





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2022/0840
Address	95 Louisa Road BIRCHGROVE NSW 2041
Proposal	The proposal seeks approval for the demolition of the existing dwelling and construction of a new three storey dwelling upon land identified as Lot 1 in DP 215750.
Date of Lodgement	08 October 2022
Applicant	Minto Planning Services Pty Ltd
Owner	Mr Joseph Macri
Number of Submissions	Initial: 3
Value of works	\$850,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	FSR Breach Landscape Breach Site Coverage Breach Heritage Submissions
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	
 N	

1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of the existing dwelling and construction of a new three storey dwelling upon land identified as Lot 1 in DP 215750 at 95 Louisa Road Birchgrove. The application was notified to surrounding properties and 3 submissions were received in response to the initial notification being 2 in objection and 1 in support.

The main issues that have arisen from the application include:

- variation to prescribed development standards

A Clause 4.6 exception was submitted to Council to vary the floor space ratio, site coverage and landscaped area development standards. The non-compliances are acceptable given that the proposal generally complies with the aims and objectives of the Inner West Local Environmental Plan 2022 and the Leichhardt Development Control Plan 2013. The proposal is considered acceptable and recommended for approval.

2. Proposal

The proposed development entails the following.

- Demolition of all existing structures on the site
- Construction of a new multi-level, 3 storey dwelling where the third level is set back from Louisa Road.
- South facing balconies and a north facing roof top terrace to Louisa Road on the third level.
- Carport for one vehicle, bin store and entrance from Louisa Road (street level)

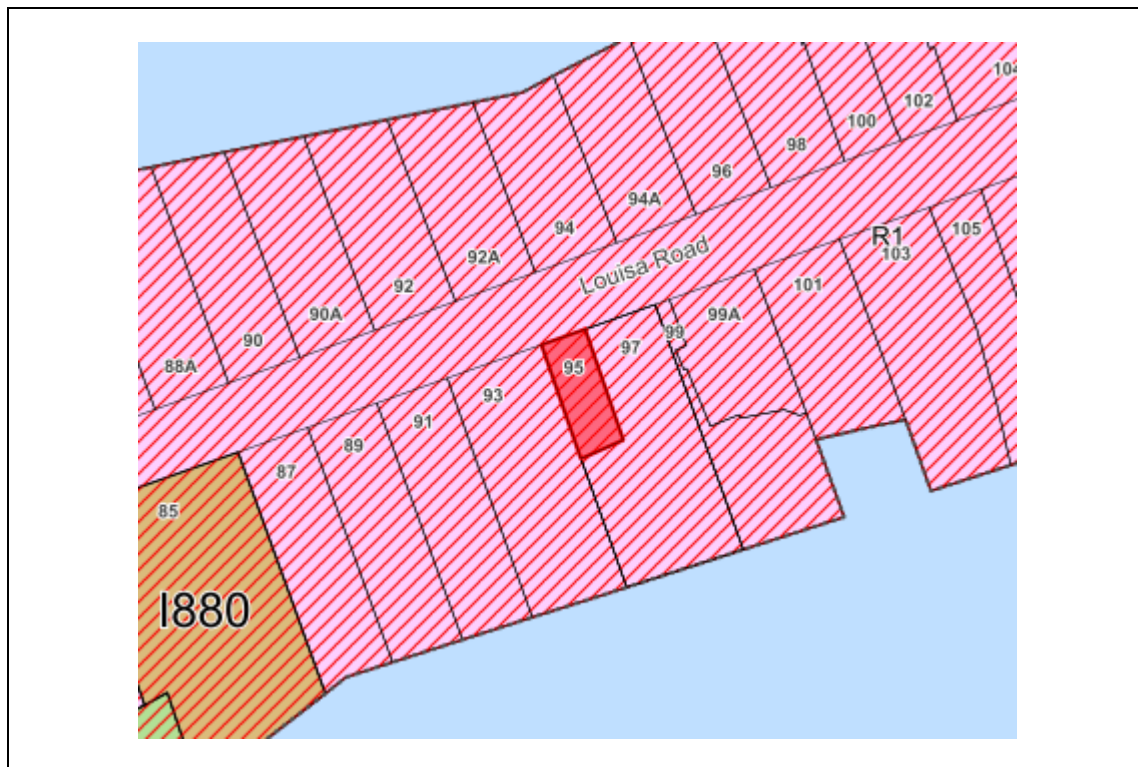
3. Site Description

The subject site is located on the southern side of Louisa Road, with the nearest cross streets being Rose Street to the west and Numa Street to the east. The site consists of 1 allotment and is generally rectangular in shape with a total area of approximately 88.5sqm and is legally described as Lot 1 in DP 215750, 95 Louisa Road BIRCHGROVE NSW 2041.

The site has a frontage to Louisa Road of approximately 5.81 metres.

The site supports an existing two storey dwelling covering 100% of the site. Unlike most allotments on Louisa Road this site is land locked to the side and rear boundaries. The adjoining properties support detached and attached single, double and multi-level dwellings due to the topography of the sites falling towards Sydney Harbour, some dwellings are upwards of 4 levels.

The property is located within a conservation area. The nearest Heritage Item is located to the west of the site at No. 85 Louisa Road.



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

95 Louisa Road

Application	Proposal	Decision & Date
OC/2007/118/	Occupation Certificate	Issued 25/10/2004
M/2004/219	Modification of development consent D/2002/915 which approved alterations and additions including new external cladding at ground and first floors and demolition of front room to accommodate new carport. Modification involves the relocation of part of the ground floor east facing wall and the first floor east facing wall onto the boundary.	Approved 23/02/2005
CC/2004/337	Alterations and additions to existing dwelling involving new external cladding at ground and first floor level and demolition of the front room of the dwelling to accommodate a new carport to the Louisa Road elevation.	Issued

M/2004/5	s96(1a) Modification to development consent D/2002/915 for alterations and additions including new external cladding at ground and first floors, demolition of front room to accommodate new carport. Modifications include external changes to window openings, the height of fencing and wall to northern section of first floor balcony.	Approved 14/05/2004
D/2002/915	Alterations and additions to existing dwelling involving new external cladding at ground and first floor level and demolition of the front room of the dwelling to accommodate a new carport to the Louisa Road elevation.	Approved 06/08/2003
D/2000/645	Alterations and additions to the existing dwelling at ground and first floor level.	Approved 19/03/2001
DA/1990/793	Building Application (New Dwelling)	Approved 27/06/1991

Surrounding properties**93 Louisa Road**

Application	Proposal	Decision & Date
MOD/2022/0474	Latest Modification Modification to D/2018/25 including (but not limited to) changes to building footprint, internal layout, balcony/deck/roof terrace, screening, balustrades, fenestration, removal of lift over run; materials, colours and finishes also amended.	Under Assessment
D/2018/25	Demolition of existing dwelling and associated structures and remediation of site. Construction of a new dwelling with basement parking provided with a car lift, landscaping and pool.	Approved 04/12/2018

97 Louisa Road

Application	Proposal	Decision & Date
BA/1993/529	Development Application to Strata Scheme	Approved 30/11/1993
BA/1992/501	Development Application to Strata Scheme	Approved 29/09/1992

99 & 99A Louisa Road

Application	Proposal	Decision & Date
DA/2022/0120	Alterations and additions to the existing dwelling, new garage with car stacker, swimming pool and roof terrace, and associated works at 99 Louisa Road	Deferred Commencement 08/11/2022 (LPP)

4(b) Application history

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

Date	Discussion / Letter / Additional Information
07/12/2022	Further information request to justify full demolition of existing dwelling and planning and heritage anomalies
07/02/2023	Response provided by applicant addressing request from 7/12/2022
21/02/2023	Correspondence with applicant to amend setback of proposed third floor from the Louisa Road elevation – required to meet planning and heritage concerns
02/03/2023	Applicant responds with amendments as discussed. The amended plans are the subject of this assessment report

5. Assessment

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

5(a) Environmental Planning Instruments

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

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

The following provides further discussion of the relevant issues:

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

Chapter 4 Remediation of land

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

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

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

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

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

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

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

Chapter 10 Sydney Harbour Catchment

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

5(a)(iv) Inner West Local Environmental Plan 2022 (IWLEP 2022)

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

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3C – Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 5.10 – Heritage conservation
- Section 6.1 – Acid sulfate soils
- Section 6.3 – Stormwater management

Section 2.3 Land Use Table and Zone Objectives

The site is zoned LR1 under the *IWLEP 2022*. The *IWLEP 2022* defines the development as:

“dwelling house means a building containing only one dwelling.”

The development is permitted with consent within the land use table. The development is consistent with the objectives of the LR1 zone.

Section 4 Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
Floor Space Ratio Maximum permissible: 1:1 or 90.6 sqm	1.3:1 or 117 sqm	26.4 sqm or 29%	No
Landscape Area Minimum permissible: 15% or 13.95sqm	0% or 0 sqm	13.95 sqm or 100%	No

<p>Site Coverage Maximum permissible: 60% or 54.36 sqm</p>	<p>98% or 88.8 sqm</p>	<p>34.4 sqm or 63%</p>	<p>No</p>
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Note: There is currently no existing or proposed landscaping that could be included in the area calculation of Landscaped Area. Therefore, there is no reduction of landscaped compared to the existing setting.

Note: The existing dwelling and the proposed dwelling covers 100% of the site. Therefore, there is no increase of site coverage compared to the existing setting.

Section 4.6 Exceptions to Development Standards

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

- Clause 4.3C(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3C(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio

Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Section Clause 4.4 of the *IWLEP 2022* by 29% (26.4sqm).

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

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

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

- *The proposed development density is reflective of dwellings within this locality and where it is considered normal for dwellings to have an FSR which either meets or exceeds the current maximum requirements Clause 4.4 of the LEP. The proposal involves a minor increase from the existing GFA of 95.6m² to 117.2m² and is consistent with the objectives of the zone adding a modest 21.5sqm.*
- *The proposed development is compatible with the scale and character of the surrounding residential development. The proposal will not result in any unreasonable amenity impacts upon adjoining properties and based upon the accompanying Heritage Impact Statement will not result in any unreasonable heritage impacts.*
- *The proposed development pursuant to Clause 4.6(4)(a)(ii) of the LEP is in my opinion in the public interest because it is compliant with both the zone objectives and the objectives of the particular standard.*

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

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

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

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

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

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

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

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

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

- *The proposal will not result in the reduction of the existing landscaped area of the site and does not require the removal of any vegetation from the site.*
- *The proposed new dwelling will result in minimal environmental impacts on both the natural and built environments.*
- *The proposal is consistent with the surrounding general residential environment and heritage conservation area as detailed in the Heritage Impact Statement prepared by John Oultram Heritage & Design.*

- *The proposed site coverage is 98% and which exceeds the requirements of subclause 3(b). It is noted that the existing site coverage is 95.5%. The existing and proposed site coverage is considered to be reflective of the small nature of the existing site and which necessitates a high site coverage in order to accommodate an appropriately sized dwelling.*
- *The proposed landscape area of 17.88% whilst not strictly meeting the requirements of subclause (4)(b) and (c) is considered to satisfy the objectives of Clause 4.3C and will provide for landscaping which contributes the character of the area and which will enhance the amenity of future occupants of the site.*
- *It is considered that strict compliance would prevent the orderly and economic development of the land in accordance with Objective 1.3(c) of the Environmental Planning and Assessment Act.*

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

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

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

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

- The site would continue to provide a landscaped setting by way of planter boxes to soften the development to the streetscape and provide landscaping to terraces areas
- The proposal maintains the existing percentage of site coverage for the constrained small block in comparison to adjoining allotments.
- The proposal maintains the character of the neighbourhood and is consistent with adjoining development
- The proposal maintains a reasonable level of private open space for occupants of the development by way of roof terrace and balconies with city skyline views.

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

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

Coverage development standards and it is recommended the Section 4.6 exception be granted.

Section 5.10 – Heritage conservation

The application was referred to Councils Heritage Officer twice who concluded initially that the applicant needed to justify the proposed demolition of the modern building and why it could not be reconfigured. In addition, the proposed third level was not supported. After the submission of additional information, the demolition of the existing dwelling is now accepted, however concerns continued to revolve around the presentation of the street fronting terrace and planter. To reduce the scale of the proposed third level which is setback from the Louisa Road elevation by 6.5m, the covered roof hood over the terrace entrance and third level stair was removed and a skillion roof was added over the stair to minimise visual impact when viewed from a south westerly direction from Louisa Road (Figure 2).

It is considered that the proposed development does present as a double storey and the RL of the third level is less than that approved at 93 Louisa Road. As a contemporary new infill development, the proposal is complementary to the architectural typology of dwellings on the southern side of Louisa Road. As such the proposal is considered to have no adverse impact on the HCA having regard to the provisions of CI 5.10 of IWLEP 2022.



Figure 1 – Roof over terrace walkway

Figure 2 – Roof removed and reduced

5(c) Draft Environmental Planning Instruments

N/A

5(d) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes

C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
Part C: Place – Section 2 Urban Character	
C2.2.2.6 Birchgrove Distinctive Neighbourhood Louisa Road Sub Area – Section C2.2.2.6(a).	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
Part C: Place – Section 4 – Non-Residential Provisions	
	N/A
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	
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
E1.2 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
E1.2.5 Water Disposal	Yes
Part F: Food	
	N/A
Part G: Site Specific Controls	
	N/A

The following provides discussion of the relevant issues:

C1.4 Heritage Conservation Areas and Heritage Items

See Section 5.10 of IWLEP 2022.

C3.2 Site Layout and Building Design

It is considered that the proposed development satisfies the objectives of the clause regarding the breaches of the side, front and rear setbacks for the constrained site. The proposed zero side setbacks are characteristic of development within the locale and can be supported.

The building line zone (BLZ) breach to the eastern boundary is unchanged to the first two levels as the development proposed is relying on the existing zero setback of these two levels. The uncharacteristic built form of a single storey double garage to the east of the site at No. 97 Louisa Road exacerbates any BLZ breach for development on the subject site, however its orientation results in minimal overshadowing and satisfies the objective of the clause.

C3.9 Solar Access

The additional shadow cast by the proposed development, whilst impacting the skylights of the lower residence off Snails Bay at 1/97 Louisa Road, still maintains solar access to most if not all the skylights between 9am and 11am on June 21 at winter solstice and therefore satisfies the controls and objectives of this Part of LDCP 2013.

C3.11 Visual Privacy

The proposal maintains existing setbacks along the southern boundary which already contain balconies that are orientated to the south to maximise water views. Having regard to the existing development and the provision of balconies, it is considered that the new development would not result in an increased privacy impact to neighbouring development.

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.

- Three (3) submissions were received in response to the initial notification. 1 in support and 2 in objection

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

- Privacy implications from the new development
- Overshadowing
- Breaches of FSR, Landscaped Area, Site Coverage development standards
- Bulk, scale & character of the development/streetscape presentation/impact to heritage conservation area

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

Issue: The proposed development will be built right to the boundary line with no allowance for water lookout which was one of the significant requirements of my recent development application. I find this offensive that this water lookout impost was imposed on me and not to my neighbors (sic).

Comment: Water lookout views are not impacted to rear balconies or the roof top terrace from 93 Louisa Road by the proposed development at 95 Louisa Road.

It is also noted that windows W11, W12 and W13 of 93 Louisa Road as approved are located less than 900mm of the boundary and are therefore nonoperative and service bathroom and are secondary glazing elements to bedrooms 2 and 3 which maintain their primary views via north facing and south facing bedroom windows which are unaffected by the proposal.

With regard to public views along the side of houses there are some areas of Louisa Road where this is a feature of the dwellings, however this is not true of this part of Louisa Road, where nil setbacks are common. Given the extremely small size of the lot, imposing such a requirement would be a significant constraint on the site.

Issue: Lack of privacy as a result of two significant terraces on level 3 fronting both Louisa Road and the water means that the owners of No 95 would be able to directly look into my home and backyard and my privacy.

Comment: the front terrace poses no immediate overlooking issues to the adjacent dwelling as that neighbouring front elevation is a front portico and basement vehicular access, and, also, as there is sufficient buffer of a planter box on this level on the proposed terrace.

In regard to the rear third floor terrace , which is only accessible via the bedroom, the finished floor level of this terrace is just under that of the approved roof terrace to the rear of 93 Louisa Road. Proposed glass balustrading at a nominal height of 1.2m is proposed to ensure sufficient view sharing. There is a reasonable expectation of view sharing along the Southern side of Louisa Road as these properties benefit from uninterrupted easterly city skyline views and the Harbour Bridge. (see figure 1)

Issue: Rooftop level appears to be missing RL. Additionally, there should be no access to the rooftop level as a trafficable area.

Comment: The RL (18.05) Is located on the elevations. No roof terrace is proposed.



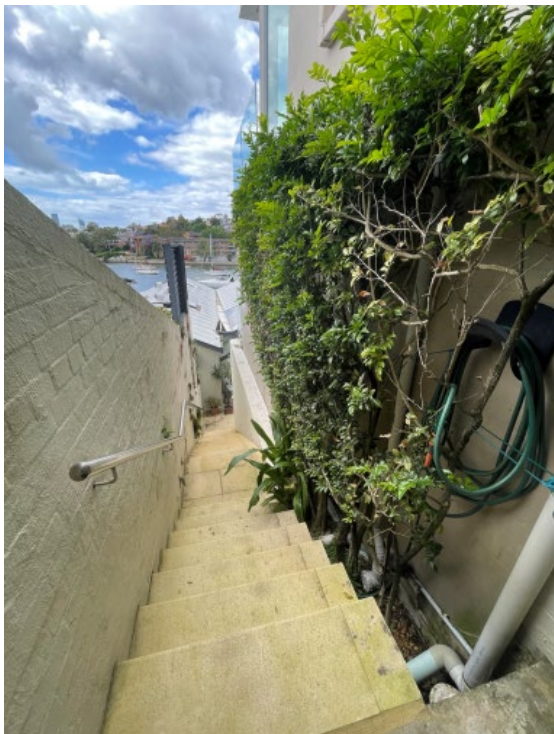
Figure 1 – north westerly montage of proposed 95 and under construction 93 Louisa Roads

Issue: *Likely Unreasonable Additional Overshadowing / Inadequate Shadow Information*

Comment: 1/97 Louisa Road provided an objection relating to overshadowing to skylights to the roof of their property that will have an increase portion of shadowing by the development at 12pm on June 21 (Winter Solstice). Due to the dwelling's orientation and elevation at Snails Bay the skylights will be impacted by development from the higher side of Louisa Road. It is referenced under Clause C3.9 C5 that habitable rooms should have access to natural daylight regardless of the provision of skylights. While all efforts are taken to protect solar access, it is considered that in this instance the proposed development maintains solar access to the subject skylights between 9am and 11am at winter solstice and therefore can be considered to meet the requirements of the prescribed control.

Issue: *Landscaping*

Comment: The remnant landscaping located on the rear northern boundary wall off the courtyard to 1/97 Louisa Road and the eastern boundary side access stairs servicing 97 and 1/97 Louisa Road (pictured below) isn't considered significant and does not meet the definition of landscaping under the IWLEP 2022. Notwithstanding it is unclear if this vegetation relies on the wall at 95 Louisa Road for support, and if so, could not be feasibly maintained with retention unlikely, given the construction impacts on such a small site.



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
- Development Engineers

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$8500.00 would be required for the development under Former Leichhardt Contributions Plan 2020. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Leichhardt Development Control Plan 2013.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the floor space ratio and landscaping and site coverage standards is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2022/0840 for the demolition of the existing dwelling and construction of a new three storey dwelling upon land identified as Lot 1 in DP 215750 at 95 Louisa Road, BIRCHGROVE subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA00 Rev C	Cover Page	28/02/2023	Mitch Higginbotham
DA01 Rev C	Site Plan	28/02/2023	Mitch Higginbotham
DA02 Rev C	Demolition Plan	28/02/2023	Mitch Higginbotham
DA03 Rev C	Level 1 Plan	28/02/2023	Mitch Higginbotham
DA04 Rev C	Level 2 Plan	28/02/2023	Mitch Higginbotham
DA05 Rev C	Level 3 Plan	28/02/2023	Mitch Higginbotham
DA06 Rev C	Roof Plan	28/02/2023	Mitch Higginbotham
DA07 Rev C	Elevation 1	28/02/2023	Mitch Higginbotham
DA08 Rev C	Elevation 2	28/02/2023	Mitch Higginbotham
DA09 Rev C	Elevation 3	28/02/2023	Mitch Higginbotham
DA10 Rev C	Section BB	28/02/2023	Mitch Higginbotham
DA23 Rev C	Materials & Finishes	28/02/2023	Mitch Higginbotham
221879 Sheet 1 of 7	Stormwater Plan	December 2022	C.K. Engineering Services
221879 Sheet 2 of 7	Stormwater Plan	December 2022	C.K. Engineering Services
221879 Sheet 3 of 7	Stormwater Plan	December 2022	C.K. Engineering Services
221879 Sheet 4 of 7	Stormwater Plan	December 2022	C.K. Engineering Services
221879 Sheet 5 of 7	Stormwater Plan	December 2022	C.K. Engineering Services
221879 Sheet 6 of 7	Stormwater Plan	December 2022	C.K. Engineering Services
221879 Sheet 7 of 7	Stormwater Plan	December 2022	C.K. Engineering Services
-	Stormwater Design Certificate	17/12/2022	C.K. Engineering Services

221879	Water Management Statement	25/07/2022	C.K. Engineering Services
-	Waste Management Plan	08/08/2022	Joseph Macri
1322789S_02	BASIX Certificate	01/03/2023	Chapman Environmental Services P/L

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:	\$8,500.00
Inspection Fee:	\$350.00

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

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

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

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

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

3. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

Note: Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contribution>

Payment amount*:
\$8500.00

*Indexing of the Section 7.12 contribution payment:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions); cash (to a maximum of \$10,000)**. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

4. Long Service Levy

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

GENERAL CONDITIONS

5. Boundary Alignment Levels

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

6. 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.

7. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

8. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**9. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

10. 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 all the adjoining properties:

- Eastern Elevation of No. 93 Louisa Road
- Courtyard and retaining wall of 1/97 Louisa Road
- Access stair of 97 and 1/97 Louisa Road

And is to be submitted 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.

11. 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**12. 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.

13. Stormwater Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on-site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The stormwater drainage concept plan on Drawing No. 221876 prepared by C.K. ENGINEERING SERVICES and submitted on 21 December 2022 must be amended to comply with the following:
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system via the OSD/OSR tanks as necessary.
- 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. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.
- e. 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.
- f. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 years ARI storm are restricted to the pre-development flows for the 5 years ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI).
- g. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks.
- i. Where a combined OSD/OSR is proposed, only roof water is permitted to be connected to the storage tank. The overflow from the OSD/OSR must be connected by gravity to the kerb and gutter of a public road.
- j. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided.
- k. Drainage pipes must be designed and constructed at a minimum grade of 1%. The pipe invert level and sump surface and invert level must be shown on the drainage plan. Drainage pipes suspended under the floor slab must be shown on plan and elevation.
- l. Appropriate measures must be provided for disposal of seepage water from the planter boxes. Particularly concern is raised about treatment of seepage water from the planter box at the rear of the building. The proposed measures must demonstrate that seepage water from the planter box will not have impact on adjoining properties.
- m. As there is no overland flow/flood path available from the central courtyards to the Louisa Road frontage, the design of the sag pit and piped drainage system is to meet the following criteria:

- a. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe;
 - b. The maximum water level over the sag pit shall not be less than 150 mm below the floor level or damp course of the building; and
 - c. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- n. A minimum 150 mm step up shall be provided between all external finished surfaces and adjacent internal floor areas.
 - o. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
 - p. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
 - q. No nuisance or concentration of flows to other properties;
 - r. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
 - s. 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;
 - t. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
 - u. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
 - v. 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 4.0 mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm.
 - w. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
 - x. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
 - y. No impact to street tree(s).

14. Amended Architectural Plans to Reflect Requirements of this Condition

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the following recommendations:

- a. Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:
- b. The garage slab or driveway must rise within the property to be 170 mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.

- c. A minimum of 2200 mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
- d. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
- e. The garage/carport/parking space must have minimum clear internal dimensions of 6000 mm x 3000 mm (length x width) and a door opening width of 3000 mm at the street frontage. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.
- f. Where the drop adjacent to the end of the parking module(s) exceeds 600mm, structural barriers must be provided. Where the drop is between 150-600mm, wheel stops must be provided. These physical controls must be installed in accordance with the requirements of Section 2.4.5 of AS/NZS2890.1-2004. The design of structural barriers must be certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications;
- g. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces.
- h. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and
- i. The external form and height of the approved structures must not be altered from the approved plans.

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

15. Structural and Geotechnical Report

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

- a. The basement must be fully tanked to prevent the ingress of subsurface flows.
- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure.
- c. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years.

- d. All components of the basement, including footings, must be located entirely within the property boundary.
- e. No adverse impact on surrounding properties including Council's footpath and road.
- f. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development.
- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

16. 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

17. 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.

18. 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

19. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Light duty concrete vehicle crossing(s) at the vehicular access location(s). and
- b. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-“Roadworks Specifications”.

20. No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

21. 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.

22. Works as Executed – Site Stormwater Drainage System

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

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned, and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

23. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities. The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

24. Parking Signoff – Minor Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

ON-GOING**25. Operation and Management Plan**

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

26. Bin Storage

All bins are to be stored within the site.

ADVISORY NOTES**Permits**

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

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

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

Insurances

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

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges

from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

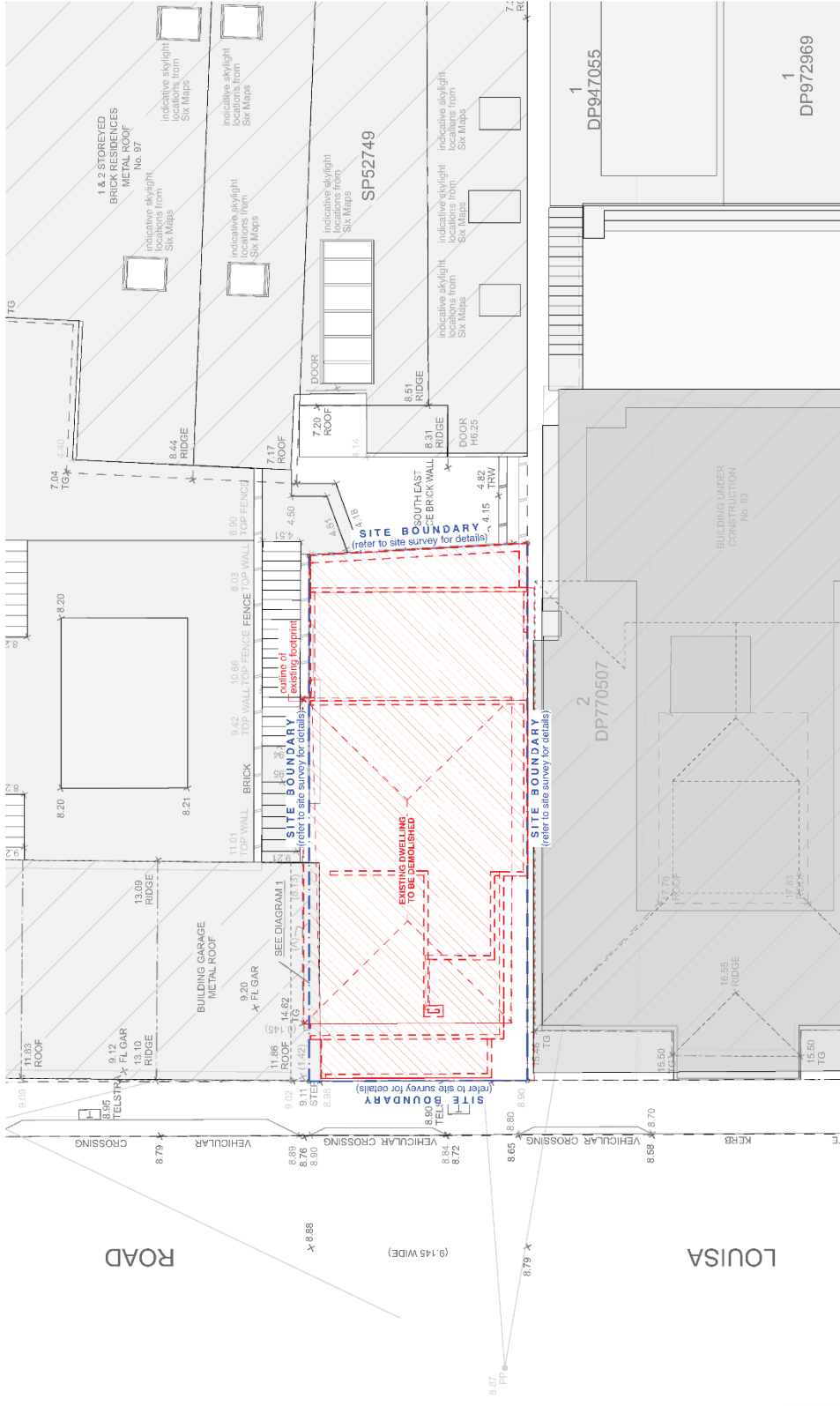
Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm 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 Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diyasafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - 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.

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Notes:
 Do not scale the drawings.
 Use figured dimensions only.
 All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS/NZS 1170.1 and AS/NZS 1170.2 unless otherwise stated.
 Verify all dimensions and levels prior to commencement of construction.
 Notify all discrepancies to the Architect.
 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

For Review
 NOT FOR CONSTRUCTION

Project: Dwalls
 Birchgrove Residence
 Client Name: Joseph Macri

Project: As-Hired
 95 Louisa Road
 Birchgrove NSW 2041

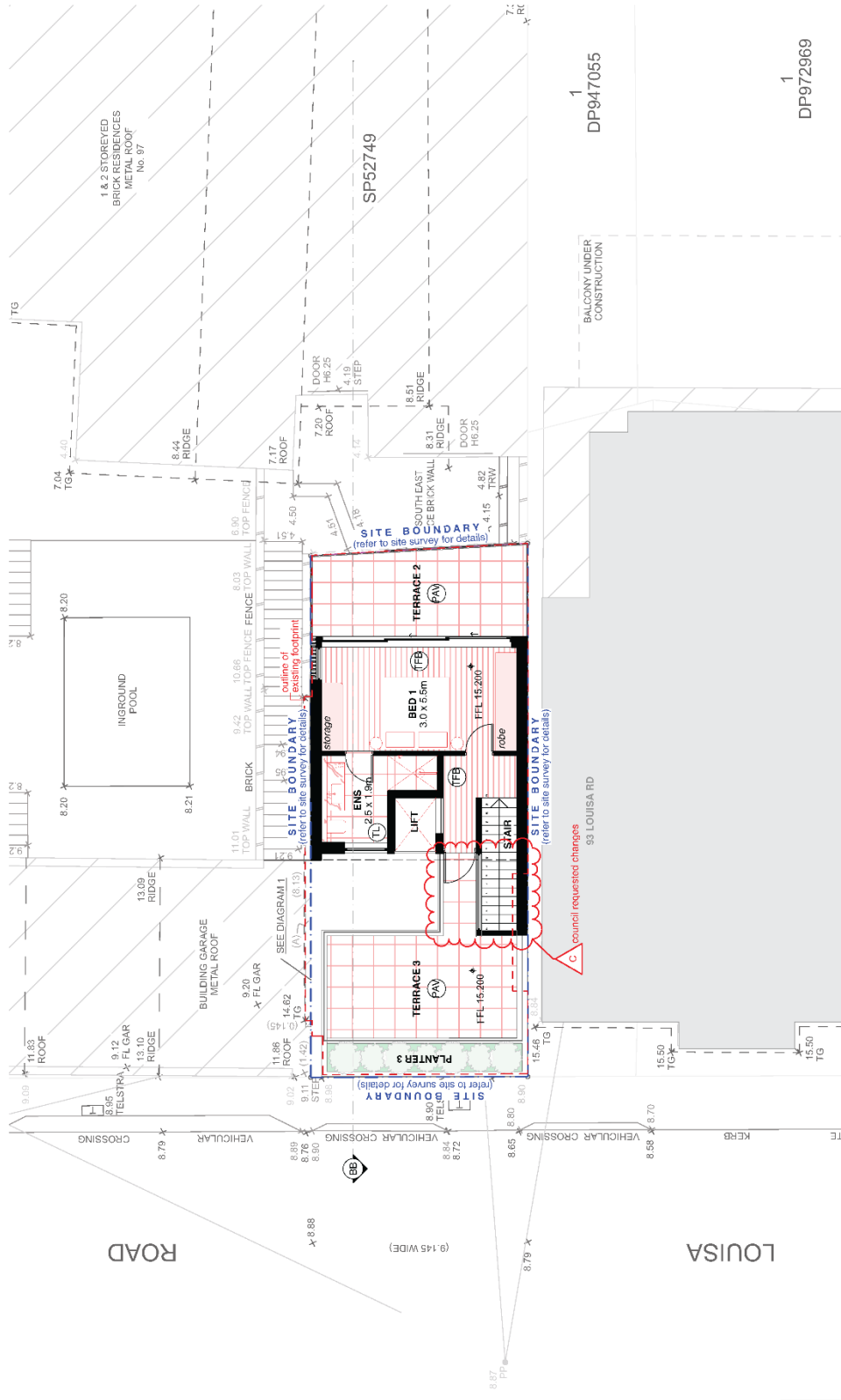
Project: Demolition Application
 Scale: 1:100 @ A3
 Drawing: ECNY
 Date: 28/02/2023
 Architect: MC

Development Application
 Demolition Plan
 DP947055
 DP972969

Project: michiru higginbotham.

Project: 2, 290228 DA L-ph
 LOUISA 2, 290228 DA L-ph

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Notes:
Do not scale the drawings.
Use figured dimensions only.
The drawings are to be read and used in accordance with the Australian Standards AS/NZS 1171:2017 and AS/NZS 1171:2017 (Part 2) for residential construction. Comply with the BASIX instructions. Comply with the BASIX certificate.
Notify all discrepancies to the Architect.
Document Set ID: 37522041
Version: 1, Version Date: 15/03/2023

FOR REVIEW
NOT FOR CONSTRUCTION

Project: Details
Bichgrove Residence
Client Name: Joseph Macri

Project: As-Filed
95 Louisa Road
Bichgrove NSW 2041

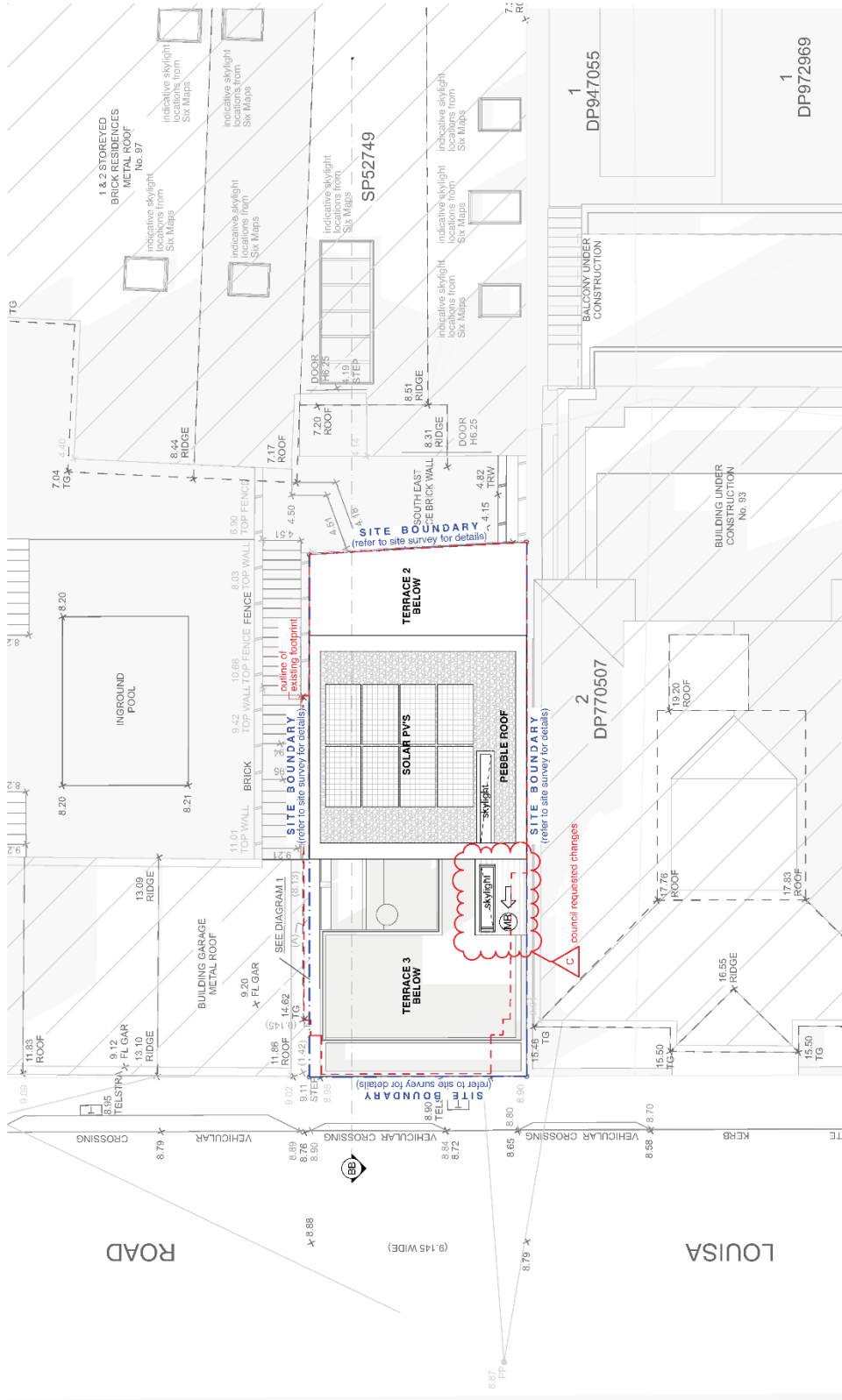
Project: Development Application
LEVEL 3 PLAN
Div # 28622023
Project Code: Residential
DAB5 LOUI C

Scale: 1:100 @ A3
Drawing: ECNY
Date: 28/02/2023
Architect: MC

Project: Details
michiru
higginbotham.

Project: Details
93 LOUISA RD
LOUISA 2, 290228 DA L-ph

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Development Application	
Scale	1:100 @ A3 [tag here]
Drawn	ECNY
Date	28/02/2023
Architect	MC
Project Name	ROOF PLAN
Drawn By	DA06 LOUI
Project Code	Residant
Client Name	C

Project: 95 Louisa Road
Bridgrove Residence
Client Name: Joseph Macri

Project: 95 Louisa Road
Bridgrove NSW 2041

michiru
higginbotham.

Notes:
Do not scale the drawings.
Use figured dimensions only.
Standard Australian units and metric units are used.
Verify all dimensions and levels prior to commencement of construction.
Notify all discrepancies to the Architect.
Document Set ID: 37522041
Version: 1, Version Date: 15/03/2023

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NOT FOR CONSTRUCTION

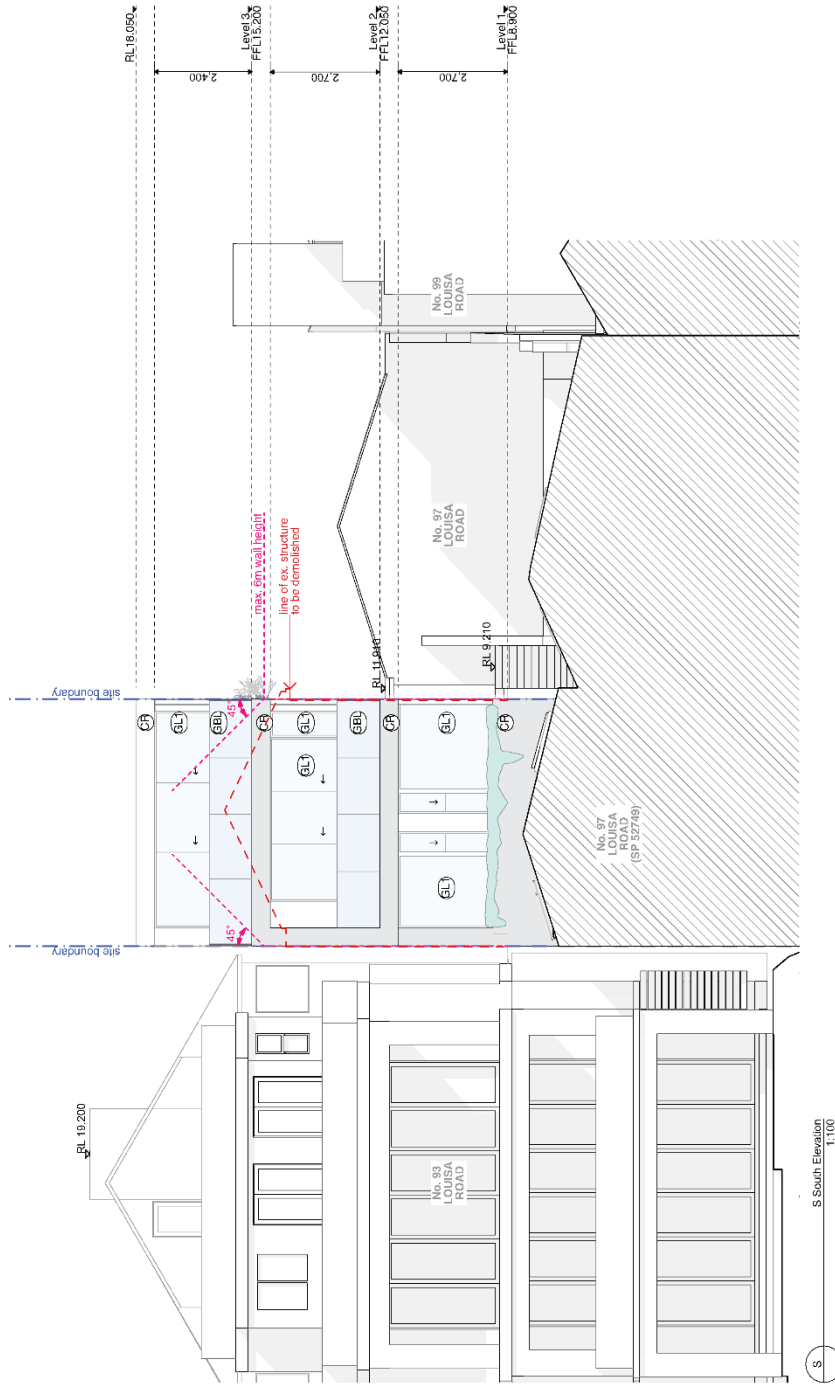
Notes: For Construction Documents

LOUISA 2.230228 DA L.ppt

Notes:
Do not scale the drawings.
Use figured dimensions only.
Standard Australian units and metric units are used.
Verify all dimensions and levels prior to commencement of construction.
Notify all discrepancies to the Architect.
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Version: 1, Version Date: 15/03/2023

Revision: Pinned - Revision Note
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Notes:
 Do not scale the drawings.
 Use figured dimensions only.
 All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS1742 (only residential) codes and manuals, and comply with the BASIX instructions. Comply with the BASIX certificate.
 Notify all discrepancies to the Architect.
 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

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NOT FOR CONSTRUCTION

Noted Preparation: FOR CONSTRUCTION Documents
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Project Details:
 Project: Birchgrove Residence
 Client Name: Joseph Macri

Project Address:
 95 Louisa Road
 Birchgrove NSW 2041

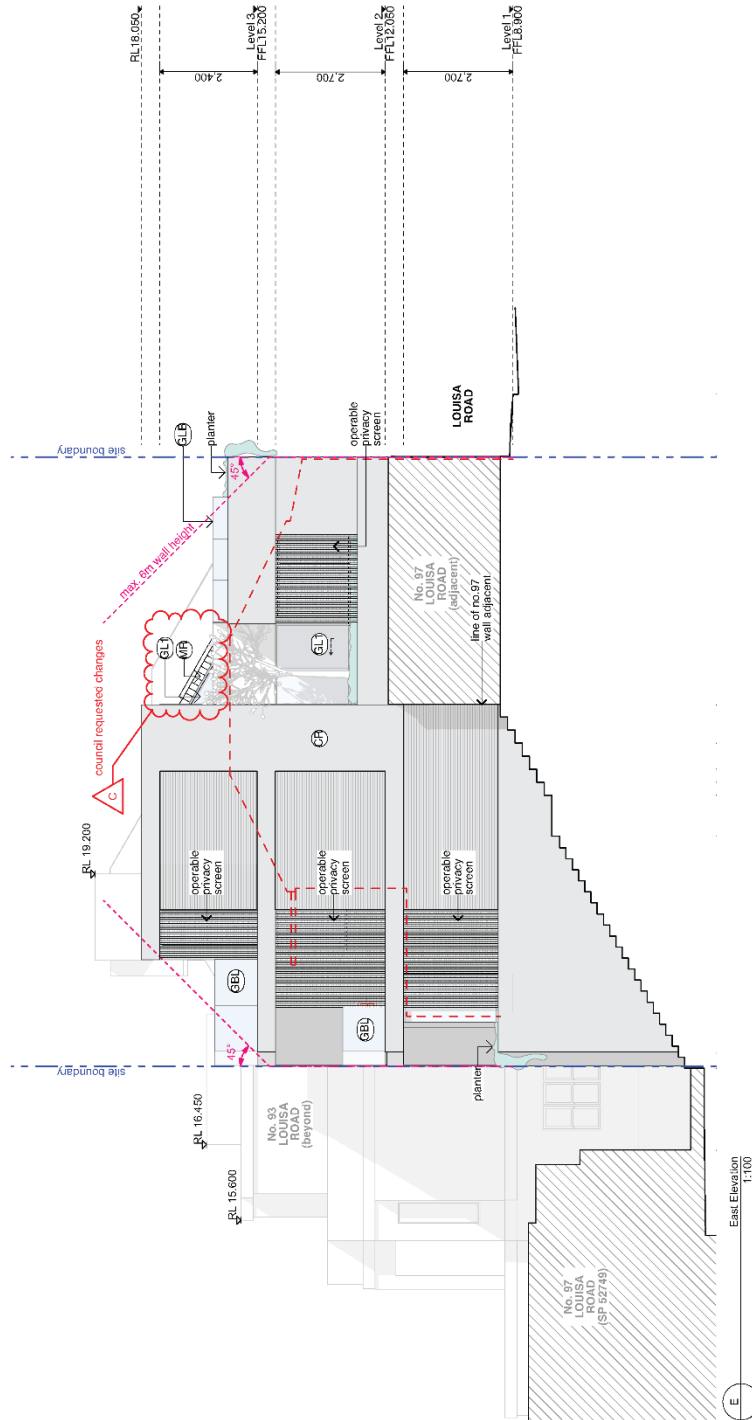
Development Application:
 Scale: 1:100 @ A3
 Drawn: ECYY
 Date: 28/2/2023
 Architect: MC

Project Name:
 michiru
 higginbotham.

Project Code: Residat #
 DAG8 LOU1 C

Revision: Pinned - Revision Note
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Development Application	
Scale	1:100 @ A3
Drawn	EC/Y
Date	28/2/2023
Architect	MC
Project Name	ELEVATION 3
Drawn By	Project: Coco Reuben +
Date	DA09 LOUI C

Project: As Above
 95 Louisa Road
 Birchgrove NSW 2041
 Client Name:
 Joseph Macri

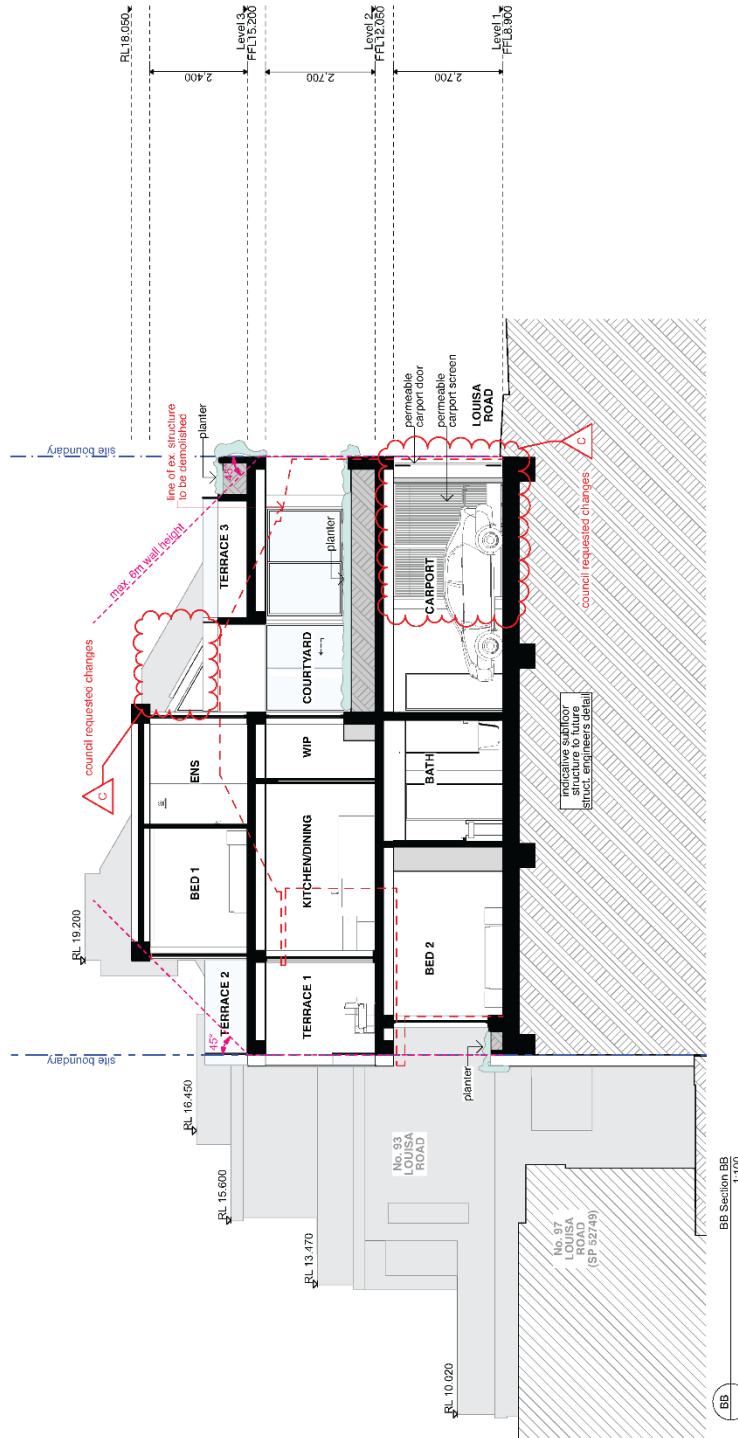
**michiru
higginbotham.**

Notes:
 Not for Preparation, FOR CONSTRUCTION Documents
**FOR REVIEW
 NOT FOR CONSTRUCTION**

All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS1562.1 and any other relevant codes and manuals. Comply with the BASIX certificate.
 Notify all discrepancies to the Architect.
 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

Revision: Pinned - Revision Note
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Notes:
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 Use figured dimensions only.
 Refer to the BASIX certificate and BASIX report for compliance with BASIX requirements.
 Verify all dimensions and levels prior to commencement of construction.
 Notify all discrepancies to the Architect.
 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

No. 97 LOUISA ROAD (SP 52749)
 No. 93 LOUISA ROAD
 No. 95 LOUISA ROAD (SP 52749)

BB Section BB
 1:100

Project: Details
 Project Address: 95 Louisa Road Brighmore NSW 2041
 Project Name: Brighmore Residence
 Client Name: Joseph Macci

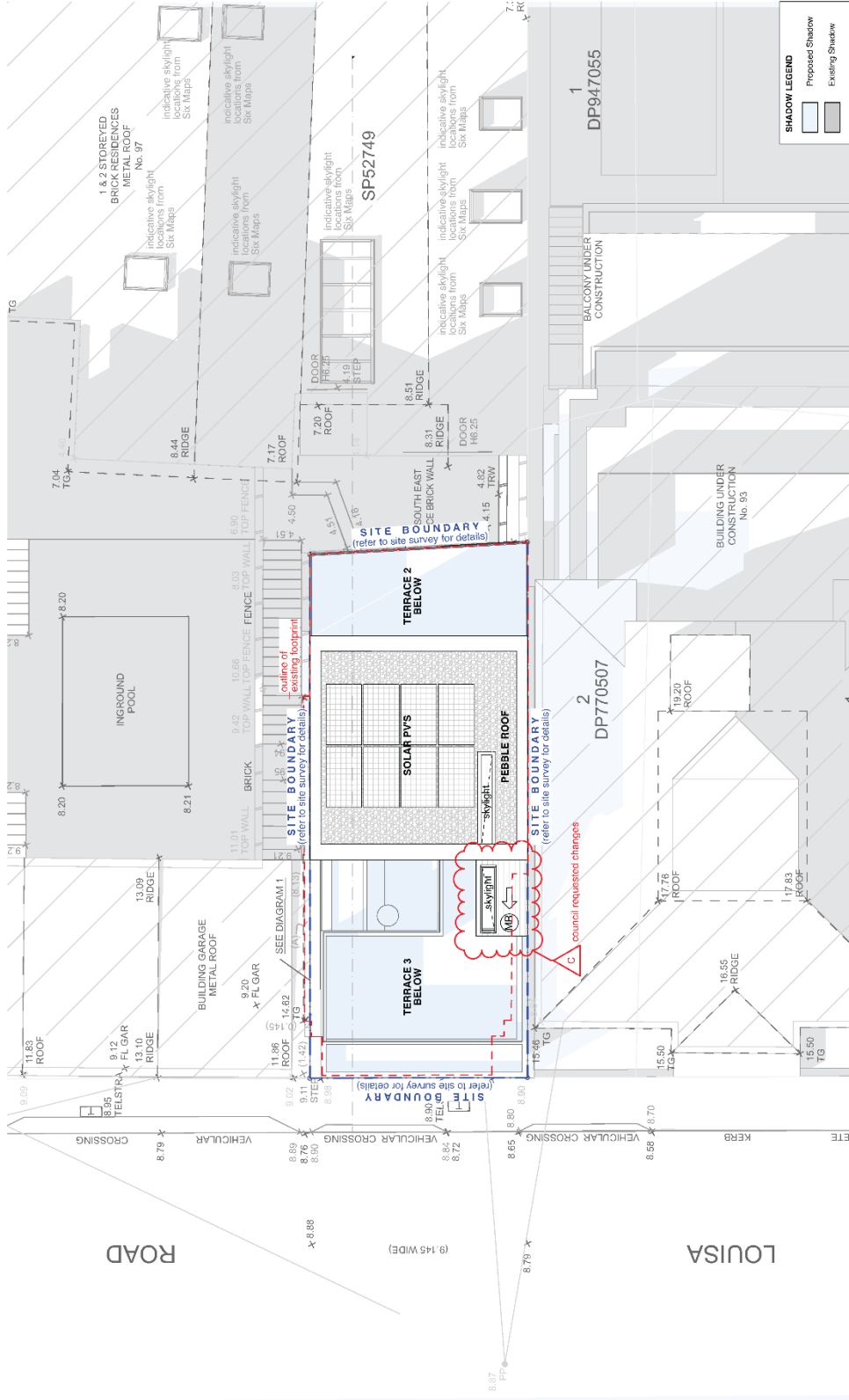
Project: As Above
 Project Address: 95 Louisa Road Brighmore NSW 2041

Development Application
 Scale: 1:100 @ A3
 Drawn: EC/Y
 Date: 28/2/2023
 Architect: MC

SECTION
 Day #: DA10
 Project Code: Residat #
 LOUI C

michiru higginbotham.

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Development Application

Scale	1:100 @ A3	Drawn by	Sam
Drawn	ECNY	Project	SHADOW PLAN - JUNE 21
Date	28/02/2023	Project Code	Reslab#
Architect	MC	DA#	LOUI C

Project: 95 Louisa Road
 Brickgrove NSW 2041

Client Name: Joseph Macri

Project: michiru higginbotham.

Project: 95 Louisa Road
 Brickgrove NSW 2041

Client Name: Joseph Macri

Notes:

Do not scale the drawings.

Use figured dimensions only.

Standard Australian metric units are used and all dimensions are in millimetres unless otherwise stated.

Notify all discrepancies to the Architect.

Document Set ID: 37522041

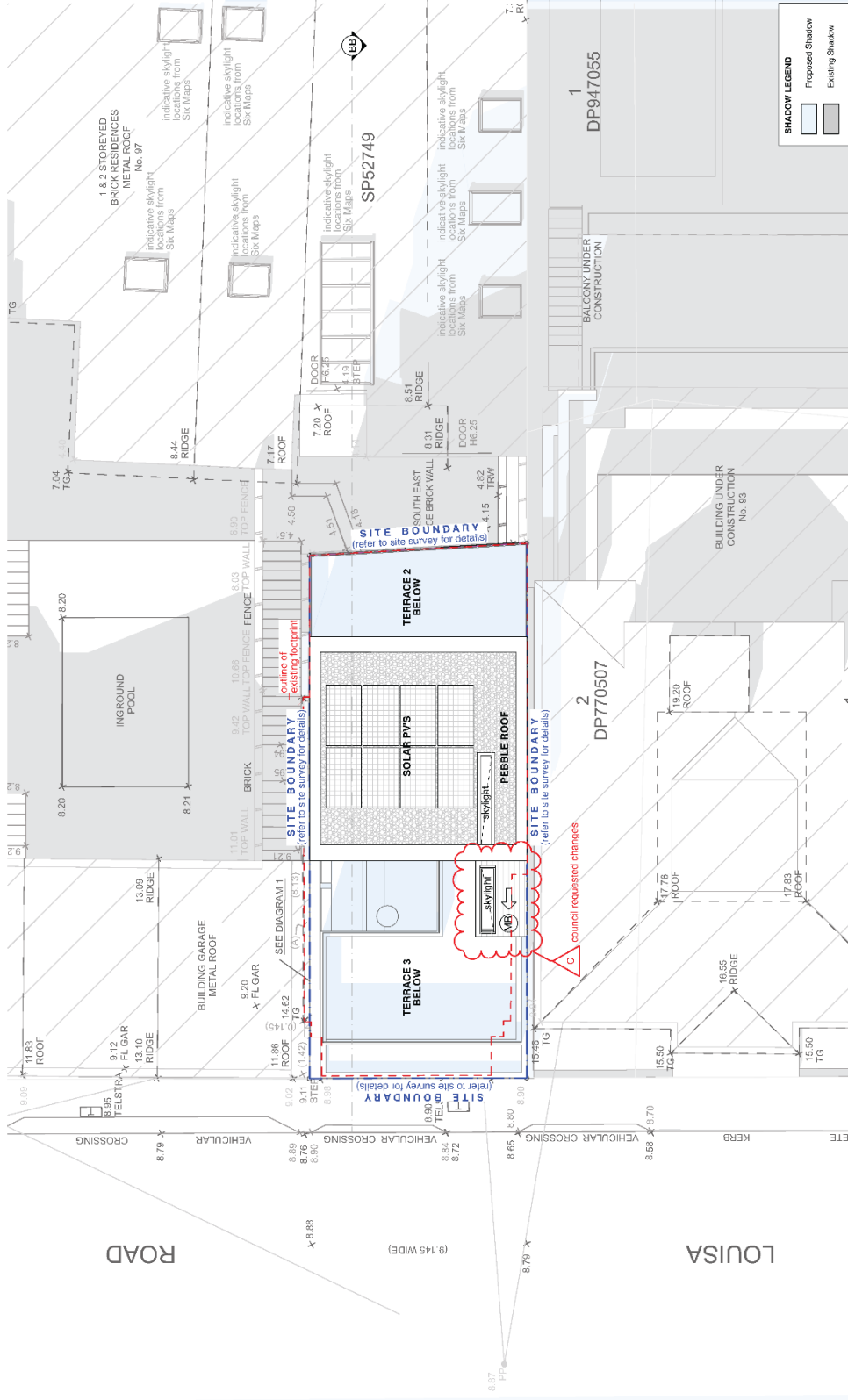
Version: 1, Version Date: 15/03/2023

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SHADOW LEGEND	
[Light Grey Box]	Proposed Shadow
[Dark Grey Box]	Existing Shadow

Development Application	
Scale	1:100 @ A3
Drawn	EC/YJ
Date	28/02/2023
Architect	MC
Project Name	SHADOW PLAN - JUNE 21
Project Code	Res/BAH #
DA#	DA12
LOU#	LOU1
City	C

Project Address:
 95 Louisa Road
 Birchgrove NSW 2041

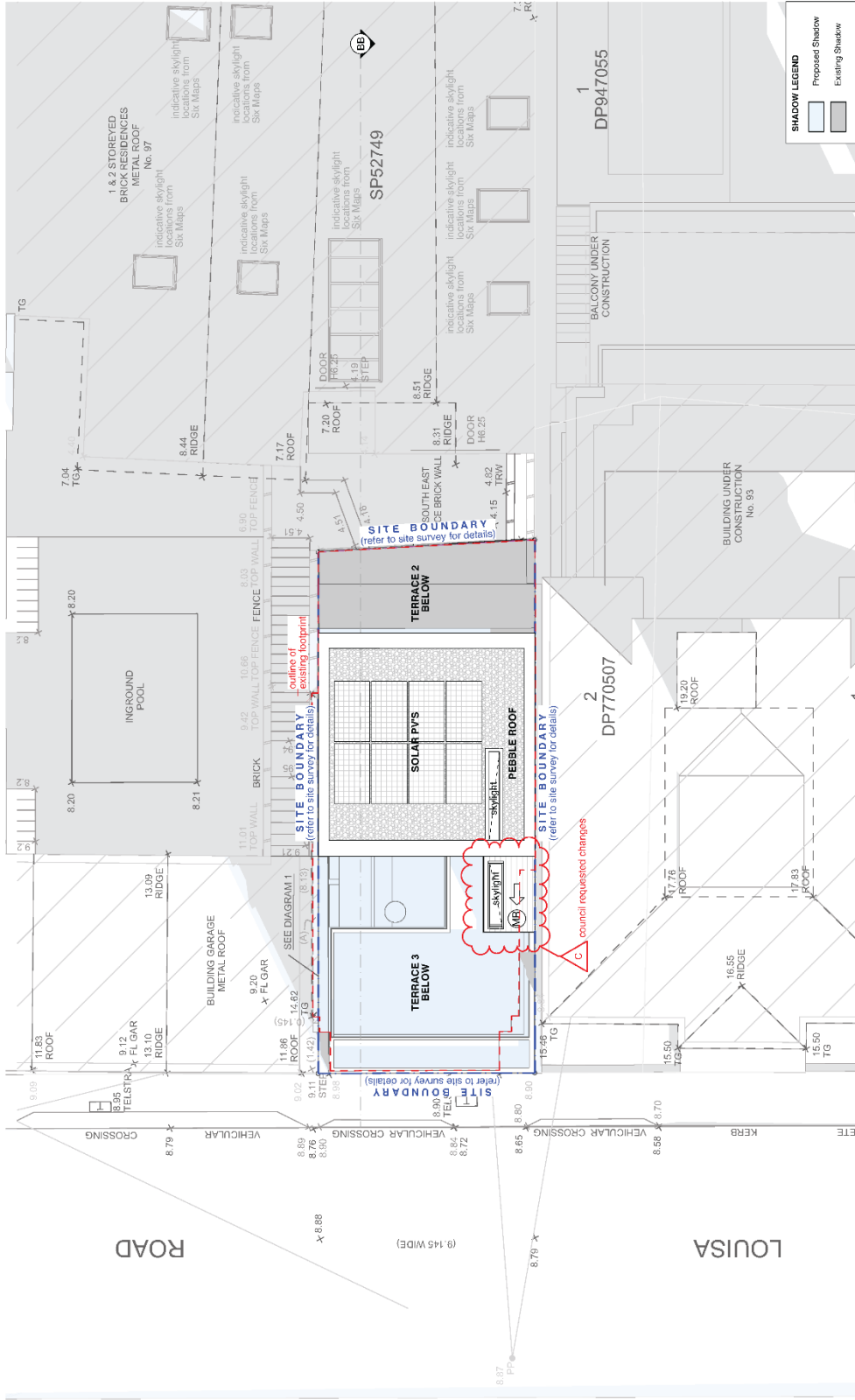
Client Name:
 Joseph Macri

Project Details:
 Birchgrove
 Residence

Notes:
 All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS1562.1 (2018) and all other relevant codes and standards, and in accordance with the BASIX instructions. Comply with the BASIX certificate.
 Notify all discrepancies to the Architect.
 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

Notes:
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 Use figured dimensions only.
 Verify all dimensions and levels prior to commencement of construction.
 Notify all discrepancies to the Architect.
 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

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Development Application

Scale	1:100 @ A3
Drawn	ECYV
Date	28/02/2023
Architect	MC
Project Name	SHADOW PLAN - JUNE 21 3pm
Project Code	DA13
Project Location	LOUI C

Project Address
95 Louisa Road
Bridgmore NSW 2041

Client Name
Joseph Macri

Project Details
Bridgmore Residence

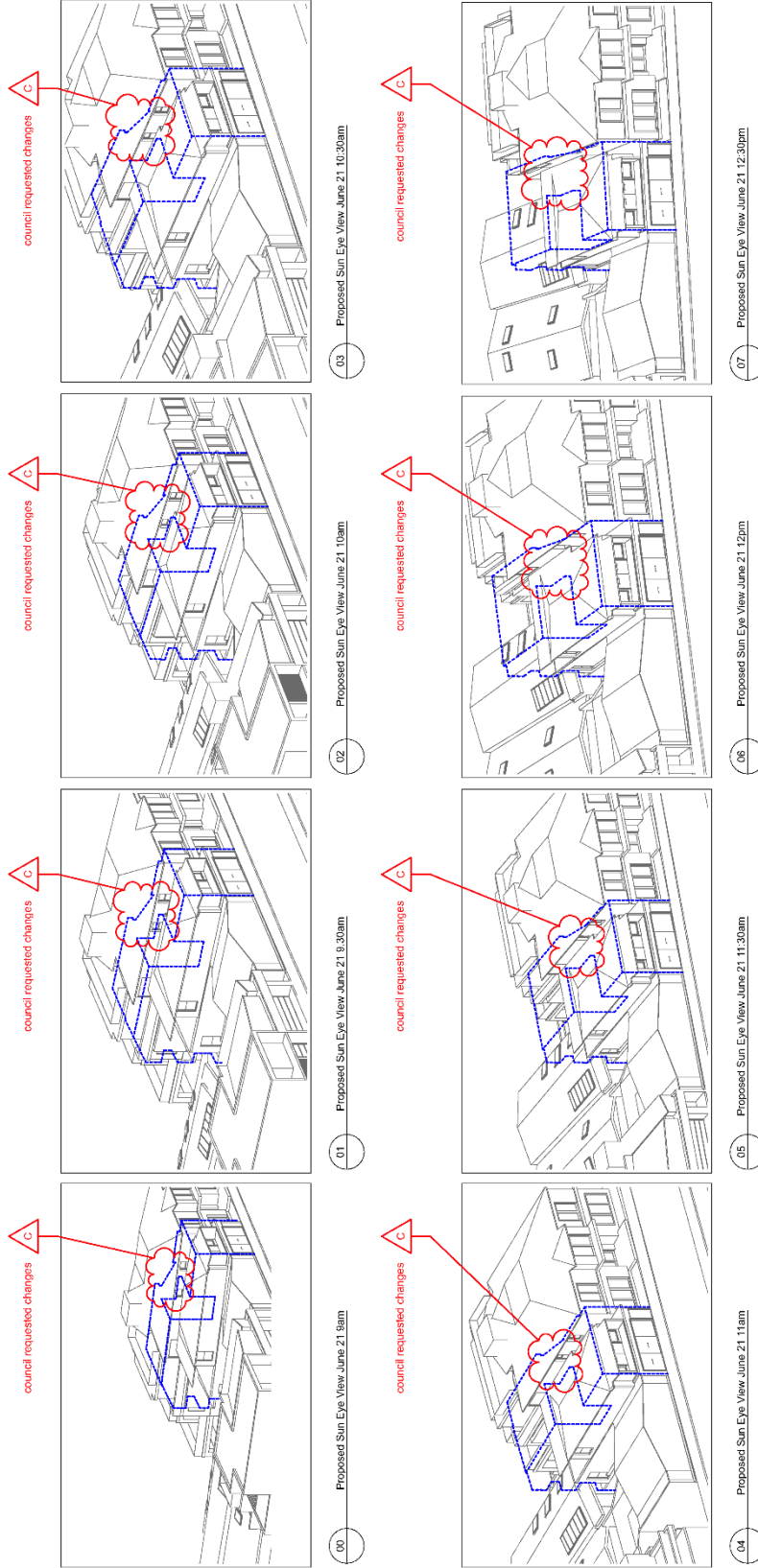
Project Details
Bridgmore Residence

Notes
Do not scale the drawings.
Use figured dimensions only.
Site and AS1188 levels and
verify all dimensions and levels prior to
commencement of construction.
Notify all discrepancies to the Architect.
Version: 1, Version Date: 15/03/2023

Notes
Do not scale the drawings.
Use figured dimensions only.
Site and AS1188 levels and
verify all dimensions and levels prior to
commencement of construction.
Notify all discrepancies to the Architect.
Version: 1, Version Date: 15/03/2023

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Notes:
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 Use figured dimensions only.
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 Notify all discrepancies to the Architect.
 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

Project Details
 Scale: NTS @ A3
 Drawn: ECYY
 Date: 28/2/2023
 Architect: MC

Project Address
 95 Louisa Road
 Birchgrove NSW 2041

Client Name
 Joseph Macri

Project Code
 DA14 LOUI C

Project Details
 Scale: NTS @ A3
 Drawn: ECYY
 Date: 28/2/2023
 Architect: MC

Project Address
 95 Louisa Road
 Birchgrove NSW 2041

Client Name
 Joseph Macri

Project Code
 DA14 LOUI C

Notes:
 Do not scale the drawings.
 Use figured dimensions only.
 All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS1742, and the council's and manufacturer's installation instructions. Comply with the BASIX certificate.
 Notify all discrepancies to the Architect.
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 Version: 1, Version Date: 15/03/2023

Development Application
 SUN EYE VIEW SHADOW ANALYSIS 1

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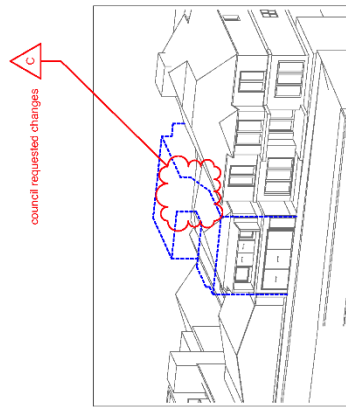


03 Proposed Sun Eye View June 21 2:30pm

02 Proposed Sun Eye View June 21 2pm

01 Proposed Sun Eye View June 21 1:30pm

00 Proposed Sun Eye View June 21 1pm



04 Proposed Sun Eye View June 21 3pm

LEGEND

---	Proposed Structure
-----	--------------------

Development Application

Drawing Details	Drawn by: NTS & AJ
Scale	ECNY
Drawn	SUN EYE VIEW SHADOW ANALYSIS 2
Date	28/2/2023
Architect	MC
Project Code	Reslab# *
DA#	LOUI
	C

Project: 95 Louisa Road
 Birchgrove NSW 2041
 Client Name: Joseph Macri
 Project: 95 Louisa Road
 Birchgrove NSW 2041
 Client Name: Joseph Macri

**michiru
 higginbotham.**

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 LOUIB.2.202228 DA L.rpt

Notes:
 Do not scale the drawings.
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 Notify all discrepancies to the Architect.
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 Comply with the BASIX certificate.
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 Version: 1, Version Date: 15/03/2023

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EXISTING VIEW - from Snells Bay



INDICATIVE PROPOSED VIEW - from Snells Bay

Notes:

Do not scale the drawings.
 Use figured dimensions only.
 All work to be carried out in accordance with the NCC/BCA, the Australian Standards AS/NZS 1170, and all codes and manuals, unless otherwise specified in the instructions. Comply with the BASIX certificate.
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 Version: 1, Version Date: 15/03/2023

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Project Details

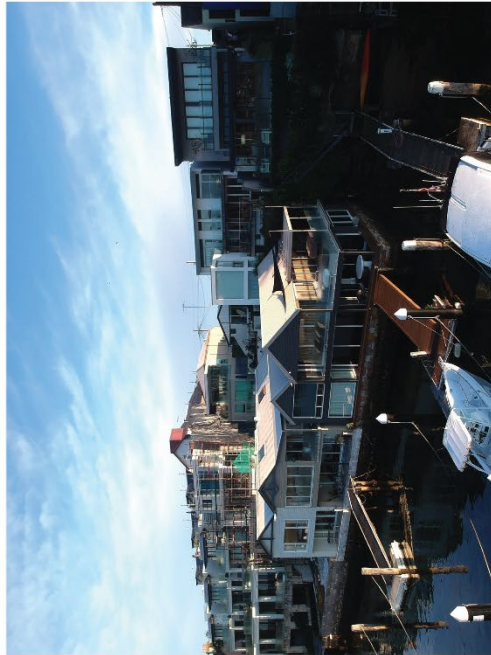
Project: Birchgrove Residence
 Client Name: Joseph Macri
 Project Address: 95 Louisa Road Birchgrove NSW 2041

Development Application

Drawing Details: Scale: NTS & A3
 Drawn: ECNY
 Date: 28/2/2023
 Architect: MC
 Day Name: PHOTOMONTAGE 1
 Day #: DA16
 Project Code: P160401 #
 LOUI. LOUI C

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 C 28/2/2023 For DA - Council Requested Changes

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EXISTING VIEW - from Snells Bay



INDICATIVE PROPOSED VIEW - from Snells Bay

Notes:

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 Use figured dimensions only.
 All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS1170.1 and any other codes and manuals, and comply with the BASIX instructions. Comply with the BASIX certificate.
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 Version: 1, Version Date: 15/03/2023

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Project Details

Project: Birchgrove Residence
 Client Name: Joseph Macri

Project Address: 95 Louisa Road
 Birchgrove NSW 2041

Drawing Details

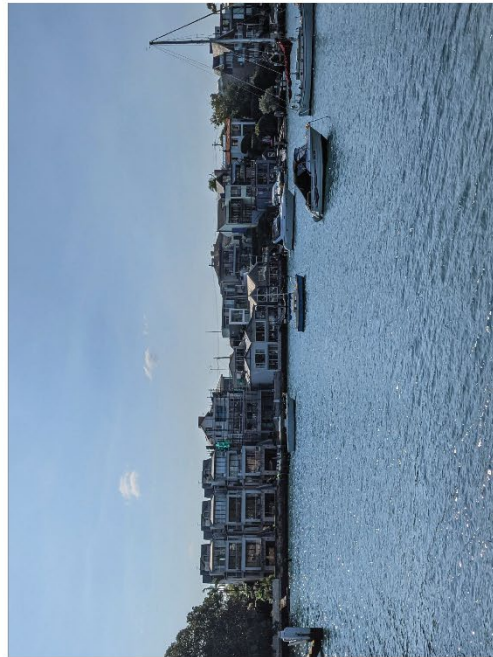
Scale: NTS @ A3
 Drawn: ECNY
 Date: 28/2/2023
 Architect: MC

Development Application

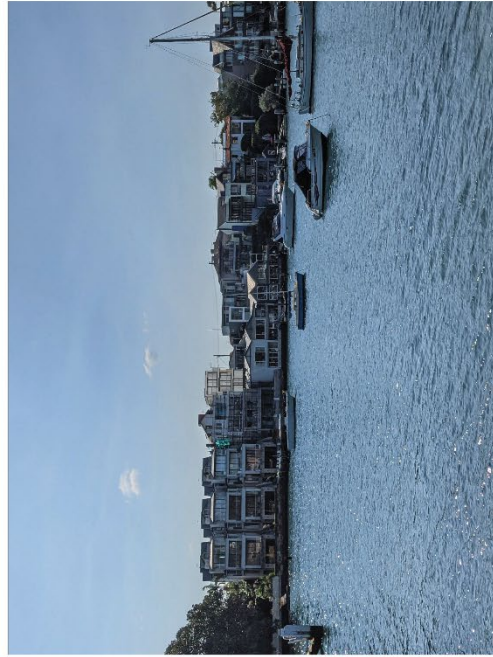
DA# Here: PHOTOMONTAGE 2
 DA# : DA17
 Project Code: PCH044 #
 LOUB LOU C

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EXISTING VIEW - from Snells Bay



INDICATIVE PROPOSED VIEW - from Snells Bay

Notes:

Do not scale the drawings.
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 All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS1170.1 and any relevant codes and manuals. Comply with the BASIX instructions. Comply with the BASIX certificate.
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Document Set ID: 37522041

Version: 1, Version Date: 15/03/2023

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Project Details:

Project: **Birchgrove Residence**
 Client Name: **Joseph Macri**
 Project Address: **95 Louisa Road Birchgrove NSW 2041**

Development Application

Drawing Details: **NTS, @ A3**
 Scale: **ECNY**
 Drawn: **ECNY**
 Date: **28/2/2023**
 Architect: **MC**
 Day: **PHOTOMONTAGE 3**
 Day #: **DA18**
 Project Code: **Reslabn #**
 Project: **LOUI**
 C

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higginbotham.

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C

council requested changes



1

Existing View from Louisa Rd



2

Indicative Proposed View from Louisa Rd

Notes:

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Document Set ID: 37522041
Version: 1, Version Date: 15/03/2023

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NOT FOR CONSTRUCTION

LOUIS.2.202208 DA L.pdf

Project: Details

Project: **Birchgrove Residence**
Client Name: **Joseph Macri**

Project Address: **95 Louisa Road Birchgrove NSW 2041**

michiru higginbotham.

Drawing Details

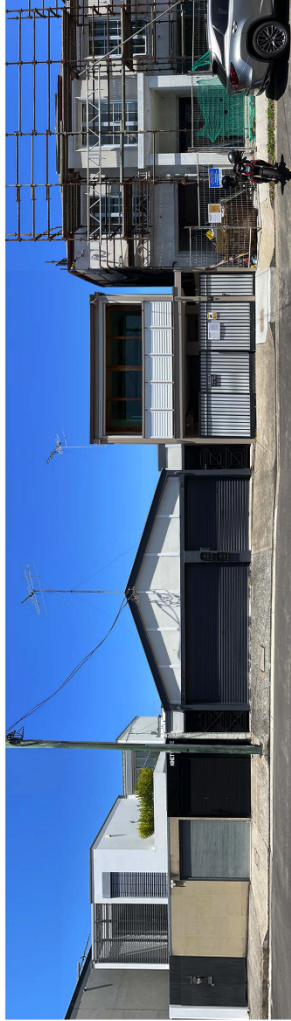
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Drawn: **ECNY**
Date: **28/2/2023**
Architect: **MC**

Development Application

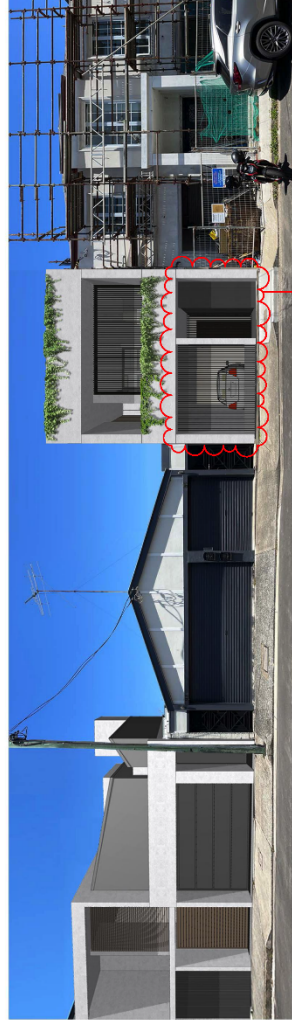
DA# Name: **PHOTOMONTAGE 4**
DA# Project Code: **Residual #**
DA# LOUIS: **LOUIS C**

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99 A & 99
 Existing View from Louisa Rd



99 A & 99
 Indicative Proposed View from Louisa Rd



93
 Council requested changes

Notes:

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 Use figured dimensions only.
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 Document Set ID: 37522041
 Version: 1, Version Date: 15/03/2023

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Project: Details

Birchgrove Residence
 Client Name: Joseph Macri

Project: As-Plans

95 Louisa Road
 Birchgrove NSW 2041

Drawing Details

Scale: NTS, @ A3
 Drawn: ECNY
 Date: 28/2/2023
 Architect: MC

Development Application

Project Name: PHOTOMONTAGE 5
 Day #: DA20
 Project Code: PCH0441 #
 Day #: DA20
 LOUI C

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C council requested changes



1 Existing View from Louisiana Rd



2 Indicative Proposed View from Louisiana Rd

Approved DA:2022/0120

Notes:

Do not scale the drawings.
Use figured dimensions only.
Check and verify all dimensions and levels prior to commencement of construction.
Notify all discrepancies to the Architect.

Document Set ID: 37522041
Version: 1, Version Date: 15/03/2023

Noted Preparation: FOR CONSTRUCTION Documents

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NOT FOR CONSTRUCTION

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Project Details		Project: Details	
Project:	Bicgrove Residence	Project Address:	95 Louisa Road Bicgrove NSW 2041
Client Name:	Joseph Macri	Scale:	NTS, @ A3
Client Name:	Joseph Macri	Drawn:	ECNY
Client Name:	Joseph Macri	Date:	28/2/2023
Client Name:	Joseph Macri	Architect:	MC
Development Application		Development Application	
Drawn:	ECNY	Draw Name:	PHOTOMONTAGE 6
Date:	28/2/2023	Draw #:	001
Architect:	MC	Project Code:	Reslabi #
		DA#1:	LOUI
			C

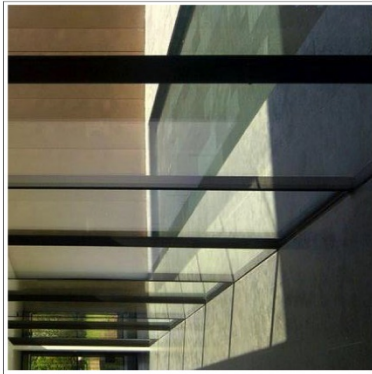
michiru
higginbotham.

Revision: Pinned - Revision Note
 C 28/2/2023 For DA - Council Requested Changes

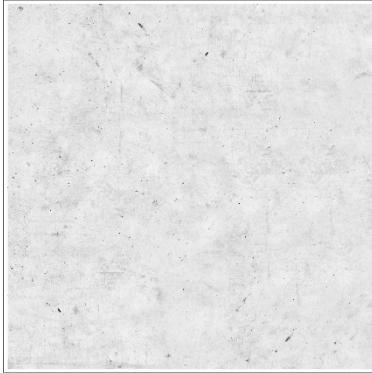
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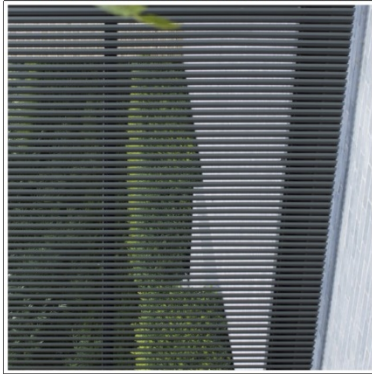
Operable Privacy Screen



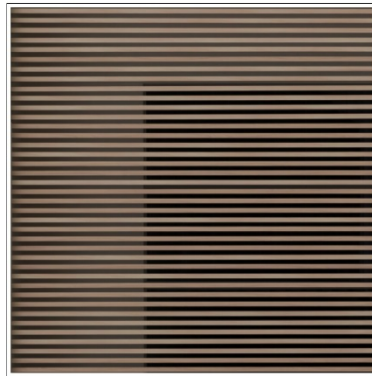
Metal Windows



Cement Textured Render



Permeable Carport Door



Privacy Louvers



Facade Texture



Internal Planting



Metal Roof



council requested changes

Notes: Do not scale the drawings. Use figured dimensions only. Standard Australian units and metric units shall apply unless otherwise specified. Verify all dimensions and levels prior to commencement of construction. Notify all discrepancies to the Architect. All work to be carried out in accordance with the NCC/BCA, the Australian Standard AS/NZS 1530.1 and the manufacturer's instructions. Comply with the BASIX certificate. Document Set ID: 37522041 Version: 1, Version Date: 15/03/2023

Project: Dwalls
 Project Address: 95 Louisa Road Birchgrove NSW 2041
 Client Name: Joseph Macri

Project: Dwalls
 Scale: NTS, @ A3
 Drawn: ECNY
 Date: 28/2/2023
 Architect: MC

Development Application
 MATERIAL SCHEDULE
 Day # DA23
 Project Code: P00001 # LOUI C

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 LOUIB.2.202228 DA L.ppt

michiru
 higginbotham.

Attachment C- Section 4.6 Exception to Development Standards



**PROPOSED DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF A NEW
DWELLING HOUSE
95 LOUISA ROAD, BIRCHGROVE**

Clause 4.6 - Exceptions to development standards (Floor Space Ratio)

This Clause 4.6 Submission is prepared in support of a Development Application which seeks approval for the demolition of the existing dwelling followed by the construction of a new three storey dwelling upon the subject site.

A variation is sought in respect of compliance with Clause 4.4 - Floor Space Ratio of the Inner West LEP 2022.

The subject site is located within the “D” floor space area zone and as such is ordinarily subject to a maximum FSR of 0.5:1.

Despite the above provision and in accordance with sub-clause (2B)(b) the maximum permissible FSR for the purposes of residential accommodation identified as ‘Area 4’ is 1:1. In this instance and based upon a site area of 90.6m², a maximum permissible floor area of 90.6m² is applicable.

The proposal provides for a total floor area of 117.2m² or 1.29:1 resulting in a non-compliance with this clause.

The existing dwelling house erected upon the site has a floor area of 95.6m² and which equates to an FSR of 1.06:1 and which also exceeds the maximum permitted FSR control for the site.

The following Clause 4.6 variation is provided in support of the proposed FSR non-compliance.

This Clause 4.6 variation has been prepared in accordance with the approach adopted by the Land & Environment Court of NSW in its recent Court decisions.

It is submitted that the variation is well founded and is worthy of the support of the Council.

Minto Planning Services P/L

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6(1) of the LEP are:

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

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

It is also considered in the circumstances, a flexible approach to the application is warranted.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

A “development standard” is defined in Section 4 of the Environmental Planning & Assessment Act as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Minto Planning Services P/L

Clause 4.4 is contained within Part 4 of the Inner West LEP 2022 and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to what matters constitute development standards.

It is also noted that Clause 4.4 does not contain a provision which specifically excludes the application of Clause 4.6 and vice versa.

On this basis it is considered that Clause 4.4 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 under the Inner West Local Environmental Plan 2022):

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications that may be used to demonstrate that compliance with a development standard is unreasonable or unnecessary:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The first justification is applicable in this instance.

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The following assessment of the proposal is provided against the objectives of Clauses 4.4 of the Inner West LEP 2022.

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

The subject site has an area of 90.6m². The maximum FSR for the site is 1:1 or 90.6m². It is not considered that the maximum FSR in this instance would allow for appropriate development density.

The existing dwelling house erected upon the site has a floor area of 95.6m² and which equates to an FSR of 1.06:1 which also exceeds the maximum permitted FSR control for the site.

The proposal seeks to increase the existing FSR by 21.6m².

The resultant floor area of 117.2m² is not considered to be excessive and is equivalent to what the State Government would ordinarily require for a 3 bedroom dwelling.

(b) to ensure development density reflects its locality,

It is my opinion that the proposed development density is reflective of dwellings within this locality and where it is considered normal for dwellings to have an FSR which either meets or exceeds the current maximum requirements Clause 4.4 of the LEP. The proposal involves a minor increase from the existing GFA of 95.6m² to 117.2m² and is consistent with the objectives of the zone.

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

This objective is not applicable to the proposal.

(d) to minimise adverse impacts on local amenity,

It is my opinion that the proposal will not result in any amenity impacts upon nearby or adjoining properties.

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

Whilst it is considered that the site is not capable of increased tree canopy the proposal does result in the protection of the use and enjoyment of private properties and the public domain.

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On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered pursuant to Clause 4.6(3)(b) of the LEP that a contravention of the development standard is justified on environmental planning grounds given that:

- The existing FSR of the site is 1.06:1 and which currently exceeds the maximum permitted FSR for the site.
- The subject site has an area is 90.6m². The maximum FSR permitted is 1:1 or 90.6m². Reference is made to the below cadastral map of the area which demonstrates that the site is significantly smaller than all other lots.



An extract from Council's Cadastre Mapping

It is considered that strict compliance would prevent the orderly and economic development of the land in accordance with Objective 1.3(c) of the Environmental Planning and Assessment Act.

5. Is the proposed development 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.

The proposed development pursuant to Clause 4.6(4)(a)(ii) of the LEP is in my opinion in the public interest because it is compliant with both the zone objectives and the objectives of the particular standard.

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The objectives for the R1 - General Residential zone are:

- *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.*

Comment

The proposal seeks to provide for a new dwelling house upon the subject site and which is generally compliant with the requirements of the Council.

The proposed development is in my opinion compatible with the scale and character of the surrounding residential development. The proposal will not result in any unreasonable amenity impacts upon adjoining properties and based upon the accompanying Heritage Impact Statement will not result in any unreasonable heritage impacts.

The proposal is, therefore considered to be consistent with the above objectives.

As detailed in response to Question 3 of this variation, the proposal is also considered to be consistent with the objectives of Clause 4.4 of the Inner West LEP.

In the absence of any unreasonable impact and given the proposals compliance with the applicable objectives, the proposal is considered to be in the public interest.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given that the proposal will result in a built form having a bulk and scale with spatial separation from adjoining properties consistent with that envisaged by the Council controls.

It is therefore my opinion that in the absence of any detrimental impact that the proposal is in the public benefit.

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Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the maximum floor space ratio control as required by Clause 4.4 of the Inner West LEP 2022 is appropriate in this instance.



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Clause 4.6 - Exceptions to Development Standards

Clause 4.3C - Landscape Areas for Residential Accommodation in Zone R1 95 Louisa Road, Birchgrove

Clause 4.6 - Exceptions to development standards (Landscape Areas for Residential Accommodation in Zone R1)

As detailed below the proposal does not technically comply with the requirements of Clause 4.3C of the LEP in relation to landscape area and site coverage.

The subject site is located in Zone R1 General Residential and is identified as 'Area 1' on the Key Sites Map. Residential accommodation with a site area of 235m² or less must result in a landscaped area of 15% of the site area and the maximum site coverage is 60%.

Whilst the proposal provides for a landscaped area of 17.88% the areas included in the landscaped area calculation do not strictly meet with the requirements of subclause (4)(b) and (c) in that they include podium planting and planter boxes as opposed to deep soil planting.

The proposal provides for a site coverage of 98% which exceeds the requirements of subclause (3)(b). The subject site currently has a site coverage of 95.5%.

It is submitted that the landscaped area and site coverage requirements as required by Clause 4.3C of the LEP is a development standard contained in Part 4 of the LEP and that any variation of its requirements requires the preparation of a submission pursuant to Clause 4.6 of the LEP.

This Clause 4.6 variation has been prepared in accordance with the approach adopted by the Land & Environment Court of NSW in its recent Court decisions.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following assessment of the proposed variation against the requirements of Clause 4.6 is therefore provided.

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1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

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

It is my opinion, as demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

A “development standard” is defined in Section 4 of the Environmental Planning & Assessment Act as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3C is contained within Part 4 of the Inner West LEP 2022 and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to what matters constitute development standards.

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It is also noted that Clause 4.3C does not contain a provision which specifically excludes the application of Clause 4.6 and vice a versa.

On this basis it is considered that Clause 4.3C is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 under the Inner West Local Environmental Plan 2022):

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications that may be used to demonstrate that compliance with a development standard is unreasonable or unnecessary:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The first justification is applicable in this instance.

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The following assessment of the proposal against the requirements of Clause 4.3C is provided:

(a) to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,

The subject site is not considered to be of sufficient size to support both substantial tree planting and a dwelling house.

The proposal includes the detailed landscaping of the site in accordance with the Landscape Plan prepared by Eco Design which accompanies this application. The landscape plan provides for plants to be provided within the proposed planter boxes to the edge of the proposed terraces located at each level.

It is my opinion that the proposal provides an appropriate level of landscaping for the use and enjoyment of residents.

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

The subject site and surrounding area is not characterised by an existing landscaped corridor between adjoining properties. This objective is therefore not considered to be applicable to the proposal.

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

It is my opinion that the proposal will provide for an outcome which promotes and is compatible with the desired character of the neighbourhood.

(d) to encourage ecologically sustainable development,

The proposal provides for a development which complies with the requirements of BASIX.

(e) to control site density,

It is my opinion that strict compliance with the landscape area and site coverage requirements of this clause would result in an outcome whereby the dwelling could not support a reasonable sized dwelling.

It is considered that strict compliance would prevent the orderly and economic development of the land in accordance with Objective 1.3(c) of the Environmental Planning and Assessment Act.

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

It is submitted that the proposal does provide for landscaped areas and private open space which is commensurate of a site having an area of 90.6m².

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified on environmental planning grounds given that:

- The proposal will not result in the reduction of the existing landscaped area of the site and does not require the removal of any vegetation from the site.
- The proposed new dwelling will result in minimal environmental impacts on both the natural and built environments.
- The proposal is consistent with the surrounding general residential environment and heritage conservation area as detailed in the Heritage Impact Statement prepared by John Oultram Heritage & Design.
- The proposed site coverage is 98% and which exceeds the requirements of subclause 3(b). It is noted that the existing site coverage is 95.5%. The existing and proposed site coverage is considered to be reflective of the small nature of the existing site and which necessitates a high site coverage in order to accommodate an appropriately sized dwelling.
- The proposed landscape area of 17.88% whilst not strictly meeting the requirements of subclause (4)(b) and (c) is considered to satisfy the objectives of Clause 4.3C and will provide for landscaping which contributes the character of the area and which will enhance the amenity of future occupants of the site.
- It is considered that strict compliance would prevent the orderly and economic development of the land in accordance with Objective 1.3(c) of the Environmental Planning and Assessment Act.

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5. **Is the proposed development 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.**

The proposed development is in my opinion in the public interest because it is compliant with the zone objectives and the objectives of the particular standard.

In this regard the proposal is considered to be consistent with the relevant objectives of the R1 - Low Density zone as detailed below.

- *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.*

Comment

The proposal will in my opinion result in a new dwelling house which remains consistent with the Birchgrove Distinctive Neighbourhood and Louisa Road Sub Area as well as the surrounding Birchgrove and Ballast Point Road HCA as detailed in the Heritage Impact Statement prepared by John Oultram Heritage & Design.

The concluding statement of the Heritage Impact Statement details that:

Overall, we consider that the current house on the site is not at a level of significance that would preclude its demolition.

The new dwelling is an appropriate infill development that will fit well into the local streetscape and is sympathetic to the current, built pattern of the area.

The proposal uses appropriate forms and materials and will have no detrimental effect on the local streetscape by providing an appropriate treatment of the front façade.

We consider that the proposal will have an acceptable impact on the conservation area and meets the heritage aims and objectives of the DCP.

In heritage terms, we consider that the proposals be approved.

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The proposed dwelling house is purpose built to provide high levels of amenity without compromising the surrounding residential environment.

The proposed works provide for a new dwelling house and increased landscape area currently provided upon the site.

As detailed in response to Question 3 the proposal is considered to satisfy the objectives of Clause 4.3C of the LEP.

The proposal therefore in my opinion is consistent with the applicable objectives of both Clause 4.3C of the LEP and the R1 - General Residential Zone and is therefore in the public interest.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the absence of any unreasonable detrimental impacts and the public benefit that arises from the provision of varying the minimum landscaped area requirement.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the landscape area and site coverage requirements of Clause 4.3C of the Inner West LEP 2022 is appropriate in this instance.



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