

INNER WEST				
DEVELOPMENT ASSESSMENT REPORT				
Application No.	MOD/2022/0474			
Address	93 Louisa Road BIRCHGROVE			
Proposal	Modification to development consent D/2018/25 including (but not limited to) changes to building footprint, windows, internal layout, balcony/deck/roof terrace, screening, balustrades, fenestration, lift overrun; materials, colours and finishes also amended.			
Date of Lodgement	23 December 2022			
Applicant	Mr Franco Bilotta			
Owner	Mr Franco Bilotta & Mrs Barbara Bilotta			
Number of Submissions	Initial: 2			
Value of works	\$1,464,000.00			
Reason for determination at Planning Panel	Departure to FSR development standard exceeds 10%			
Main Issues	<ul style="list-style-type: none"> - Non-compliance with FSR - Substantially the same development (Section 4.55) - Visual privacy - Unauthorised works - Heritage 			
Recommendation	Approved with Conditions			
Attachment A	Recommended conditions of consent			
Attachment B	Plans of proposed development			
Attachment C	Statement of Heritage Significance			
LOCALITY MAP				
Subject Site		Objectors		
Notified Area		Supporters		

1. Executive Summary

This report provides an assessment of the application to modify consent D/2018/25 dated 12 June 2018 under s4.55(2) of the Environmental Planning and Assessment Act 1979 at 93 Louisa Road Birchgrove.

The proposed modifications include changes to building footprint, windows, internal layout, balcony/deck/roof terrace, screening, balustrades, fenestration, roof form, lift overrun, materials, colours and finishes.

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

The main issues that have arisen from the application include:

- Unauthorised works
- Substantially the same development (Section 4.55)
- Non-compliance with FSR
- Visual Privacy
- Heritage

The non-compliances are acceptable on merit for reasons summarised below and therefore the application is recommended for approval.

- Continuation of the use of external and internal unauthorised works are sought under the subject modification under the parameters of s4.55(2) of the EPA Act.
- For the purposes of satisfying the relevant test under Section 4.55(2), the application is considered to be, in essence, substantially the same development as that originally approved (and as modified) with reference to all relevant case law.
- The FSR of the development as proposed to be modified by the Modification Application is 35sqm more than the GFA previously approved. Notwithstanding, the increase in GFA will not result in adverse amenity impacts to neighbouring properties or the streetscape and is consistent with the objectives of the FSR development standard and the R1 General Residential Zone.
- Visual privacy as a result of modifications to windows will not result in any overlooking impacts to neighbouring properties.
- The development as modified will not result in any significant impacts on the amenity of the adjoining premises/properties (including views, solar access, bulk and scale and visual privacy) and the streetscape and is considered to be in the public interest.

2. Proposal

Determination No. D/2018/25, dated 4 December 2018, approved an application for demolition of the existing dwelling and associated structures, remediation of site, construction of a new dwelling with basement parking provided with a car lift and landscaping.

This application seeks to modify Development Consent D/2018/25 in the following manner:

1. To seek retrospective approval for the continuing use of various unauthorised internal and external modifications to the approved dwelling that have been constructed, contrary to consent D/2018/25 (as modified) pursuant to Section 4.69(1)(b) of the *Environmental Planning & Assessment Act 1979* as follows:

- Extension of lower stairs to the boundary
 - Construction of a pizza oven in the terrace area at basement level measuring 4.06sqm which exceeds the size requirements for exempt development
 - Extension of the basement and ground level carparks by squaring up the walls which are shown as curved on the plans in the north-eastern corners to the boundaries of the site
 - Installation of internal roller doors to car lift on basement and lower ground floors
 - Replacement of two windows in the basement bathroom within the western façade with a single window
 - Construction of a lift service box in the rumpus room of the basement level where a fireplace is shown in approved plan
 - Construction of a 1000mm high wall on the western side of the basement level terrace and a privacy wall on the eastern side
 - Addition of a glazed corner in the south-eastern corner of the dining room identified as W06 on the upper ground floor, and delete one window in the eastern elevation of the dining room
 - Deletion of two windows in the western elevation of the kitchen on the upper ground floor and widening of the door opening to the terrace
 - Enlargement of the external columns on the terrace on the upper ground floor by 100mm
 - Moving of the eastern wall of Bedroom 1 on the first floor closer to the eastern boundary by 220mm
 - Extension of the slab in the south-eastern and north-eastern corners to increase non-trafficable areas outside Bedroom 1 and replacement of 900mm high iron balustrades with glass
 - Changing of the design of the doors from bedroom 1 to the terrace in the southern elevation from French doors to sliding glass doors
 - Extension of the first-floor bedroom 1 window opening across the entire eastern wall where no windows have been approved
 - Replacement of the French doors on the southern elevation of the bathroom on the first floor to a window
 - Reconfiguration of the internal walls on the first floor to delete Bedroom 5 and amalgamate the space into Bedroom 1's walk-in-robe
 - Enlargement of Bedrooms 2 and 4 on the first floor by moving walls towards the stair landing
 - Movement of the eastern wall of the roof terrace (over Bedroom 1) 220mm closer to the eastern boundary
 - Deletion of the linen cupboard outside bathroom 2 on the first floor
 - Introduction of rendered and painted walls 540mm high on the eastern and western side of the roof terrace instead of glass balustrades
 - Reconfiguration of the internal walls near the landing of the staircase on the roof terrace level
 - Alteration of the hipped roof to a gabled roof and metal deck flat roof to a glass roof
 - Increase in the height of the lift overrun from below the roof ridge (which is RL 18.82) to RP 19.29 as constructed.
2. To seek consent for various proposed internal and external modifications to the approved dwelling pursuant to the provisions of Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* as follows:
- Basement: Proposed kitchenette along western wall of rumpus, deletion of fireplace, Proposed sauna adjacent to lift service box.

- Upper ground (Louisa Road level): Proposed vertical louvres to east face of glazed corner, SE corner of Lounge
- First floor: Proposed window and fixed full height vertical louvres to east face of bedroom 1.
- Roof terrace: Proposed 230mm rendered and painted masonry wall with frameless clear glass balustrade above, NE and NW corners of roof terrace.

Further to the above, it is noted that certain unauthorised works are shaded orange on the revised architectural plans. These works are not included in this modification application however are detailed as follows:

- Steps at SE corner to be cut back in line with the rest of the stair
- Lower top of lift overrun to finish below roof ridge. Lift walls will have the approved rendered and painted finish reinstated.

3. Site Description

The site is located on the southern side of Louisa Road, between Birchgrove Oval and Yerroulbin Lane. The site consists of four allotments and is generally rectangular with a total area of 417.2m². The site is legally described as Lot 1 in DP 947055, Lot 1 in DP 972969, Lot 1 in DP 770507 and Lot 2 in DP 770507.

The site has a frontage to Louisa Road of 12.195 metres and a rear boundary to Snails Bay of 12.17 metres. The adjoining properties support modern dwellings that present as two storeys to Louisa Road and include off street parking to their front façade.

The site previously supported a weatherboard cottage which presented as single storey to Louisa Road, with a lower level accessing the rear yard. While the existing dwelling contained heritage fabric, it was in a dilapidated condition and consent was granted under D/2018/25 for its demolition. The demolition has subsequently been undertaken and construction is underway with the dwelling largely completed.

The property is located within the 'Birchgrove and Ballast Point Road Heritage Conservation Area' (C8) and is identified as a Foreshore Inundation lot. The listed heritage items in the visual vicinity of the subject site include:

- I553 "Geierstein", the dwelling at 85 Louisa Road, Birchgrove; and
- I536 Birchgrove Park, Grove Street, Birchgrove.



Figure 1 - Aerial of Subject Site outlined in Green



Figure 2 - Land Zoning Map with Subject Site outlined in yellow

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision and Date
MOD/2021/0320	Internal alterations, BBQ and privacy screening at basement level; new and modified openings; new dwarf walls to roof terrace; and new glass roof	Refused on appeal (LEC) 9 February 2022
MOD/2020/0231	Amend the size and height of the lift overrun.	Refused on appeal (LEC) 11 December 2020
M/2019/84	Various internal and external changes, including increase the floor area at the basement level; increases to rear setbacks and reductions to front setbacks; changes to window locations and sizes; and internal reconfiguration.	Approved 8 October 2019
D/2019/174	New pool and retaining wall works and repair and recapping of sea wall.	Approved 19 September 2019
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, and landscaping	Approved with Deferred Commencement Condition on 12 Jun 2018 Operational Development Consent 4 December 2018
M/2004/80	Minor changes to window and door openings in house and boatshed, new door to boatshed, changes to an external stair, minor internal reconfiguration and adjustment to level of boatshed floor slabs	Approved 9 August 2004
M/2001/300	Altering roof form and fenestration and minor upper-level internal reconfiguration	Approved 27 February 2002
D/2000/1013	Demolition of existing dwelling, erection of a new dwelling and rebuilding/refurbishment of an existing rear boatshed with residence above and associated works	Approved 10 October 2001

***Note:** Class 4 Proceedings No.2021/167207 were commenced in the Land and Environment Court of NSW in the matter of Inner West Council v Bilotta on 10 June 2021.

The proceedings relate to the refusal of two modification applications (MOD/2020/0231 and MOD/2021/0320 summarised above) seeking to regularise unauthorised works to an approved dwelling.

The modifications were refused by the Court on 9 February 2022 in proceedings *Bilotta v Inner West Council [2022] NSWLEC 1058*. The Commissioner and planning experts concluded "...the architectural plans are unacceptable because they are inaccurate and uncertain" and "...do not comply with the Court's requirements for plans per Appendix A of the Practice Note, Class 1 Residential Development Appeals".

The submitted plans (as amended) have been reviewed in detail supported by a site visit and are found to reflect as-built and proposed modifications sought under the subject application.

The subject modification application has been lodged to reflect further amendments resulting from discussions between the parties as part of a Section 34AA Conciliation Conference Hearing held on the 12 and 13 October 2021.

Surrounding properties

87-91 Louisa Road, Birchgrove

Application	Proposal	Decision & Date
D/2011/425	Demolition of existing structures, remediation of the site, construction of three new dwellings with parking and three lot subdivision	Approved on appeal 3 April 2012.

95 Louisa Road, Birchgrove

Application	Proposal	Decision & Date
D/2000/645	Alterations and additions to the existing dwelling at ground and first floor level.	Approved 19 May 2001
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 6 August 2003

4(b) Application history

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

Date	Discussion / Letter / Additional Information
8 December 2022.	<p>Council requested additional information to resolve a number of issues including:</p> <p><u>Floor space ratio</u> The maximum FSR prescribed by Clause 4.4 of the Leichhardt LEP 2013 applicable at the time was 0.8:1. The approved FSR under D/2018/25 was 0.92:1. The approved modification M2019/84 resulted in an FSR of 1.076:1 (however this excluded the GFA of the additional car space). The subject modification proposes an FSR of 1.16:1. While modification applications do not require a Clause 4.6 request, the development proposal must demonstrate that the objectives of Clause 4.4 and the zone objectives are met notwithstanding the breach.</p> <p>It is noted that the Statement of Environmental Effects Report submitted for the subject modification does not discuss those objectives and should be updated to address this.</p>

Comment: SEE updated to address the FSR departure

Works to the upper ground floor

The proposed modifications to the upper ground floor do not reflect the internal roller door that was observed during the site inspection. The plans need to reflect that roller door or the deletion of that roller door must be confirmed.

Comment: Plans amended to reflect the upper floor roller door.

Works to the first floor

The proposed modifications to the upper ground floor do not reflect the following works that were observed during the site inspection:

- I. The deletion of the linen store adjacent to Bathroom 1;
- II. The deletion of the wall between the lift and the back of the stairs; and
- III. The service duct in Bedroom 4.

Comment: Amended plans provided which reflect these works

RL of the top of the lift overrun

While the reduction in height of the lift overrun can be supported, the architectural drawings must indicate an RL for the top of the lift overrun.

Comment: Amended plans provided which provide an RL for the lift overrun.

5. Section 4.55 Assessment

Section 4.55(2) of the *Environmental Planning and Assessment Act, 1979*, requires the following matters to be assessed in respect of all applications which seek modifications to approvals.

The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).

Comment:

In considering whether the development as modified is substantially the same as that for which consent was granted, an assessment against relevant case law has been undertaken, particularly the authority in *Moto Projects (No 2) v North Sydney Council [1999] NSWLEC 280*, which deals with taking both a qualitative and quantitative approach to addressing the 'Substantially the same' test of Section 4.55.

Quantitative Assessment

The original Development Application approved demolition of the existing dwelling and associated structures, remediation of site, construction of a new dwelling with basement parking provided with a car lift and landscaping. The proposed modifications relate to numerous internal and external changes to the approved dwelling. Notwithstanding, each of those changes are relatively minor in the context of the scale of the development as a whole. None of the changes sought in the Modification Application change material features of the original consent. It remains a new dwelling with basement parking, a car lift and landscaping.

The form of the dwelling when considered holistically remains substantially the same development as the development for which the consent was originally granted and before that consent was modified, albeit for incremental and minor changes, that, if proposed as part of the original approved Development Application would not have resulted in a refusal.

The proposed modification results in a technical increase to Gross Floor area (GFA) and an assessment under Section 4.6 of the IWLEP 2022 has been undertaken which is summarised as follows:

- The additional GFA proposed with this modification is generally within the existing footprint of the approved dwelling (infill of voids), inclusion of car parking as GFA which was excluded from the original DA for the purposes of calculating FSR and squaring off of rounded walls to the garage at basement (subfloor) level and will not be readily visible from the street.
- The proposed dwelling remains of a similar bulk and scale to adjoining dwellings and is compatible with the desired future character of the area in relation to building bulk, form and scale
- The proposed modifications do not result in view loss.
- The proposal complies with the Landscaped Area and Site Coverage standards, providing a suitable balance between landscaped areas and the built form
- The proposal is considered acceptable with regard to the objectives of the R1 General Residential zone.
- The proposal is considered acceptable with regard to the objectives of Clause 4.4 Floor Space Ratio.

Furthermore, consideration of relevant case law in response to quantitative matter is addressed below:

- (a) A proposal to modify a dwelling house development that did not result in 'unreasonable increased impacts' (*Garbourg v Ku-ring-gai Council* [2022] NSWLEC 1429).

Comment: This case law involved an increase in floor area of 22% and took the building from a building which complied with the FSR control to one which significantly exceeded it. It also changed a 4 bedroom house to a 5 bedroom house with an additional 26m² home office and extra bathroom. By contrast, the Modification Application does not change the number of bedrooms, and the floor area increases only as a result of filling in void areas. There is a new sauna included, but within the original basement area. Furthermore, no adverse amenity, streetscape or heritage impacts will result from the subject modification application as discussed elsewhere in this assessment report.

In consideration of the above and Section 4.6 assessment, in a quantitative sense, although there is a technical increase to the proposed GFA, the Modification Application does not change the number of bedrooms, floors, and the floor area increases only as a result of

filling in void areas and calculation of an additional car space as GFA which was excluded in the original DA assessment.

Qualitative Assessment

When considering qualitative impacts, the proposed modifications do not cumulatively result in a development that results in an unreasonable increase to impacts on neighbouring properties, the streetscape or heritage conservation area. Submissions received raise concerns regarding a sense of enclosure, impacts on visual privacy, view loss and impacts from a pizza oven.

- Having regard to the submission noting the sense of enclosure, the extension of a slab from a setback of 1,510 to 1,260 mm is a minor decrease when viewed from the neighbouring property.
- The additional window to bedroom No.1 has been provided with louvers to direct viewing away from the neighbouring living room and is not considered to reduce privacy. The new living room window is provided with louvers to direct views toward the harbour. This window is not considered to reduce privacy beyond that of the approved development noting the approved balcony in that location.
- The reduction in height of masonry walls from 860mm to 230mm and the introduction of frameless glass balustrading above the masonry walls will maintain reasonable view quality.
- The pizza oven is gas operated rather than woodfired thus will not result in adverse odour or air quality impacts.

Based on the above and the merits of the assessment of the modification overall, the quantitative and qualitative changes result in a Modification Application which is, in essence, substantially the same as the development as originally approved (and as modified).

Council has consulted with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority.

Comment: No concurrence with any external bodies was required.

The application has been notified in accordance with the regulations, if the regulations so require, or a development control plan, if council's development control plan requires the notification or advertising of applications for modification of a development consent.

Comment: The application was notified for a period of 14 days, between 18 January 2023 until 1 February 2023. Consideration of submissions made has been undertaken.

Two (2) submissions received during the notification period which are addressed in Section 6(g) of the Assessment Report.

6. 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)*.

6(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:

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

Chapter 2 Coastal management

The SEPP aims to ensure that future coastal development is appropriate and sensitive to its coastal location and category.

The application has been considered against the SEPP for Coastal Management. The subject site is located within the “Coastal Zone” pursuant to CI 5 of the SEPP. The modified development has been assessed by Council’s development engineers, who have confirmed that the proposal will not result in an unacceptable increased risk of coastal hazards on the site.

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.”*

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) were provided in the original Development Application (D/2018/25) to address the management of contaminated groundwater onsite and the treatment and/or disposal of any contaminated soils and contamination issues prior to determination.

The RAP concludes that the site could be made suitable for the proposed use after the completion of the RAP. Conditions of consent were included in the original application in accordance with the SEPP. The changes involved in this modification will not impact those conditions.

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

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

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

Chapter 10 Sydney Harbour Catchment

The original Development Application was referred to the Foreshores and Waterways Planning and Development Advisory Committee as required under the SREP. The committee raised no specific issues in relation to the proposed development.

An assessment has been made of the matters set out in Chapter 10 of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. The proposed modifications are not considered to be contrary to the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities for the following reasons:

- The appearance of the modified development as viewed from the harbour is compatible with surrounding development; and
- The development as modified does not further restrict access to foreshore land and will protect existing views from Louisa Road to the water.

6(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 5.21 – Flood planning
- Section 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management
- Section 6.4 – Terrestrial biodiversity
- Section 6.5 – Limited development on foreshore area
- Section 6.6 – development on the foreshore must ensure access

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R1 -General Residential under the *IWLEP 2022*. The *IWLEP 2022* defines the development as a 'dwelling house', meaning a building containing only one dwelling.

The development is permitted with consent within the zone. The development is consistent with the objectives of the R1 – General Residential zone.

Section 4 Principal Development Standards

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

Standard	D/2018/25	M/2019/84	Proposal	Non compliance	Complies
Floor Space Ratio Maximum permissible: 0.8:1 or 333.76sqm	0.92:1 (382.5sqm) (14.6% variation)	1.076:1 (449sqm) (34.5% variation)	1.16:1 (484sqm) (45% variation)	150.24sqm (45%)	No
Landscape Area Minimum permissible: 20% or 83.4sqm	21.3% (89sqm)	26% (107.9sqm)	26% (107.9sqm)	N/A	Yes
Site Coverage Maximum permissible: 60% or 250sqm	58.75% (245.1sqm)	58.8% (245.1sqm)	60% (247sqm)	N/A	Yes

*Note: The approved FSR under D/2018/25 was 0.92:1 (382.5sqm) which resulted in a non-compliance of 14.6%. The application was determined by the Inner West Local Planning Panel on 12/06/2018 and the Panel considered the matters relied upon by the applicant in regard to the contravention of the FSR development standard and were satisfied that the written request was well founded and the contravention would not result in a detrimental effect on the public interest and the objectives of the standard would nevertheless be satisfied.

A subsequent modification (M/2019/84) further increased the approved Gross Floor Area (GFA) calculation by 66.5sqm, to 449sqm, which equates to an FSR of 1.076:1. In a similar manner to the original DA, the Inner West Local Planning Panel considered the matters relied upon by the applicant with regard to the contravention of the FSR development standard and were satisfied that the written request was well founded and the contravention would not result in a detrimental effect on the public interest and the objectives of the standard would nevertheless be satisfied.

This modification proposes an additional 35sqm of gross floor area which is predominantly the result of the infill of approved voids on the first floor and roof terrace level and inclusion of car parking which was excluded from the originally approved GFA for the purposes of calculating FSR.

An assessment against Section 4.6 of the IWLEP 2022 is provided below.

Section 4.6 Exceptions to Development Standards

As outlined in table above, the modified proposal results in a breach of the Floor Space Ratio (FSR) development standard.

The applicant seeks a variation to the FSR development standard under Clause 4.4 of the applicable local environmental plan by 45% (150.24qm).

Pursuant to *Gann and Anor v Sutherland Shire Council* [2008] NSWLEC 157, the Land and Environment Court has held that there is power to modify a development application where the modification would result in a breach or further breach of development standards without the need to lodge variation requests (in this case under Section 4.6 of the IWLEP 2022 – Exceptions to Development Standards).

Notwithstanding the above, had a Clause 4.6 Exceptions to Development Standards request

been required, seeking Council's consent to vary the floor space ratio standard, the request would have been considered favourably in this instance for the following reasons:

- The modifications, while numerous, do not result in a development that would have an unreasonable increase of impact to neighbours, nor do they contribute to any discernible bulk and scale of the approved development
- The extension of a slab from a setback of 1,510 to 1,260mm is minor when viewed from the neighbouring property
- The additional GFA proposed with this modification is generally within the existing footprint of the approved dwelling (infill of voids), inclusion of car parking as GFA which was excluded from the original DA for the purposes of calculating FSR and the squaring off of rounded walls to the garage at basement (subfloor) level and will not be readily visible from the street.
- The proposed dwelling remains of a similar bulk and scale to adjoining dwellings and is compatible with the desired future character of the area in relation to building bulk, form and scale
- The proposed modifications do not result in view loss.
- The proposal complies with the Landscaped Area and Site Coverage standards, providing a suitable balance between landscaped areas and the built form
- The proposal is considered acceptable with regard to the objectives of the R1 General Residential zone.
- The proposal is considered acceptable with regard to the objectives of Clause 4.4 Floor Space Ratio.

In consideration of the above, the contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning and there is no public benefit in maintaining strict compliance with the standard.

Clause 5.10 – Heritage Conservation

The subject property at 93 Louisa Road, Birchgrove, is located within the Birchgrove and Ballast Point Road Heritage Conservation Area. It is in the vicinity of the heritage listed house, "Geierstein", including interiors, at 85 Louisa Road. The heritage advice for D/2018/25 stated:

The height of the dwelling is considered excessive in relation to adjoining historic and modern infill buildings in this section of Louisa Road. In this regard, there appears to be scope to readily reduce the height and bulk of the pitched roof of the dwelling (particularly to the rear) and the internal floor to ceiling heights.

The application was referred to Council's Heritage Advisor who provided the following comments:

The proposed height and bulk of the infill dwelling was not supported from a heritage perspective in the original proposal with the heritage referral acknowledging that there was scope to readily reduce the height and bulk of the pitched roof of the dwelling (particularly to the rear) and the internal floor to ceiling heights. The proposed height of the dwelling was approved.

The SEE states the height of the lift overrun will be reinstated to its approved height. This is a positive heritage outcome as it will reduce the overall height and bulk of the lift over run which will reduce its impact on the significance of the Birchgrove and Ballast Point Road HCA. The reduced height of the lift over run will have no additional impact to the height of the lift over run approved under D/2018/25. The walls of the lift overrun are proposed to be

rendered and painted in accordance with the approved Finishes Board, which specifies Dulux “White Duck”, which is acceptable.

With regard to the already constructed glass balustrades instead of iron to east and west elevations of rear first floor balcony, the frameless clear glass balustrade above the rendered and painted masonry walls to the roof terrace and the glass roof, glazed balustrades are normally not supported for balconies or for roofing material in HCAs. Given the extent of glazed balustrading visible to the rear of dwellings overlooking Snails Bay and the altered character of this part of the HCA, this material is acceptable in this instance.

The other modifications already constructed, or proposed to be constructed, are acceptable from a heritage perspective because they are located to the rear of the site, some works are internal, and will have no further impact on the significance of the HCA than the development approved under D/2018/25.

The proposed modification is acceptable from a heritage perspective as it will not detract from the heritage significance of the Birchgrove and Ballast Point Road Heritage Conservation Area and are in accordance with Clause 5.10 of the IWLEP 2022 and the relevant objectives and controls in the Leichhardt DCP 2013.

6(b) Draft Environmental Planning Instruments

There are no draft Planning Instruments pertaining to the subject application.

6(c) Development Control Plans

The application has been assessed against the following applicable DCPs:

- Leichhardt Development Control Plan 2013
- Sydney Harbour Foreshores and Waterways Development Controls Plan 2005

The following provides an assessment of the proposal against the relevant provisions of the DCPs mentioned above.

LDPC2013	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
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes – see discussion
C1.14 Tree Management	Yes

C1.20 Foreshore Land	Yes
Part C: Place – Section 2 Urban Character	
C2.2.2.6(a) Louisa Road sub area, Birchgrove distinctive neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes - see discussion
C3.3 Elevation and Materials	Yes – see discussion
C3.5 Front Gardens and Dwelling Entries	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes– see discussion
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes
Part D: Energy	
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	
E1.1.1 Water Management Statement	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.1.5 Foreshore Risk Management Report	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.5 Water Disposal	Yes
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	Yes
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	Yes

The following provides discussion of the relevant issues:

C1.4 Heritage Conservation Areas and Heritage Items

Heritage aspects have been discussed previously in Part 6(a)(ii) of this report above with regards to Clause 5.10 of IWLEP 2022. The modifications are not considered to materially impact on the heritage significance of the locality. The modified proposal is considered acceptable having regard to Heritage Conservation.

C1.11 Parking

The proposal includes modifications to the approved car parking spaces on the basement and lower ground floor levels. Council's Development Engineers have advised that the changes to parking are acceptable.

C3.2 Site Layout and Building Design

The proposal seeks to regularise an extension of a slab from a setback of 1,510 to 1,260 mm, exacerbating the approved non-compliance with the side setback control approved under the original Development Application. Notwithstanding, the non-compliance is considered to be acceptable for the following reasons:

- The pattern of development within the streetscape is not compromised, Louisa Road contains many dwellings which present as two storey to the street and a built to one or both boundaries.
- The bulk and scale of the development is commensurate to that of the originally approved dwelling and surrounding properties and is acceptable
- The siting of the dwelling adjacent to the built form of adjoining dwellings will ensure that the dwelling will not result in adverse impacts in terms of bulk and scale.
- The increased non-compliance with the side setback control does not result in adverse amenity impacts for adjoining properties.
- The reduction in height of masonry walls from 860mm to 230mm and the introduction of frameless glass balustrading above the masonry walls will maintain reasonable view quality
- Reasonable access will be maintained for the necessary maintenance of adjoining properties views to Snails Bay will be retained along the western setback.

C3.3 Elevation and Materials

The modification reduces the lift overrun so that it sits below the ridge of the roof. A condition of consent is recommended to require that a registered surveyor confirm the RL of the lift overrun accords with the approved plans.

No objections are raised in relation of the modified roof to a gable in lieu of a hipped roof and changes to materials and finishes in the context of the streetscape and broader Heritage Conservation Area.

C3.9 Solar Access

The proposed modifications are considered minor having regard to the existing development overall and the changes are not anticipated to exacerbate the existing solar access impacts to the subject site or neighbouring properties.

C3.10 Views

In order to address potential view impacts for the neighbouring property at 95 Louisa Road, a View Analysis Plan has been prepared by ESNH Design Pty Ltd. The First Floor Plan shown in the View Analysis Plan shows a comparison of sight lines between the existing approved development as modified (which includes a dwarf wall) and that proposed under this modification (beyond the bedroom wall, with the approved dwarf wall deleted).

The reduction in height of masonry walls from 860mm to 230mm and the introduction of frameless glass balustrading above the masonry walls at the roof terrace will maintain reasonable view sharing achieved from 91 Louisa Road.

This Application will provide a greater view range for the occupants of 95 Louisa Road than the existing approved development as modified and is considered to appropriately address the potential view loss impacts for the neighbouring property.

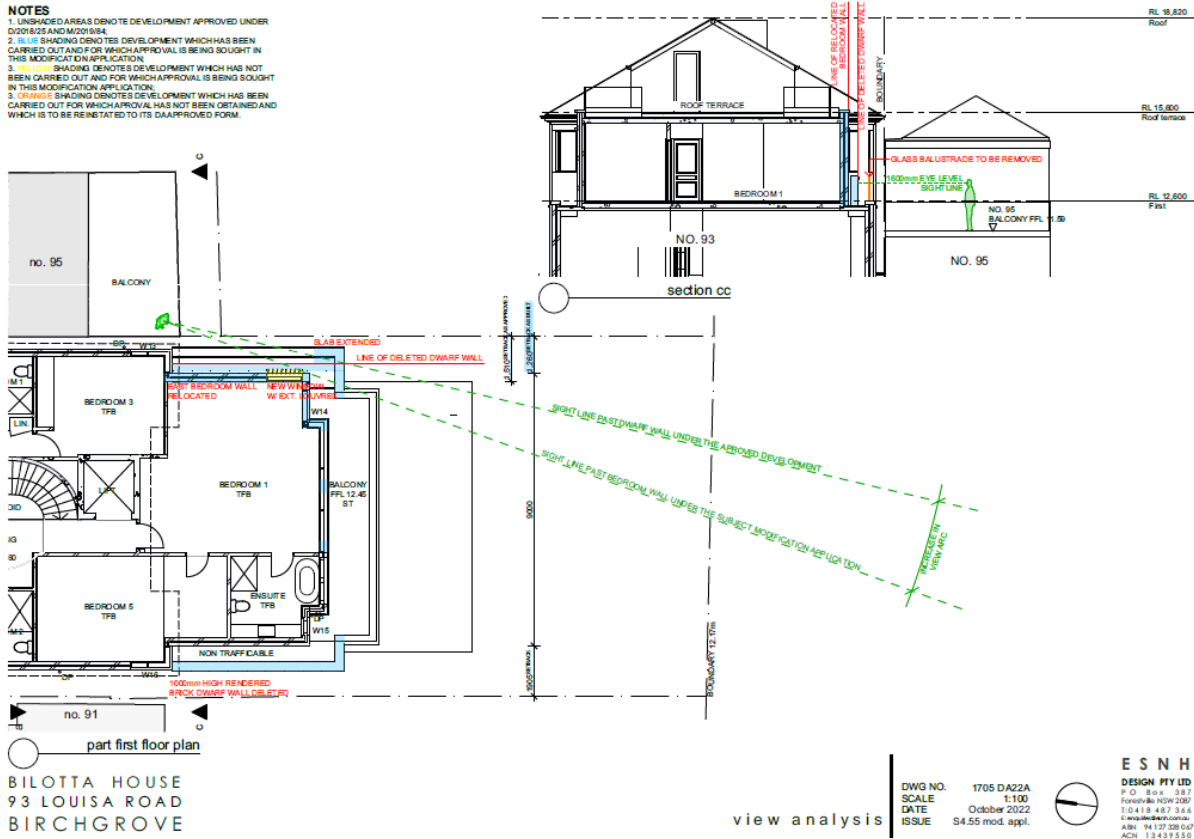


Figure 3 - View Analysis Plan (ESNH Design Pty LTD, October 2022)

C3.11 Visual Privacy

Louvres are proposed to the new and reconfigured windows (W18 and W06) to the eastern elevation serving Bedroom 1 at the first floor and a living room at the upper floor, respectively. Any sightlines are directed away from neighbouring properties. The proposed windows propose fixed, full-length, 150mm blade vertical louvres, permanently angled to permit views from 93 Louisa Road but preventing viewing toward the rear balcony of 95 Louisa Road. Furthermore, window W06 is not orientated towards 95 Louisa Road.

Deletion of kitchen windows to the western elevation will improve visual privacy for 91 Louisa Road.

Furthermore, the view analysis View Analysis plan been prepared by ESNH Design Pty Ltd demonstrates that no adverse visual privacy impacts arise as a result of the matters covered by this Application (Figures 4 and 5).

Therefore, the proposed modifications are not considered to reduce privacy to neighbouring properties.



Figure 4 - View from upper ground floor balcony to the east (photo supplied)

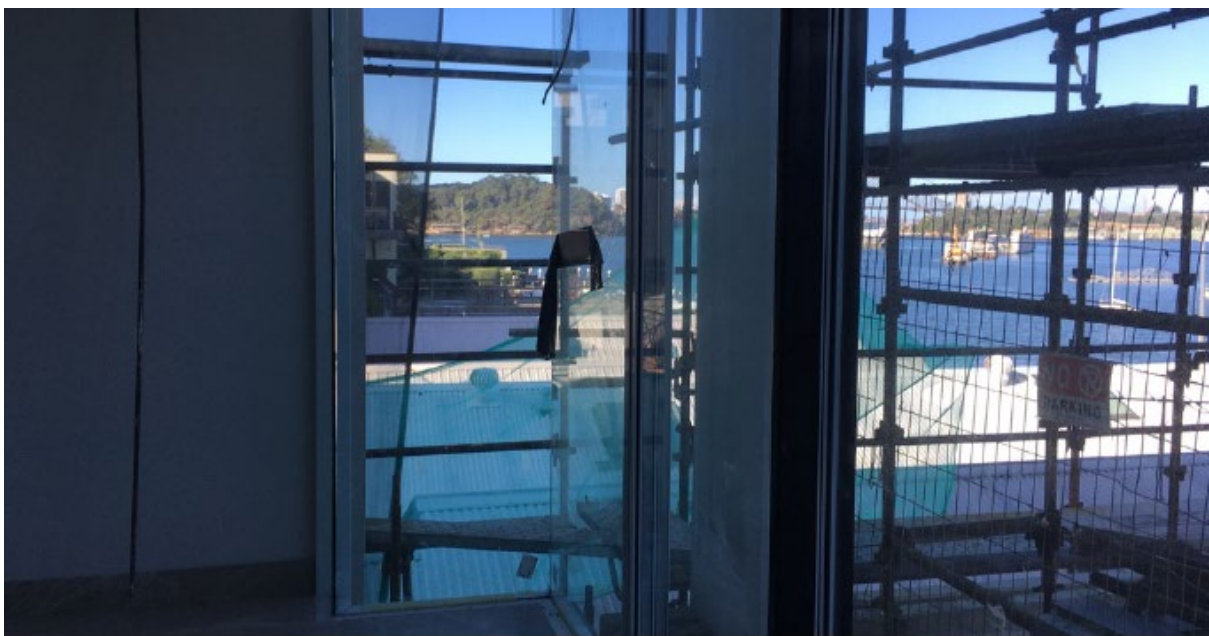


Figure 5 - View from first floor balcony to the east (Photo supplied)

6(d) Sydney Harbour Foreshores and Waterways Development Controls Plan 2005

SHFWDCP 2005	Compliance
1. Introduction	Yes
2. Ecological Assessment	
2.2 General Aims	Yes
3. Landscape Assessment	
3.2 General Aims	Yes
4. Design Guidelines for Water-Based and Land/Water Interface Developments	N/A
5. Design Guidelines for Land-Based Developments	
5.1 Introduction	Yes
5.2 Foreshore Access	Yes
5.3 Siting of Buildings and Structures	Yes
5.4 Built Form	Yes
5.6 Planting	Yes

The proposed modifications will generally be consistent with the provisions of the SHFWDCP 2005.

6(e) The Likely Impacts

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

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

The site is zoned R1 – General Residential, 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.

6(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

Two (2) submissions were received in response to the initial notification.

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

- Privacy implications from the windows – see Section 6
- The increase in visual bulk from the development – see Section 6
- Substantially the same test – see Section 5, s.4.55 Assessment

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

Issue:	Comment
Sense of enclosure resulting from reduced setback to 95 Louisa Road	The side setback of the first floor bedroom 1 has been constructed at a side setback of 1260mm, as opposed to 1510mm, which is a reduction of 250mm. It is not considered that the marginal decrease in setback of the eastern elevation will result in adverse amenity to neighbouring properties. It is noted that the rendered brick dwarf wall has been deleted and the glass balustrade will be removed, reducing bulk of the development.
Accuracy of plans	Amended Statement of Environmental Effects and plans provided have been provided to Council on 23 March 2023 which reflect all proposed modifications sought under the subject application (both as built and proposed).
Additional non-compliances sought	Any non-compliances have been addressed in Part 6 of the Report.
Masonry structures on the roof terrace	The plans show the reduction in height of the masonry walls from 860mm to 230mm and the introduction of frameless glass balustrading above that which will maintain reasonable view quality for the roof terrace to 91 Louisa Road.
Pizza Oven	The pizza oven is gas operated and is unlikely to result in any adverse amenity impacts. Furthermore, the size of the pizza oven is not such that it would result in any bulk and scale impacts
Merits of the application	The proposed modification is supported on merit for the reasons outlined elsewhere in this assessment.

6(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.

7 Referrals

7(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 6 above.

- Heritage Officer - Acceptable, no additional conditions proposed.
- Development Engineer – Acceptable, no additional conditions proposed.

7(b) External

The application was not required to be referred to any external bodies.

8. Section 7.11 Contributions/7.12 Levy

As the original Development Application involved demolition of a dwelling and construction of a larger dwelling, Section 7.11 contributions were payable for the original proposal. This modification does not alter this requirement, nor does it trigger levying of additional contributions.

9. Conclusion

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

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

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

10. Recommendation

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 approve Application No. MOD/2022/0474 for changes to building footprint, internal layout, balcony/deck/roof terrace, screening, balustrades, fenestration, removal of lift over run; materials, colours and finishes under s4.55(2) of the *Environmental Planning and Assessment Act 1979* at 93 Louisa Road Birchgrove, subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

A. Condition 2 be amended as follows:

Development must be carried out in accordance with Development Application No. D/2018/25 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Demolition Plan DA13	ESNH Design Pty Ltd	November 2017
Basement Floor Plan 1705 DA02G	ESNH Design Pty Ltd	October 2022
Lower Ground Floor Plan 1705 DA03D	ESNH Design Pty Ltd	October 2022
Upper Ground Floor Plan 1705 DA04H	ESNH Design Pty Ltd	March 2023
First Floor Plan 1705 DA05J	ESNH Design Pty Ltd	March 2023
Roof Terrace Plan 1705 DA06F	ESNH Design Pty Ltd	October 2022
Roof Plan 1705 DA07F	ESNH Design Pty Ltd	October 2022
Landscape Plan L-01-A	Space Landscape Designs	16 July 2019
Landscape Plan L-02-A	Space Landscape Designs	23 April 2018
North and West Elevations 1705 DA08F	ESNH Design Pty Ltd	October 2022
South and East Elevations 1705 DA09E	ESNH Design Pty Ltd	October 2022
Sections 1705 DA10D	ESNH Design Pty Ltd	October 2022
Pool Section Plan DA15	ESNH Design Pty Ltd	January 2018

Document Title	Prepared By	Dated
BASIX Certificate 869219S_05	ESNH Design Pty Ltd	22 November 2022
Finishes Board DA13	ESNH Design Pty Ltd	November 2017
Waste Management Plan	Eugenia Harley	20.11.12
Geotechnical report No. 17/3401B	STS GeoEnvironmental	December 2017
Remediation Action Plan	LG Consult	12/12/2017
Structural Engineers Report and Construction Methodology	Mance Arraj	1/12/2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail. Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail. In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail. The existing elements (walls, floors etc.) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

(Modified by M/2019/84 on 08/10/2019 and MOD/2022/0474 on 13 June 2023)

B. Additional condition 2 a) be inserted as follows:

2a) A registered surveyor is to confirm the RL of the lift overrun accords with the approved plans as modified under MOD/2022/0474 (i.e RL 18.77 for the top of the lift overrun which is below the ridge height of RL 18.82).

(Modified by MOD/2022/0474 on 13 June 2023)

C. Condition 5 to be amended as follows:

To ensure reasonable privacy for the adjoining property, the following windows/glazing:

Window/glazing	Room	Elevation
W06	Kitchen	Eastern
W07	Lounge	Western
W13	Bedroom	Eastern

- must be treated with one of the following privacy treatments:
- have a minimum sill height of 1.6m above finished floor level. or
- be permanently fixed (that is windows are not to swing or lift open) with obscure glazing (not frosted film on clear glazing) to a height of 1.6 metres above finished floor level; or
- provided with fixed external louvers with a density of 75% and have no individual opening more than 30mm wide, and have a total area of all openings that is less than 30 per cent of the surface area of the screen and be made of durable materials. Where fixed louvered screens are used, the screen structure must be securely fixed. The louvers may tilt open from a closed position to an angle of 45 degrees in either a downward or upward position, depending on the sightlines that are to be restricted.

The treatment must ensure that the ventilation requirements of the Building Code of Australia are met. If one treatment cannot satisfy the requirements, an alternative in the list above is to be used.

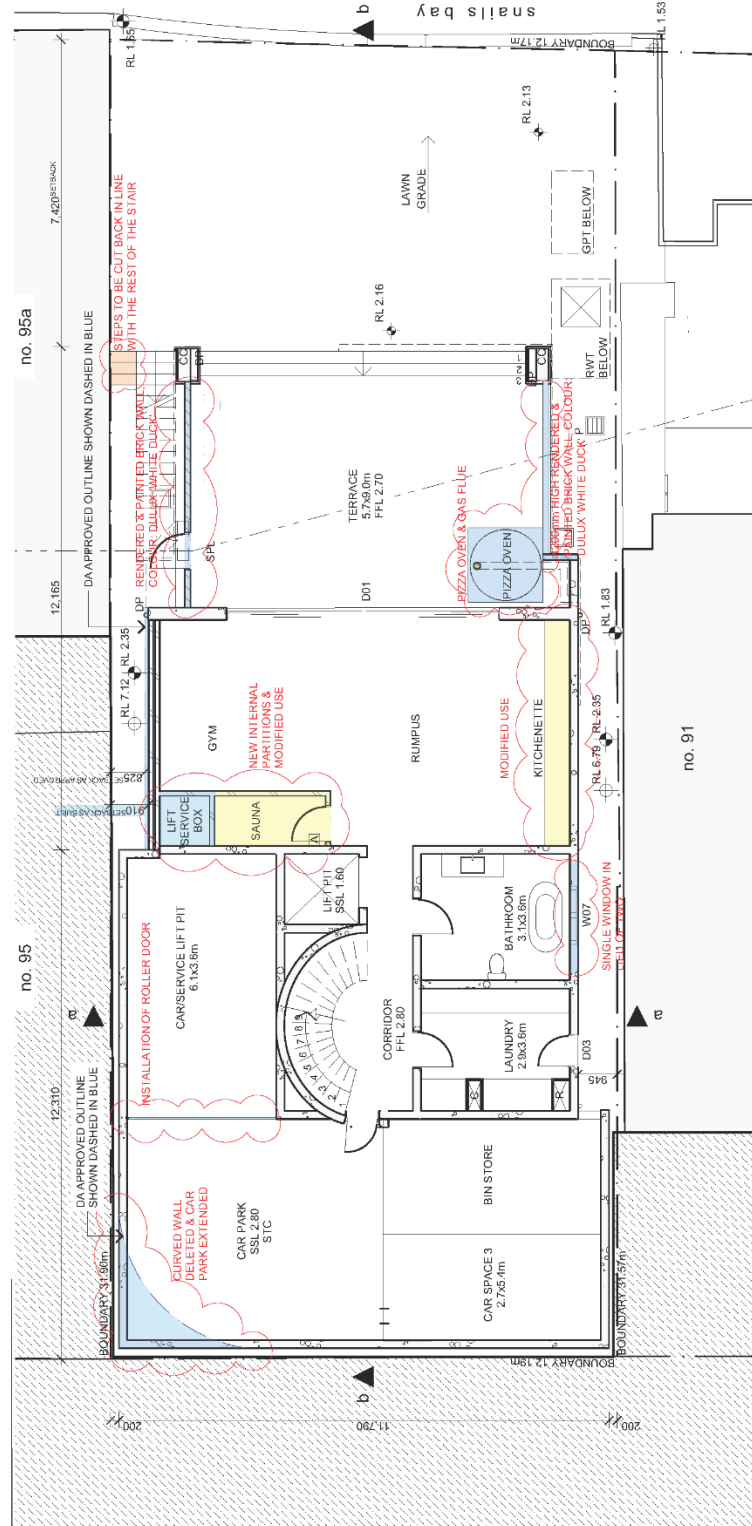
Details must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The privacy measures must be maintained for the life of the building.

(Modified by M/2019/84 on 08/10/2019 and MOD/2022/0474 on 13 June 2023)

Attachment B – Plans of proposed development

- LEGEND**
- C CHUTE
 - CS SERVICE RISER
 - CC CONCEALED COLUMN TO ENGINEER'S DETAILS
 - GPT GROSS POLLUTANT TRAP
 - RWT RAIN WATER TANK
 - P PIT
 - EXISTING GROUND LEVEL
 - PROPOSED GROUND LEVEL

- NOTES**
1. UNSHADED AREAS DENOTE DEVELOPMENT APPROVED UNDER D/2018/25 AND M/2018/94.
 2. SHADING DENOTES DEVELOPMENT WHICH HAS BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.
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 4. RED SHADING DENOTES DEVELOPMENT WHICH HAS BEEN CARRIED OUT FOR WHICH APPROVAL HAS NOT BEEN OBTAINED AND WHICH IS TO BE REINSTATED TO ITS DA APPROVED FORM.



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DWG NO. 1705-DA02G
 SCALE 1:100
 DATE October 2022
 ISSUE S4-S5 mod. appl.

basement floor plan

BILOETTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

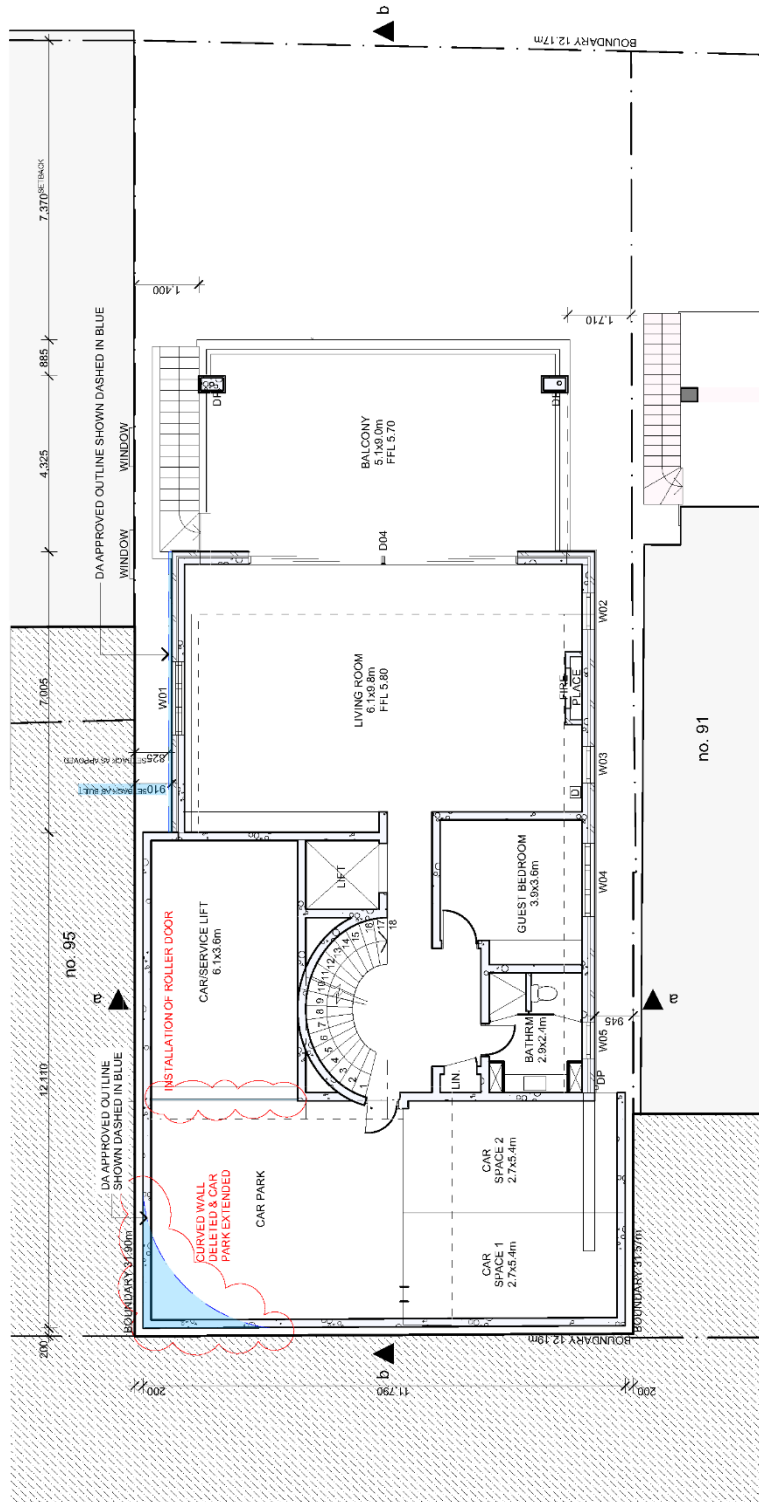
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NOTES

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LEGEND

- C CHUTE
- R SERVICES RISER
- CC CONCRETE COLUMN TO ENGINEERS DETAILS
- IFB TIMBER FLOOR BOARDS
- +— EXISTING GROUND LEVEL
- +— PROPOSED GROUND LEVEL



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 ISSUE S 4.55 mod. appl.

lower ground floor plan

BILLOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

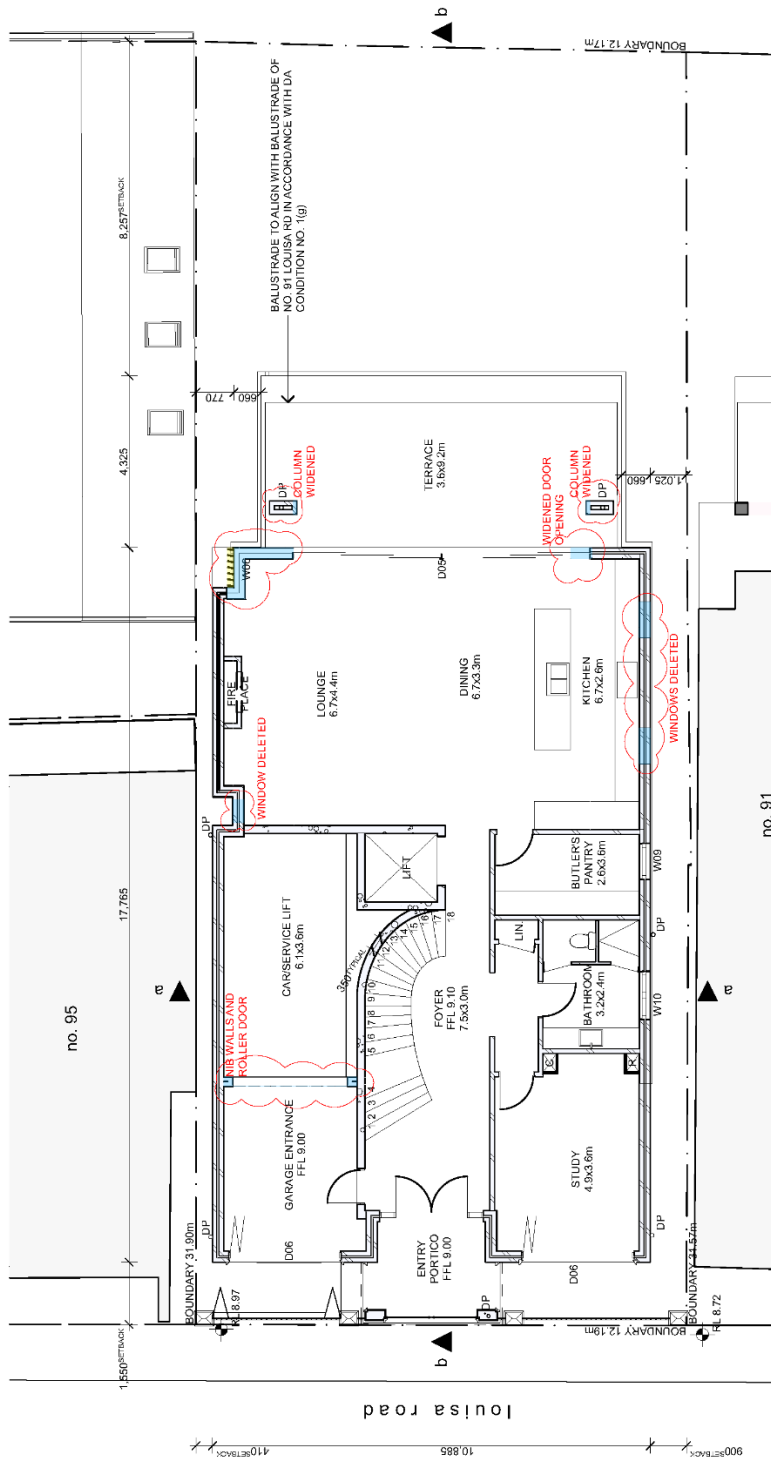
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LEGEND

- CHUTE
- R SERVICES RISER
- CC CONCRETE COLUMN TO ENGINEER'S DETAILS
- ST STONE TILE
- IPB TIMBER FLOOR BOARDS
- IPB CONCRETE FLOOR
- ⊕ PROPOSED GROUND LEVEL



BILOTTA HOUSE
93 LOUISA ROAD
BIRCHGROVE

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upper ground floor plan

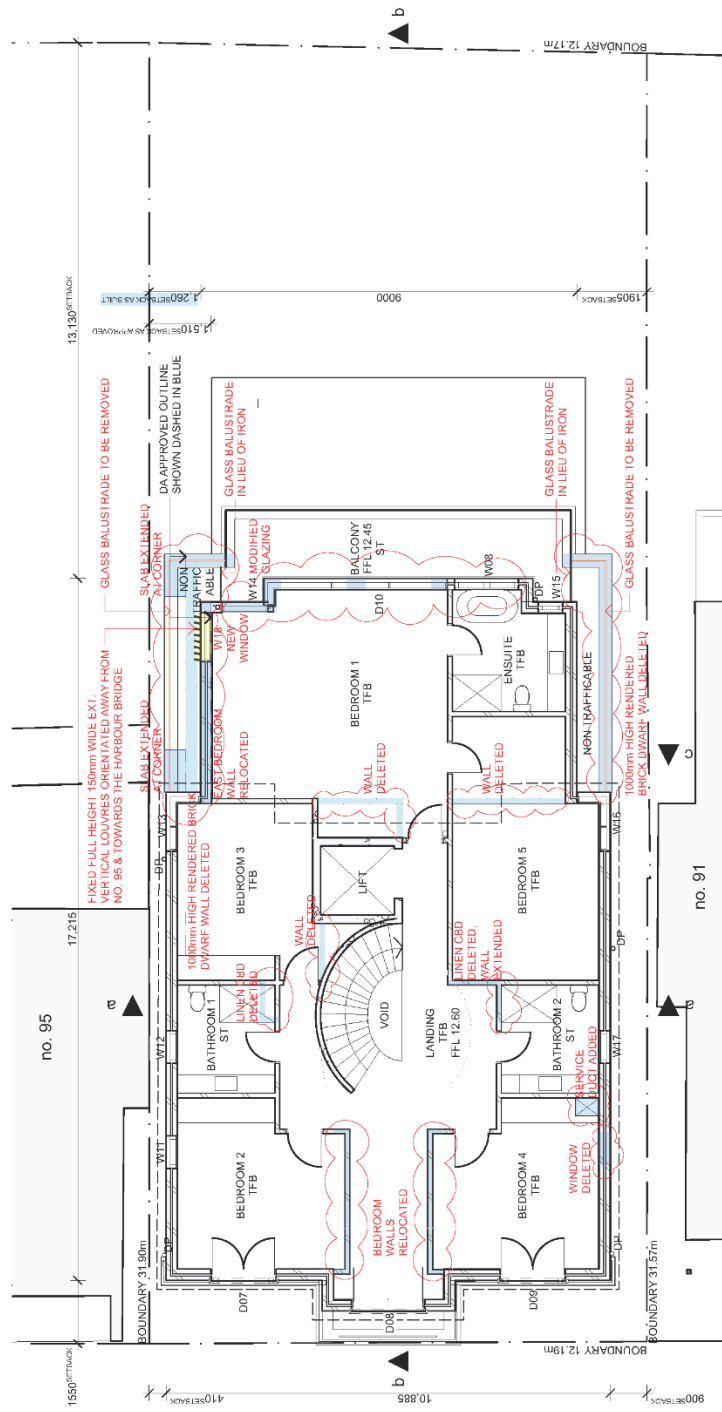
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 SCALE 1:100
 DATE March 2023
 ISSUE information added



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- LEGEND**
- C CHUIE
 - CC CONCRETE COLUMN TO ENGINEER'S DETAILS
 - ST STONE TILE
 - TFB TIMBER FLOOR BOARDS

- NOTES**
1. UNSHADED AREAS DENOTE DEVELOPMENT APPROVED UNDER D/2016/25 AND M/2017/1964.
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first floor plan

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 93 LOUISA ROAD
 BIRCHGROVE

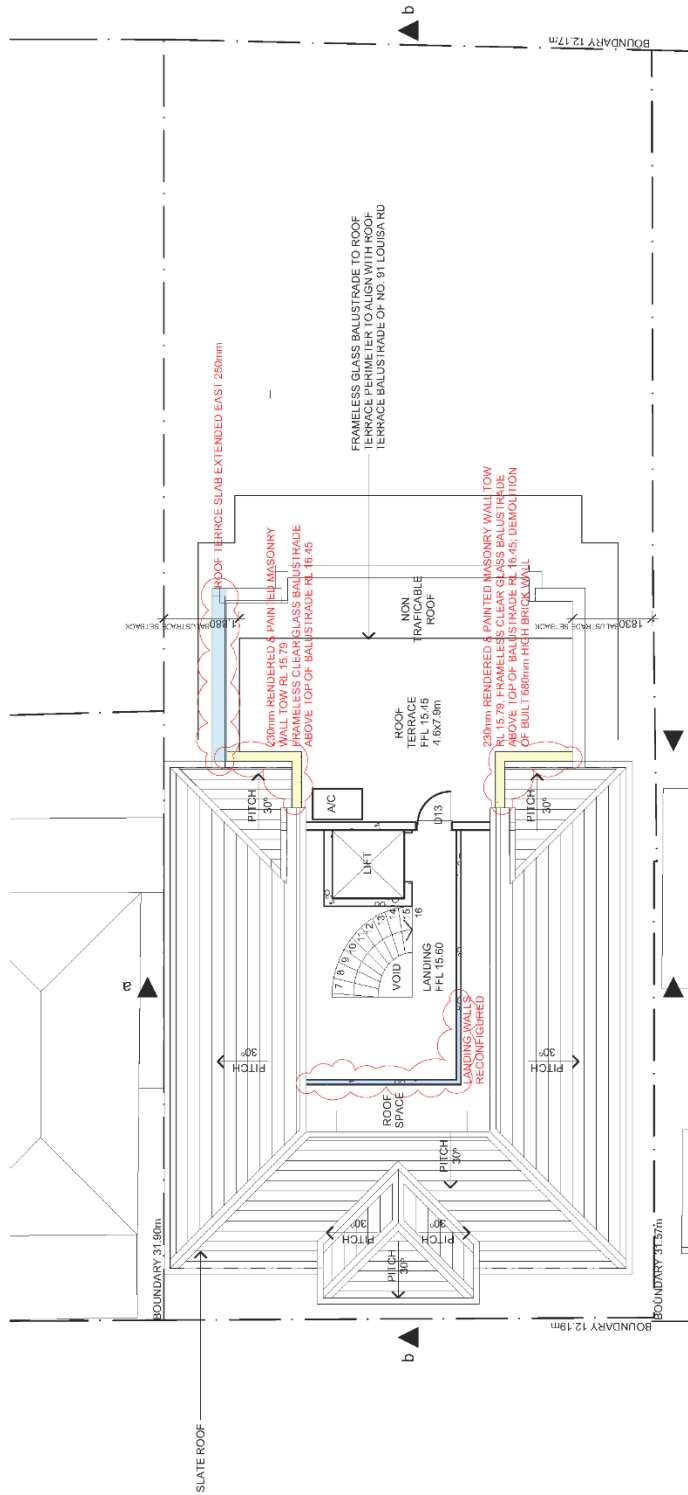
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LEGEND

A/C AIR CONDITIONING COMPRESSOR UNIT



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roof terrace plan

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 93 LOUISA ROAD
 BIRCHGROVE

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BASIX COMMITMENTS CERTIFICATE NO. 8892195_05

Landscape

Indigenous or low water use species of vegetation to be planted throughout 11 square metres of the site.

Water

rainwater tank of at least 2000L is to be installed on the site.

Thermal Comfort

The area of the dwelling must not exceed 300 square metres. The dwelling must not contain open mezzanine area exceeding 25 square metres.

Floor, walls and ceiling/roof

Construction
 floor - concrete slab on ground
 floor - concrete over open subfloor, concrete
 external wall - cavity brick
 internal wall shared with garage - single skin masonry
 ceiling and roof - flat ceiling / pitched roof ceiling.

Windows & Glazed Doors

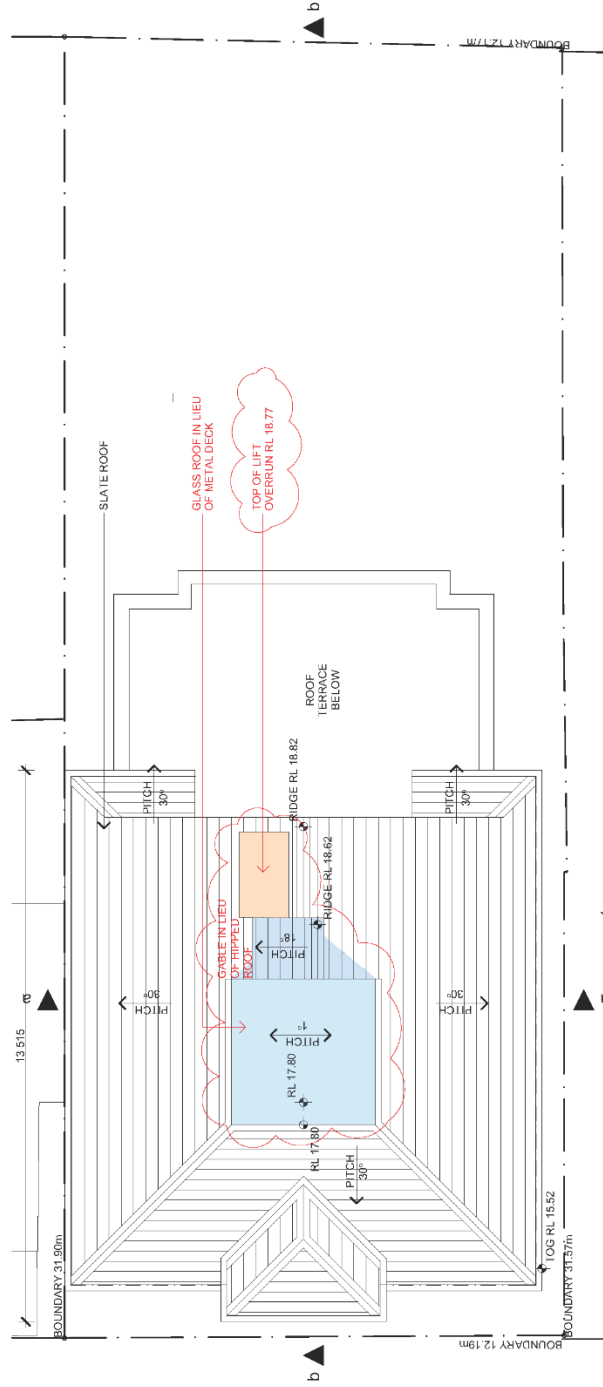
Windows and glazed doors are to be aluminium framed with minimum single, clear glass.

Hot water

The hot water system to be installed in the development, or a system with a higher energy rating, ground source heat pump (closed loop) only.

Other specifications

Additional insulation required (R-value)
 nil, 0.9 (or 1.5 including construction) (down)
 0.50 (or 1.17 including construction)
 nil
 1.45 (up), roof foil backed blanket (100 mm)
 dark (solar absorbance > 0.70)



BILOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

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roof plan

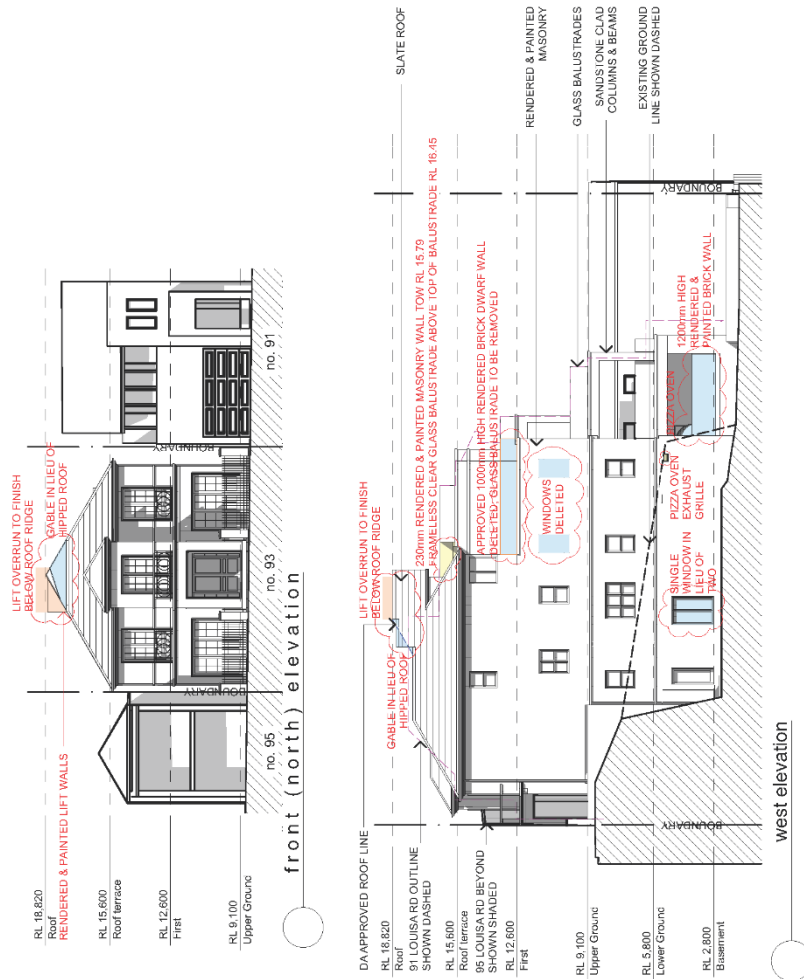
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DATE
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 March 2023
 information added



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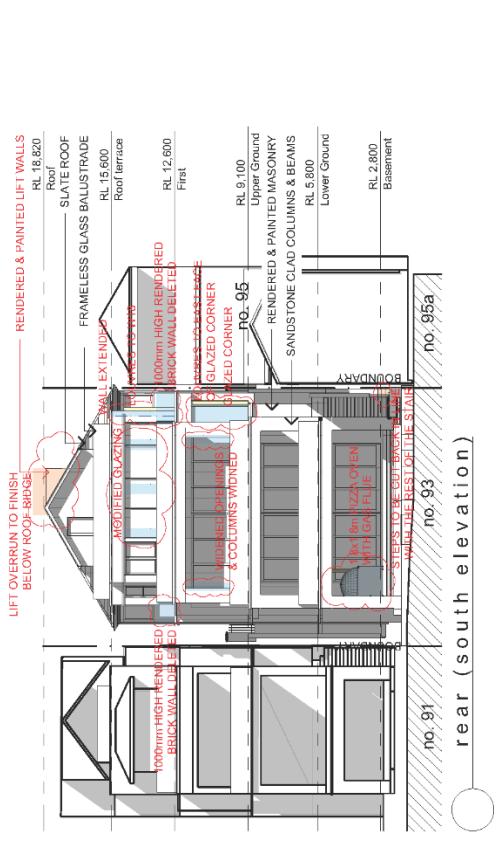
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 DATE October 2022
 ISSUE S.4.55 mod. app.

elevations sheet 1 of 2

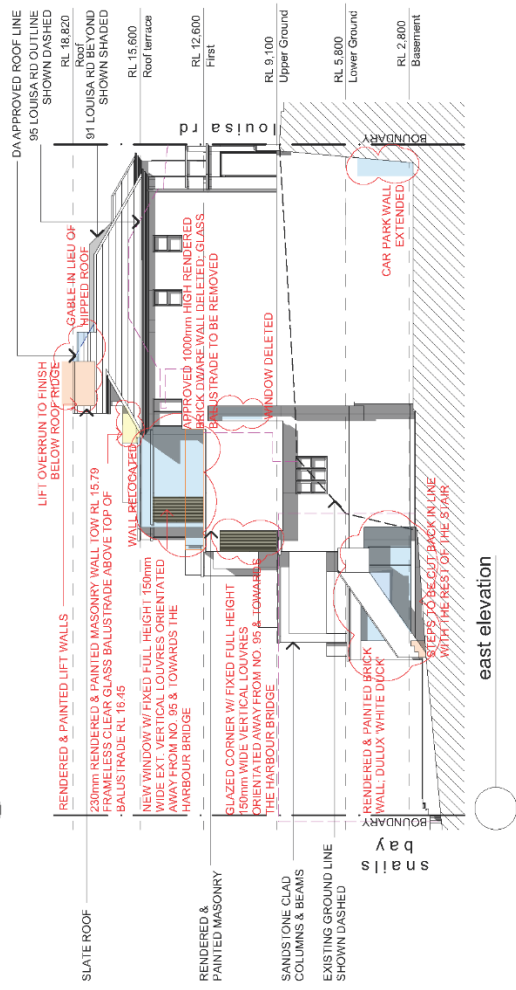
BILLOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

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 Version: 1, Version Date: 24/05/2023

- NOTES**
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 2. BLUE SHADING DENOTES DEVELOPMENT WHICH HAS BEEN APPROVED WITH MODIFICATION. APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.
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rear (south elevation)



east elevation

BILOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

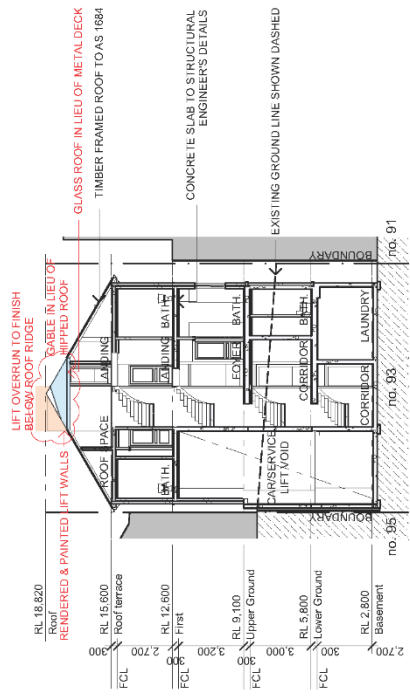
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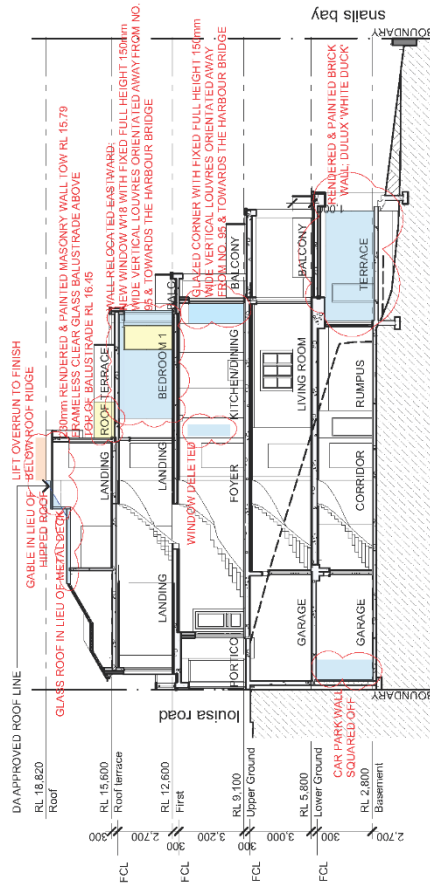
elevations sheet 2 of 2

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section aa



section bb

sections

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 SCALE 1:200 (A3)
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BILOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

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 Version: 1, Version Date: 24/05/2023

Attachment C – Statement of Heritage Significance

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Area 14 Birchgrove and Ballast Point Road

Landform

Birchgrove Point is a rugged narrow neck of sandstone called Yurulbin (swift running waters) by the Aboriginals because of the change in water movement around the point where the bays of the river to the west are protected from the open waters of the harbour to the east. Very deep water frontage along both sides of the point.

There are swamps and mudflats within the still waters of Snails Bay with another high, rocky headland on the southern side, and Ballast Point at its most easterly end. Views either northeast to the harbour, and/or south over Morts Dock can be achieved from most allotments along the Ballast Point headland.



Figure 14.1 Birchgrove and Ballast Point Road Conservation Area Map.

History

The Birchgrove and Ballast Point Conservation Area covers the area of the George Whitfield's 30-acre grant of 1796 (Birchgrove) and sections of John Gilchrist's Balmain Estate (Ballast Point).

Birch acquired Whitfield's grant in 1810 and built Birch Grove house (at 67 Louisa Road, demolished 1967). In 1860 the estate was purchased by Didier Joubert of Hunters Hill and the Parramatta Ferry Service. He commissioned Surveyor Brownrigg to subdivide the land into villa allotments, and despite later small resubdivisions, Brownrigg's layout provides the backbone for Birchgrove today. The streets were named for Joubert's wife (Louisa), children (Numa and Rose) and nephew (Ferdinand) with (Iron) Cove Road, and (Birch) Grove Road defining the grant boundaries. Louisa Road followed the ridge, except for the sharp bend to avoid Birch Grove House, giving access to a single row of steep allotments, all with deepwater frontage. The land around the bay was divided to provide the greatest number of allotments at 50-70ft x 150ft approximately, above high water mark, with The Terrace forming the drive to Birch Grove House.

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The 1860 sale was premature. Within six years Joubert had only sold seven allotments. Stonemasons and quarrymen were among the first purchasers. The estate was eventually mortgaged to the Bank of New South Wales. By 1878, only twenty-three lots had been sold. These early residents were Sydney professionals, who travelled to town by ferry, and small speculators or builders, who quarried the land for buildings elsewhere. In 1886 twenty-four houses, eighteen built of weatherboard, remained from those first eighteen years. Today only fifteen remain.

A new consortium of McLean, McGregor and Threlkeld commissioned Surveyor Reuss Junior to re-examine the Brownrigg plan, and make some amendments around the head of the bay and along the steepest part of Louisa Road to create more allotments or more useable allotments. The estate was again put up for sale in 1878. Sydney's boom period of the 1880s saw many more allotments taken up and villas in stone or rendered brick were built. This dramatic tongue of sandstone at the western end of the harbour also attracted industries dependent on water (shipbuilding and repair) or on water for the transport of its raw materials (timber yards, a cooperage, a coalyard, an oil refinery). Birchgrove was also the site of a power cable tunnel to the north side of the harbour 1913-1926.

The mud flats, by then the repository of garbage and effluent from an increasingly industrialised and urbanised harbour, were designated in the plan as 'proposed park'. A trust was established to fill the area in 1887 for shrubberies and a cricket pitch. The present configuration was completed in 1897.

The garden of Birch Grove House was subdivided twice, in 1900 fourteen brick houses were built between 1902 and 1922 (twelve remain), and again in 1911 when four brick houses built between 1912 and 1926 (all remain). A thick plantation of trees in Birchgrove Park marks the eastern edge of the Birch Grove House garden, and shields the 1967 flats which replaced it, from view. By 1941 when Storey and Keers shipwrights were established on an apron below a narrow cliff edge in Louisa Road, all land in Birchgrove had been taken up. In the 1970s change in industrial operations and the nature of maritime industry in particular left the former small industrial sites of Birchgrove available for new residential development.

Along Ballast Point to the east of Birchgrove Park, land was released for subdivision and sale in 1852. It was part of John Gilchrist's 550-acre Balmain Estate, and subdivisional activities across the whole estate had been suspended in 1841 because of disputes about his will. Once resolved, Surveyor Charles Langley was responsible for subdividing the remaining acres into 46/47 sections, using existing contour-aligned routes such as Darling Street, Birchgrove Road and Ballast Point Road to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders.

Speculators Joshua Josephson, Didier Joubert, Charles Smith, William Cover and George Thorne bought up the land on both sides of Ballast Point Road in 1853. This marine location, with most allotments possessing water frontages, attracted some keen bidding.

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By 1891 the whole process of building up Ballast Point Road, Wharf Road, Yeend, Ronald and Lemm Streets was largely complete. There were marine villas on generous parcels of land along Wharf Road. They were sited well up from the waterfront for a stylish setting and for views, with their backs to the road. Large terraces and villas occupied the high ground along Ballast Point Road.

Cooper, who had already received twenty-three acres in Morts Bay (later part of Mort's Town of Waterview) also owned Ballast Point itself. The Point was purchased and used by Caltex Oil Co for oil storage purposes until the 1980s.

Sources

Jeffery, P 1986, Birchgrove 1796-1985 – the Suburbanisation of the 'Birch Grove' Estate, *Leichhardt Historical Journal*, No. 15.

History of the Ballast Point area provided by Max Solling.

Significant Characteristics

- Close relationship between landform and the road pattern, park, siting of buildings (particularly the nineteenth-century marine villas).
- Wide main access roads.
- Narrow minor streets.
- Sandstone a major element – in retaining walls and sea walls, cut stone fences and walls, as outcrops in streetscape, in steps for pedestrian access, kerbs and gutters, piers to palisade fences, in buildings – terraces and villas.
- Generally a sense of elevation.
- Buildings sited close to street alignment.
- Setbacks can vary, particularly on waterfront sites.
- Views between buildings to harbour from public roads and footpaths.
- Villas often sited with backs to street and front elevation to water.
- Villas sometimes single-storey to street, with two to three stories to waterfront.
- Variety of building types:
 - some early cottages of timber/stone/brick remain;
 - Victorian boom villas of stone or rendered brick;
 - dark brown or blue face brick buildings of early twentieth century; and
 - last subdivisions of the Birch Grove House garden occupied by dark brown face brick houses (some unfortunately painted recently).
- Slate roofs particularly noticeable. Also terracotta tiles and iron roof claddings.
- Some original fences remain – iron palisade fences with sandstone piers and bases from 1880s; brick fences from 1920s/1930s.

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- Prominence of large trees, particularly fig trees, around site of Birch Grove House, in Birchgrove Park and along Ballast Point; some notable palm trees.
- Tree planting schemes of jacaranda and melaleuca along Dock Road and Ballast Point Road.
- Grassed verges in wide streets – Grove Street and Ballast Point Road.
- Loss of many original face brick surfaces to plaster and painting.

Note: The location of former waterfront industries indicated by new dwellings/town houses.

Statement of Significance or Why the Area is Important

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area retains evidence (though somewhat diminished in the last twenty years) of the growth of Birchgrove and Ballast Point as marine suburbs and as a maritime industrial area from the 1870s-1920s, and other industry developed prior to 1941.
- Demonstrates the close relationship between landform, the layout of the roads and the siting of the early villas and industries to take advantage of the marine position.
- Demonstrates the close physical relationship between industry and housing (both middle class and workers housing) in nineteenth century cities.
- Demonstrates the development of brick making in Sydney through its building materials with the use of plastered brick walls and dry-pressed face bricks (unplastered, unpainted) walls.
- Demonstrates one of a number of late nineteenth century bay reclamation projects which characterise Sydney Harbour.

Management of Heritage Values

Generally

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

Retain

- All residential or commercial industrial structures developed up to 1941 belonging to the period of the growth of the Birchgrove and Ballast Point area.
- All weatherboard buildings – rare and typical of early development.
- All sandstone structures – cottages, villas, wharves/slipways, uninterrupted kerbs and gutters, walls, bases to fences.

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- All plaster finishes to external walls – reconstruct where necessary.
- All original external architectural detail where evidence is available.
- Views between buildings from public places, especially views to the harbour.
- Open undeveloped setting between waterfront and marine villas.

Avoid

- Demolition of any pre-1940s building unless the building has been so compromised that it can no longer explain its history or its role in the history of the area.
- Alteration to the form (scale and massing) of these buildings, especially the roof, including additional stories above the roofline.
- Removal of any plaster or decorative mouldings to external walls.
- Painting or plastering of any sandstone or face brick walls.
- Loss of any trees.
- Widening of Louisa Road or Wharf Road.

Notes

Because this area comprises high headlands and tall tree canopies prominent within the harbour, and visible also from the land behind, special care is needed in dealing with changes which might alter the skyline of those headlands in any way – new buildings, additions at the rear of existing buildings. Further, the apron to these headlands – the trees and remaining open land, usually private garden, between building and waterfront – is vital to the protection of the harbour and its foreshores as the most important visible open space asset in Sydney. These foreshore gardens/open areas need to be protected from encroachment of buildings or large moorings.

Care is needed for applications for change to any building or the tree canopy in these areas. There are a number of very early buildings that remain here, overlaid with later works, and restoration to reveal the original building could be possible in many cases.

Industrial archaeology is an important issue – remnants of wharves, slipways, remains of former buildings (especially small cottages later taken over for industry), tunnel entrance, and the proper process for their assessment is essential before any new works can be considered. For any remaining redundant industrial structures careful archaeological work would be needed prior to consideration of demolition or recycling.