two storey dwellings.

The property is located within a conservation area. The property is not identified as a flood prone lot.

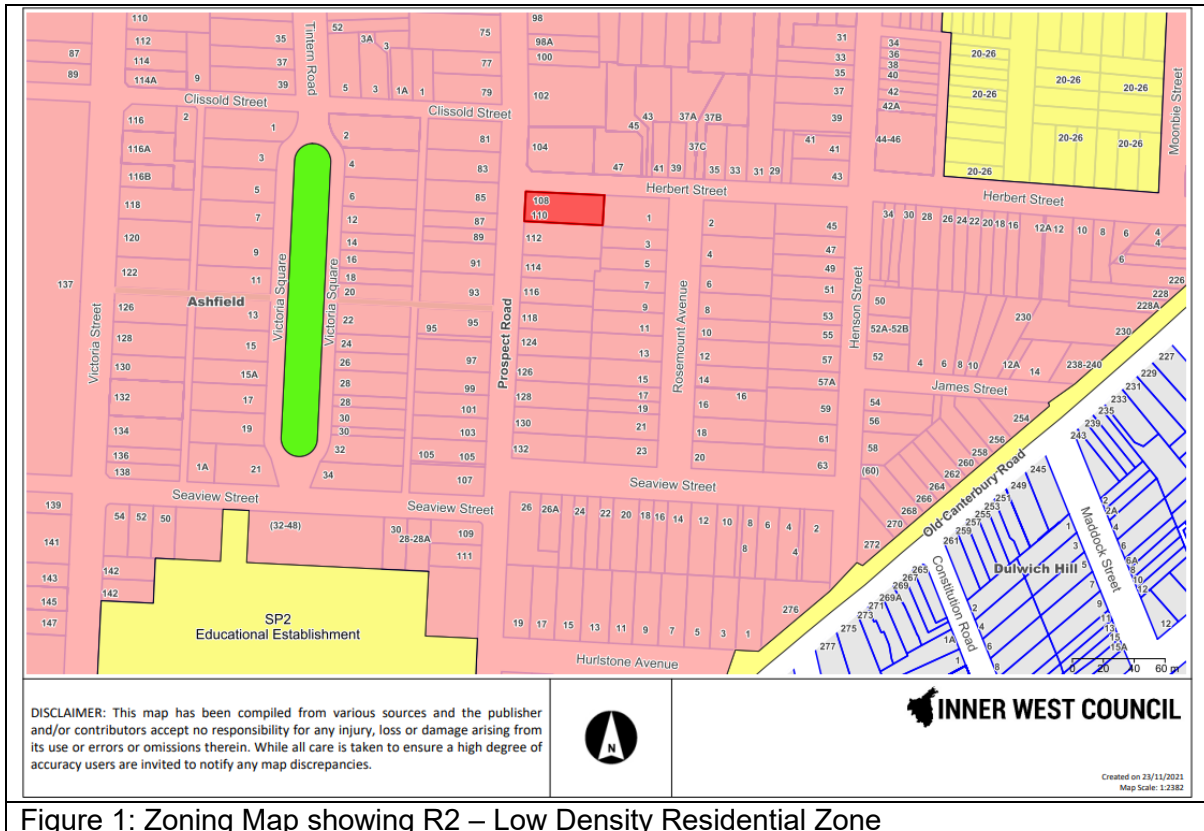


Figure 1: Zoning Map showing R2 – Low Density Residential Zone

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
006.1990.00000427.001	108 Prospect Road - Double Garage	12/11/1991 Approved
006.1963.00004698.001	108 Prospect Road - Laundry	01/10/1963 Approved

Surrounding properties

Not applicable

4(b) Application history

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

Date	Discussion / Letter / Additional Information
20 October 2021	Council wrote to applicant requesting additional information including revised Statement of Heritage Impact (SOHI), architectural plans and information demonstrating current use rights of the dual occupancy
10 November 2021	Additional information lodged with Council including revised SOHI, floor plans and existing use evidence letter.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Inner West Comprehensive Development Control Plan 2016 (IWCDCP 2016) provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

5(a)(ii) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)*

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

The application does not seek the removal of vegetation from within the site or on Council land.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP*.

5(a)(iii) *Ashfield Local Environment Plan 2013 (ALEP 2013)*

The application was assessed against the following relevant clauses of the *ALEP 2013*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.6 - Subdivision
- Clause 2.7 - Demolition
- Clause 4.1 - Minimum subdivision lot size
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation

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

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

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

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R2 zone.

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

108 Prospect Road

Standard	Proposal	Non compliance	Complies
Minimum subdivision lot size (500sqm)	393.65sqm	106.35sqm or 21.27%	No
Height of Building Maximum permissible: 8.5m	No change	N/A	N/A
Floor Space Ratio Maximum permissible: 0.5:1 or 196.83sqm	0.34:1 or 133.82sqm	N/A	Yes

110 Prospect Road

Standard	Proposal	Non compliance	Complies
Minimum subdivision lot size (500sqm)	393.65sqm	106.35sqm or 21.27%	No
Height of Building Maximum permissible: 8.5m	No change	N/A	N/A
Floor Space Ratio Maximum permissible: 0.5:1 or 196.83sqm	0.39:1 or 152.40sqm	N/A	Yes

(ii) Clause 4.6 - Exceptions to Development Standards

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

- Clause 4.1 - Minimum subdivision lot size

The applicant seeks a variation to the Minimum Subdivision Lot Size Development Standard under Clause 4.1 of the *Ashfield Local Environmental Plan 2013* by 21.27% or 106.35sqm.

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed

against the objectives and provisions of Clause 4.6 of the *Ashfield Local Environmental Plan 2013* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Ashfield Local Environmental Plan 2013* justifying the proposed contravention of the development standard which is reproduced below:

- The proposal maintains the existing development pattern as the proposed subdivision line follows the location of party wall and bisects the current site into two equal portions. The proposal is compatible with the surrounding area as the proposed lots have a narrow lot width and greater lot depth.
- The development has been designed to complement the existing scale and character of surrounding development.
- The proposal does not compromise of any physical building works that will unreasonably impact the value of the contributory item.
- The existing building is already compatible with the locality and this will not be changed under the proposal.
- The proposed toilet modification is to remove the part of structure that encroaches the proposed subdivision line.
- The building work is for rectification purposes and is considered to be acceptable.
- The proposal does not result in the creation of new dwellings and does not result in the reduced amenity of the existing dwellings.

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

It is considered the development is in the public interest because it is consistent with the objectives of R2 zone, in accordance with Clause 4.6(4)(a)(ii) of the *Ashfield Local Environmental Plan 2013* for the following reasons:

- a) *To provide for the housing needs of the community within a low-density residential environment.*
 - b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- The development is compatible with the zone objectives as the existing building will continue to be used as residential dwellings.
 - The proposal does not change the current housing provision of the site as it will continue to provide two separate residences.
 - The proposed variation to the minimum lot size does not render the development incompatible with the zone.

It is considered the development is in the public interest because it is consistent with the objectives of the Minimum Subdivision Lot Size Development Standard, in accordance with Clause 4.6(4)(a)(ii) of the *Ashfield Local Environmental Plan 2013* for the following:

Objectives

- a) *to maintain the existing pattern of subdivision within heritage conservation areas in terms of lot size and lot dimensions,*
- b) *to provide opportunities for infill small lot subdivision in areas close to transport and amenities in a manner that does not adversely impact on the streetscape or amenity of residential areas,*

- c) *to provide for small lot subdivision in certain areas close to public transport as an alternative to redevelopment for the purpose of multi dwelling housing in order to retain the scale and character of the area,*
- d) *to ensure that lot sizes allow development to be sited to protect and enhance riparian land.*

Comments

- The proposal seeks to subdivide an existing dual occupancy that visually presents as two dwellings with two street numbers.
- The proposal maintains the existing subdivision pattern and is consistent with the pattern of development.
- The proposal results in two equal lots which are compatible in terms of lot sizes and dimensions with the surrounding area.
- The proposal will not impact the streetscape, HCA or amenity of adjoining properties given minimal building works are proposed to formalise the current dual occupancy on the site.
- The site is not located within the vicinity of any riparian land.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *Ashfield Local Environmental Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Minimum Subdivision Lot Size Development Standard and it is recommended the Clause 4.6 exception be granted.

(iii) Clause 5.10 - Heritage

The site is located within the Prospect Hall Summer Hill Heritage Conservation Area (C49) and is a contributory building. The application was accompanied by information addressing heritage management and impacts upon heritage significance. This documentation was reviewed and considered to be unsatisfactory with regard to primary research or detailed analysis of the heritage significance of the existing building. However, no objection was raised to the proposed Torrens title subdivision subject to measured architectural drawings and a revised Statement of Heritage Impact being submitted.

Additional information was submitted by the applicant which generally addressed the above concerns. As such, the proposal is considered acceptable and recommended for approval.

5(b) Existing Use Rights / Current Use

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

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

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

There are no Council records which indicate development approval for the construction of dual occupancy or conversion of the existing dwelling to a dual occupancy on the site. Furthermore, the construction date of building remains unknown.

However, dual occupancy (attached) are permitted with consent in the R2 – Low Density Residential Zone under the *Ashfield Local Environmental Plan 2013*. Therefore, it is considered reasonable for proposed development to rely on the current dual occupancy use for the purposes of pursuing a Torrens title subdivision on the site.

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

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

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

IWCDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
3 - Flood Hazard	N/A
4 - Solar Access and Overshadowing	Yes
5 - Landscaping	Yes
6 - Safety by Design	Yes
7 - Access and Mobility	N/A
8 - Parking	N/A
9 - Subdivision	Yes – refer to discussion under Section 5(a)(ii)
10 - Signs and Advertising Structures	N/A
11 - Fencing	N/A
12 - Telecommunication Facilities	N/A
13 - Development Near Rail Corridors	N/A
14 - Contaminated Land	Yes
15 - Stormwater Management	Yes
B – Public Domain	N/A
C – Sustainability	
1 – Building Sustainability	Yes
2 – Water Sensitive Urban Design	Yes
3 – Waste and Recycling Design & Management Standards	Yes

4 – Tree Preservation and Management	Yes
5 - GreenWay	N/A
6 – Tree Replacement and New Tree Planting	N/A
D – Precinct Guidelines	N/A
E1 – Heritage items and Conservation Areas (excluding Haberfield)	
1 – General Controls	Yes
2 – Heritage Items	N/A
3 – Heritage Conservation Areas (HCAs)	Yes – refer to discussion below
4 – Building Types and Building Elements within HCAs	Yes
5 – Retail and Commercial Buildings	N/A
6 – Apartments and Residential Flat Buildings	N/A
7 – Subdivision and lot consolidation affecting heritage items or in heritage conservation areas	Yes – refer to discussion below
8 - Demolition	Yes
9 – Heritage Conservation Areas, Character Statements and Rankings	Yes
E2 – Haberfield Heritage Conservation Area	N/A
F – Development Category Guidelines	
1 – Dwelling Houses and Dual Occupancy	Yes – refer to discussion below
2 – Secondary Dwellings	N/A
3 – Neighbourhood Shops and Shop Top Housing in R2 zones	N/A
4 – Multi Dwelling Housing	N/A
5 – Residential Flat Buildings	N/A
6 – Boarding Houses and Student Accommodation	N/A
7 – Residential Care Facilities	N/A
8 – Child Care Centres	N/A
9 – Drive-in Take Away Food Premises	N/A
10 – Sex Industry Premises	N/A
11 – Car Showrooms	N/A

The following provides discussion of the relevant issues:

E1 – Heritage items and Conservation Areas (excluding Haberfield)

The proposal involves Torrens title subdivision of an existing dual occupancy and retains the existing contributory building on site. As discussed previously, additional information was submitted which provided further detail and analysis regarding the existing building on the site and this is generally acceptable with regard to the provisions of the *ALEP 2013*.

The proposed subdivision pattern is consistent with the pattern of development on Prospect Road and the applicant has demonstrated that the proposed works would not detract from the significance of the Prospect Hall Summer Hill Heritage Conservation Area. Furthermore, all existing landscaping, trees, fences and architectural features of the existing building are to be retained.

As such, the proposal is considered acceptable with regard to this Part of the IWCDCP 2016 and recommended for approval.

F – Part 1 Dwelling Houses

The proposal seeks to retain the existing building on the site which is currently a dual occupancy. The only works included as part of the proposal involve alterations to the existing toilet/storage room at No. 110 Prospect Road and relocation of a wall to ensure a consistent subdivision pattern and to formalise the boundaries of each site.

The proposal is considered to be consistent with the character of the prevailing street, the Heritage Conservation Area and will result in a pair of semi detached dwellings which maintain a single storey appearance.

As such, the proposal is considered acceptable with regard to this Part of the IWCDP 2016 and recommended for approval.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the notification.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Heritage
- Engineering

6(b) External

N/A

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

While the proposal will result in the creation of a new lot, there are already two dwellings on the site and as such, the development will not result in a net difference with regard to demand for public amenities and/or public services within the area.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will not result in any significant impacts on the amenity of the adjoining 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. The applicant has made a written request pursuant to Clause 4.6 of the *Ashfield Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2021/0655 for Torrens title subdivision of existing dual occupancy at 110 Prospect Road SUMMER HILL NSW 2130 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
Sheet 01	Site Plan	June 2021	Corona Projects
Sheet 01	Floor Plan	June 2021	Corona Projects
Sheet 04	Floor Plan	November 2021	Corona Projects
SW1 and SW2	Stormwater Drainage Concept Plan	09 July 2021	Water Design

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

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

Security Deposit:	\$2254.00
Inspection Fee:	\$241.50

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

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

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

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

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

3. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

GENERAL CONDITIONS

4. Waste Management Plan

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

5. Standard Street Tree Protection

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

6. Verification of Levels and Location

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

7. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**8. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of the adjoining properties at No. 112 Prospect Road, Summer Hill and No. 1 Rosemount Avenue Summer Hill to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

9. Advising Neighbours Prior to Excavation

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

10. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**11. Dilapidation Report – Pre-Development – Minor**

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

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

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

- a. The design must generally be in accordance with the Stormwater Drainage Concept plans on Drawing Nos. SW1 and SW2 prepared by Water Design Civil Engineers and dated 9 July 2021, as amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank, by gravity to the kerb and gutter of a public road;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm event. Major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank;
- f. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- g. The design must make provision for the natural flow of stormwater runoff from adjacent properties;
- h. No nuisance or concentration of flows to other properties;
- i. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate

capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;

- j. A silt arrestor pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- k. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm; and
- l. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings,

13. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Structural Certificate from a practising structural engineer which verifies that the structural integrity of the existing "Party Walls" are adequate to accept the additional loads imposed thereon by the proposal. A copy of the Structural Certificate must be provided to all owners of the party wall/s.

14. Structural Certificate for retained elements of the building

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

15. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION

16. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

17. Survey Prior to Footings

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

PRIOR TO OCCUPATION CERTIFICATE**18. Protect Sandstone Kerb**

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

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

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

- a. Easement for drainage of water; and
- b. Restrictions on the Use of Land to prevent the erection of any structures or fencing.

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

20. Section 73 Certificate

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

21. Torrens Title Subdivision to Occur before Occupation

Prior to the issue of an Occupation Certificate for any dwelling on the site, the certifying authority is to be provided with evidence that the subdivision that forms part of this consent has been registered with the NSW Land Registry Services.

PRIOR TO SUBDIVISION CERTIFICATE**22. Separate Drainage Systems**

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

23. Civil Engineer Verification

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with written verification from a suitably experienced / Chartered/Registered Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans.

24. Section 73 Certificate

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

25. Release of Subdivision Certificate

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

26. Torrens Title Subdivision

Prior to the issue of a Subdivision Certificate, the Certifying Authority must verify that the physical works within this consent have been constructed.

ADVISORY NOTES**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in

accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

Insurances

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

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

Noise

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

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au

NSW Government	www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

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

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

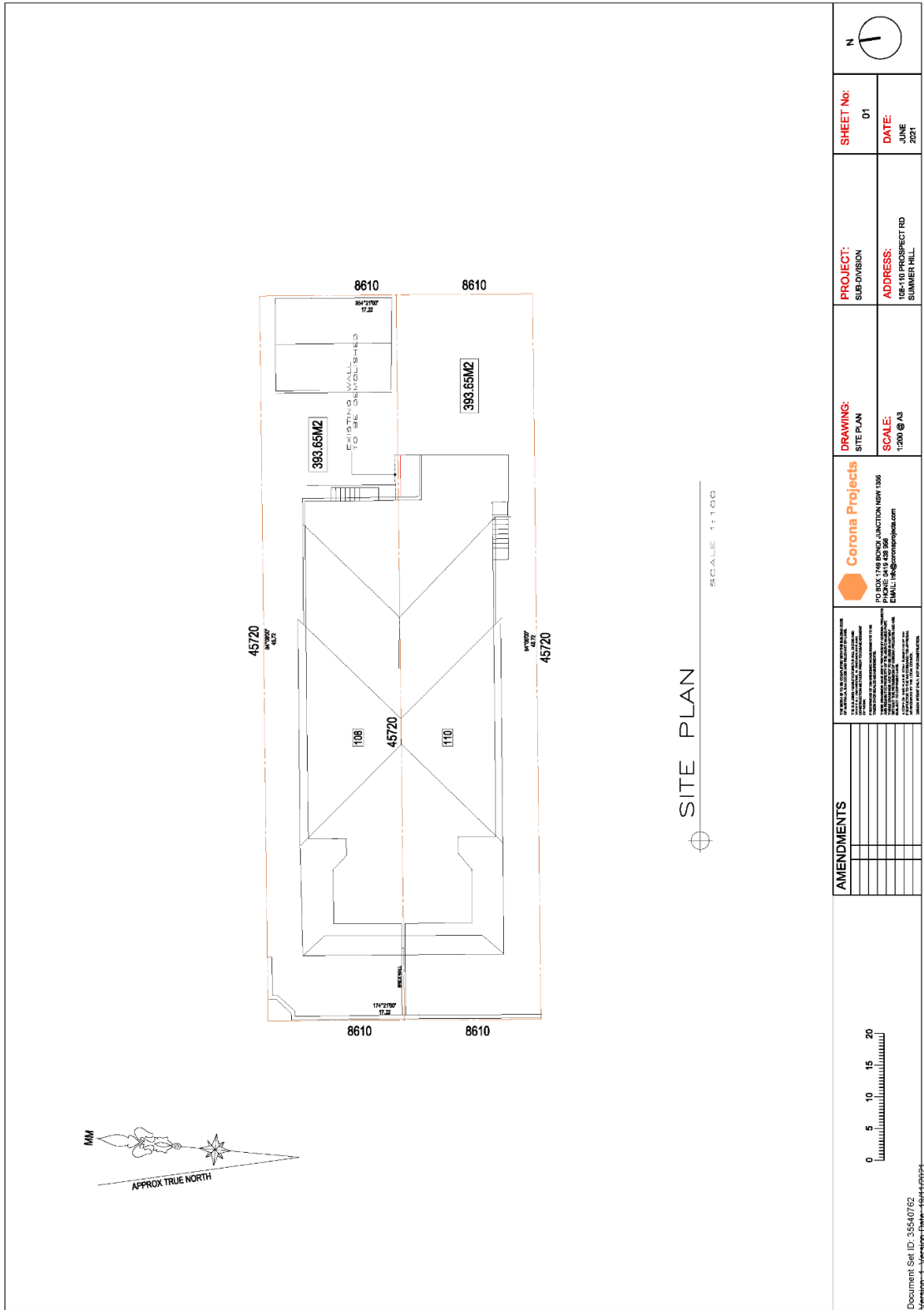
All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

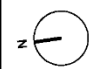
Street Numbering

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

REASONS FOR REFUSAL

Attachment B – Plans of proposed development





SHEET No: 01
DATE: JUNE 2021

PROJECT: SUB DIVISION
ADDRESS: 108-110 PROSPECT RD SUMMER HILL

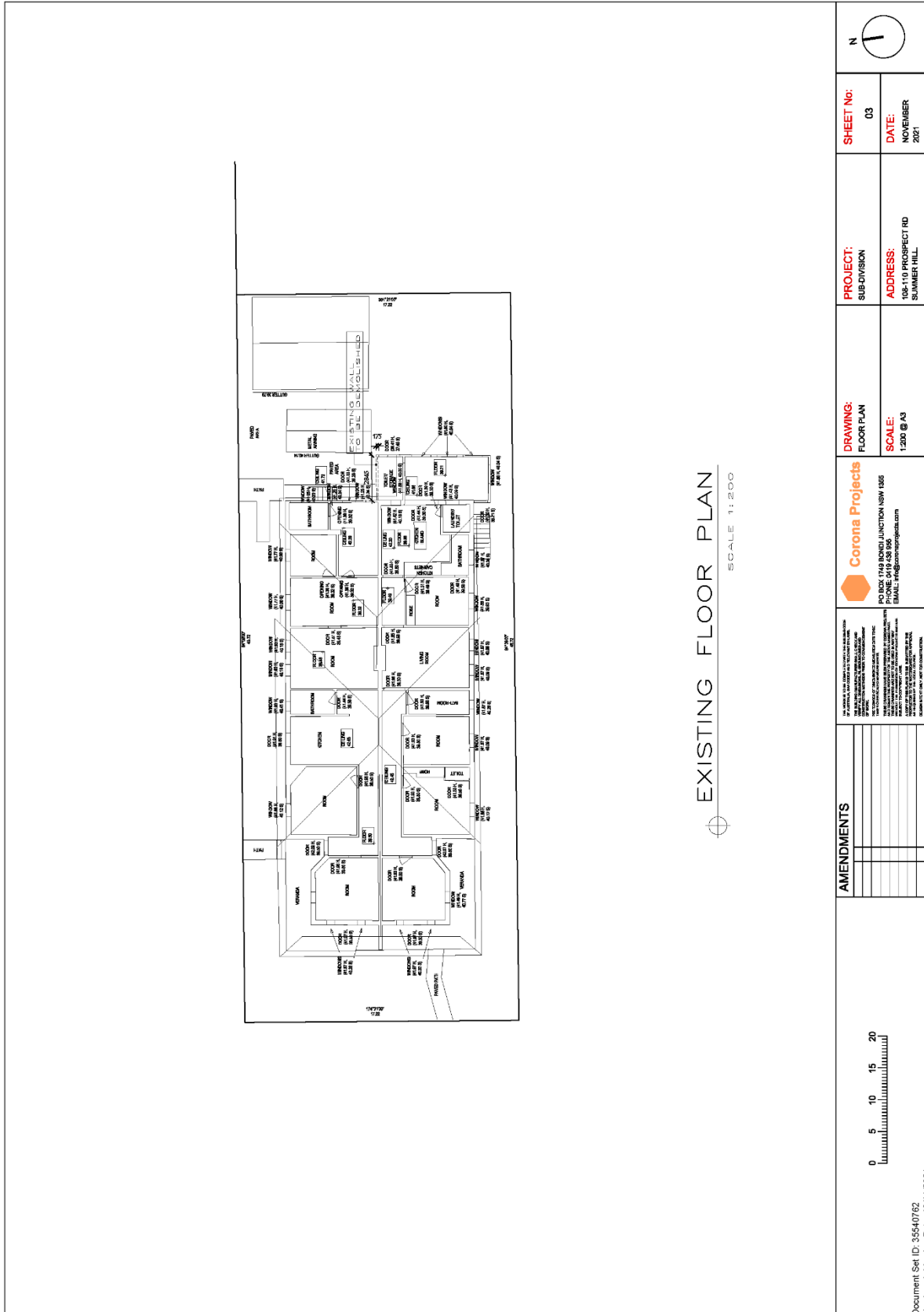
DRAWING: FLOOR PLAN
SCALE: 1:200 @ A3

Corona Projects
 PO BOX 1748 ROUND JUNCTION NSW 1586
 WWW.CORONAPROJECTS.COM
 EMAIL: info@coronaprojects.com

THE CLIENT IS TO BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ARCHITECT AND FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ARCHITECT. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ARCHITECT. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ARCHITECT.

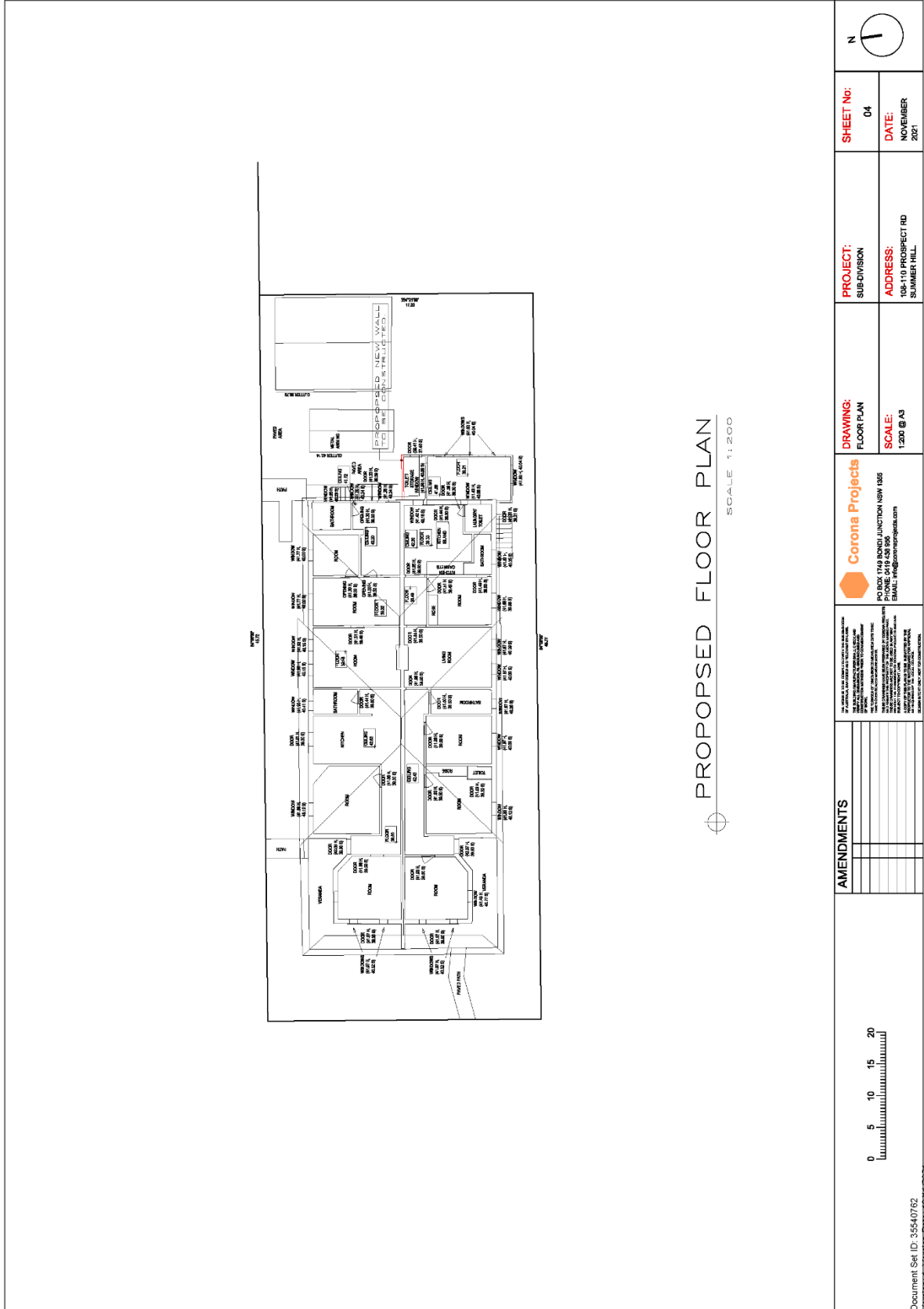
AMENDMENTS	

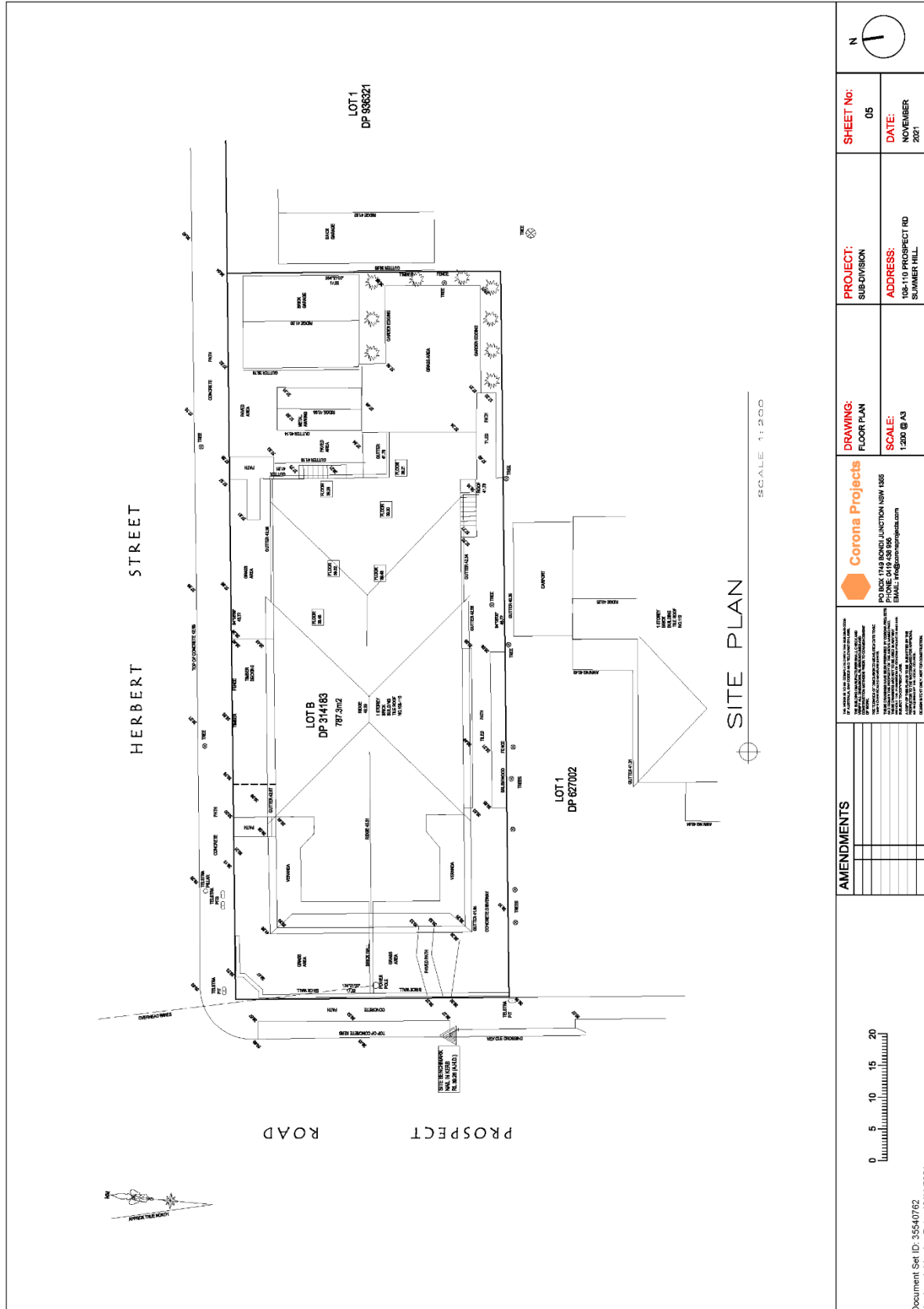
Document Set ID: 35540752
 Version: 1 - Version Date: 19/11/2021



EXISTING FLOOR PLAN
SCALE 1:200

<p>AMENDMENTS</p>	<p>0 5 10 15 20</p>	<p>Document Set ID: 35540752 Version: 1; Version Date: 19/11/2021</p>	<p>PROJECT: SUB-DIVISION</p>	<p>SHEET No: 03</p>	<p>DATE: NOVEMBER 2021</p>
			<p>DRAWING: FLOOR PLAN</p>	<p>ADDRESS: 108-110 PROSPECT RD SUMMER HILL</p>	
<p>Corona Projects PO BOX 1748 BONDURUMBA NSW 1885 TEL: 08 8332 2222 EMAIL: info@coronaprojects.com</p>		<p>SCALE: 1:200 @ A3</p>			





PROPOSED SUBDIVISION OF EXISTING DUAL OCCUPANCY 108-110 PROSPECT ROAD, SUMMER HILL NSW 2130 STORMWATER MANAGEMENT DESIGN

GENERAL DRAINAGE NOTES

1. ALL WORK SHALL BE CARRIED OUT IN ACCORDANCE WITH THE LOCAL COUNCIL'S RELEVANT SPECIFICATIONS AND/OR STORMWATER CODE. ANY UNUSUAL VARIATION OR ADDITIONAL WORK SHALL BE APPROVED BY THE PRINCIPAL CERTIFIER.
2. ALL SERVICES SHALL BE VERIFIED ON SITE PRIOR TO COMMENCEMENT OF WORK.
3. DIAL BEFORE YOU DIG SHALL BE CONTACTED PRIOR TO COMMENCEMENT.
4. ALL DRAINAGE PIPEWORK AND PLUMBING SHALL BE INSTALLED BY A CERTIFIED PLUMBER IN ACCORDANCE WITH THE AUSTRALIAN STANDARDS AS3500 AND COUNCIL REQUIREMENTS.
5. ALL DRAINAGE PIPES ARE TO BE SEWER GRADE UNLESS NOTED OTHERWISE.
6. ALL COVERS, GRATES AND FRAMES ARE TO BE CLASS C HEAVY DUTY WHERE SUBJECT TO VEHICULAR TRAFFIC.
7. ALL COVERS, GRATES AND FRAMES ARE TO BE CLASS A MEDIUM DUTY WHERE SUBJECT TO PEDESTRIAN TRAFFIC OR IN LANDSCAPE AREAS.
8. COUNCIL PERMIT/APPROVAL SHALL BE OBTAINED PRIOR TO WORKS ON ANY UTILITY OR COUNCIL PROPERTY.
9. ALL PIPE BENDS TO BE FITTED WITH AN INSPECTION OPENING.

RAINWATER TANK NOTES

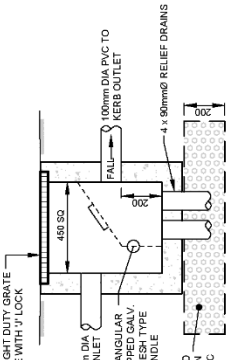
1. THE TANK SHALL NOT BE LOCATED OVER A WATER OR SEWER MAIN UNLESS IT IS INSTALLED IN ACCORDANCE WITH THE REGULATORY AUTHORITY REQUIREMENTS.
2. ABOVE GROUND TANKS SHALL BE LOCATED AT LEAST 100 MM FROM ANY POTABLE WATER SUPPLY PIPE AND AT LEAST 300 MM FOR BELOW GROUND TANKS.
3. ALL PLUMBING WORK SHALL BE CARRIED OUT BY A LICENSED PLUMBER IN ACCORDANCE WITH SYDNEY WATER REQUIREMENTS AND COUNCIL REGULATIONS.
4. ALL INLETS SHALL BE SCREENED OR FILTERED TO PREVENT THE ENTRY OF FOREIGN MATTER OR CREATURES.
5. REUSE PUMP TO BE INSTALLED BY A LICENSED PLUMBER AND ELECTRICIAN TO SYDNEY WATER REQUIREMENTS.
6. A SIGN SHALL BE AFFIXED TO THE RAINWATER TANK AND ALL APERTURES CLEARLY STATING THAT THE WATER IN THE TANK IS RAINWATER.
7. NOISE EMISSIONS FROM ANY PUMP SHALL MEET COUNCIL'S REQUIREMENTS.
8. WATER RETAINED FOR INDOOR HOUSEHOLD USE SHALL BE AUGMENTED BY MAINS WATER SUPPLY AND APPROVAL OBTAINED BY SYDNEY WATER.
9. WATER RETAINED FOR OUTDOOR USE SHALL BE SUPPLIED BY A BUCKET OR PRESIDENTIAL DISCHARGE FLOW RESTRICTOR SHALL BE INSTALLED IN ACCORDANCE WITH AS 3500 AND SYDNEY WATER REQUIREMENTS.
10. ALL INLETS SHALL BE FITTED WITH A FIRST FLUSH DEVICE PRIOR TO DISCHARGING TO THE RAINWATER TANK.
11. THE INDIRECT CONNECTION TO MAINS WATER SUPPLY SHALL HAVE A VISIBLE AIR GAP IN ACCORDANCE WITH AS 3500.

INNER WEST COUNCIL REQUIREMENTS

THE STORMWATER DRAINAGE SYSTEM HAS BEEN DESIGNED IN ACCORDANCE WITH THE BARRIOCKVILLE DOP PART 2.2.2 AND AUSTRALIAN STANDARDS AS3500.3

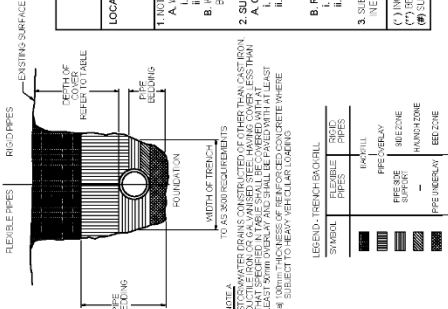
ON-SITE DETENTION
ON-SITE DETENTION IS NOT REQUIRED FOR THIS DEVELOPMENT AS THE TOTAL INCREASE IN ROOF AND PAVED AREAS FOR THE DEVELOPMENT IS LESS THAN 40m²

RAINWATER REUSE TANK
NO RAINWATER TANKS REQUIRED IN ACCORDANCE WITH THE BASIS CERTIFICATE



POLLUTION CONTROL PIT DETAIL

NOT TO SCALE



LOCATION	MINIMUM PIPE COVER (FROM FINISHED SURFACE TO TOP OF PIPE)	
	CAST/DUCTILE IRON OR GALV STEEL	MINIMUM COVER (MIN) AUTHORIZED PRODUCTS (1)
1. NOT SUBJECT TO VEHICULAR LOADING: A. WITHOUT PAVEMENT: I. FOR SINGLE DWELLINGS: II. OTHER THAN SINGLE DWELLINGS: B. HIGH DRAINAGE FORCED CONCRETE	0 0 (*)	100 (1 #) 300 90 (**)
2. SUBJECT TO VEHICULAR LOADING: A. WITH PAVEMENT: I. SPAVED II. UNPAVED B. ROADS I. SPAVED II. UNPAVED	300 300 300 300	450 100 (1 #) 75 (1 #) 500 (1 #) 500 (1 #)
3. SUBJECT TO CONSTRUCTION VEHICLES OR NEIGHBOURHOOD CONDITIONS	300	500 (1 #)

(1) INCLUDES OVERLAY ABOVE THE TOP OF THE PIPE (IF NOT LESS THAN 450mm THICK)
(*) BELOW THE UNDERSIDE OF THE PAVEMENT
(**) SUBJECT TO COMPLIANCE WITH AS 1072, AS 3088, AS/NZS 2967.1, AS 2725 OR AS 4050

LEGEND

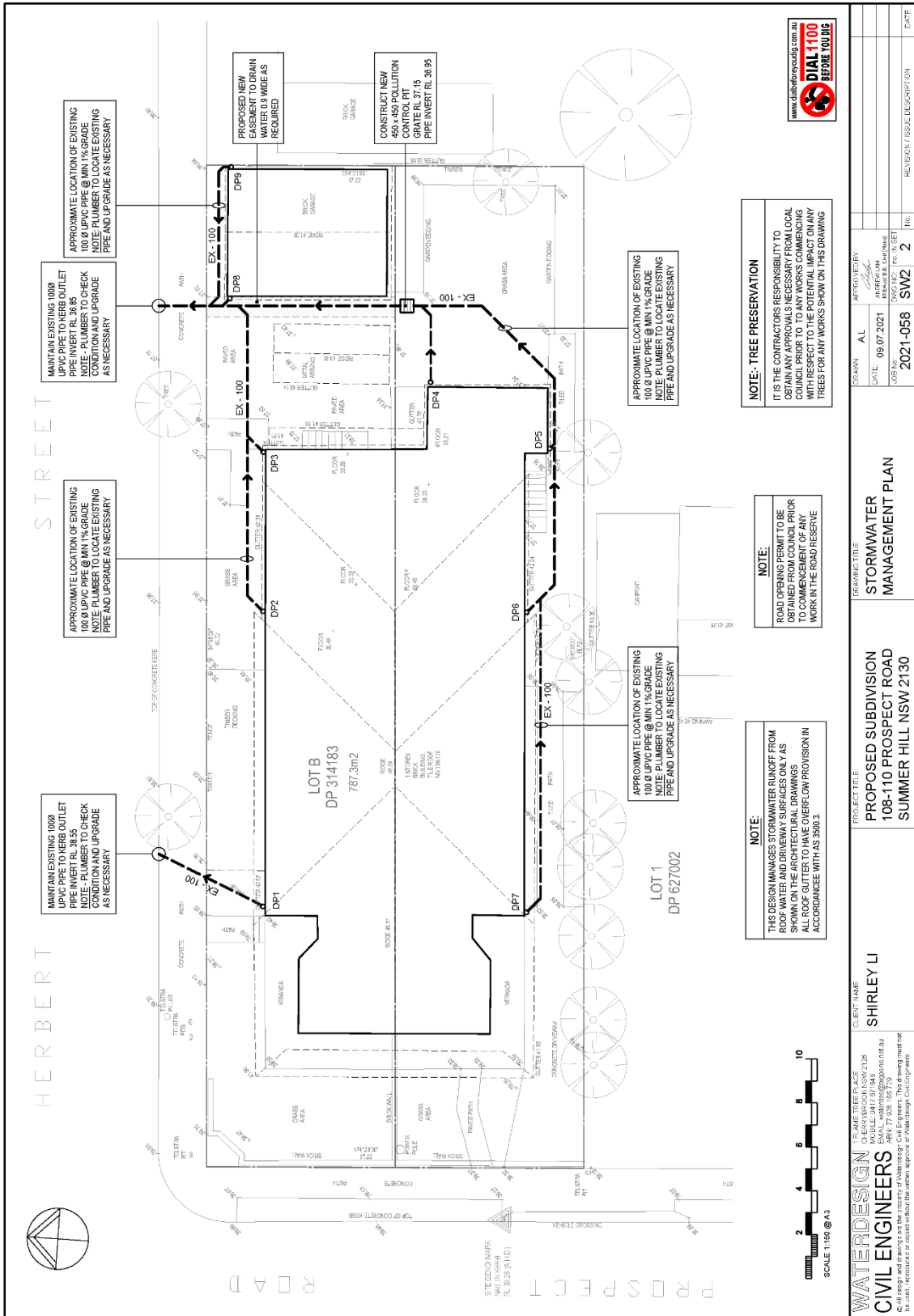
- DENOTES RAINWATER REUSE TANK
- SW - 100 DENOTES 100mm DIA. STORMWATER PIPE AT 1% MIN GRADE U N O
- RW - 100 (CH) DENOTES 100mm DIA. CHARGED STORMWATER PIPE TO RAINWATER TANK U N O
- EX - 100 DENOTES EXISTING 100mm DIA. STORMWATER PIPE U N O
- DP DENOTES DOWNPIPE
- STORMWATER PIT - GRATED INLET
- DENOTES GRATED DRAIN

SHEET INDEX

COVER SHEET AND NOTES SHEET SW1

STORMWATER MANAGEMENT PLAN SHEET SW2

WATERDESIGN CIVIL ENGINEERS 10/114-116/118-120/122-124/126-128/130-132/134-136/138-140/142-144/146-148/150-152/154-156/158-160/162-164/166-168/170-172/174-176/178-180/182-184/186-188/190-192/194-196/198-200/202-204/206-208/210-212/214-216/218-220/222-224/226-228/230-232/234-236/238-240/242-244/246-248/250-252/254-256/258-260/262-264/266-268/270-272/274-276/278-280/282-284/286-288/290-292/294-296/298-300/302-304/306-308/310-312/314-316/318-320/322-324/326-328/330-332/334-336/338-340/342-344/346-348/350-352/354-356/358-360/362-364/366-368/370-372/374-376/378-380/382-384/386-388/390-392/394-396/398-400/402-404/406-408/410-412/414-416/418-420/422-424/426-428/430-432/434-436/438-440/442-444/446-448/450-452/454-456/458-460/462-464/466-468/470-472/474-476/478-480/482-484/486-488/490-492/494-496/498-500/502-504/506-508/510-512/514-516/518-520/522-524/526-528/530-532/534-536/538-540/542-544/546-548/550-552/554-556/558-560/562-564/566-568/570-572/574-576/578-580/582-584/586-588/590-592/594-596/598-600/602-604/606-608/610-612/614-616/618-620/622-624/626-628/630-632/634-636/638-640/642-644/646-648/650-652/654-656/658-660/662-664/666-668/670-672/674-676/678-680/682-684/686-688/690-692/694-696/698-700/702-704/706-708/710-712/714-716/718-720/722-724/726-728/730-732/734-736/738-740/742-744/746-748/750-752/754-756/758-760/762-764/766-768/770-772/774-776/778-780/782-784/786-788/790-792/794-796/798-800/802-804/806-808/810-812/814-816/818-820/822-824/826-828/830-832/834-836/838-840/842-844/846-848/850-852/854-856/858-860/862-864/866-868/870-872/874-876/878-880/882-884/886-888/890-892/894-896/898-900/902-904/906-908/910-912/914-916/918-920/922-924/926-928/930-932/934-936/938-940/942-944/946-948/950-952/954-956/958-960/962-964/966-968/970-972/974-976/978-980/982-984/986-988/990-992/994-996/998-1000	PROJECT TITLE PROPOSED SUBDIVISION 108-110 PROSPECT ROAD SUMMER HILL NSW 2130	DRAWN AL	APPROVED BY SHIRLEY LI
	DATE: 09/07/2021 JOB No.: 2021-058 DWG No.: SW1 No.: 2	PROJECT TITLE COVER SHEET AND NOTES	DATE: 09/07/2021 JOB No.: 2021-058 DWG No.: SW1 No.: 2



NOTE: TREE PRESERVATION
 IT IS THE CONTRACTOR'S RESPONSIBILITY TO OBTAIN ANY APPROVALS NECESSARY FROM LOCAL COUNCIL PRIOR TO ANY WORKS COMMENCING WITH RESPECT TO THE POTENTIAL IMPACT ON ANY TREES FOR ANY WORKS SHOWN ON THIS DRAWING

NOTE:
 ROAD OPENING PERMIT TO BE OBTAINED FROM COUNCIL PRIOR TO COMMENCEMENT OF ANY WORK IN THE ROAD RESERVE

NOTE:
 THIS DESIGN MANAGES STORMWATER RUNOFF FROM ROOF WATER AND DRIVEWAY SURFACES ONLY AS ALL ROOF GUTTERS TO HAVE OVERFLOW PROVISION IN ACCORDANCE WITH AS 3500.3



DRAWN: AL		APPROVED BY:	
DATE: 09/07/2021		DATE:	
JOB No: 2021-058		REV No: SW2	No: 2
PROJECT TITLE: PROPOSED SUBDIVISION 108-110 PROSPECT ROAD SUMMER HILL NSW 2130		DRAWING TITLE: STORMWATER MANAGEMENT PLAN	
CLIENT NAME: SHIRLEY LI		REVISION / ISSUE DESCRIPTION:	
TEAM LEADER: SHIRLEY LI		DATE:	
CLIENT ADDRESS: CHERRY BROOK NSW 2128		PROJECT NO:	
PHONE: 02 9630 9000		JOB NO:	
EMAIL: info@waterdesign.com.au		REVISED BY:	
WEBSITE: www.waterdesign.com.au		DATE:	
WATERDESIGN CIVIL ENGINEERS		REVISION / ISSUE DESCRIPTION:	

Attachment C- Clause 4.6 Exception to Development Standards



ABN: 33 122 390 023
Suite 106, L1, 35 Spring Street, Bondi Junction, 2022
PO Box 1749 Bondi Junction NSW 1355
Ph: 0419 438 956
Email: info@coronaprojects.com.au

15 July 2021

The General Manager
Inner West Council
Po Box 1145,
Ashfield NSW 1800

Dear Sir/Madam,

108-110 Prospect Road, Summer Hill 2130
Clause 4.6: Exceptions to Development Standards
Minimum Lot Size (Clause 4.1)– Ashfield Local Environmental Plan 2013

1. Introduction

Clause 4.1 of Ashfield Local Environmental Plan (ALEP) 2013 relates to the minimum lot size requirements and states that “the size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map”. The Minimum Subdivision Lot Size map stipulates that the minimum lot size for 108-110 Prospect Road, Summer Hill is 500sqm.

The architectural plans submitted with the Development Application at 108-110 Prospect Road, Summer Hill for the “Torrens Title subdivision of an existing dual occupancy with modification to toilet” indicate that the proposed development has a lot size of 393.65sqm, resulting in a 21.27% variation to the development standard and non-compliance of 106.35m².

The proposal is for the reasonable Torrens Title subdivision of an existing dual occupancy building. The proposal does not impact the heritage value of the site, does not change the current setbacks and physical development characteristics apart from the minor toilet modification. The existing contributory front façade and development pattern will be completely retained. The proposed subdivision pattern has considered the settings of the locality and will have minimal impacts to the heritage conservation area. The variation results in the substantial increase in amenity for the subject site, by granting it the ability to have separate ownership, without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties. The proposal does not result in the creation of new dwellings and does not result in the reduced amenity of the existing dwellings.

2. Clause 4.6

An application to vary a development standard can be made under Clause 4.6 of ALEP 2013.

The objectives of Clause 4.6 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.

Clause 4.6(3) specifies that:

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

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

Clause 4.6(4) specifies that:

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

These matters are considered below.

3. Justification of proposed variance

Samadi v Council of the City of Sydney [2014] NSWLEC 1199 provides jurisdictional guidance on the assessment of variations under Clause 4.6.

Paragraph 27 of the judgement states:

'Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).'

4. Precondition 1 – Consistency with zone objectives

The land is located in the R2 – Low Density Residential zone under the Ashfield Local Environmental Plan 2013.

The objectives of the zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development is compatible with the zone objectives as the existing building will continue to be used as residential dwellings. The proposal does not change the current housing provision of the site as it provides two residences. The objective of the proposal is to allow for the subdivision of site to be two semi-detached dwelling that can be sold separately in the future.

The variation to the minimum lot size does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

'The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.'

5. Precondition 2 – Consistency with the objectives of the standard

The objectives of the minimum lot size controls as specified in Clause 4.1 are:

- a) *to maintain the existing pattern of subdivision within heritage conservation areas in terms of lot size and lot dimensions,*
- b) *to provide opportunities for infill small lot subdivision in areas close to transport and amenities in a manner that does not adversely impact on the streetscape or amenity of residential areas,*
- c) *to provide for small lot subdivision in certain areas close to public transport as an alternative to redevelopment for the purpose of multi dwelling housing in order to retain the scale and character of the area,*
- d) *to ensure that lot sizes allow development to be sited to protect and enhance riparian land.*

The variation is supportable in relation to the aforementioned objectives.

Objective (a) – The proposal maintains the existing development pattern as the proposed subdivision line follows the location of party wall and bisects the current site into two equal portions. The proposal is compatible with the surrounding area as the proposed lots have a narrow lot width and greater lot depth.

Objective (b) – The proposal will subdivide an existing dual occupancy that visually presents as two dwellings with two street numbers. Although the site does not have good public transport connectivity, it does not prevent the site from being benefited from a reasonable subdivision that provides positive outcomes to the site.

Objective (c) – The objective does not apply to the proposal as it is not for a development of multi-dwelling. However, the proposal is for the subdivision of an existing dual occupancy that was built circa 100 years ago. The proposal will have no impacts to the locality as the current dual occupancy visually presents as two dwellings.

Objective (d) – The objective does not apply to the proposal as the site is not located within the vicinity of any riparian land.

6. Precondition 3 – To consider a written request that demonstrates that compliance with the development standards is unreasonable or unnecessary in the circumstance of the case.

Wehbe vs Pittwater Council [2007] NSWLEC 827 establishes the five-part test for determining whether strict compliance with the development standard is deemed unnecessary or unreasonable. These five ways have recently been re-emphasised in the *Four2Give Pty Ltd v Ashfield Council [2015]* NSELEC 1009 cases, by Commissioner Morris in *Mecone Pty Limited v Ashfield Council [2015]* NSWLEC 1312 and by Commissioner Tuor in *Moskovich v Ashfield Council [2016]* NSWLEC 1015. This approach has recently been upheld in the case of *Micaul Holdings Pty Limited v Randwick City Council [2015]* NSWLEC 1386. An appeal on a point of law against this decision by Randwick Council was dismissed by Commissioner Morris on 19 February 2016: *Randwick City Council v Micaul Holdings Pty Ltd [2016]* NSWLEC 7.

In the decision of *Wehbe vs Pittwater Council*, Preston CJ established the five ways in which an objection has been well founded and that approval of the objection may be consistent with the aims of the policy:

- ‘the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
- the zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.’

It is noted that each ‘test’ offers a potential way of demonstrating that compliance is unnecessary or unreasonable in each case. Therefore, not all tests need to be met.

Test	Comment
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard	Yes — The development meets the objectives of the development standard demonstrated in part 5 of this document.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary	Not applicable — The purpose of the standard is relevant.

<p>3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable</p>	<p>Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.</p>
<p>4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable</p>	<p>Not applicable — the development standards of minimum lot size cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.</p>
<p>5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.¹</p>	<p>Not applicable — The zoning of the site is not considered to be inappropriate.</p>

Application of the above tests thus demonstrate that strict numerical compliance is unreasonable and unnecessary for this proposal. The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide additional housing in a manner which meets the objectives of applicable controls. The Torrens title subdivision and the toilet modification development over its

economic life is consistent with the promotion and coordination of the orderly use and development of land.

8. Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

This report is the written request demonstrating that there are sufficient environmental planning grounds to justify deviation from the development standard.

The development has been designed to complement the existing scale and character of surrounding development. The proposal does not compromise of any physical building works that will unreasonably impact the value of the contributory item. The existing building is already compatible with the locality and this will not be changed under the proposal. The proposed toilet modification is to remove the part of structure that encroaches the proposed subdivision line. The building work is for rectification purposes and is considered to be acceptable. The proposal does not result in the creation of new dwellings and does not result in the reduced amenity of the existing dwellings.

The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest.

9. Conclusion

The proposal seeks a variation to the minimum lot size standard prescribed in Clause 4.1 of Ashfield Local Environmental Plan 2013.

This submission is considered to adequately address the matters required by Clause 4.6. The proposal meets the assessment criteria set out in Clause 4.6 (3) (a) and (b) and (4) (a). As demonstrated, strict compliance with the prescribed minimum lot size development standard is unreasonable and unnecessary in the circumstances of the case. The proposal is in the public interest because it is consistent with the objectives of the R2 - Low Density Residential zone and the objectives for minimum lot size standard. There are thus sufficient environmental planning grounds to justify the non-compliance.

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Clause 4.6 Variation Request Report
108-110 Prospect Road, Summer Hill

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