



DEVELOPMENT ASSESSMENT PANEL REPORT

Application No.	MOD/2024/0079
Address	86 Rowntree Street BIRCHGROVE
Proposal	Section 4.55(2) modification of Determination No DA/2020/0771 which approved alterations and additions to the existing dwelling. House. Modification seeks internal and external changes.
Date of Lodgement	18 March 2024
Applicant	Mr Leonard V Hambleton
Owner	Mr Leonard V Hambleton Ms Rhian N Czech
Number of Submissions	Initial: Zero (0)
Cost of works	Initial: \$150,000.00 Proposed: \$700,000.00
Reason for determination at Planning Panel	Departure from development standards
Main Issues	<ul style="list-style-type: none"> • Departure from the Floor Space Ratio development standard, which surpasses the previously approved level of non-compliance. • Departure from the Landscaped Area development standard, which is a further reduction from the previously approved level of Landscaped Area. • Proposed private open space deviates further from the minimum quantitative requirements at Part C3.8 of the Leichhardt Development Control Plan 2013.
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Notice of Determination- DA/2020/0771



LOCALITY MAP

Subject Site		Objectors		N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify Determination No. DA/2020/0771 dated 16 March 2021 which approved alterations and additions to the existing dwelling. The proposed modification seeks various internal and external modifications to the approved alterations and additions to dwelling at 86 Rowntree Street Birchgrove (the Site).

The application was notified to surrounding properties and no submissions were received in response to notification.

The main issues that have arisen from the application include:

- The proposal entails a further departure from the Floor Space Ratio development standard, which exceeds the previously approved level of non-compliance.
- The proposal entails a further departure from the Landscaped Area development standard, which is a further reduction from the previously approved level of Landscaped Area.
- The dimensions of the proposed private open space further deviates from the minimum quantitative requirements for POS stipulated in Part C3.8 of Leichhardt DCP 2013.

The non-compliances are acceptable given the works will not be visible from the public domain and are not considered to result in undue adverse amenity impacts on adjoining properties or the subject site and therefore the application is recommended for approval.

Demolition and construction commenced on the Site prior to the issue of a Construction Certificate. This work included demolition of existing fabric, which was not approved to be demolished, and construction of internal walls on the first floor, and altered floor levels.

A BIC (BC/2024/0016) was lodged with Council for assessment for works already carried out. The BIC was determined on 20/02/2023 and does not raise issues that would alter an assessment of the subject application.

The application has been assessed within the framework of the matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is recommended for approval because:

1. The development, as modified is considered to be substantially the same as that originally approved; and
2. The reasons for approval of the modified development, are consistent with the reasons for the originally approved development.

2. Proposal

Ground Floor

Rebuilding Work

- Rebuild the demolished rear wing.
- Reconfigure the size of W1 on northern elevation.
- Increase the size of W3 on western elevation.

New Work

- Internal reconfiguration of ground floor layout, including:
 - Relocate the hallway inside the rear wing to the opposite side of the wing.
 - Relocate the approved WC and laundry to adjacent to the party wall.
- New skylight (SK4) over the kitchen.

First Floor

Rebuilding Work

- Rebuild the demolished rear deck at the same RL, in the same location, and with the same dimensions, and same rear and side setbacks, as the original demolished deck.

New Work

- Construct a shower.
- Construct a new solid balustrade 1m high from the deck FFL, in the same location and the same height as the demolished balustrade of the deck.
- New 1.5m wide and 1.8m high privacy screens to both sides of deck.
- New external weatherboard lining on battens with insulation beneath, over the 2 existing external single skin brick walls of bed 2.
- Re-pitch the existing skillion roof of the rear wing over Bed 2. Maintain the existing ridge along the party wall shared with No. 88.

3. Site Description

The Site is located on the north western side of Rowntree Street, between Spring Street and Macquarie Terrace. The Site consists of one allotment and is generally rectangular in shape with a total area of 116.4sqm and is legally described as Lot 1 in Deposited Plan 1300734.

The Site has a frontage to Rowntree Street of 5.05 metres. The Site is affected by a number of easements including a right of footway between 84 and 86 Rowntree Street.

The Site currently supports a two storey dwelling which is significantly raised above street level. The subject dwelling shares party walls at least in part with the adjoining dwellings at 84

and 88 Rowntree Street. These adjoining dwellings have a similar two storey built form significantly raised above street level.

The Site is currently a construction site and various elements of the existing building have already been demolished (see photos below).

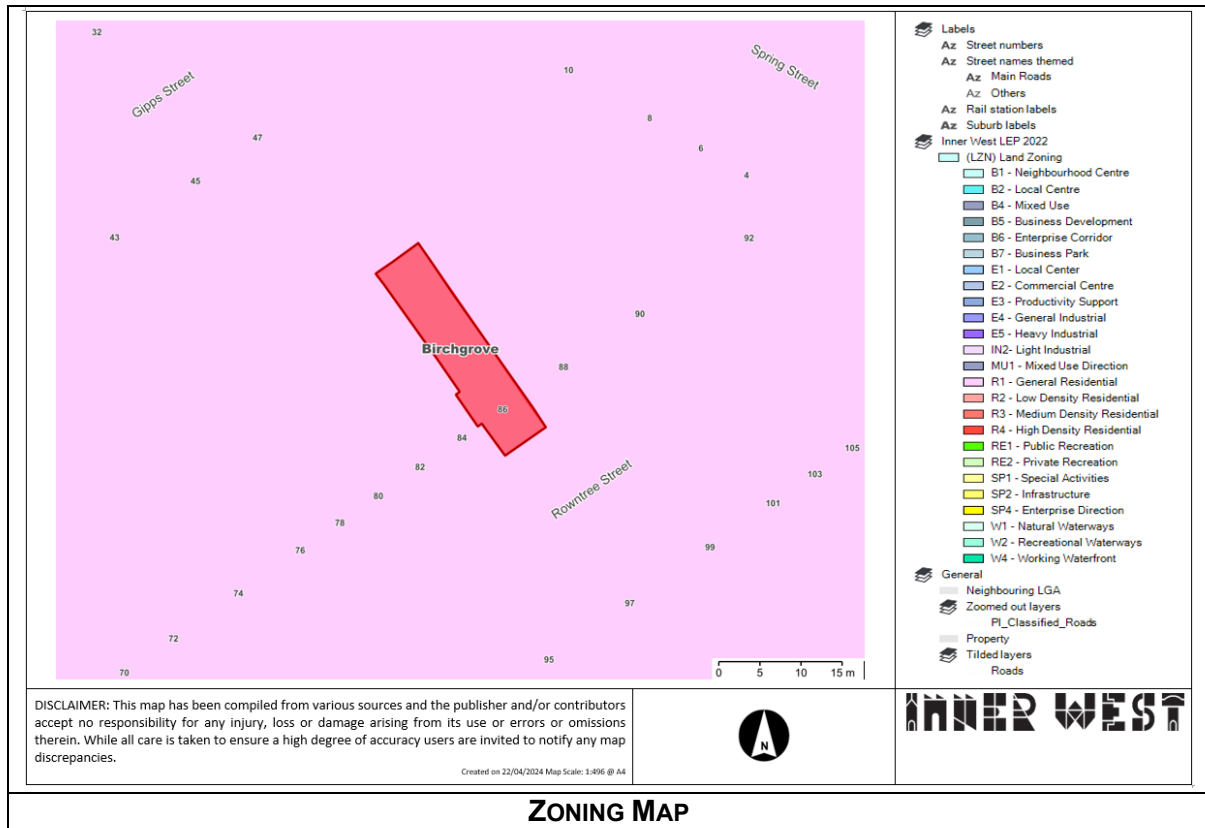




Photo 1: Photo taken from rear of property looking south



Photo 2: Photo taken from rear of property looking north

4. Background

Site history

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

Subject Site

Application	Proposal	Decision and Date
BC/2024/0016	Building Certificate internal and external works undertaken without a construction certificate and beyond the approval granted by the DA.	Approved - Delegation to Staff - 20/02/2024
DA/2020/0771	Alterations and additions to existing dwelling-house	Approved - Local Planning Panel - 16/03/2021

Surrounding properties

Not applicable.

5. Section 4.55 Modification of Consent

The following is a summary of the assessment of the application in accordance with Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EPA Act 1979).

Section 4.55(2)

Section 4.55(2) of the *EPA Act 1979* allows a consent authority to modify a development consent granted by it, if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment / Assessment: In considering whether the development as modified is substantially the same as that for which consent was originally 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. The qualitative and quantitative aspects of the original consent have been compared to the original proposal, and the following comments are made:

- The proposed modifications do not radically change the original proposal.
- The proposed development as modified is considered to be essentially and materially the same development.
- The proposed modifications would not substantially change how the development is to be carried out.
- The proposed modifications do not alter any aspect of the development which was essential to the development when it was originally approved.

The development consent as proposed to be further modified is considered to be substantially the same as the originally approved development.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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 or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Comment / Assessment: No such consultation was required.

(c) it has notified the application in accordance with—
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment / Assessment: The application was notified in accordance with Council's Community Engagement Strategy.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment / Assessment: No submissions were made in response to the exhibition period.

Section 4.55(3)

In consideration of Section 4.55(3) of the *EPA Act 1979* the consent authority has taken into account the following reasons given by the determination authority for the granting of the original consent:

- The proposal generally complies with the aims, objectives and design parameters contained in the relevant environmental planning instruments and development controls plans;
- The proposal will not result in any significant impacts on the amenity of the adjoining properties, the streetscape and is considered to be in the public interest; and

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

It is considered that the modified proposal has taken into account the aforementioned reasons that the original development consent was granted.

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)*.

A. Environmental Planning Instruments

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

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards SEPP* requires the consent authority not consent to the carrying out of any development on land unless:

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

In considering the above, there is no evidence of contamination on the Site. There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

SEPP (Sustainable Buildings) 2022

Section 4.2 Saving and transitional provisions within the Sustainable Buildings SEPP states:

- (1) *This policy does not apply to the following—*
- (a) *a development application submitted on the NSW planning portal but not finally determined before 1 October 2023,*
 - (c) *a development application for BASIX development or BASIX optional development submitted on the NSW planning portal on or after 1 October 2023, if the BASIX certificate that accompanies the development application was issued before 1 October 2023,*
 - (e) *an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal but not finally determined before 1 October 2023,*
 - (f) *an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal on or after 1 October 2023, if the development application for the development consent was submitted on the NSW planning portal before 1 October 2023.*

In this regard, the provisions of the repealed *SEPP (Building Sustainability Index: BASIX) 2004* remain applicable to this application.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has included a BASIX Certificate as part of the lodgment of the application (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EPA Regulation 2021*.

SEPP (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The provisions of Chapter 2 Vegetation in non-rural areas require the consideration of the proposed modifications with regard to tree impacts.

The proposed modifications to the development consent do not involve the potential for any tree impacts.

Chapter 6 Water Catchments

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

Inner West Local Environmental Plan 2022

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

Part 1 – Preliminary

Section	Proposed	Compliance
Section 1.2 Aims of Plan	The proposal satisfies the section as follows: <ul style="list-style-type: none"> • The proposal conserves and maintains the natural, built and cultural heritage of Inner West, • The proposal encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents 	Yes

Part 2 – Permitted or prohibited development

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table	<ul style="list-style-type: none"> • The Site is zoned R1 General Residential. The application, as modified, proposes alterations and additions to a dwelling house, (dwelling houses) are permissible with consent in the R1 General Residential zone. • The proposal is consistent with the relevant objectives of the zone, as it will assist to provide for the housing needs of the community within a general residential environment. 	Yes

Part 4 – Principal development standards

Section	Proposed	Compliance	
Section 4.3C (3)(a) Landscaped Area	Minimum	15% (site area < 235sqm) or 17.46sqm	No
	Proposed	3.26% or 3.8sqm	
	Variation	78.24% or -13.66sqm	
Section 4.3C (3)(b) Site Coverage	Maximum	60% or 69.84sqm	No
	Proposed	68.27% or 79.47sqm	
	Variation	13.79% or 9.63sqm	
Section 4.4 Floor space ratio	Maximum	1:1 or 116.4sqm	No
	Proposed	1.15:1 or 134.1sqm	
	Variation	15.21% or 17.7sqm	
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.	Yes	
Section 4.6 Exceptions to development standards	<p>The proposed modification is not required to formally submit a written request to vary a development standard having regard to the decision within <i>North Sydney Council v Michael Standley and Associates Pty Ltd</i> [1998] NSWSC 163 that states that Section 96 (now Section 4.55) is a:</p> <p><i>‘free-standing provision’, meaning that “a modification application may be approved notwithstanding the development would be in</i></p>	See discussion below	

Section	Proposed	Compliance
	<p><i>breach of an applicable development standard were it the subject of an original development application.</i></p> <p>Notwithstanding, the assessment principles and considerations set out in Section 4.6 of <i>IWLEP 2022</i> are applied as guidance, which is discussed below.</p>	
<p>Section 4.6 Exceptions to Development Standards</p>		
<p>As outlined above, the proposal results in a breach of the following development standards:</p>		
<ul style="list-style-type: none"> • Section 4.3C – Landscaped areas for residential accommodation in Zone R1 <ul style="list-style-type: none"> ○ Section 4.3C (3)(a) – Landscaped Area ○ Section 4.3C (3)(b) – Site Coverage • Section 4.4 – Floor Space Ratio 		
<p><u>Landscaped Area and Site Coverage</u></p>		
<p>The development as proposed to be modified proposes a Landscaped Area of 3.26% (i.e. 3.8sqm). A variation of -13.66sqm (or 78.24%) is proposed to the minimum permissible Landscaped Area under Clause 4.3C of the <i>IWLEP 2022</i>.</p>		
<p>Further, the proposal seeks to increase site coverage to 68.27% (or 79.47sqm) of the Site’s area. A variation of 9.63sqm (or 13.79%) to the Site Coverage development standard under Clause 4.3C of the <i>IWLEP 2022</i>.</p>		
<p>The objectives of Clause 4.3C are as follows:</p>		
<p>(1) <i>The objectives of this clause are as follows—</i></p> <ul style="list-style-type: none"> (a) <i>to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,</i> (b) <i>to maintain and encourage a landscaped corridor between adjoining properties,</i> (c) <i>to ensure that development promotes the desired character of the neighbourhood,</i> (d) <i>to encourage ecologically sustainable development,</i> (e) <i>to control site density,</i> (f) <i>to provide for landscaped areas and private open space.</i> 		
<p>The proposed decrease in landscaped area, compared to the previous DA approval, is due to the proposed expansion of the ground floor building footprint, leading to higher site coverage. Initially, the subject Site lacked any landscaped area, and the original development application aimed to introduce more landscaped area to the Site. Despite the proposed reduction, the modified application will still enhance the landscaped area on the Site compared to its pre-existing state. Additionally, if the proposed paved surfaces in the rear yard are ever removed, the Site could potentially meet the required landscaped area. Accordingly, had separate Section 4.6 variation requests to the proposed Landscaped Area and Site Coverage variation been provided, it would have been supported as the modified proposal meets the objectives of the Landscaped Area and Site Coverage development standards.</p>		
<p><u>Floor Space Ratio (FSR)</u></p>		

Section	Proposed	Compliance
<p>As previously noted, the development as proposed to be modified proposes a FSR of 1.15:1 (i.e., a GFA of 134.1sqm). That is, a variation of 17.7sqm (or 15.21%) is proposed to the maximum permissible FSR under Clause 4.4 of the <i>IWLEP 2022</i>.</p> <p>The relevant objectives of Clause 4.4 are addressed below.</p> <p>(1) <i>The objectives of this clause are as follows—</i></p> <ul style="list-style-type: none"> (a) <i>to establish a maximum floor space ratio to enable appropriate development density,</i> (b) <i>to ensure development density reflects its locality,</i> (c) <i>to provide an appropriate transition between development of different densities,</i> (d) <i>to minimise adverse impacts on local amenity,</i> (e) <i>to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.</i> <ul style="list-style-type: none"> • <u>Objective (a) – to establish a maximum floor space ratio to enable appropriate development density; Objective (b) – to ensure development density reflects its locality; and Objective (c) – to provide an appropriate transition between development of different densities.</u> <p><u>Comment:</u> The FSR control serves as a numerical measure for gauging the density and intensity of development. It determines the size of new development and its resultant impact on the surrounding environment. The proposed extension on the ground floor and internal reconfiguration of the internal layout leads to a higher FSR, which in turn adds to the overall size of the building compared to the initially approved development. However, despite this deviation from the maximum permitted FSR, the increase in building size is not considered to be significant enough to cause an imbalance or be out of sync with the density of development in the immediate area. Accordingly, the modified proposal achieves objectives (a), (b) and (c).</p> <ul style="list-style-type: none"> • <u>Objective (d) – to minimise adverse impacts on local amenity.</u> <p><u>Comment:</u> The proposed development, as modified, has minimised amenity impacts on local amenity. The proposed additional gross floor area is located at the ground floor level and is not considered to result in any undue adverse amenity impacts on surrounding residential properties. Further, the modified internal layout does not have any adverse impacts on local amenity. Accordingly, the modified proposal achieves objective (d).</p> <ul style="list-style-type: none"> • <u>Objective (e) – to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.</u> <p><u>Comment:</u> The FSR non-compliance does not have any adverse impacts on significant tree canopy. Moreover, the ground floor extension, would not compromise the use and enjoyment of surrounding properties. Accordingly, the modified proposal achieves objective (e).</p> <p>Accordingly, the modified proposal meets the objectives of the FSR development standard.</p>		

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
Section 5.10 Heritage conservation	<p>The subject site is a contributory building within the Iron Cove Heritage Conservation Area (HCA).</p> <p>The proposal achieves the objectives of this section as follows:</p> <ul style="list-style-type: none"> • The proposed development has minimised impacts on the HCA by locating the new contemporary development at the rear of the Site, in a manner that would not be visible from the public domain. • The development has been designed to respond to the significance of the conservation area and preserve the main contributory elements and fabric of the existing building <p>Given the above the proposal preserves the environmental heritage of the Inner West.</p>	Yes

Part 6 – Additional local provisions

Section	Proposed	Compliance
Section 6.1 Acid sulfate soils	The Site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable.	Yes
Section 6.2 Earthworks	The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.	Yes
Section 6.3 Stormwater Management	Subject to standard conditions imposed under the parent consent the proposed development, as modified, would not result in any significant runoff to adjoining properties or the environment.	Yes, subject to conditions

B. Development Control Plans

Summary

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	

B1.1 Connections – Objectives	Yes
Part C: Place – Section 1 General Provisions	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.7 Site Facilities	Yes
C1.9 Safety by Design	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes
Part C: Place – Section 2 Urban Character	
C.2.2.2.6: Birchgrove Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – see discussion
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – see discussion
C3.9 Solar Access	No – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	No – see discussion
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
E1.2.5 Water Disposal	Yes
E1.2.7 Wastewater Management	Yes

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

Building Location Zone (BLZ) – Main Building

In accordance with control C3 at Part C3.2 of the LDCP 2013, the BLZ is the part of a site where it can be reasonably expected that a building can be located. In this regard, the BLZ controls determine the front and rear building setbacks of new development. The BLZ is determined by having regard to only the main building on the adjacent properties.

Where an adjoining development has a front or rear setback that is clearly uncharacteristic of the general pattern of development within the street, consideration will be given to that general pattern in determining whether to permit a variation to the BLZ that would otherwise be determined based on the adjoining buildings alone.

The property adjacent to the subject site located at No. 88 Rowntree Street consists of a ground floor level that extends to the rear boundary. However, because No. 88's lot is notably larger than the subject site, it doesn't serve as a suitable guide for the siting of new development on the subject site due to its smaller size. Properties in the vicinity, such as those at Nos. 76 to 84 Rowntree Street, share similar lot dimensions to the subject site. Among them, Nos. 82 and 84 Rowntree Street have comparable rear ground floor building setbacks, which generally correspond with the proposed ground floor extension on the subject site.

However, despite the above, the proposed development involves altering the approved rear BLZ at the ground floor level, which results in a deviation from control C3 at Part C3.2 of the LDCP 2013. As outlined in control C6 at Part C3.2 of the LDCP 2013, if there is a proposed deviation from the BLZ, the responsibility lies with the applicant to show that the proposed construction is consistent with the pattern of development in the immediate area (typically considered as the same street) and that:

- a. amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved;*
- b. the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;*
- c. the proposal is compatible in terms of size, dimensions, privacy and solar access of private open space, outdoor recreation and landscaping;*
- d. Retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and*
- e. The height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.*

In assessment of the application under control C6, it is considered that the proposed ground floor BLZ is generally compatible with ground floor BLZ of properties in the immediate vicinity of the Site and is acceptable for the following reasons:

- The proposal will result in acceptable visual privacy and solar access/overshadowing impacts (see DCP Parts C3.9 and C3.11 assessment below) and will not result in adverse view loss impacts to surrounding properties.
- The proposed ground floor is generally consistent with the scale of surrounding development and would not result in any streetscape impacts as the additions are located at the rear of the Site and would not be visible from the public domain.
- The proposal development does not achieve compliance with the controls for private open space (POS) under Part C3.8 of the LDCP 2013. However, the proposal meets the objectives of the controls, and the non-compliance is justifiable. See DCP Part C3.8 assessment below.
- There is no existing significant vegetation located within the rear yard of the subject site. However, there is still opportunity for a small tree to be planted and a landscape corridor to be provided at the rear of the property.
- The proposed ground floor is positioned nearer to the built structure of No. 88 Rowntree Street along the north eastern boundary and employs modest floor-to-ceiling heights, thereby reducing the visual impact of the building's bulk when viewed from No. 84 Rowntree Street.

Accordingly, the proposed first floor rear BLZ meets the requirements under control C6 and the proposed ground floor BLZ can be supported on merit.

Building Location Zone – Open-Sided Structures

The proposed modification application seeks consent to reconstruct a deck located at the first floor level. Control C4 at Part C3.2 of the LDCP 2013 permits open-sided structures, like balconies, to extend beyond the designated BLZ, if they are consistent with similar structures on adjoining properties. In this case, neither adjacent property has a first floor deck in an equivalent location. A review of Council's records indicates that the deck was approved under Building Application (BA 14577) on 23/04/1976. The proposed deck is proposed at the same RL, with the same dimensions, and same rear and side setbacks, as the original demolished deck. As such, the deck is considered acceptable in this instance.

C3.8 Private Open Space

The proposal does not comply with the private open space (POS) requirements of Control C1 at Part C3.8 of the LDCP 2013 as follows:

- The proposal does not achieve a POS with a minimum 3m dimension, which is inconsistent with control C1(b).

The relevant objectives to consider in relation to the variation are objectives O1(a), (b), (c), (d) and (f) at Part C3.8 of the LDCP 2013. In considering a variation the following is noted:

- POS is provided for the dwelling. Therefore, objective O1(a) is met.
- While the existing POS does not achieve the minimum dimension required [3m], the proposal provides over 16sqm of POS and is capable of accommodating for the private

recreation needs of the residents, which is considered a reasonable outcome on a small allotment. Therefore, the objective O1(b) is met.

- The proposed POS is integrated with and can serve as an outdoor extension of the dwelling's main living area. Therefore, objective O1(c) is met.
- The proposal does not cause any additional adverse impacts upon the POS of the subject site. Therefore, the proposal achieves objective O1(d).
- The proposed POS is generally commensurate with the layout and size of POS on properties of a similar development density in the vicinity of the Site and is located at grade level to minimise visual privacy and acoustic impacts. Therefore, objective O1(f) is met.

Considering the above, the proposed development, as modified, achieves the relevant objectives under Part C3.8 of the LDCP 2013 and can be supported on merit.

C3.9 Solar Access

The proposal entails the following external modifications, which would result in changes to the existing shadow profile:

- Ground floor extension;
- External cladding fixed to existing single skin brick wall;
- Privacy screen installed on the first floor deck; and,
- Re-pitching the skillion roof form.

All Development and Alterations and Additions

Because of the presence of existing structures at No. 88 Rowntree Street and No. 10 Spring Street, the subject site experiences minimal direct sunlight exposure to its private outdoor area during the winter solstice. The overshadowing effects resulting from the proposed external modifications, namely the ground floor extension, would have minimal impact on the level of overshadowing present on the subject site's private outdoor space, particularly when accounting for the length of the deck that overhangs the ground floor below [as existing]. The proposed ground floor extends approximately 320mm beyond the length of the deck and would have a negligible overshadowing impact, which is not considered to warrant a redesign to protect solar access to the subject site.

Minimise Impact to Neighbouring Properties – Living Areas

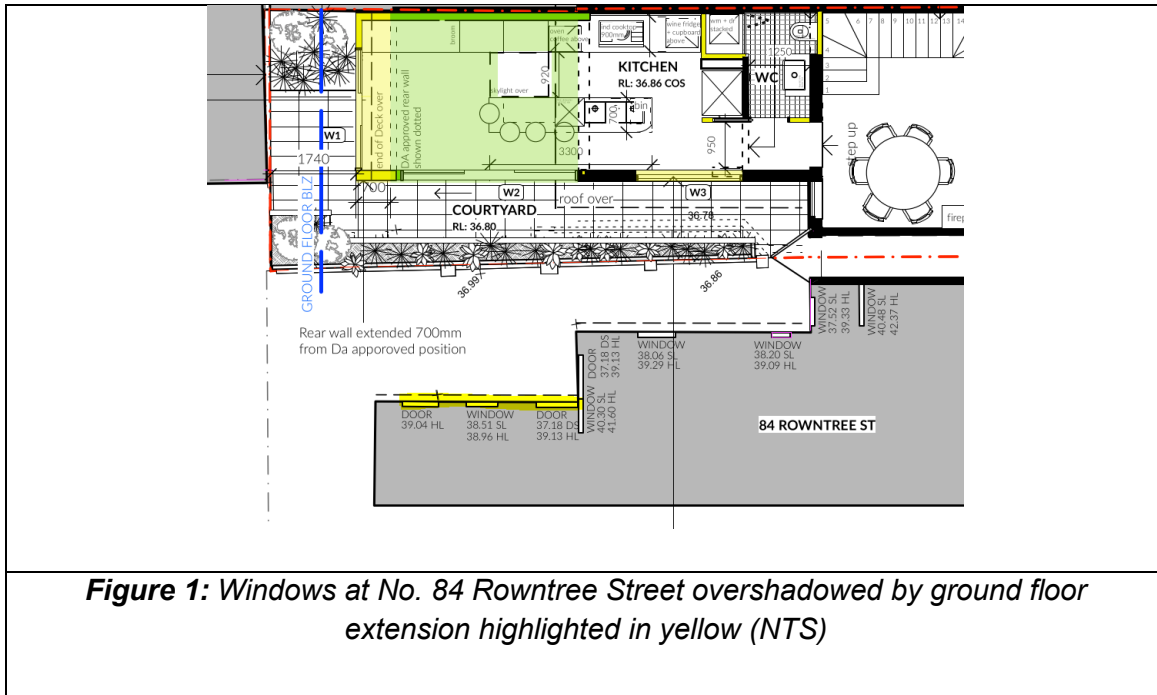
The neighbouring properties impacted in terms of overshadowing are oriented as follows:

Street Address	Orientation	Control
84 Rowntree Street	45 degrees from true north	C14 – 2 hours between 9am and 3pm during the winter solstice

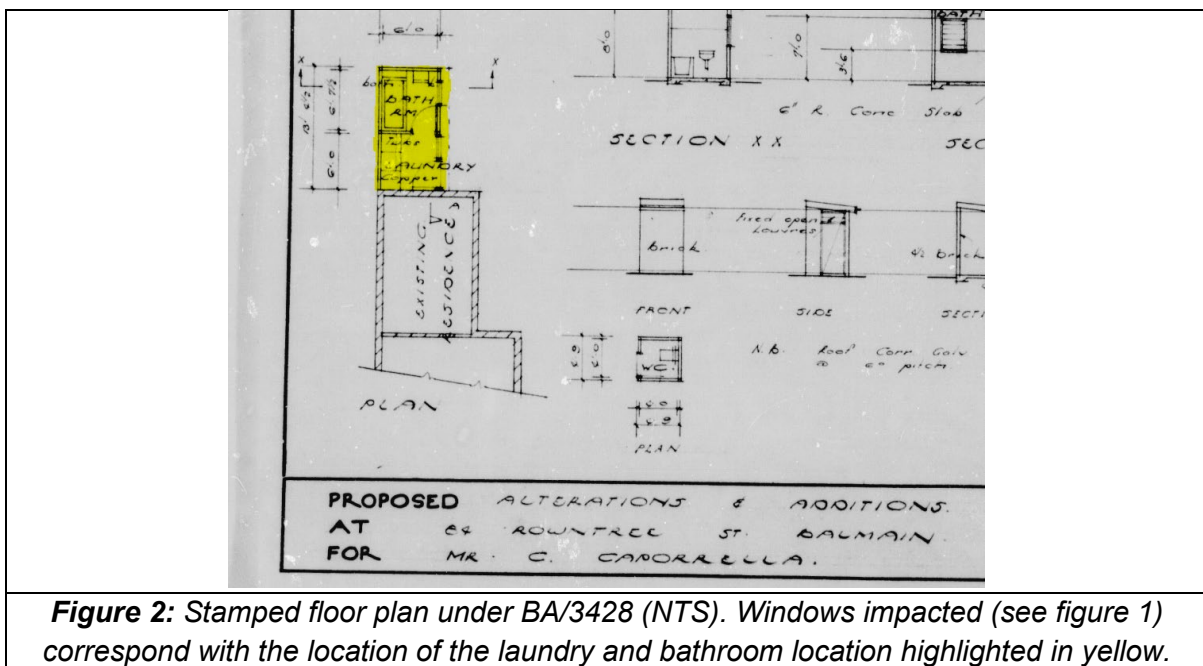
The proposed modification, as previously mentioned, seeks consent to various external changes. Each of these external changes is dealt with in turn below.

Ground Floor Extension

The proposed ground floor extension would cause additional overshadowing to side facing openings at No. 84 between 9am and 12pm, the windows impacted by the ground floor extension are highlighted in yellow in figure 1 below:



As desktop review of Council’s records indicates under BA/3428 that these openings do not serve the main living area and serve a laundry and bathroom (see image below).



Having regard to the use of these rooms, which are not protected under Part C3.9 of the LDCP 2013, overshadowing to these openings is considered acceptable.

External Cladding

The proposed modification seeks to attach external weatherboard cladding to the existing single skin brick wall at the first floor level. Considering the thickness of weatherboard cladding, which is approximately 16mm thick, this proposed material change would not cause any substantial overshadowing effect that would adversely affect the amenity of No. 84.

Privacy Screen

The proposal seeks to install a 1800mm tall privacy screen, extending 1500mm along part of the western side of the first floor deck. This screen, rising 800mm above the existing 1000mm high balustrade, would cast further shadows on the following windows highlighted in yellow in figure 3 below.

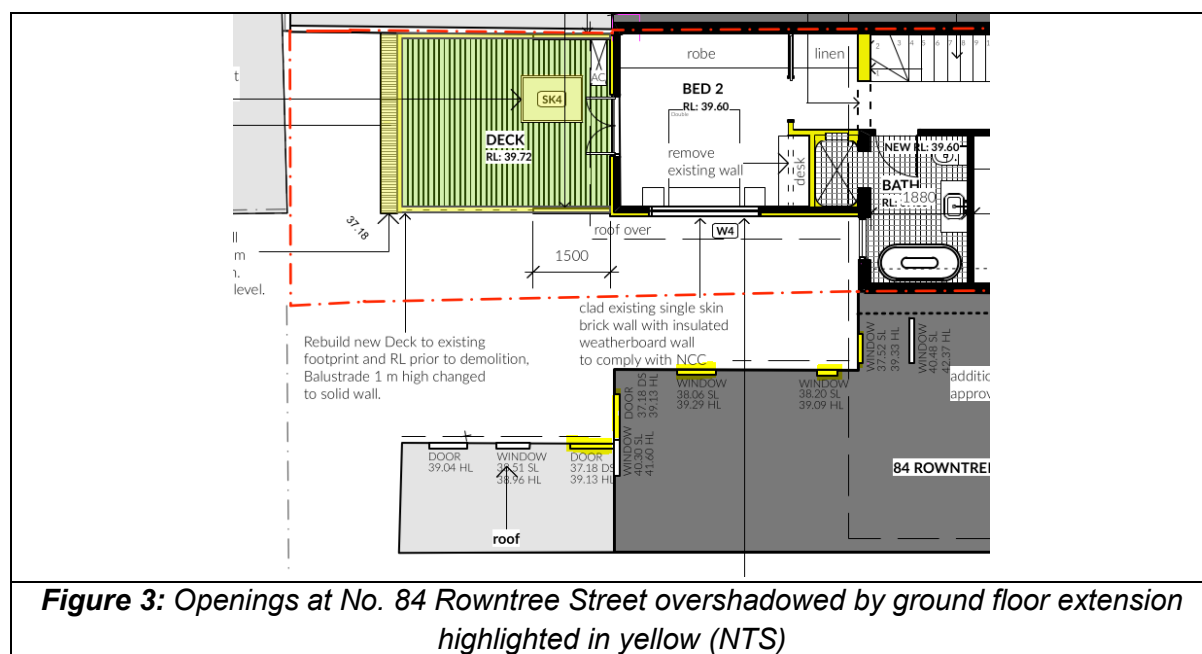


Figure 3: Openings at No. 84 Rowntree Street overshadowed by ground floor extension highlighted in yellow (NTS)

A detailed floor plan of No. 84 Rowntree Street could not be accessed, and no submission was received from the neighbouring property during the notification process, specifying the use of the rooms with windows affected. Notwithstanding, as noted in the LDCP 2013, assessment of the impact of development on the solar access of neighbouring properties considers the following matters, which are derived from the Planning Principle established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082:

- a) the reasonableness of the development overall, in terms of compliance with other standards and controls concerned with the control of building bulk and having regard to the general form of surrounding development;
- b) site orientation;
- c) the relative levels at which the dwellings are constructed;
- d) the degree of skill employed in the design to minimise impact; and,

- e) whether reasonably available alternative design solutions would produce a superior result.

In consideration of these points, the openings at No. 84 Rowntree Street are located centrally on the side elevation and are primarily side facing, making protection of solar access more challenging. Additionally, the proposed privacy screen has been introduced on a section of the deck to address overlooking concerns when residents use the deck. While the introduction of new shadows could be avoided by removing the privacy screen, this action would compromise the intended privacy mitigation measure. The proposal presents a trade-off between solar access and privacy concerns, which, given the nuances and complexities of the Site and its context, is deemed to be a reasonable planning outcome. As such, any additional overshadowing associated with the proposed privacy screen is not considered to be unreasonable in the circumstances of this case and can be supported on merit.

Re-pitching Skillion Roof

The proposed modification application seeks consent to reduce the pitch of the skillion roof over the first floor level. Given the height of the current roof and the shadow it casts on the neighbouring wall, the ground floor windows are already overshadowed. Therefore, the proposed re-pitching adjustment to the skillion roof pitch would not cause further overshadowing on the side-facing windows.

Accordingly, in consideration of the reasonableness of the proposed solar impacts, the proposal does not result in adverse overshadowing to existing openings at No. 84 Rowntree Street and is considered to be consistent with objectives O1(d) and (f) at Part C3.9 of the LDCP 2013.

Minimise Impact to Neighbouring Properties – Private Open Space

The neighbouring properties impacted in terms of overshadowing are oriented as follows:

Street Address	Orientation	Control
84 Rowntree Street	North	C17 – 3 hours between 9am and 3pm to 50% of the total area during the winter solstice

The POS of No. 84 does not currently receive compliant solar access. The proposed modifications would not result in additional overshadowing impacts to No. 84’s POS since any new shadows generated by the proposed development would fall within the existing shadow profile of existing structures. Therefore, compliance control C19, which requires no further loss of solar access, is achieved.

C3.11 Visual Privacy

Windows

The proposed modification application seeks consent for amended/additional openings as follows:

- Northwest (rear) elevation
 - W1 – Ground floor sliding door/window servicing the rear living/dining room.
- Southwest (side) elevation
 - W2 – Ground floor sliding door/window servicing the rear living/dining room.
 - W3 – Ground floor window servicing kitchen.
 - W4 – First floor window servicing a bedroom.

Having regard to the above, sightlines from openings at the ground level (W1, W2, W3) are obscured by existing dividing walls / fencing and screening is not required in accordance with control C6 at Part C3.11 of the LDCP 2013. Window (W4) is proposed with a high sill height of 1600mm, which is an appropriate visual privacy mitigation measure in accordance with control C1 at Part C3.11 of the LDCP 2013.

Raised Deck

The proposed modification application seeks to rebuild a first floor deck located off a bedroom. Council's records indicate that the deck was approved under a Building Application (BA 14577) on 23/04/1976. The dimensions of the deck exceed the maximum permitted under control C9 at Part C3.11 of the LDCP 2013, which reads as follows:

- *C9: Balconies at first floor or above at the rear of residential dwellings will have a maximum depth of 1.2m and length of 2m unless it can be demonstrated that due to the location of the balcony there will be no adverse privacy impacts on surrounding residential properties with the provision of a larger balcony.*

No change is proposed to the floor level or dimensions of the deck and, as such, the proposal is satisfactory as it will not result in undue or adverse privacy impacts to adjoining sites beyond those that have been existing since the deck was first erected and permission was granted for use and occupation of the building on 08/05/1979. It is noted that the proposal seeks to include a 1,800mm high privacy screen along a portion of the western elevation, which will assist to obscure sightlines from the deck.

On balance, the proposed modifications are considered to achieve the objectives of Part C3.9 of the LDCP 2013.

C. The Likely Impacts

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

(B)

(C) It is further noted that the proposal seeks works to re-pitch the skillion roof over the rear first floor wing. Conditions of consent imposed under the original consent requires the applicant to provide architectural drawings accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate and plans must be provided to all owners of the party wall/s. This condition is considered sufficient for ensuring the new roof works do not adversely impact the existing party wall.

D. The Suitability of the Site for the Development

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

E. Submissions

The application was notified in accordance with Council's Community Engagement Strategy between 27 March 2024 to 12 April 2024.

F. The Public Interest

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

This has been achieved in this instance.

7. Referrals

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

- Heritage Specialist;
- Development Engineer.

8. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining 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. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.55(2) of the *Environmental Planning and Assessment Act 1979*, grant consent to Application No. MOD/2024/0079 for internal and external modifications to the existing dwelling at 86 Rowntree Street, Birchgrove subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

A. Amend Condition 1 to read as follows:

1. Documents related to the consent

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

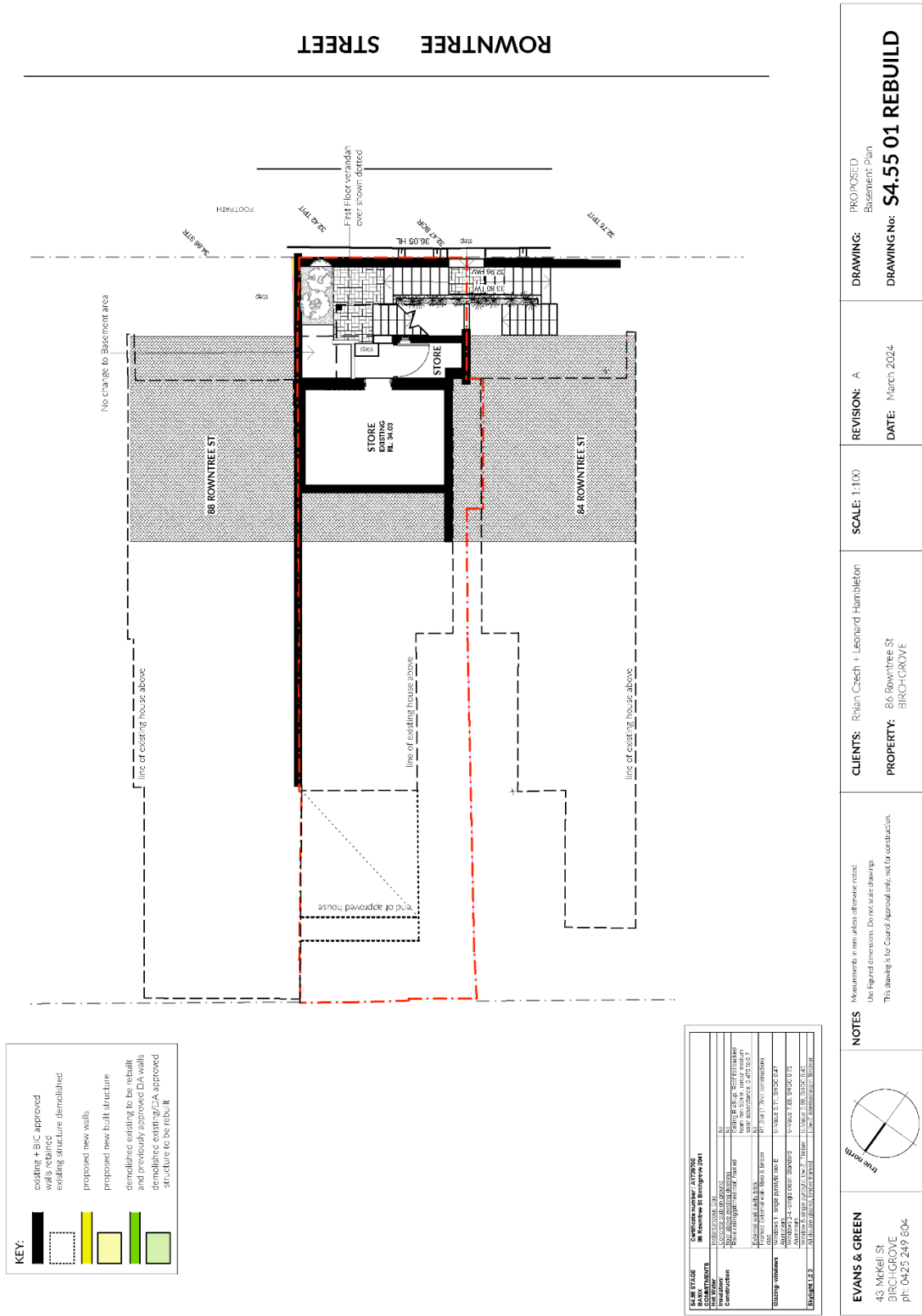
Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
Dwg No. DA 001	Proposed Site Plan	09.09.20	COSO Architecture
Dwg No. DA 002	Proposed Basement Floor Plan	09.09.20	COSO Architecture
Dwg No. DA 003	Proposed Ground Floor Plan	09.09.20	COSO Architecture
Dwg No. DA 004	Proposed First Floor Plan	09.09.20	COSO Architecture
Dwg No. DA 005 Rev A	Proposed Second Floor Plan	21.12.20	COSO Architecture
Dwg No. DA 006	Proposed Roof Plan	09.09.20	COSO Architecture
Dwg No. DA 007 Rev A	Proposed Section AA	21.12.20	COSO Architecture
Dwg No. DA 009	Proposed South (Front) Elevation	09.09.20	COSO Architecture
Dwg No. DA 010	Proposed North (Rear) Elevation	09.09.20	COSO Architecture
Dwg No. DA 011	Proposed West Elevation	09.09.20	COSO Architecture
Dwg No. DA 012	Proposed East Elevation	09.09.20	COSO Architecture
Dwg No. DA 019	Material and Finishes Schedule	09.09.20	COSO Architecture

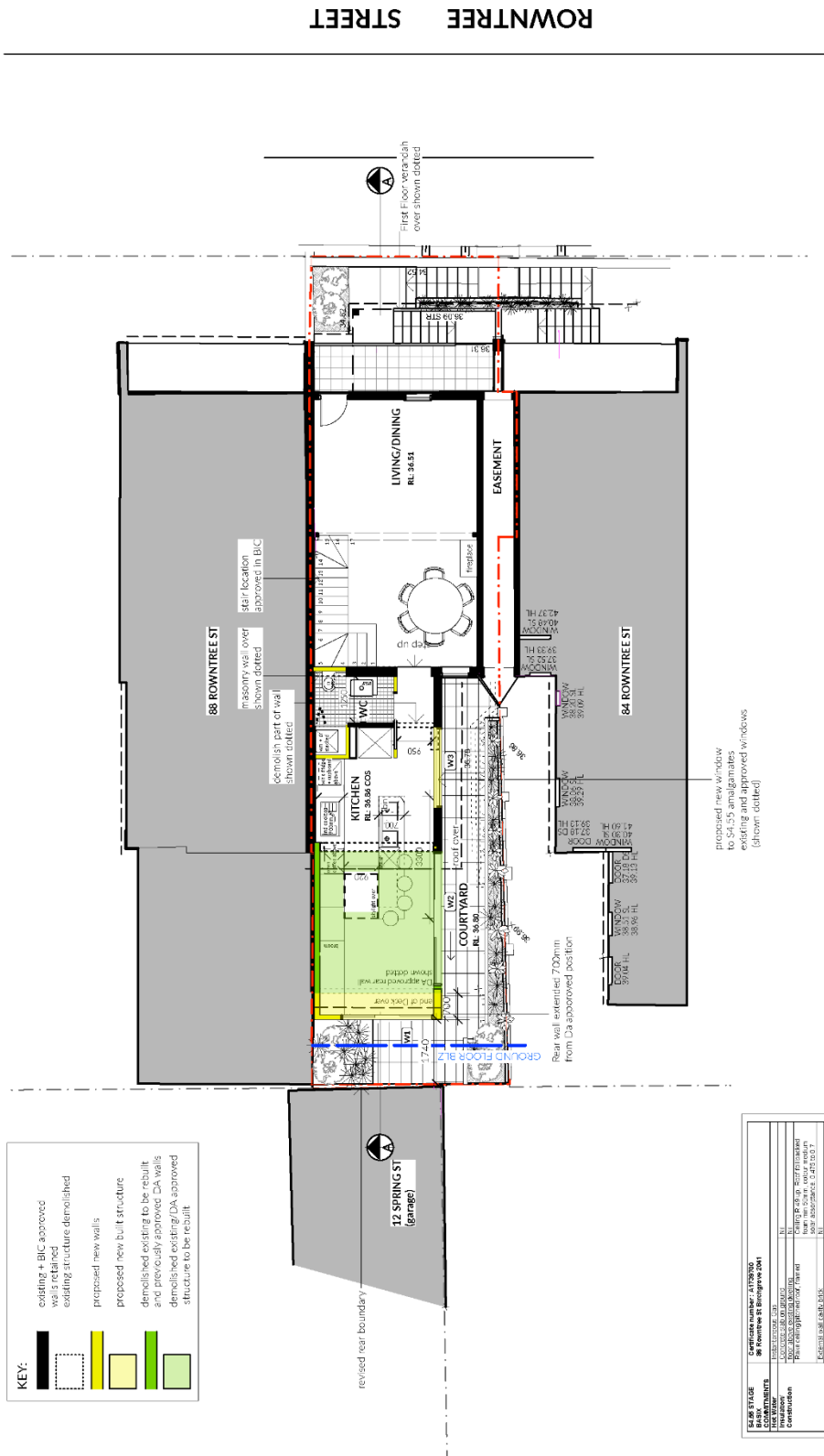
A389676	BASIX Certificate	09 September 2020	Connor + Solomon Architects
S4.55 01 REBUILD, Rev. A	Proposed Basement Plan	March 2024	Evans and Green
S4.55 02 REBUILD, Rev. A	Proposed Ground Floor Plan	March 2024	Evans and Green
S4.55 03 REBUILD, Rev. A	Proposed First Floor Plan	March 2024	Evans and Green
S4.55 04 REBUILD, Rev. A	Proposed Second Floor Plan	March 2024	Evans and Green
S4.55 05 REBUILD, Rev. A	Proposed Roof Plan	March 2024	Evans and Green
S4.55 10 REBUILD, Rev. A	Proposed Front and Rear	March 2024	Evans and Green
S4.55 11 REBUILD, Rev. A	Proposed Elevations West	March 2024	Evans and Green
S4.55 12 REBUILD, Rev. A	Proposed Elevations East	March 2024	Evans and Green
S4.55 13 REBUILD, Rev. A	Proposed Section AA	March 2024	Evans and Green
Dwg No. DA 019	Material and Finishes Schedule	09.09.20	COSO Architecture
A1739700	BASIX Certificate	13 March 2024	Mr Anthony Green

As amended by the conditions of consent.

Condition Amended - MOD/2024/0079 – 12 June 2024

Attachment B – Plans of proposed development





EVANS & GREEN
 43 Merkel St
 BIRCHGROVE
 ph: 0425 249 804

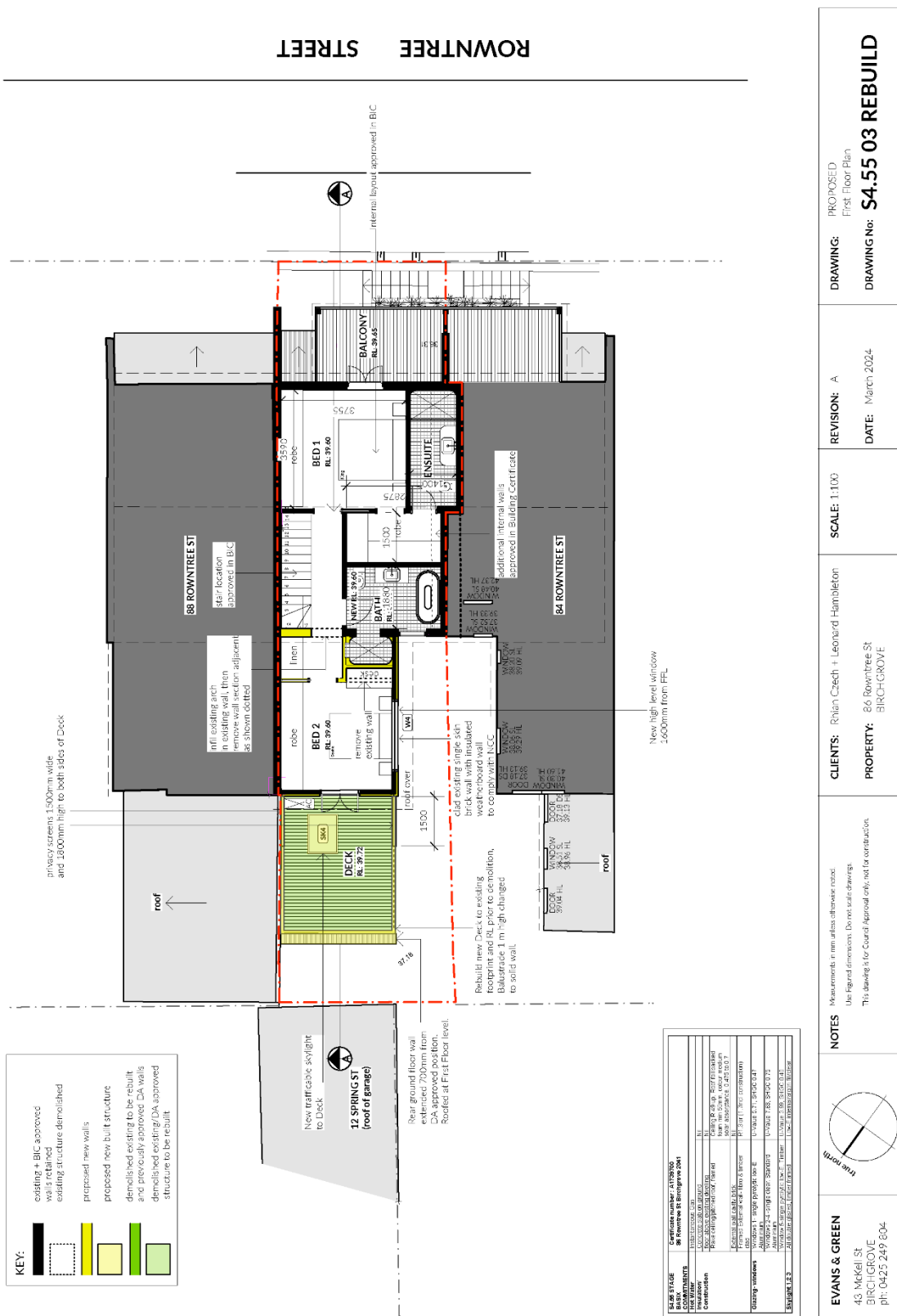
NOTES
 Measurements in mm unless otherwise noted.
 Use figured dimensions. Do not scale drawings.
 This drawing is for Council Approval only, not for construction.

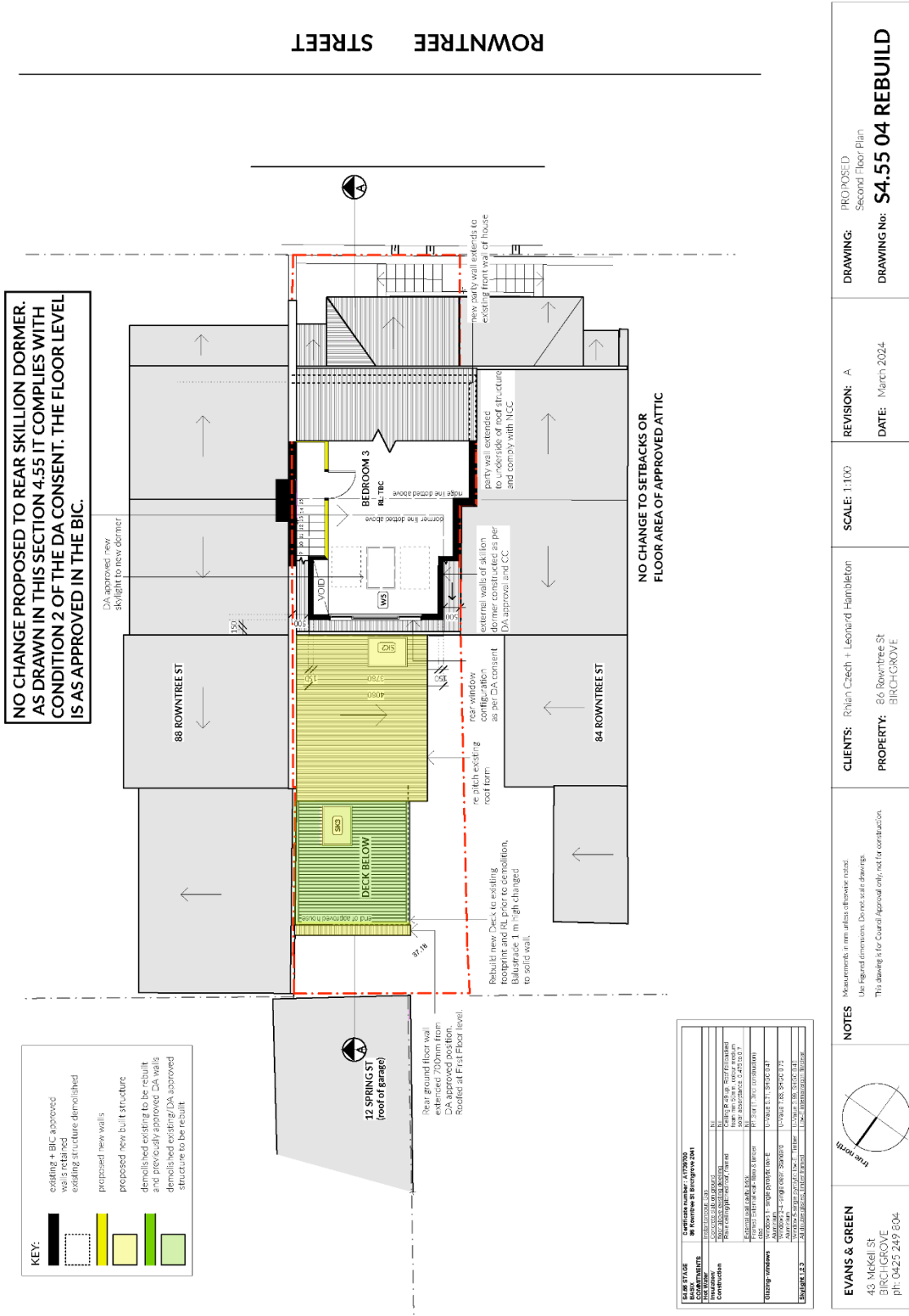
CLIENTS: Rhan Czech + Leonard Hambleton
PROPERTY: 84 Rowntree St
 BIRCHGROVE

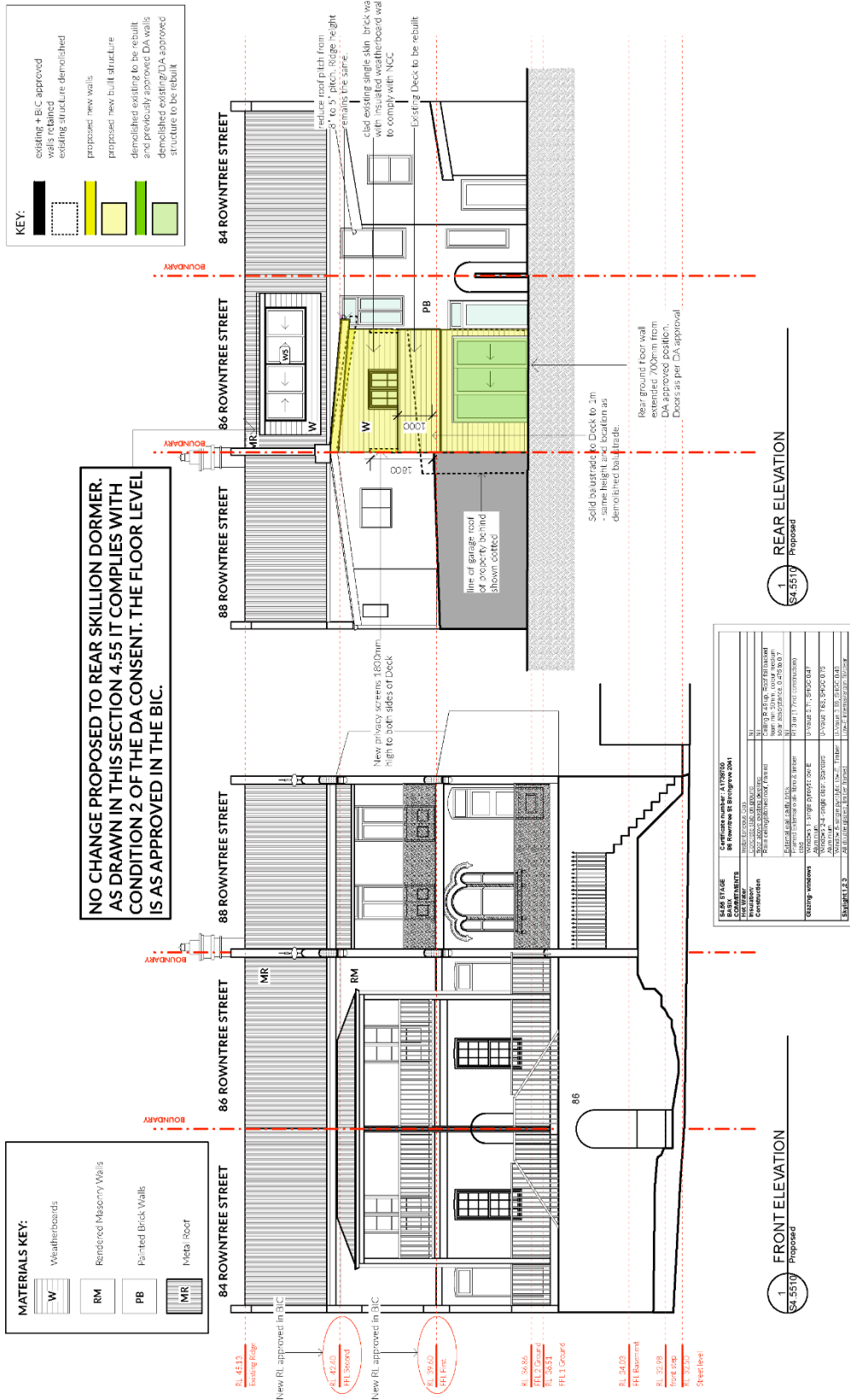
SCALE: 1:100
REVISION: A
DATE: March 2024

DRAWING: PROPOSED Ground Floor Plan
DRAWING No: S4.55 02 REBUILD

Document Set ID: 39051988
 Version: 1, Version Date: 24/04/2024







EVANS & GREEN
43 McKell St
BIRCHGROVE
PH: (0)25 249 804

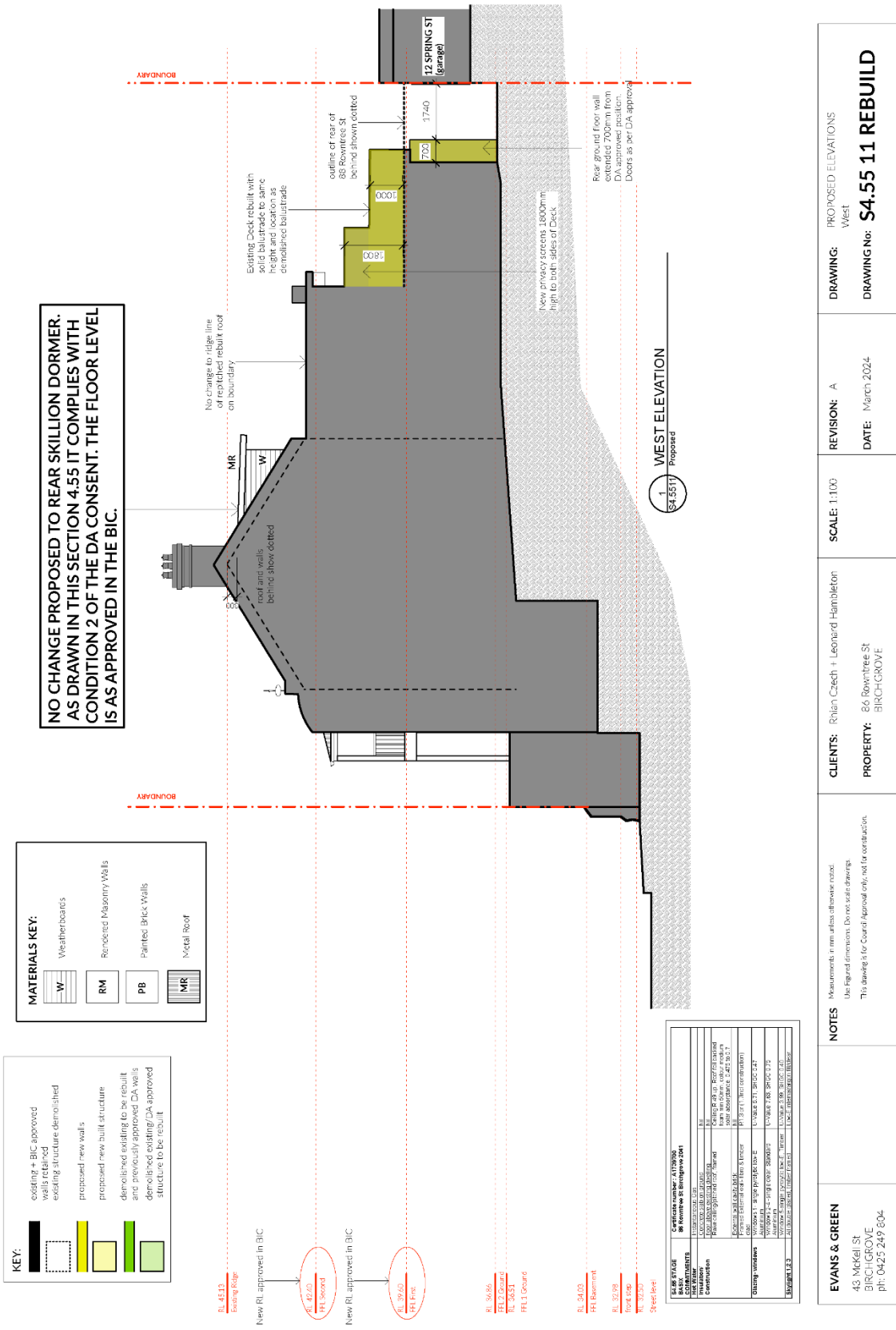
NOTES
Measurements in mm unless otherwise noted.
Use figured dimensions. Do not scale drawings.
This drawing is for Council Approval only, not for construction.

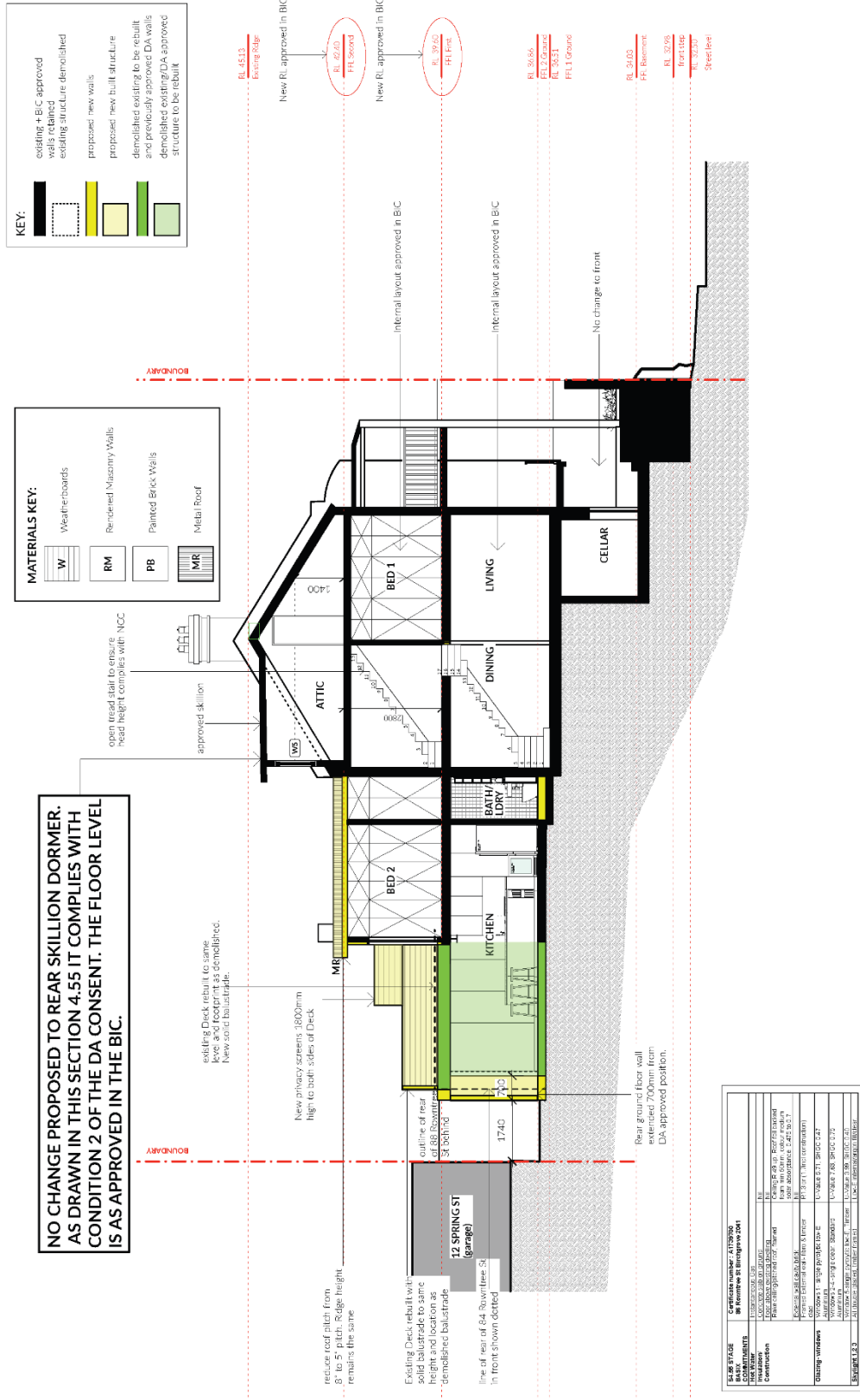
CLIENTS: Rhian Czech + Leonard Hambleton
PROPERTY: 86 Rowntree St
BIRCHGROVE

SCALE: 1:100
REVISION: A
DATE: March 2024

DRAWING: PROPOSED Front and Rear
DRAWING No: S4.55 10 REBUILD

Document Set ID: 39681988
Version: 1, Version Date: 24/04/2024





EVANS & GREEN	
43 McKell St BRIDGEVILLE ph: 0425 249 804	
CLIENTS:	Rohan Czech + Leonard Hambleton
PROPERTY:	86 Rowntree St BRIDGEVILLE
SCALE:	1:100
REVISION:	A
DATE:	March 2024
DRAWING:	PROPOSED Section AA
DRAWING NO.:	\$4.55 13 REBUILD

NOTES
 Measurements in mm unless otherwise noted.
 Use Figured dimensions. Do not scale drawings.
 This drawing is for Council Approval only, not for construction.

Attachment C – Notice of Determination DA/2020/0771



NOTICE OF DETERMINATION - APPROVAL

Issued under Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979

Development Application No.	DA/2020/0771
Applicant	Mr Leonard V Hambleton Ms Rhian N Czech
Land to be developed	86 Rowntree Street BIRCHGROVE NSW 2041
Approved development	Alterations and additions to existing dwelling-house
Cost of development	\$150,000.00
Determination	The application was determined by Local Planning Panel and was granted consent subject to the conditions attached.
Other Approvals	Before commencing <i>building work</i> or <i>subdivision work</i> , a relevant Construction Certificate must be obtained from Council or an Accredited Certifier. Council must be appointed the Principal Certifier for any <i>subdivision work</i> under the Act.
Determination date	16 March 2021
Consent is to operate from	16 March 2021
Consent will lapse on	18 March 2026

Inner West Council
innerwest.nsw.gov.au
02 9392 5000

council@innerwest.nsw.gov.au
PO Box 14, Petersham NSW 2049

Document Set ID: 30206708
Version: 1, Version Date: 28/03/2024

Reasons for conditions

To protect the environmental amenity of the area and the public interest.

Right of appeal

If you are dissatisfied with this decision, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court in accordance with the timeframes set out in [Section 8.10](#) of the *Environmental Planning and Assessment Act 1979*. In addition to the above, third party appeal rights are set out in the *Environmental Planning and Assessment Act 1979* and may be applicable.

Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides that the applicant may request the Council to review the determination. Section 8.2 does not apply to complying development, designated development, a determination made by Council under Section 4.2 in respect of Crown applications, or a decision that is already subject to a Section 8.2 review.

For further information please contact **Anna Walker** on **02 9392 5778** or anna.walker@innerwest.nsw.gov.au.



Luke Murtas
Manager Development Assessment (South)

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
Dwg No. DA 001	Proposed Site Plan	09.09.20	COSO Architecture
Dwg No. DA 002	Proposed Basement Floor Plan	09.09.20	COSO Architecture
Dwg No. DA 003	Proposed Ground Floor Plan	09.09.20	COSO Architecture
Dwg No. DA 004	Proposed First Floor Plan	09.09.20	COSO Architecture
Dwg No. DA 005 Rev A	Proposed Second Floor Plan	21.12.20	COSO Architecture
Dwg No. DA 006	Proposed Roof Plan	09.09.20	COSO Architecture
Dwg No. DA 007 Rev A	Proposed Section AA	21.12.20	COSO Architecture
Dwg No. DA 009	Proposed South (Front) Elevation	09.09.20	COSO Architecture
Dwg No. DA 010	Proposed North (Rear) Elevation	09.09.20	COSO Architecture
Dwg No. DA 011	Proposed West Elevation	09.09.20	COSO Architecture
Dwg No. DA 012	Proposed East Elevation	09.09.20	COSO Architecture

Dwg No. DA 019	Material and Finishes Schedule	09.09.20	COSO Architecture
A389676	BASIX Certificate	09 September 2020	Connor + Solomon Architects

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

1. The skillion dormer proposed in the rear roof plane of the main gable roof form is to be redesigned in accordance with the following :
 - a. The eastern and western side elevations of the rear skillion dormer are to be amended to reflect the form of the dormer in the approved "Section" plan numbered DA 007 Rev A dated 21.12.2020;
 - b. the glazing to the rear skillion dormer on the northern (rear) elevation is to be replaced with vertically proportioned timber framed windows which have a maximum height of 1.2m;
 - c. the window frames, front lining boards, fascias and barge boards are to be painted timber;
 - d. the side elevations (cheeks) of the dormer are to be weather boards, or shingles or fibre cement sheet with battens over joints and edges;
 - e. The eave of the rear skillion dormer is to extend past the vertical face of the windows;
 - f. The shade awning above the windows and fin wall extensions on the eastern and wester elevations are to be deleted.

FEES

3. Security Deposit - Standard

Prior to the commencement of demolition works or 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:	\$2,209.00
Inspection Fee:	\$236.70

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

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

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

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

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

4. Long Service Levy

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

5. 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-contributions>

Payment amount*:

\$ _____750_____

*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.**

GENERAL CONDITIONS

6. Plan of Redefinition

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a survey plan of redefinition with proof of registration at NSW Land Registry Services.

7. Works Outside the Property Boundary

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

8. 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.

9. 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.

PRIOR TO ANY DEMOLITION**10. Construction Fencing**

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

11. Advising Neighbors Prior to Excavation

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

12. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of the adjoining properties at 84 Rowntree Street and 88 Rowntree Street 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.

PRIOR TO CONSTRUCTION CERTIFICATE**13. 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

14. Structural Certificate for retained elements of the building

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

15. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

DURING DEMOLITION AND CONSTRUCTION**16. 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.

17. Stormwater Drainage System

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

18. 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.

ADVISORY NOTES

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au

Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.diysafe.nsw.gov.au
		Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA 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.
Dial before you dig		
Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.		

Lead-based Paint

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

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.

Noise

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

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.

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.

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.

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.

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.

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*.

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 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.

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.

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.

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.

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.

Prescribed Conditions

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