



NSLPP MEETING HELD ON 02/03/22

Attachments:

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Variation (Non-residential FSR)

ADDRESS: Suite 3/102 Alfred Street South, Milsons Point

LOT/DP: Lot 3 in SP 32515

APPLICATION No: DA277/21

PROPOSAL: Alterations and additions to ground floor commercial tenancy and change of use of first floor level to provide a 2-bedroom residential apartment.

PLANS REF: Drawings numbered DA 03am DA 03b, DA 03c, DA 04 and DA08, drawn by Henry May Projects and received on 10 November 2021. Drawings numbered DA02, DA05, DA06 and DA07, drawn by Tekton Projects and received on 9 September 2021.

OWNER: L Liaris

APPLICANT: F Henry-May

AUTHOR: Miguel Rivera, Senior Assessment Officer

DATE OF REPORT: 17 February 2022

DATE LODGED: 14 September 2021

ADD INFO: 10 and 13 November 2021

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

The applicant seeks development consent from the North Sydney Local Planning Panel (NSLPP) for alterations and additions to a ground floor commercial tenancy and change of use and fit-out of the first floor level (of this tenancy) to provide a 2-bedroom residential apartment at land identified as Suite 3/102 Alfred Street South, Milsons Point.

The application is required to be reported to the NSLPP for determination, as directed by the Minister of Planning, given that the application involves a departure to a development standard that is greater than 10%. The proposed application involves a reduction in existing commercial floor space by 79m² resulting in a 39% (519.22m²) departure to the minimum non-residential floor space ratio required for the land under Clause 4.4A of NSLEP 2013.

The applicant has submitted a written request pursuant to Clause 4.6 in NSLEP 2013. The request is supported on the grounds that the reduction in floor space would not significantly reduce the available commercial floor space in the locality, the reduction relates to existing first floor commercial floor space and the development would retain a continuous and activated streetscape to the Alfred Street frontage. The proposal is assessed as meeting the objectives of the non-residential FSR development standard and the objectives for the B4 Mixed Use Zone.

Council's notification of the original plans attracted a total of **three (3) submissions from two (2) separate addresses**, raising concerns regarding inconsistencies in the lot boundaries and allocation of courtyards and any new structures/external works within courtyards.

The proposed development involves no substantial changes to the external façade and aesthetic of the existing mixed use building – ensuring that this will result in a built form that is appropriate to the context of the site, and sympathetic to and in keeping with the established character of the immediate locality.

The development application has been assessed against the North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013 and the relevant State Planning Policies and generally found to be satisfactory in consideration of the site constraints, context and circumstances.

The assessment of the proposal has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. Following this assessment and having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application is recommended for **approval**.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposal before the Panel is for alterations and additions to an existing commercial tenancy (Suite 3) within an existing mixed use building at 102 Alfred Street South, Milsons Point.

Specifically, the proposed development involves the following elements:

Alterations and additions – ground floor portion of Suite 3

- Demolition of internal partition walls and fixtures to create an open and consolidated area for the ground floor;
- Construction of a new internal wall to separate the ground floor and Level 1 of the unit;
- New glazed aluminium shop front with new door on southern end of shopfront façade to provide access to the ground floor unit;

Alterations and additions – first floor portion of Suite 3

- Demolition of internal partition walls and fixtures;
- Construction of new partition walls, fixtures, lighting and fit-out works first floor addition comprising main bedroom with walk-in-rob, ensuite and south-facing balcony;
- Replacement of windows and glazed doors to comply with BASIX requirements;

Change of use and Strata subdivision

- Change of use of first floor portion of Suite 3 and corresponding courtyard/terrace area from a commercial unit to a residential unit; and
- Strata subdivision of the ground floor and first floor portions of Suite 3 to reflect the change of use and modified allocations to the car spaces. The car space allocations are modified as follows: a single car space for the ground floor and a single car space for the first floor.

A site plan, existing ground floor and first floor plans, demolition plans, proposed ground floor and first floor plans, and elevations are shown in Figures 1 to 7 below.

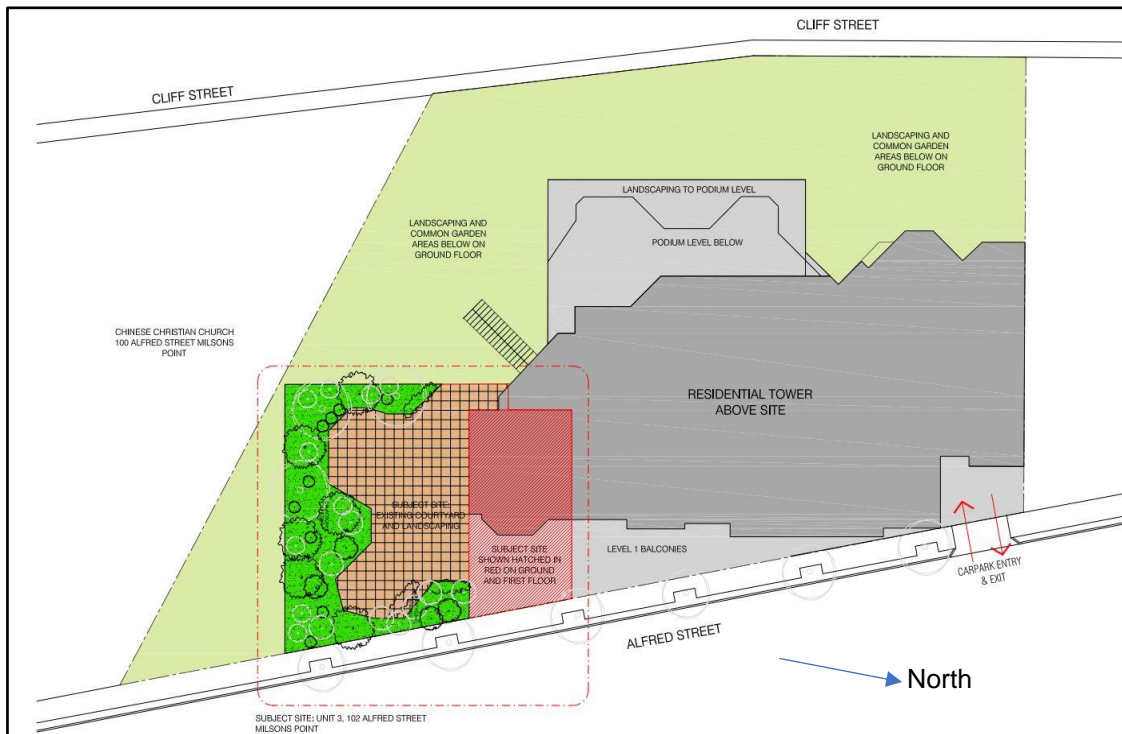


Figure 1 – Site Plan

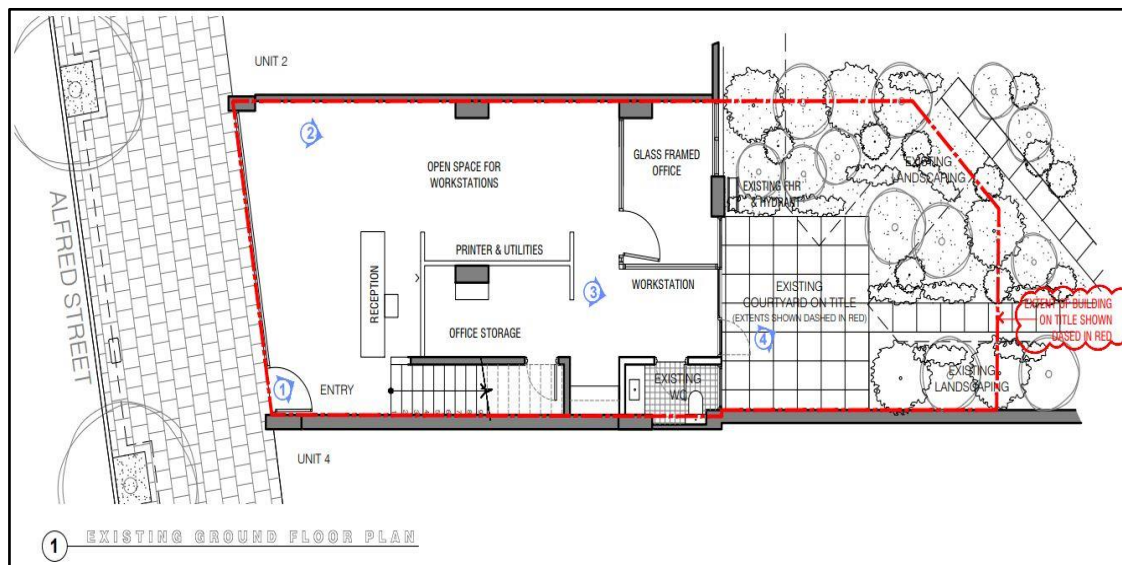


Figure 2 – Existing Ground Floor Plan

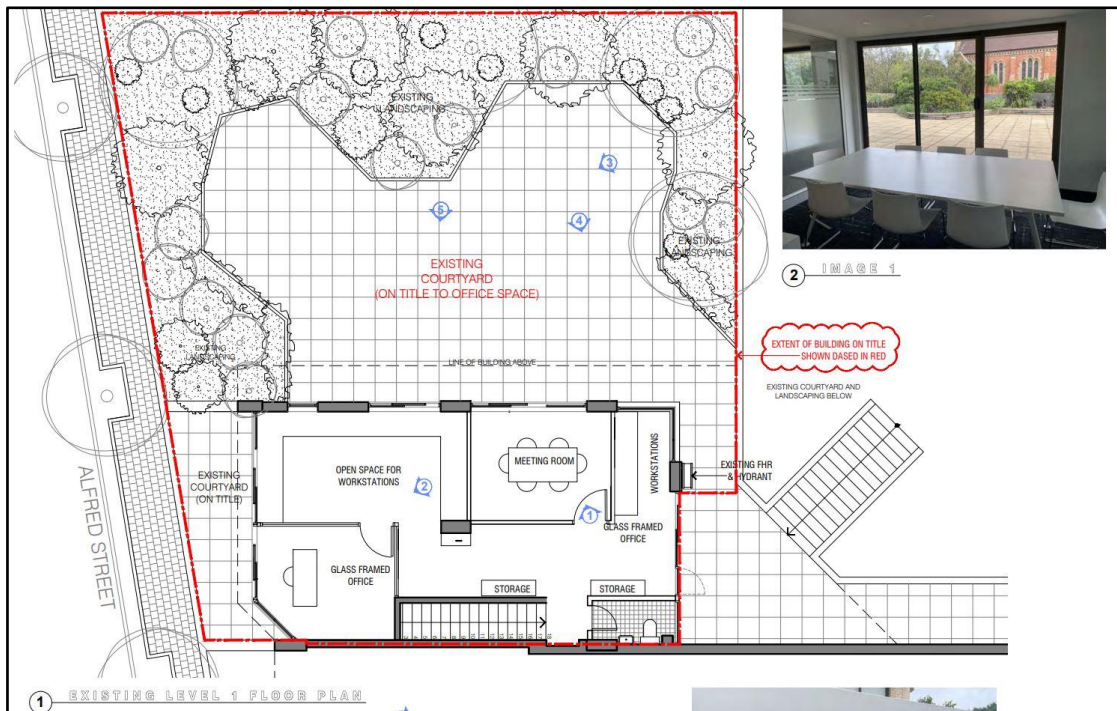


Figure 3 – Existing First Floor Plan

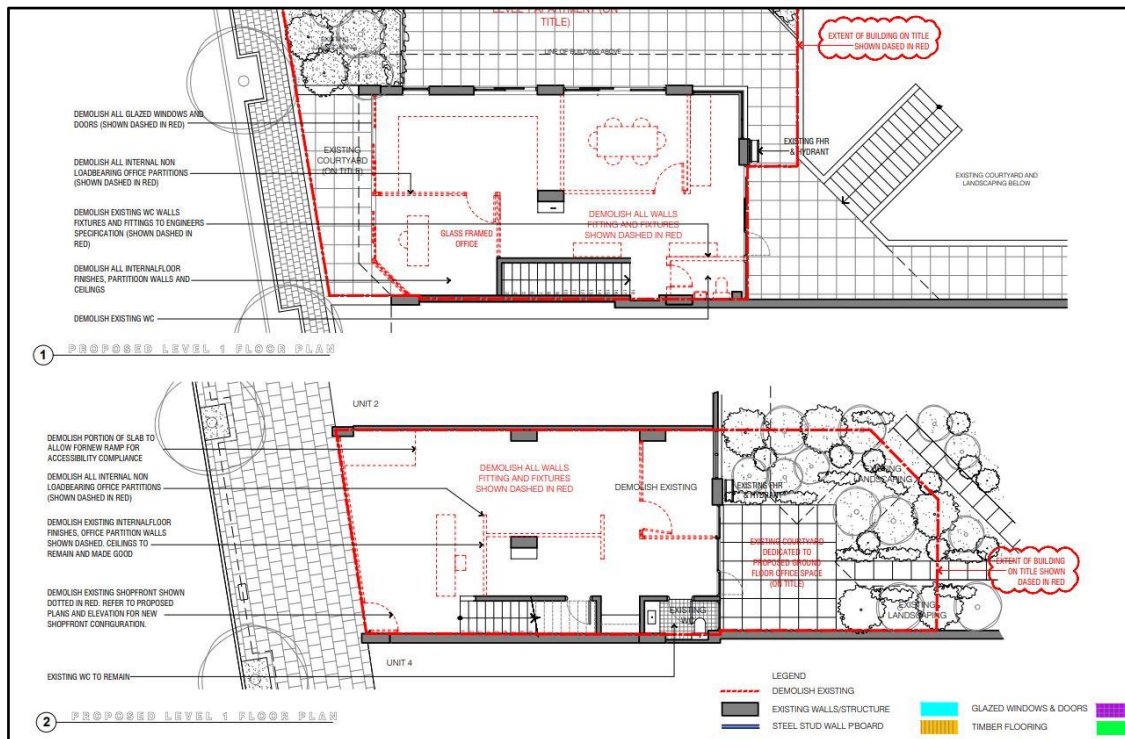


Figure 4 – Demolition Plans

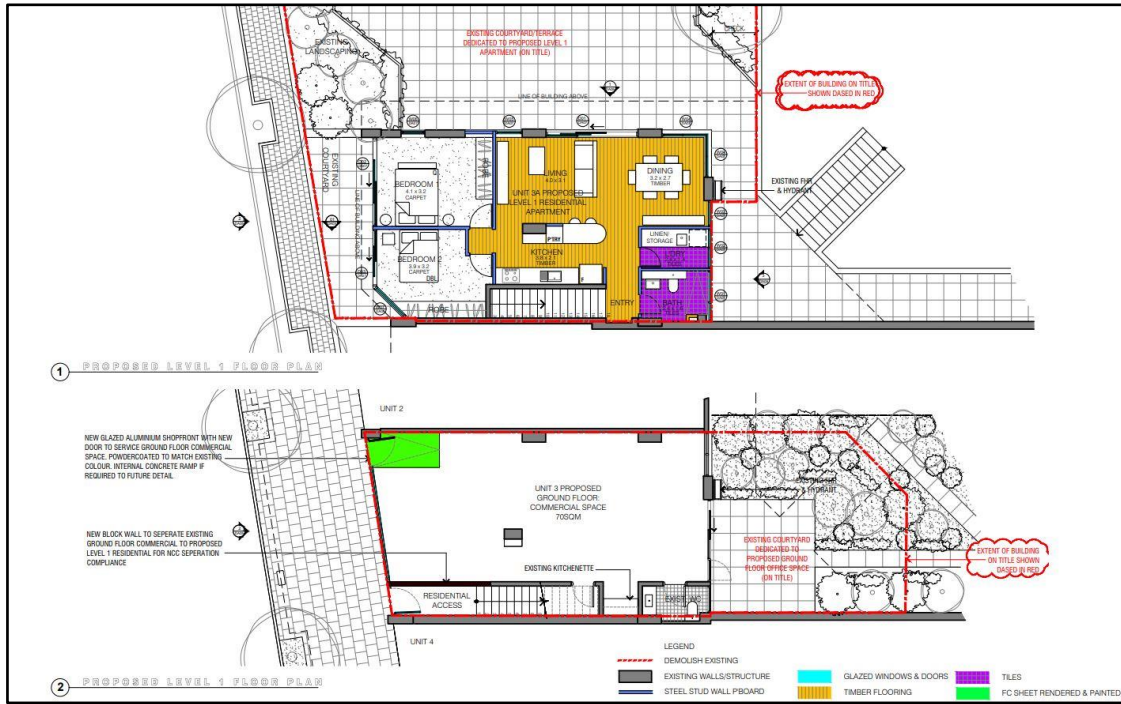


Figure 5 – Proposed Ground and First Floor Plans

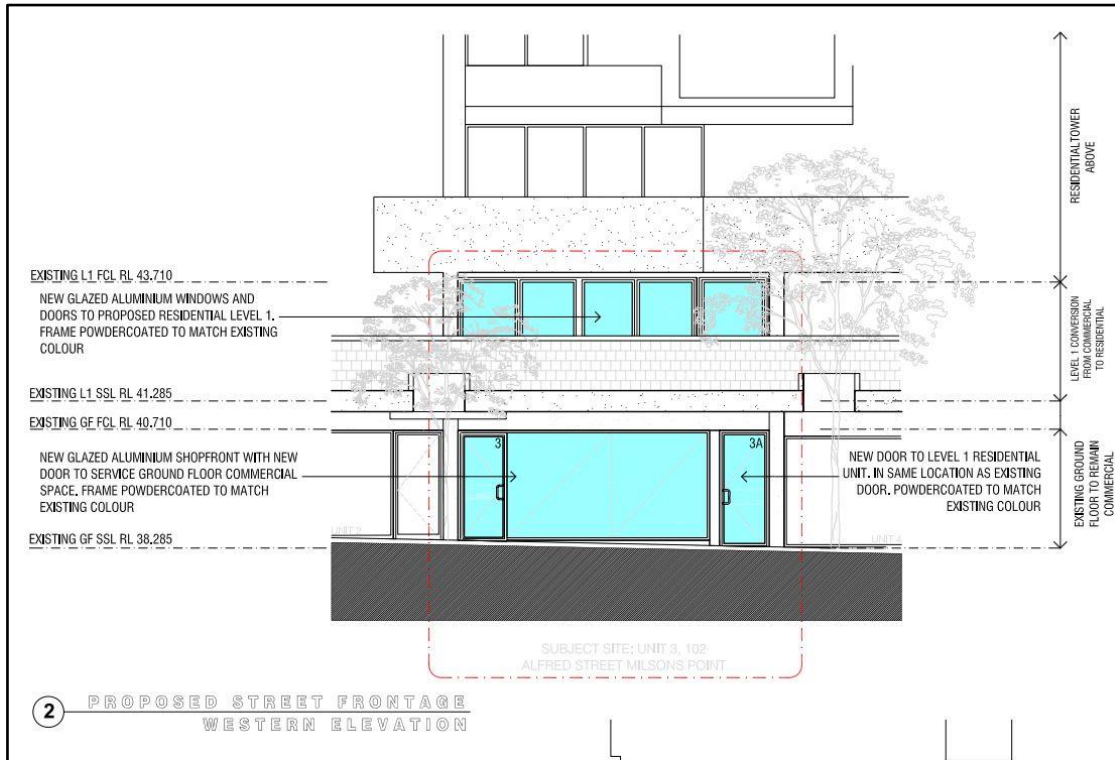


Figure 6 – Elevations: Street (Western)



Figure 7 – Elevations: First Floor

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – B4 Mixed Use zone
- Building Height — 40 metres (maximum)
- Non-residential Floor Space Ratio – 0.75:1 (minimum)
- Item of Heritage – No
- In Vicinity of Item of Heritage – Yes, adjoins heritage item I0528 – Chinese Christian Church
- Conservation Area – No

Environmental Planning and Assessment Act 1979

State Environmental Planning Policy No. 55 – Remediation of Land

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

- Part B – Development Controls
 - Section 2 – Commercial and Mixed Use Development
 - Section 11 - Construction Management
 - Section 12 - Access
 - Section 14 - Contamination and Hazardous Building Materials
 - Section 17 - Erosion and Sediment Control
 - Section 19 - Waste Management
- Part C - Character Statements
 - Section 9 – Lavender Bay Planning Area (Milsons Point Town Centre)

DESCRIPTION OF LOCALITY

The subject site is commonly identified as Suite 3 of No. 102 Alfred Street South, Milsons Point and is legally described as Lot 3 in SP 32515. It is an irregular shaped allotment, located on the eastern side of Alfred Street South and the western side of Cliff Street (refer to Figures 8 and 9). The site comprises an area of 1776.86m².



**Figure 8 – Cadastre Map showing subject site (outlined in blue) and surrounding properties
(Source: SIX Maps)**



**Figure 9a – Aerial Photo showing subject site (outlined in yellow) and surrounding properties
(Source: SIX Maps)**

The site is currently occupied by a multi-storey mixed use building containing commercial units at ground/street level and some extending to the first floor, and a tall podium/tower comprising residential apartments and basement parking (refer to Figure 10). The site is predominantly modified with the building occupying most of the site. Suite 3 is an existing commercial unit split between two (2) levels – the ground floor/street level and the first floor. The entire unit is currently vacant and comprises some partition walls, fixtures, bathroom/kitchen amenities, and courtyards/balconies at each level (refer to Figures 11 to 16). The unit has direct pedestrian access off Alfred Street South; however, there is also lift access for the first floor portion, from the building lobby (also accessed from Alfred Street South).

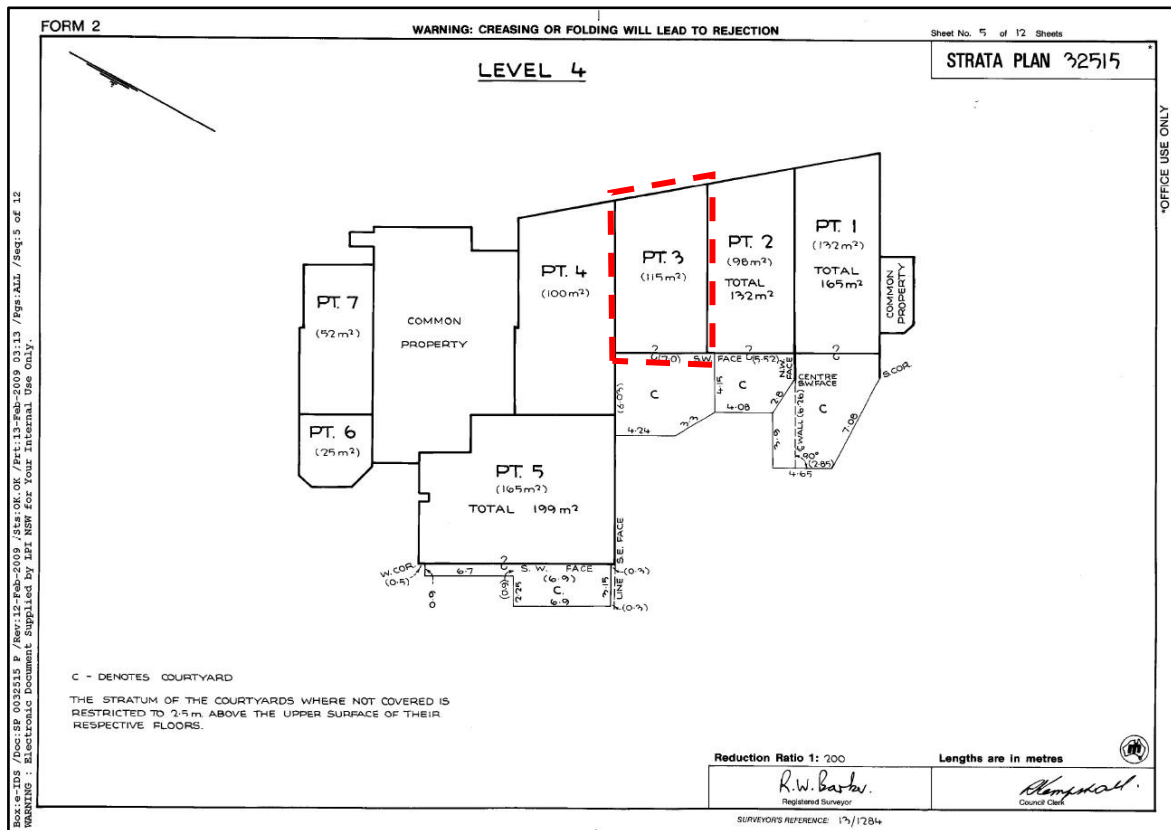


Figure 9b – Strata Plan 32515 detailing the ground floor (Level 4) location of Suite 3 and adjoining ground level courtyard (see also Figure 14).

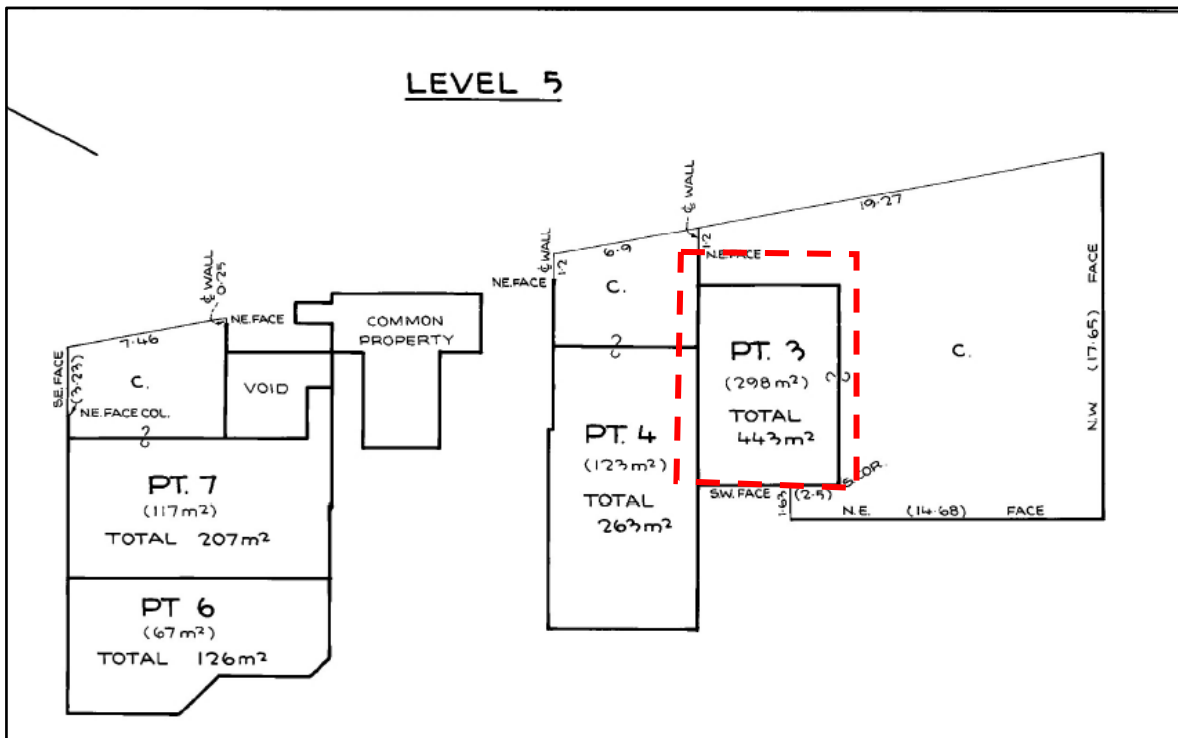


Figure 9c – Strata Plan 32515 (extract) detailing the first floor (Level 5) location of Suite 3 and adjoining courtyard (See also Figure 16).

There are currently two (2) car spaces allocated to Suite 3. These are situated in the basement level of the building and are accessed via Alfred Street South/Cliff Street. The site has an east-west orientation.

The site is surrounded/adjoined by the following properties:

- Front/east: Bradfield Park North (public reserve);
- Rear/west: No. 3 Harbourview Crescent (mixed use/residential flat building);
- North-adjointing: No. 110-116 Alfred Street South (mixed use/residential flat building) (refer to Figure 17); and
- South-adjointing: No. 100 Alfred Street South (Chinese Christian Church) (refer to Figure 18).



Figure 10 – Existing mixed use building within subject site



Figure 11 – Front of unit (ground floor) facing Alfred Street South

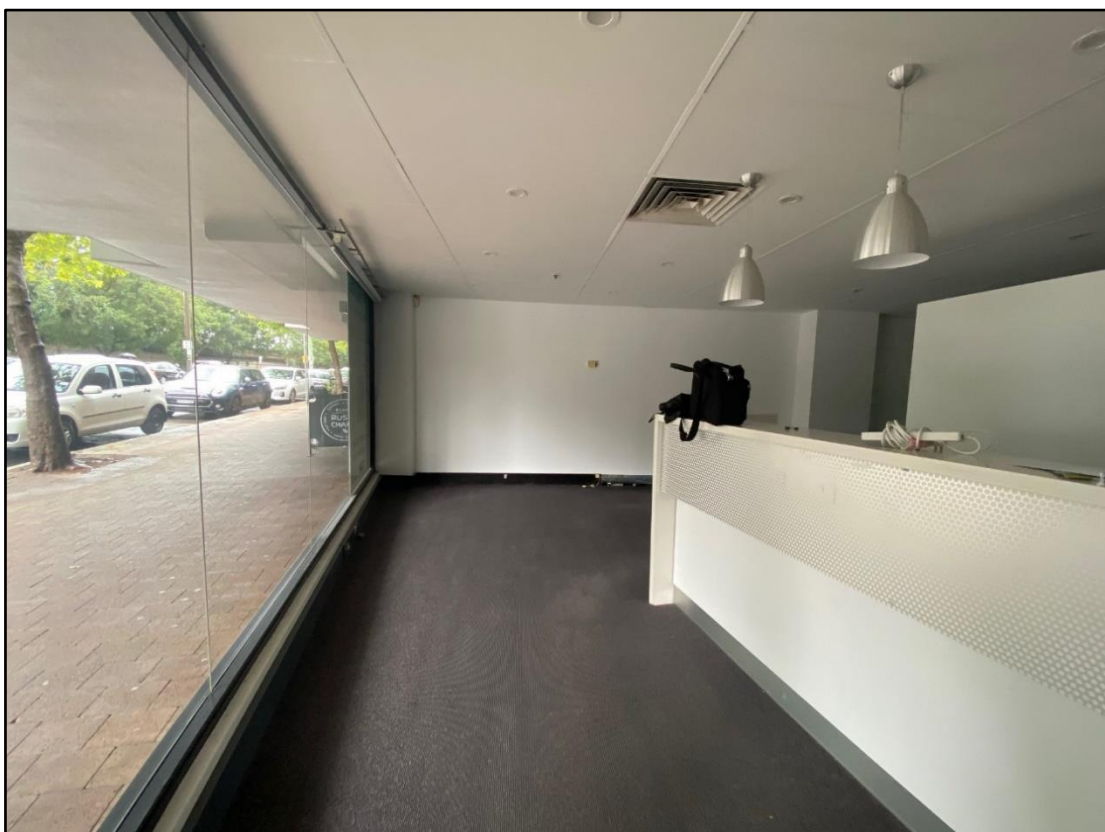


Figure 12 – Front of unit (ground floor)



Figure 13 – Access stairs to first floor



Figure 14 – Ground floor courtyard



Figure 15 – Front of unit (first floor)

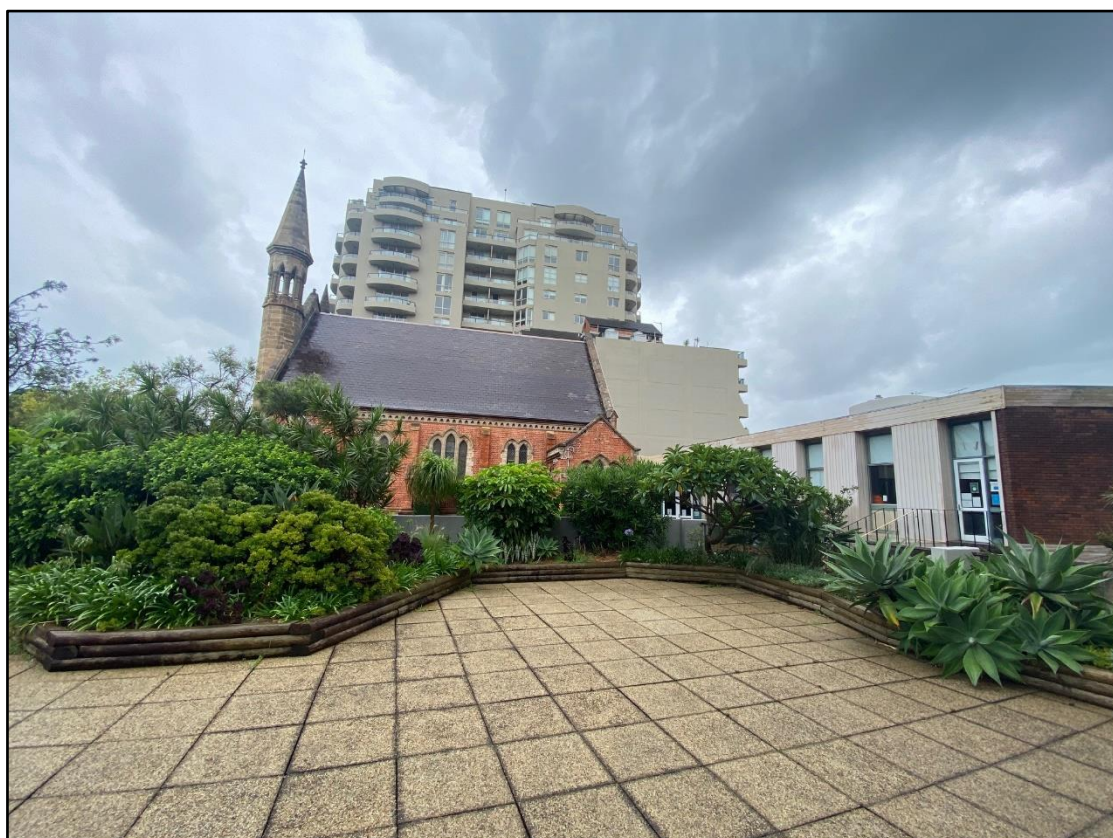


Figure 16 – First floor courtyard with view of Chinese Christian Church

The site is within Milsons Point Town Centre. This streetscape reflects a predominantly mixed use precinct with commercial and retail premises typically at street level and residential units on upper/podium levels, and within multi-storey mixed use/residential flat buildings. The site is generally bounded on the eastern side by Bradfield Park North, a railway corridor and a high traffic classified road (Cahill Expressway), and Luna Park and Lavender Bay to the west (refer to Figure 19). In general, Milsons Point Town Centre is predominantly comprised of medium to high-rise mixed residential and commercial development, built boundary to boundary, with setbacks at laneways, above podium and to public spaces.



Figure 17 – Neighbouring building at No. 110-116 Alfred Street South

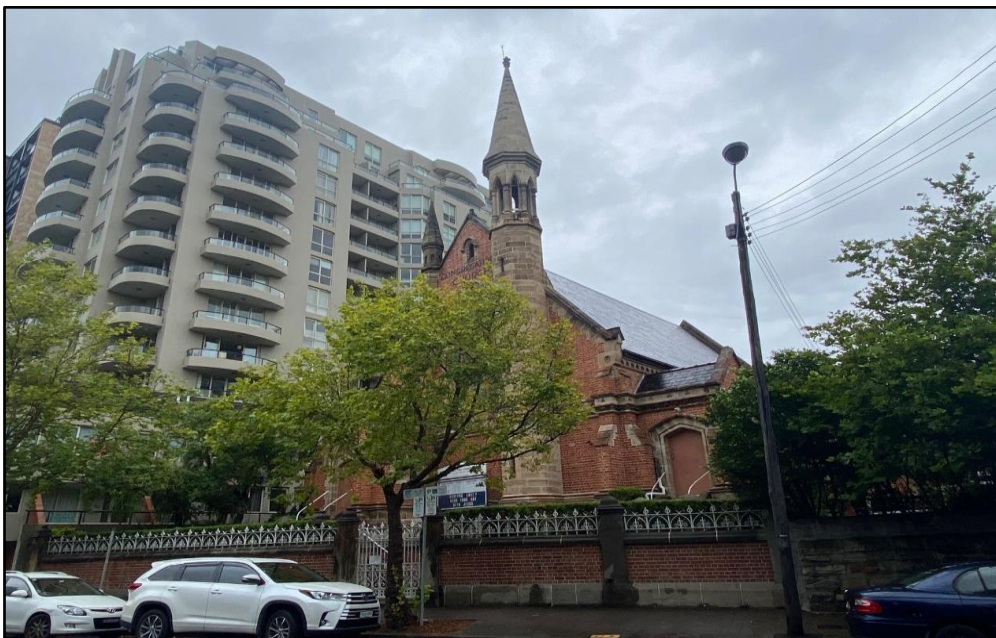


Figure 18 – Neighbouring church at No. 100 Alfred Street South



Figure 19 – Streetscape along Alfred Street South, showing Bradfield Park North and mixed use buildings

RELEVANT HISTORY

There is no recent relevant history in Council’s records regarding construction of the original mixed use building on site and any previous uses and development within Suite 3. It is understood that the building was constructed around 1986.

Subject Application

The history of the current application is summarized as follows:

Please note, there was no pre-lodgement proposal undertaken for the proposed development.

Subject Application

The subject application was lodged on 14 September 2021.

A stop the clock (STC) letter was sent to the applicant on 22 September 2021 requesting:

- Building Code of Australia/National Construction Code Compliance Report;
- Details of existing commercial use and layout (existing floor plans);
- Non-residential floor space compliance diagram; and
- Revised Clause 4.6 written request.

The application was notified from 30 September to 15 October 2021. Three (3) submissions from two (2) individual addresses were received during this period.

Information responding to the STC letter was submitted on 10 and 14 November 2021. Given the nature of this information, a second notification was not considered necessary.

A site inspection of the premises occurred on 19 January 2022.

REFERRALS

BUILDING

Council's Senior Building Surveyor reviewed the application and provided the following commentary with regard to compliance against the relevant requirements under the Building Code of Australia (BCA) (now known as the National Construction Code/NCC):

"The provided BCA Report identifies the key considerations for the design to be able to achieve the provisions of the BCA whether it be by meeting the Deemed-to Satisfy Provisions of the BCA or by meeting the Performance Requirements via Fire Engineered Solutions.

Whilst there does not appear to being any major BCA issues that may result in the requirement of a S4.55, it is impossible to be certain without specific professional reports or more detailed architectural plans.

Given the above, there are no objections to the information contained within the BCA Report. The development will be subject to a full BCA Assessment by a suitably qualified Registered Building Surveyor during Construction Certificate application."

Planning comment: The above comments are noted are concurred with. It is recommended that standard conditions requiring compliance with NCC are imposed to ensure compliance with the relevant building standards. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

SUBMISSIONS

The application was notified to adjoining properties in accordance with Council's Community Consultation Plan from 30 September to 15 October 2021. Three (3) submissions from two (2) properties were received during this period.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

Basis of Submissions

The key issues raised in these submissions were as follows:

- *Clarification of the allocated courtyards and boundaries of the subject lot*
- *Clarification of proposal*
- *Future installation of structures within courtyards*

It is noted that the application was referred to the Lavender Bay Precinct Committee during the notification period. No objections or concerns were raised by this committee with regard to the proposed development.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

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

SEPP (BASIX) requires applications that propose residential alterations and additions with a cost of works that are at least \$50,000 to be accompanied by a BASIX certificate, detailing energy efficiency commitments to be undertaken with the proposed works.

The application includes a valid BASIX Certificate and the commitments where relevant are reflected on the application's plans. The application can therefore meet BASIX requirements.

State Environmental Planning Policy No. 55 and Contaminated Land Management Issues

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

Given that the proposed development does not involve any ground excavation/disturbance and the commercial/residential history of the site, there is unlikely to be any issues of soil contamination that would require remediation. Standard precautionary conditions can be imposed upon any approval notice.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Having regard to the SREP (Sydney Harbour Catchment) 2005 (gazetted on 28 September 2005), the subject site will not be visible from Sydney Harbour. The impact of the development upon the harbour-scape is not considered to be detrimental and will not unduly impose upon the character of the foreshore. As such, the development satisfies the provisions contained within SREP 2005.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The aims of SEPP (Vegetation in Non-Rural Areas) 2017 is to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. The proposed development involves internal building works only and does not involve the removal of any trees and other vegetation. As such, having regard to this SEPP, the respective aims have been satisfied by the proposed development.

NORTH SYDNEY LEP 2013

1. Permissibility within the zone

The site is zoned **B4 – Mixed Use** under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). Development for the purposes of a commercial premises and residential unit within a mixed use/residential flat building are permissible uses, with the consent of Council.

2. Residential Zone Objectives

Zone B4 – Mixed Use

Objectives of zone

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

The proposed development involves works to alter an existing ground and first floor commercial premises into a ground floor commercial unit and a 2-bedroom residential unit on the first floor. The premise(s) is contained within a mixed use/residential flat building which contains a number of commercial suites and residential units that are of similar scale and are currently occupied.

The proposed works will maintain a compatible mixture of land uses that are permissible within the zone, reflects the current building use and the surrounding/adjoining development along Alfred Street South and in Milsons Point Town Centre.

The retention of the commercial space at ground level with a maintained interface within Alfred Street South ensures sufficient activation of the street frontage that is consistent with and appropriate for the immediate vicinity.

The proposed development provides improved functionality of the premises and a further diversification of uses contained within the existing building. Notwithstanding the resultant slight reduction in commercial space, the proposed development allows for residential development in mixed use buildings and concentrates the non-residential use (commercial use) on the lower level (ground floor) and the residential use on higher levels (first floor). In addition, the proposed change is supported by existing amenities and facilities including two (2) parking spaces in the basement.

The proposed development will not unreasonably compromise the amenity of the surrounding area as it features a design and orientation that ensure a sympathetic response and contextually appropriate outcome are achieved for the site. The layout of the premises and its accessibility are adequate and suitable for the intended use of premises as a commercial unit on the ground floor and a residential unit on the first floor.

Therefore, in light of the above matters, the proposed development is considered acceptable with regard to achieving the objectives of the *B4 – Mixed Use* zone.

NSLEP 2013 Compliance Table

North Sydney Local Environmental Plan 2013			
Site Area: 1776.86m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building Cl.4.3(2) Height of building not to exceed that shown on Building Heights Map	N/A	40 metres maximum	N/A Unchanged from existing building.
Clause 4.4A – Non-residential floor space ratio	<i>Existing</i> 0.55:1 892.43m ² <i>Proposed</i> 0.46:1 813.43m ²	0.75:1 minimum 1332.65m ²	No*

* Clause 4.6 written request provided (see discussion below)

Non-Residential floor space ratios

The proposed development involves a change of use to the commercial premises on the first floor, resulting in a reduction to the non-residential floor space ratio of the building by 79m². As per the provisions of Clause 4.4A of NSLEP 2013, the minimum non-residential floor space ratios for the subject site is 0.75:1 (1332.65m²). The existing non-residential floor space ratio of the building is 0.5:1 (892.43m²). The proposed development will result in a non-residential floor space ratio of 0.46:1 (813.43m²).

This ratio represents a variation to the development standard of 39% (519.22m²). A discussion regarding the proposed variation is contained below.

Clause 4.6 – Exceptions to development standards

The applicant has provided a written request to vary the development standard for non-residential floor space ratio (refer to Attachment 2).

Extent of the Variation

The proposed development results in a reduced non-residential floor space ratio across the site of 0.46:1 (813.43m²), which represents a variation of 39% (519.22m²). It is noted that the existing building currently has a non-residential floor space ratio of 0.5:1 (892.43m²), which reflects a similar though lesser departure/contravention to the development standard.

Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

For reference the objectives of the development standard are as follows:

Clause 4.4A of North Sydney Local Environmental Plan 2013

(1) *The objectives of this clause are as follows:-*

- (a) *to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
- (b) *to encourage an appropriate mix of residential and non-residential uses,*
- (c) *to provide a level of flexibility in the mix of land uses to cater for market demands,*
- (d) *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

The Applicant's written request relies upon Webhe Test 1 to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance as the objectives of the development standard would be achieved notwithstanding the non-compliance with the development standard. The Applicant's written request further outlines that there are sufficient environmental planning grounds that justify the variation and that support for the variation will be in the public interest. The proposed development is considered below, having regard to the objectives of the development standard.

(a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,

As mentioned above, the proposed development creates a single ground floor commercial unit that faces Alfred Street South, and a single, 2-bedroom residential unit on the first floor within a mixed use building. This building already contains a number of commercial suites on the ground floor and residential units on the upper levels (within the podium/tower). As such, the proposed development provides development with a continuous and active street frontage on land in Zone B4 Mixed Use as it retains the commercial space at ground level with sufficient interface to Alfred Street South. The proposed development achieves the above objective of Clause 4.4A.

(b) to encourage an appropriate mix of residential and non-residential uses,

The proposed development is contained within a multi-storey mixed use building that has commercial suites and residential units at podium/tower level. The proposed reduction in non-residential floor area of 79m² within the building is considered minor given that there is no loss in the number of commercial units (a single commercial unit will be retained at street level) and the remaining 72m² of non-residential floor area is considered ample with regard to practical functioning and usability of this space for commercial purposes. Further, the commercial unit comprises design features and facilities such as a glazed shop front, single car space, kitchenette, bathroom and private courtyard – ensuring the unit receives adequate amenity that supports the intended use. As such, the proposed development will encourage an appropriate mix of residential and non-residential uses that are reflective of the uses within existing mixed development along Alfred Street South and in Milsons Point Town Centre.

(c) to provide a level of flexibility in the mix of land uses to cater for market demands,

The change of use of the first floor portion to a residential unit and reduced non-residential floor space ratio are considered acceptable and appropriate given that:

- The first floor portion currently has limited pedestrian access from the street and involves traversing a flight of stairs. Any disabled access would require entry into the main foyer of the building and then travelling within the rear common areas;
- Unlike the ground floor portion, the first floor portion does not have a direct connection or interface to the street frontage that would encourage visitation to the premises. The solid balustrades and walling directly in front of first floor balconies limits the visibility of this portion when viewed from Alfred Street South;
- As per above, the resultant ground floor commercial unit features sufficient dimensions and area as well as facilities and amenities that would support the intended use and reflects the market demands for commercial and residential uses.

In light of the above, the proposed development enables some flexibility to the use of the unit whilst delivering further diversification of uses contained within the existing building and will therefore achieve the above objective of Clause 4.4A.

(d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.

The proposed reduction in non-residential floor area of 79m² within the building is minor at 4% given that there is no loss in the number of commercial units (a single commercial unit will be retained at street level) and the remaining 72m² of non-residential floor area will facilitate practical functioning and usability of this space for commercial purposes and reflects the hierarchy and design of commercial centres. In accordance with the objective of the B4 – Mixed Use zone, the proposed development concentrates commercial premises at ground/street level and residences on upper levels. The proposed development achieves this objective and as such, demonstrates alignment with the above objective of Clause 4.4A.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The applicant has provided the following grounds:

- *The context of the proposed development being contained within a unit that is part of a larger mixed use development. The ground level of the development at No. 102 Alfred Street South has a total gross floor area of 607.1m² including the residential lobby. This equates to a footprint of approximately one third of the site area (34%). The development as approved in 1986 was designed to use the remainder of the ground level predominantly for landscaping and recreation spaces.*
- *The required minimum non-residential FSR of 0.75:1 would normally be readily accommodated on ground floor alone, as most buildings in the surrounding area cover the majority of their respective sites, with basement parking accessed via the Cliff Street to the west. This achieves the desired continuous active street frontage within selected mixed use areas.*
- *The proposed development is able to achieve a similar outcome in terms of retaining a continuous, activated streetscape to the Alfred Street frontage notwithstanding numeric non-compliance.*

- *The public interest is served by supporting the variation as it allows the opportunity for an additional dwelling under separate ownership while maintaining an active commercial frontage at ground level.*
- *The proposal satisfies the objectives of the B4 Mixed Use Zone and the objectives of the non-residential FSR development standard, having regard to the particular nature of the development and the particular circumstances of the site.*
- *The variation to the non-residential FSR standard will not have any visual impact or change to the built form outcome. The extent of variation solely relates to the use which has no bearing on appearance or character.*

The planning grounds provided by the applicant are considered sufficient and reasonable in the context of the existing site. The proposed variation will not significantly diminish the functioning of the existing building nor significantly reduce the quality, availability and usability of commercial premises in the locality.

As demonstrated above, the proposed development is able to achieve the key objectives of the B4 Mixed Use Zone and Clause 4.4A – enabling sufficient active street activation whilst providing adequately sized commercial and residential units that have appropriate access, design features, amenities and facilities that support these uses.

Clause 4.6(4)(a)(ii) Applicant's written request

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

Clause 4.6(4)(a)(ii) Public Interest

The proposed development would be in the public interest because it is consistent with the objectives of the development standard for non-residential floor space ratio and the objectives of the zone as discussed above.

Conclusion

The applicant has submitted a written request pursuant to Clause 4.6 in NSLEP 2013. The written request has adequately addressed sub clause (3) and, subject to satisfying conditions, is considered to be in the public interest because it is consistent with the relevant development standard and the objectives of the zone.

Clause 5.10 Heritage conservation

The site adjoins the following heritage item of local significance as per Schedule 5 of the NSLEP 2013:

- Chinese Christian Church (item I0528).

Given the location and nature of the proposed works (being wholly contained within the existing building) there will be nil impacts on the locally listed item as a result of the development.

Accordingly, the development is considered to satisfy the provisions of Section 5.10(4) NSLEP 2013 in that the resultant outcome of the development, will satisfy the objectives of Section 5.10 of NSLEP 2013.

Clause 6.10 Earthworks

Clause 6.10 of NSLEP 2013 seeks to ensure that earthworks will not have any detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

There are no earthworks proposed as the development involves internal building works only. As such, the provisions under Clause 6.1 are considered satisfied.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposed development has been assessed against the following relevant sections of NSDCP 2013:

- Part B – Development Controls
 - Section 2 – Commercial and Mixed Use Development
 - Section 11 - Construction Management
 - Section 12 - Access
 - Section 14 - Contamination and Hazardous Building Materials
 - Section 17 - Erosion and Sediment Control
 - Section 19 - Waste Management
- Part C - Character Statements
 - Section 9 – Lavender Bay Planning Area (Milsons Point Town Centre)

North Sydney Development Control Plan 2013		
Part B Section 2 – Commercial and Mixed Use Development		
Control	Compliance	Comments
1.1 General objectives		
O1 can meet the aims and residential and employment population targets as outlined in the State Government’s Metropolitan Strategy and Inner North Subregional Strategy,	Yes	The proposed development involves retaining the same number of commercial units for the building and introduces an additional residential unit. This ensures the development achieves this objective and provides a balanced and viable outcome for the site.
O2 can meet the aims and dwelling targets of Council’s Residential Development Strategy,	Yes	The proposed development results in an additional residential unit that enables meeting the aims and dwelling targets of the strategy.
O3 is consistent with the principles contained within the Integrated Land Use and Transport Policy;	Yes	The proposed change of use is supported by the existing parking and the site is within a highly accessible area that features several public transport options.

<p>O4 provide various grades and sizes of commercial floorspace to accommodate a mix of business, service, high tech industry, retail and recreational uses,</p>	<p>Yes</p>	<p>The proposed development involves a reduction in commercial space by removing the commercial unit on the first floor. The existing mixed use building already comprises residential units on upper levels – as such – this change of use ensures commercial uses are faithfully retained at street level. Notwithstanding the reduced commercial space proposed, the resultant commercial space of 72m² for the ground floor commercial unit is considered sufficient in supporting a business/retail use.</p>
<p>O5 are designed to contribute positively to their surroundings and particularly to diversity, vitality, social engagement and ‘a sense of place’,</p>	<p>Yes</p>	<p>The proposed development does not involve substantial changes to the external façade and presentation of the existing building. Majority of the works are internal and involve a change of use to the first floor portion. Accordingly, the streetscape response and contribution are considered similar to the current building and are acceptable in this regard.</p>
<p>O6 provide active street frontages both during the day and night,</p>	<p>Yes</p>	<p>By retaining the commercial use of the ground floor portion, the proposed development enables active street frontage (as per the existing building).</p>
<p>O7 contribute to maximising public transport usage, walking and cycling,</p>	<p>Yes</p>	<p>The proposed development does not significantly alter the parking arrangement for the unit and maintains the two (2) spaces – that would be attributed to the unit. These spaces will be split between the proposed residential and commercial units, which is considered acceptable.</p>
<p>O8 provide an acceptable level of amenity to residents living within and adjoining centres,</p>	<p>Yes</p>	<p>The new residential unit is designed with access to ample solar access and cross ventilation. The proposed development involves mostly internal works that do not change amenity impacts on neighbouring development. The residential unit generally faces Alfred Street South and features openings that provide passive street surveillance.</p>
<p>O9 are designed to mitigate against the extreme impacts of the sun, wind and rain,</p>	<p>Yes</p>	<p>As per above.</p>
<p>O10 provide adequate natural light to buildings, public places and streets,</p>	<p>Yes</p>	<p>As per above.</p>
<p>O11 incorporate innovative sustainable design to reduce energy and water consumption and meets or exceeds sustainability requirements,</p>	<p>Yes</p>	<p>Given that both residential and commercial units have sufficient solar access and are wholly contained within the existing building footprint – this objective has been met.</p>
<p>O12 minimise the acoustic impacts on residents from non-residential activities,</p>	<p>Yes</p>	<p>Acceptable and in context of the mixed use/residential flat building use of the site.</p>
<p>O13 maximise opportunities for the sharing of views,</p>	<p>Yes</p>	<p>The proposed development does not result in any view loss.</p>
<p>O14 creates safe and high quality urban environments through careful design of buildings and use of materials, and a well designed and maintained public domain,</p>	<p>Yes</p>	<p>Acceptable and near identical to the existing built form and presentation of the building.</p>

O15 encourages the provision of adaptable office development which meets the requirements of new office technology and caters for variations in office layout and use,	Yes	As per above, the layout and facilities of the nominated commercial space, which comprises a kitchenette and water closet, and parking space – can support an adaptable office use.
O16 soften the highly urbanised landscape by introducing water and greenery,	Yes	No change from the existing building.
O17 minimise stormwater runoff, maintain and improve stormwater quality and encourage recycling where possible, and	Yes	Stormwater management is as per the existing building.
O18 contribute to attractive and well designed public open spaces to service increased population of the area.	Yes	Unchanged from existing.
1.2 Function		
2.2.1 Diversity of activities, facilities, opportunities and services	Yes	The proposed development retains the commercial use for the ground floor and ensures an active street frontage and appropriate public domain interface are maintained along Alfred Street South.
2.2.2 Maximise use of public transport	Yes	The proposed development does not involve changes to the number of parking spaces available within the current building. The delineation of parking spaces to have a space allocated for each unit is considered an acceptable outcome.
2.2.3 Mixed residential population	Yes	The provision of a new 2-bedroom residential unit on the first floor facilitates mixed use that is appropriate to the existing building and the site's context, being within a mixed use and commercial area.
2.3 Environmental criteria		
2.3.1 Clean air	Yes	The proposed development does not significantly alter air quality – given its nature and siting. The proposed changes to parking arrangements are not considered dramatic and will not result in a higher reliance on public car usage. As mentioned above, the site is within a highly accessible area.
2.3.2 Noise	Yes	The proposed development is situated in an area exposed to numerous noise sources including a railway corridor and classified road. A condition can be imposed to ensure openings facing these sources are appropriately designed to ensure any noise emissions are minimised and amenity for future occupants of the residential unit are preserved.
2.3.7 Solar access	Yes	The proposed units feature windows facing north-east, east and south-east – thereby ensuring adequate solar access can be provided for future occupants.
2.3.9 Acoustic privacy	Yes	The proposed development involves predominantly internal works and do not substantially change the use of the units that result in acoustic impacts on neighbouring properties.

2.3.10 Vibration	Yes	The proposed development is across the road from a railway corridor; however, the primary structural components of the unit are retained as per the existing building. Further design modifications to minimise vibration impacts from the corridor are not considered necessary.
2.3.11 Visual privacy	Yes	The proposed development will not result in privacy impacts on neighbouring properties. The change of use from a commercial space to a residential unit for the first floor component will not likely create significant overlooking as the existing building features numerous residential units on upper levels that typically have views to other developments including nearby residential flat buildings. It is further noted that the change of use that not feature any additional glazing treatments to which relate to the current building.
1.4 Quality built form		
2.4.3 Setbacks	Yes	The proposed development involves no changes to the setbacks of the existing building.
2.4.8 Balconies – apartments	Yes	The proposed development involves no changes to the existing balcony (courtyard) within the first floor portion.
2.4.10 Streetscape	Yes	The proposed development will result in retention of a commercial unit on the ground floor with transparent glazing and pedestrian entry that enables appropriate street frontage activation and street surveillance.
1.5 Quality urban environment		
2.5.1 Accessibility	Yes	The resultant units feature suitable and separate pedestrian access for persons with a disability.
2.5.2 Safety and security	Yes	The proposed development facilitates street surveillance from both units.
2.5.4 High quality residential accommodation	Yes	The new residential unit features a number of windows along the north-east, east and south-east elevations that facilitates ample solar access for future occupants. This unit also comprises a dual aspect that enables natural and cross ventilation. Ample private open spaces are provided along the perimeter of this unit.
2.5.6 Private open space	Yes	The proposed 2-bedroom residential unit has private open spaces comprising a total area of at least 100m ² – thereby ensuring compliance with the minimum private open space control.
2.5.8 Car parking	Yes	The proposed parking allocations for both units are acceptable and remain similar in the existing development.
2.6 Efficient Use of Resources		
2.6.1 Energy efficiency	Yes	The applicant has provided a BASIX Certificate in support of the development application which requires suite of energy efficiency measures such as: <ul style="list-style-type: none"> • Energy efficient internal appliances • Energy efficient lighting • Thermal insulation levels for glazing, walls and ceilings

		A condition can be imposed to ensure that the measures contained within the BASIX Certificate are undertaken at all stages of the development process.
2.6.2 Passive solar design	Yes	The development will perform adequately in this regard.
2.6.4 Natural ventilation	Yes	As per above, the proposed development facilitates sufficient openings that provide natural ventilation.
2.6.6. Waste minimisation	Yes	A waste management plan is provided, which adequately details the management of waste generated from demolition and construction works.

Part C – Character Statements

Section 9 – Lavender Bay Planning Area

Section 9.1 – Milsons Point Town Centre

Consideration has been given to Part C of NSDCP 2013 – in particular, Section 9.1 of the Character Statement for Milsons Point Town Centre. The table below provides a summary of the assessment against relevant controls under this section of Part C of NSDCP 2013.

North Sydney Development Control Plan 2013 Part C Section 9.1 – Milsons Point Town Centre		
Control	Compliance	Comments
9.1.1 Significant elements		
Land use Predominantly mixed commercial and residential development. Passive and active recreational spaces. Major road and railway infrastructure.	Yes	The proposed development involves primarily internal works or works within the building footprint and do not result in changes to the natural topography of the site.
Topography Generally falls to the south and south west from the Sydney Harbour Bridge down to Sydney Harbour. Steep falls and cliffs adjacent to and along the western boundary of the Area.	Yes	The proposed development involves primarily internal works or works within the building footprint and do not result in changes to the natural topography of the site.
Natural features Interface with Sydney Harbour	Yes	The proposed development involves primarily internal works or works within the building footprint and do not result in changes to the natural features of the site.
Views	Yes	The proposed development involves primarily internal works or works within the building footprint and do not result view loss impacts. Th built form, scale and massing of the existing building are unchanged.
Identity	Yes	It is noted that the subject site is located near iconic architecture and built forms including Luna Park and Bradfield Park. The proposed development does not result any impacts on these prominent features.
Subdivision	Yes	The proposed development does not involve any land subdivision or consolidation. The proposed Strata

<p>Large consolidated allotments reflective of the Area's previous commercial nature.</p> <p>Heritage items have small rectilinear lots, reflecting original subdivision patterns.</p>		<p>subdivision relates to the existing unit and proposed splitting of this unit into two (2) separate Strata titled units. The actual land subdivision of the site is unchanged.</p>
<p>Streetscape</p> <p>Narrow footpaths and streets, except to Alfred Street which has wide fully paved verges incorporating street trees.</p> <p>Buildings built to street and laneway frontages.</p>	<p>Yes</p>	<p>The proposed development will continue to maintain the shopfront façade of the ground floor portion – ensuring street activation and an appropriate interface with Alfred Street South are achieved. The proposed development does not alter the setbacks of the existing building. Accordingly, the proposed development will result in the streetscape being appropriately maintained.</p>
<p>Public transport</p> <p>Development should capitalise on the Area's high level of accessibility to high frequency public train, bus and ferry services.</p>	<p>Yes</p>	<p>The proposed development retains the commercial use of the ground floor portion whilst providing a new residence on the first floor. Whilst both units have parking in the basement – future occupants and respective visitors/customers can also utilise the various public transport options available in Milsons Point.</p>
<p>9.1.2 Desired future character</p>		
<p>Medium to high-rise mixed residential and commercial development, built boundary to boundary, with setbacks at laneways, above podium and to public spaces.</p> <p>Variety of different sized non-residential spaces and land uses which serve the local needs of residents (including convenience stores, cafes, medical centres, etc).</p> <p>Development for residential accommodation should be in accordance with Council's Residential Development Strategy, with limited growth envisaged for the area.</p> <p>Ground floors of mixed use development to operate land uses that promote pedestrian activity.</p> <p>Existing heritage items shall be protected and retained where practical.</p> <p>Provide a balance between the working and resident populations of the town centre, to ensure an active environment throughout the day.</p>	<p>Yes</p>	<p>As mentioned above the proposed development facilitates active street activation whilst promoting an appropriate mixture of uses within the town centre that are already reflective of and occurring within the existing building.</p>

Where existing commercial buildings are to be refurbished, retention of the existing level of commercial floor space is encouraged		
Thru site pedestrian links Pedestrian access is provided from Glen Street to Alfred Street between 68 and 72 Alfred Street.	N/A	Not applicable to the proposed development.
Traffic management Existing one-way vehicular movements are maintained along Cliff Street.	Yes	The proposed development maintains the current along Cliff Street.
9.1.3 Desired built form		
Subdivision Form, massing and scale Setbacks Podiums Building design Skyline Street furniture, landscaping works, public art Noise Wind speed Reflected light Solar access Views	Yes	The majority of aspects under Section 9.1.3 are irrelevant to the proposed development as the overall form, massing, scale, distances from property boundaries, landscaping and land size/dimensions remain identical to the existing development. It is noted that a number of new glazing treatments (windows and doors) are proposed at the shopfront elevation for the ground floor portion and for the entire first floor portion. These treatments reflect the same windows and doors that are existing within the premises – the changes are necessitated by the proposed change to access and for BCA compliance.

North Sydney Local Infrastructure Contributions Plan 2020

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. Section 7.11 levy is applicable and is calculated in accordance with the plan. The contribution payment has been calculated with consideration of the net residential increase (by providing a new 2-bedroom residential unit) and the resultant commercial floor space (of 72m²) and as per Council's Contributions Plan as follows:

Contribution amounts payable		
Applicable contribution type		
s7.11 contribution details	Open space and recreation facilities	\$8,836.88
	Public domain	\$77.20
	Active transport	\$4.47
	Community facilities	\$1774.91
	Plan administration and management	\$158.36
S7.12 contribution details	Cost of works: \$180,000.00	Contribution: \$900.00 N/A as s7.11 contribution would be higher.
Total payment amount subject to indexing at time of payment	s7.11 contribution: \$10,851.83	

Accordingly, should the application be supported, a condition will be imposed requiring the payment of the above contribution amount.

APPLICABLE REGULATIONS

Clause 92(1)(b) of the EPA Regulation 2000 require that council take into consideration *Australian Standard AS 2601-1991: The Demolition of Structures*, as in force at 1 July 1993. As demolition is proposed, suitable conditions can be included for any approval recommendation.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	N/A
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant 4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

SUBMITTERS CONCERNS

The relevant issues raised by submitters have largely been addressed within this report. To provide further clarify, the following commentary relates to the issues raised in the submissions:

- ***Clarification of the allocated courtyards and boundaries of the subject lot***

Comment: The current Strata Plan for the existing building indicates that the ground floor and first floor portions of Suite 3 (Lot 3 in SP 32515) feature courtyards that are allocated to the unit. This means that the occupier of this unit has access to these courtyards and benefits from the use of these private spaces. The Strata Plan does not indicate that the respective courtyards are common property and can be accessed to and utilised by other occupiers within the building. The boundaries indicated in the architectural plans are also consistent with the boundaries shown on the Strata Plan.

It was observed that there are currently no barriers (such as fencing) that would prevent other occupiers/visitors of the building from entering/using the courtyard on the first floor. Whilst the proposed development is not seeking approval for such barriers, future occupants may require these at some stage to reflect the correct allocation and private use of the courtyard and to ameliorate potential security and amenity issues. Any proposed barriers would need to be brought to the attention of the Strata Committee/Body Corporate of the building and would require acceptance from this group.

- ***Clarification of proposal***

Comment: The proposed development involves a change of use of the first floor portion to a 2-bedroom residence and internal building works only. It does not entail structures/buildings external of Suite 3. The internal building works (including shopfront glazing and openings) relate to the intended uses of the portions.

- ***Future installation of structures within courtyards***

Comment: As mentioned above, there are no new structures proposed within the courtyards. Future installation of these will require approval from the Strata Committee/Body Corporate of the building and may require planning approval from a consent authority (such as Council).

PUBLIC INTEREST

The proposed development is considered to be in the public interest for the reasons provided throughout this report.

HOW HAVE THE COMMUNITY VIEWS BEEN TAKEN INTO ACCOUNT

The application has been notified on a single occasion. The concerns as raised in the submissions have been considered throughout the scope of this report.

CONCLUSION AND REASONS

The proposed development was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and generally found to be satisfactory, subject to the satisfaction of recommended conditions of consent.

The proposed development involves further reduction to the non-residential floor space ratio of an existing mixed use building that are less than the minimum ratio. The applicant has submitted a written request seeking a variation to the non-residential floor space ratio development standard in accordance with Clause 4.6 of NSLEP 2013.

The applicant's submission has been evaluated and considered with reference to the relevant planning principle/s in order to justify the proposed variation. The applicant's written request is considered to be well founded given the site context and circumstances and on the basis that the proposed variation demonstrates sufficient planning merit and will not result in the generation of any significant impacts on the environment, including those associated with view loss, privacy, amenity, overshadowing and streetscape.

Notification of the proposal has attracted three (3) submissions from two (2) individual properties and the assessment of the proposal has considered the performance of the application against Council's planning requirements. Any substantive points raised by the submissions have been addressed/clarified in the section above (refer to Submitters Concerns).

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or surrounding properties, and the significance of the adjoining heritage item and the quality of the streetscape are maintained. The proposed development will also not result in any unreasonable impacts to the amenity of adjoining properties including impacts to views, overshadowing or loss of privacy.

Having regard for the potential impacts upon the amenity of adjoining properties and the unique context of the site, subject to conditions, the development application is considered to be satisfactory and is recommended for approval.

The assessment of the proposed development has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. Following this assessment, and having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application recommended for **approval** given the consistency to the objectives and controls within the North Sydney Local Environmental Plan and Development Control Plan 2013, and lack of material adverse impacts on the redevelopment of the adjoining properties.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of the Department of Planning, Industry and Environment, and invoke the provisions of Clause 4.6 with regard to the exception to the development standard Clause 4.4A for non-residential floor space ratios, grant consent to Development Application No. 277/21 for alterations and additions to ground floor commercial tenancy and change of use of first floor level to provide a 2-bedroom residential apartment at land known as Suite 3/102 Alfred Street South, Milsons Point, subject to the attached recommended conditions:

Miguel Rivera
ASSESSMENT OFFICER

David Hoy
TEAM LEADER ASSESSMENTS

Stephen Beattie
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
SUITE 3, 102 ALFRED STREET SOUTH, MILSONS POINT
DEVELOPMENT APPLICATION NO. 277/21

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Title	Drawn by	Received
DA 03a	A	Existing Floor Plan: Ground Floor	Henry May Projects	10 November 2021
DA 03b	A	Existing Floor Plan: Level 1	Henry May Projects	10 November 2021
DA 03c	A	Demolition Plans	Henry May Projects	10 November 2021
DA 04	A	Proposed Floor Plans: Ground Floor and Level 1	Henry May Projects	10 November 2021
DA 08	A	Existing and Proposed FSR Diagrams	Henry May Projects	10 November 2021
DA02	A	Site Plan	Tekton Projects	9 September 2021
DA05	A	Proposed Elevation: Alfred Street and Section AA	Tekton Projects	9 September 2021
DA06	A	Elevations	Tekton Projects	9 September 2021
DA07	A	Window and Door Schedule	Tekton Projects	9 September 2021

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

C. Prior to the Issue of a Construction Certificate (and ongoing, where indicated)

Sediment Control

- C1. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

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A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Waste Management Plan

C2. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

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External Colours and Finishes

- C3. The external colours and finishes shall match those as existing and/or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that the completed colours and finishes of the works are compatible with surrounding development)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

- C4. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,000.00 to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
 - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
 - c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;

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- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Footpath, Entries and Fire Exit Details (Mixed-Use/Commercial/Apartments)

C5. Footpaths, entries and exits and fire exits for the development must be designed by an appropriately qualified and practising Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The design must include (but is not limited to) the following:

- a) cross section along the centre-line of each access point to the building including fire exits at a scale of 1:50 to be taken from the centre of the road and shall include all changes of grade both existing and proposed;
- b) the sections must show all relevant levels and grades (both existing and proposed) including those levels stipulated as boundary levels;
- c) the sections must show the calculated clearance to the underside of any overhead structure;
- d) a longitudinal section along the boundary line showing how it is intended to match the internal levels of the building with the boundary footpath levels. The footpath must be designed (at a single straight grade of 3% falling to top of kerb) so that it is smooth without showing signs of dipping or rising particularly at entrances; and
- e) a longitudinal section along the gutter and kerb line extending 5 metres past property lines showing transitions.

Details, plans and specifications complying with this condition are to be certified as complying with the Building Code of Australia (BCA) and Council's standard footpath specifications, and the certification, details, plans and specifications must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate. Written concurrence confirming there will be no change to existing boundary and footpath levels is to be provided to the Certifier and North Sydney Council, prior to issue of any Construction Certificate.

(Reason: To facilitate suitable pedestrian and disabled access to private sites, and to ensure that internal levels reflect footpath boundary levels)

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Tree Bond for Public Trees

- C6. Prior to the issue of any construction certificate, security in the sum of \$3,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

Tree	Location	Height (m)
One (1) x street tree (deciduous species)	Within road reserve, immediately east and adjacent to Suite 3/102 Alfred Street South.	<10m

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

Protection of Trees

- C7. The existing street tree within the Alfred Street South Road reserve that is immediately adjacent and to the east of the premises is required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Acoustic Privacy (Residential Apartments)

- C8. Noise levels in sole occupancy units of residential apartments must not exceed the following:

Location	Maximum
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The "Maximum" limits are to apply in any hour of a 24-hour period with the windows of the sole occupancy unit closed.

"habitable room" has the same meaning as in the Building Code of Australia.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level $L'_{nT,w}$ not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 "Field measurements of impact sound insulation of floors" and rated to AS ISO 717.2-2004 "Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation". This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit.

Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

Provision of Accessible Paths of Travel

- C9. The building must be designed and constructed to provide access and facilities in accordance with the Building Code of Australia and Disability (Access to Premises - Buildings) Standards 2010. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council's power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an "unjustifiable hardship exemption" under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>.

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

Section 7.12 Development Contributions

- C10. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is **\$10,851.83**.

Indexation

The monetary contribution required under this consent will be indexed between the date of the grant of the consent and the date on which the contribution is paid the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of payment

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

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Security Deposit/Guarantee Schedule

- C11. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Security Deposit Bond	\$2,000.00
TOTAL BONDS	\$2,000.00

Note: The following fees applicable

Fees	
S7.12 Development Contributions	\$10,851.83
TOTAL FEES	\$10,851.83

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

- C12. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A428322 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

D. Prior to the Commencement of any Works (and continuing where indicated)

Commencement of Works' Notice

- D1. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. During Demolition and Building Work**Parking Restrictions**

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Removal of Extra Fabric

- E3. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Dust Emission and Air Quality

E4. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Noise and Vibration

E5. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Developer's Cost of Work on Council Property

E6. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

E7. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Protection of Trees

E8. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

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In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

- E9. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

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3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours (Commercial Core and Mixed-Use Zones)

E10. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
B3 Commercial Core Zone B4 Mixed-Use Zone	Monday - Friday	7.00 am - 7.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

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Site Amenities and Facilities

- E11. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E12. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E13. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant and Equipment Kept Within Site

- E14. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

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Waste Disposal

- E15. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

- E16. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

F. *Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation***National Construction Code**

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- 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, or
 - (b) in the case of work to be done by an owner-builder:

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- (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.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Construction Certificate

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

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Occupation Certificate

- F5. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Commencement of Works

- F7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two (2) days' notice to North Sydney Council of the person's intention to commence the erection of the building.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Excavation/Demolition

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

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Protection of Public Places

- F9.
- 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
 - 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
 - 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
 - 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
 - 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Site Sign

- F10.
- 1) A sign must be erected in a prominent position on the site
 - a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
 - 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate**Infrastructure Repair and Completion of Works**

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Access to Premises

- G2. Prior to the issue of any Occupation Certificate, a certificate must be prepared an appropriately qualified and practising Civil Engineer certifying that access and facilities for persons with a disability in accordance with the Building Code of Australia and AS Disability (Access to Premises - buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Certifying Authority prior to issue of the Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

Damage to Adjoining Properties

- G3. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Notification of New Address Developments

- G4. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following: -

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- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website (www.auspost.com.au) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

BASIX Completion Certificate

- G5. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

House Numbering (Commercial and Residential Units)

- G6. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the new commercial and residential units (as approved in this consent) in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

I. Ongoing/Operational Conditions

New use of ground floor premises – Further consent required

- I1. A separate approval must be obtained for the use of the ground floor commercial unit prior to that use commencing.

(Reason: To ensure development consent is obtained prior to uses commencing)

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Approved Occupancy of Premises

- I2. Nothing in this consent authorises the use of the premises other than for a commercial unit on the ground floor and a 2 bedroom residential unit on the first floor.

(Reason: To ensure compliance with the terms of this consent)

Noise and Vibration Impact

- I3. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Allocation of Spaces

- I4. The allocation of carparking spaces within the development must be maintained at all times in accordance with the terms of this consent. The allocation of spaces must be maintained in accordance with the following table:

- One (1) vehicle space for residential unit on first floor – Lot 3 in SP 32515
- One (1) vehicle space for commercial unit on ground floor – Lot 3 in SP 32515

Carparking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

K. *Prior to the Issue of any Strata Certificate*

Registered Plans (Strata)

- K1. The applicant must submit to Council's documentary evidence that the Strata Plan has been registered and the lot(s) exists. The use of the premise must not commence until the documentary evidence has been submitted to and approved by Council.

(Reason: To ensure that the allotments of land are created prior to the commencement of the approved use.)

Fire Safety Upgrade

- K2. .Prior to issue of any Strata Certificate, works involving the upgrading/installation of essential fire safety measures (as recommended in the BCA Assessment and Fire Safety Upgrading Report prepared EBS Consultants, dated 12 November 2021 and received by Council on 13 November 2021 are to be fully completed.

A **fire safety schedule** and **final fire safety certificate** (as specified in clauses 168 to 174 of the Environmental Planning and Assessment Regulation 2000) must be issued with the Construction Certificate and Occupation Certificate respectively.

A report from an appropriately qualified person in relation to fire safety and the Building Code of Australia, certifying that the fire upgrading works have been completed and indicating all required essential fire safety measures have been installed and verified as functioning in accordance with the above-named report, must be submitted to the Certifying Authority for approval prior to the issue of any Strata certificate.

Note: The requirement to undertake physical building works in relation to the installation/upgrade of essential fire safety measures in the building constitutes building work and as such will necessitate obtaining a Construction Certificate, appointing a Principal Certifying Authority and obtaining an Occupation Certificate (pursuant to section 81A and 109M of the EP&A Act.

(Reason: To meet legislative requirements and ensure adequate provision is made for fire safety in the premises)

Strata Subdivision

- K3. A Strata Certificate pursuant to the *Strata Schemes (Freehold Development) Act 1973*, that authorises registration of the strata plan, strata plan of subdivision or notice of conversion at NSW Land and Property Information Office must be obtained. If the Strata Certificate is obtained from an Accredited Certifier, other than the Council, the certifier is to provide Council with a copy of the endorsed Strata Certificate within seven (7) days of issuing the same, pursuant to the *Strata Schemes (Freehold Development) Regulation 2002*.

NOTES: For approval of the Strata Certificate by North Sydney Council, the following must be submitted to Council:

- a) the original strata plans or strata plans of subdivision and administration sheets plus two (2) copies of each, and any original Instrument (including but not limited to any section 88B or 88E instruments) to be endorsed, all **enclosed in a protective cardboard tube** (to prevent damage during transfer);
- b) two additional copies of the strata plans or strata plans of subdivision and any relevant Instrument for submission to Council Customer Services and records department for electronic database scanning and copying;

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- c) a completed *Subdivision or Strata Certificate Application* form together with payment of fee current at lodgement;
- d) written evidence that all applicable conditions of consent required to be satisfied, prior to issue of the Strata Certificate, have been satisfied. Council will check the consent conditions on the relevant consent(s). Failure to submit the required information will delay endorsement of the Strata Certificate, and may require payment of rechecking fees;
- e) **plans of subdivision and copies must not be folded; and**
- f) **council will not accept bonds in lieu of completing subdivision works.**

(Reason: To ensure compliance with relevant legislative requirements and maintenance of up-to-date Council records)

Sydney Water

K4. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The Section 73 Certificate must be submitted to the Certifying Authority or North Sydney Council with the documentation to enable the issue of the Strata Certificate.

Notes:

1. Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au or telephone 13 20 92.
2. Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with Sydney Water requirements)

Release of Strata Certificate

K5. The Strata Certificate that authorises registration of the Strata Plan, Strata Plan of Subdivision or Notice of Conversion at NSW Land and Property Information shall not be issued until bounding walls, floors and ceilings between proposed strata lots have been constructed in accordance with the approved plans identified in Condition A1 of this Consent.

(Reason: To ensure that the registered strata plan relates to approved development)

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Allocation of Parking and Visitor Parking

- K6. Car-parking provided must only be used in conjunction with the units and tenancies contained within the development. Any carparking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

The allocation of spaces must be maintained in accordance with the following table:

- One (1) vehicle space for residential unit on first floor – Lot 3 in SP 32515
- One (1) vehicle space for commercial unit on ground floor – Lot 3 in SP 32515

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Carparking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any carparking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Building and Unit Numbering (Strata Subdivisions)

- K7. Prior to issue of the Strata Certificate, the person acting upon this consent must apply to North Sydney Council and receive written confirmation of the allocated street address and unit numbers for the building and the approved strata allotments within the completed project. These are the property addresses that will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard (AS/NZS 4819:2011).

To assist Council, a draft proposal for numbering within the strata scheme or street should be submitted for concurrence to Council, as these numbers will be used to maintain Council's property and mapping database.

(Reason: To ensure that Council records are accurate, and that building and unit numbering complies with the requirements of Council's Property Addressing Policy. Proper building and unit numbering also assist emergency services in readily locating properties)

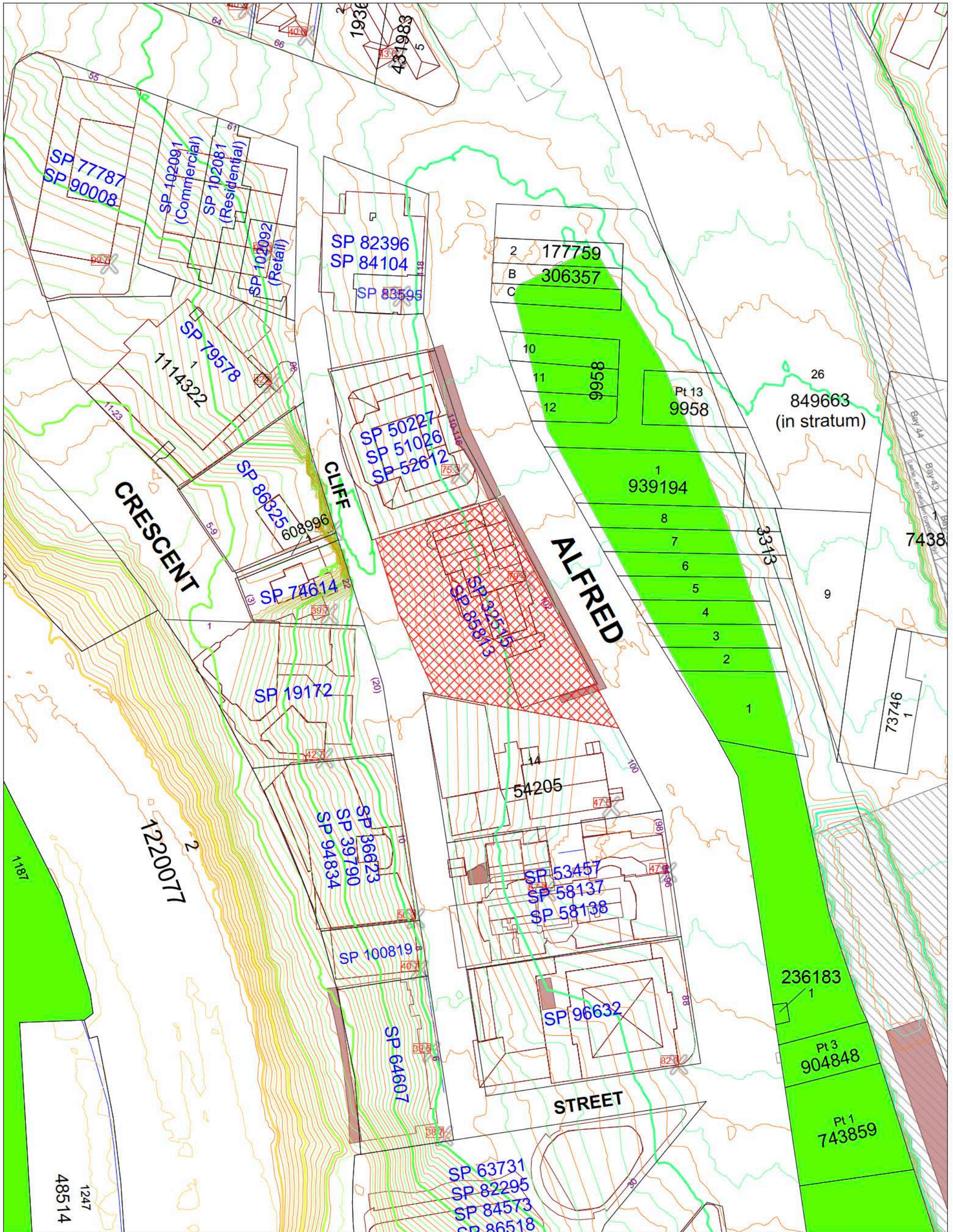
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Services within Lots

- K8. A report must be provided by a Registered Surveyor certifying that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services. The report must be submitted to the Certifying Authority for approval prior to the issue of any Subdivision Certificate.

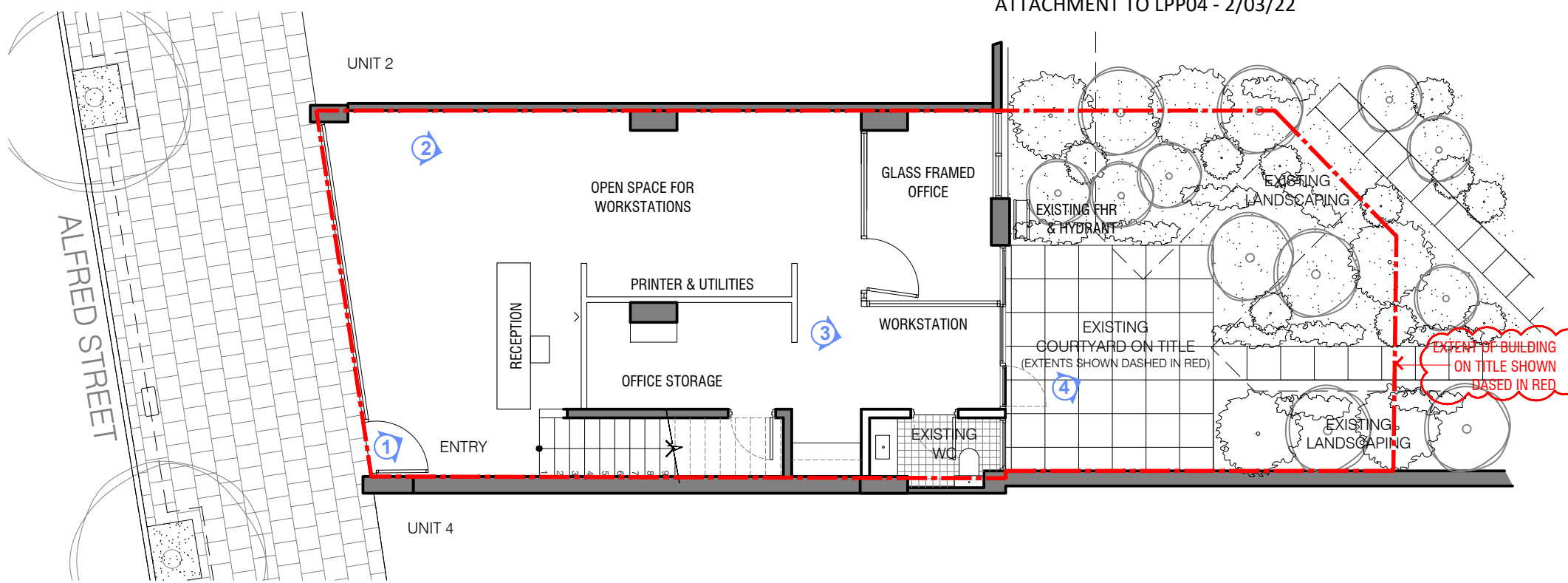
(Reason: To ensure adequate servicing of the development)



North Sydney Council

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1 EXISTING GROUND FLOOR PLAN

2 IMAGE 1

Existing Ground Floor Internal: Unoccupied office space

3 REFERS TO IMAGE LOCATION & REFERENCE

Existing Ground Floor Terrace: Paved and landscaped courtyard that is on title belonging to Unit 3, 102 Alfred St (as denoted in red on the above plan)



3 IMAGE 2

4 IMAGE 3

5 IMAGE 4

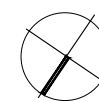


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project
Fatore Pty Ltd

project
Alterations and Additions to:
U3, 102 Alfred St Milsons Point

Rev#	Description	Date
A	Development Application	08.09.21
B	Further Details of Existing Floor Plans	01.10.21



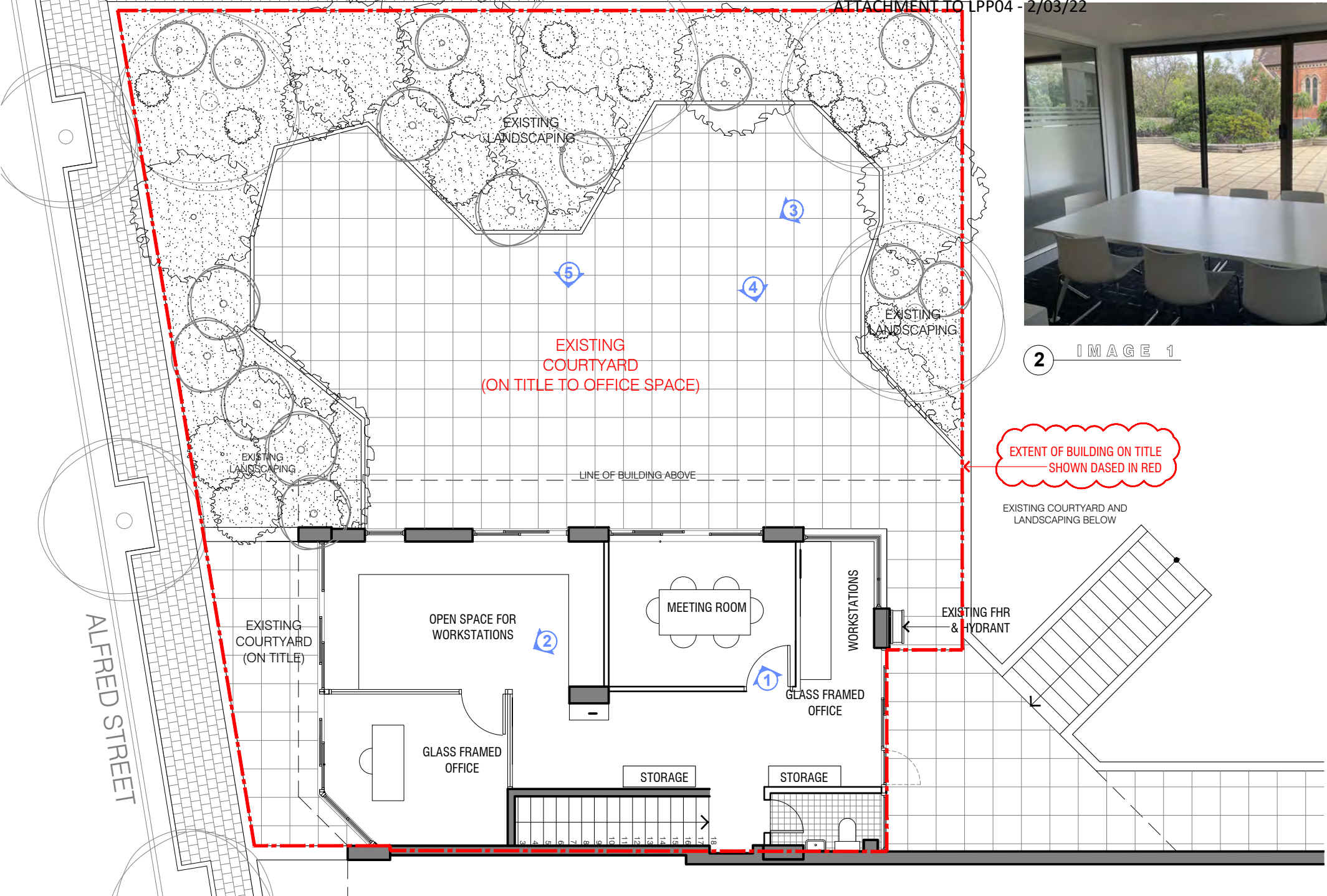
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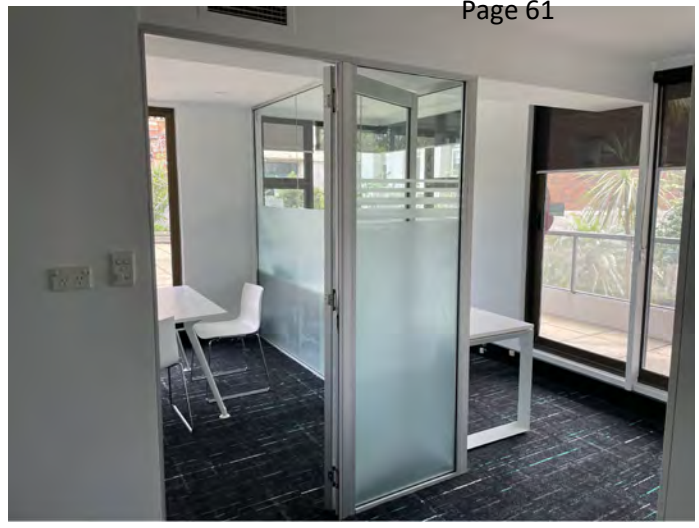
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Development Application

drawing #
DA 03a revision
B

scale @ A3
1:100 document date
01.10.21 drawn by
JL



2 IMAGE 1



3 IMAGE 2



4 IMAGE 3

1 EXISTING LEVEL 1 FLOOR PLAN

1 REFERS TO IMAGE LOCATION & REFERENCE

Existing Level 1 Internal: Unoccupied office space
Existing Level 1 Roof Terrace: Paved and landscaped courtyard that is on title belonging to Unit 3, 102 Alfred St (as denoted in red on the above plan)



6 IMAGE 5



5 IMAGE 4

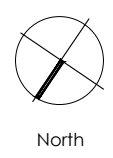


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project
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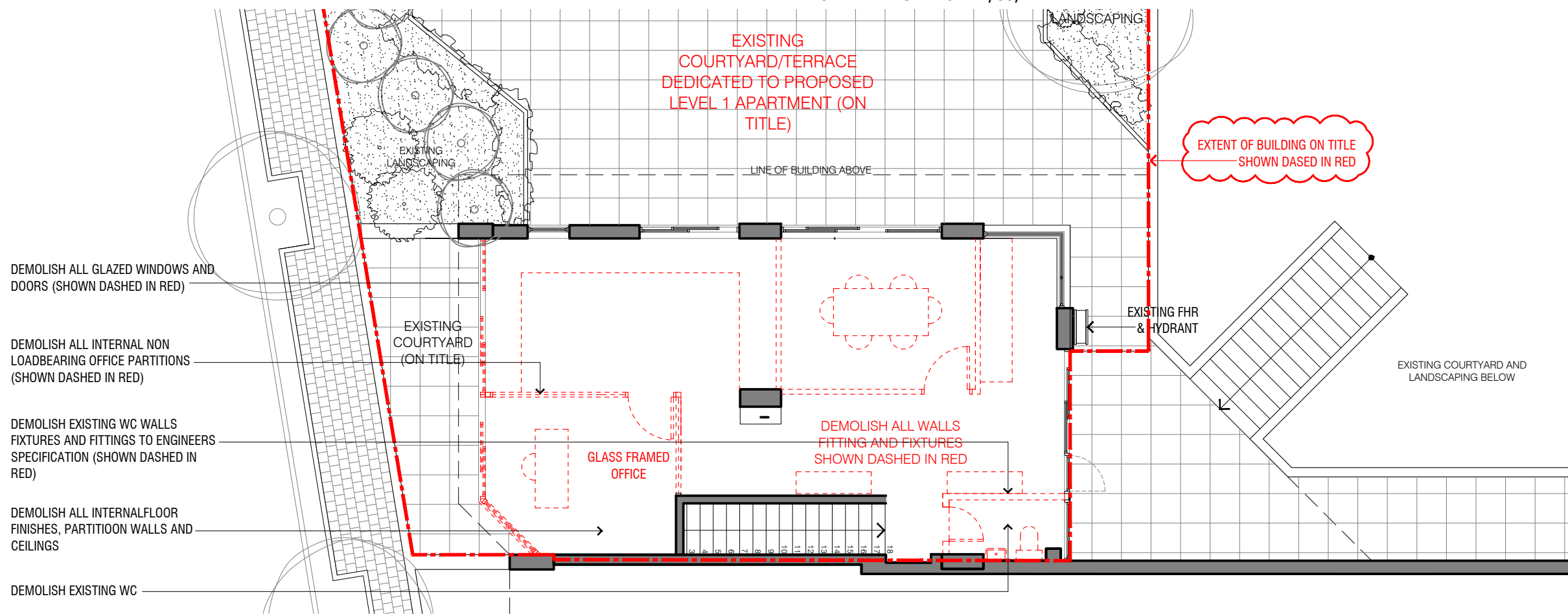
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 U3, 102 Alfred St Milsons Point

Rev#	Description	Date
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B	Further Details of Existing Floor Plans	01.10.21

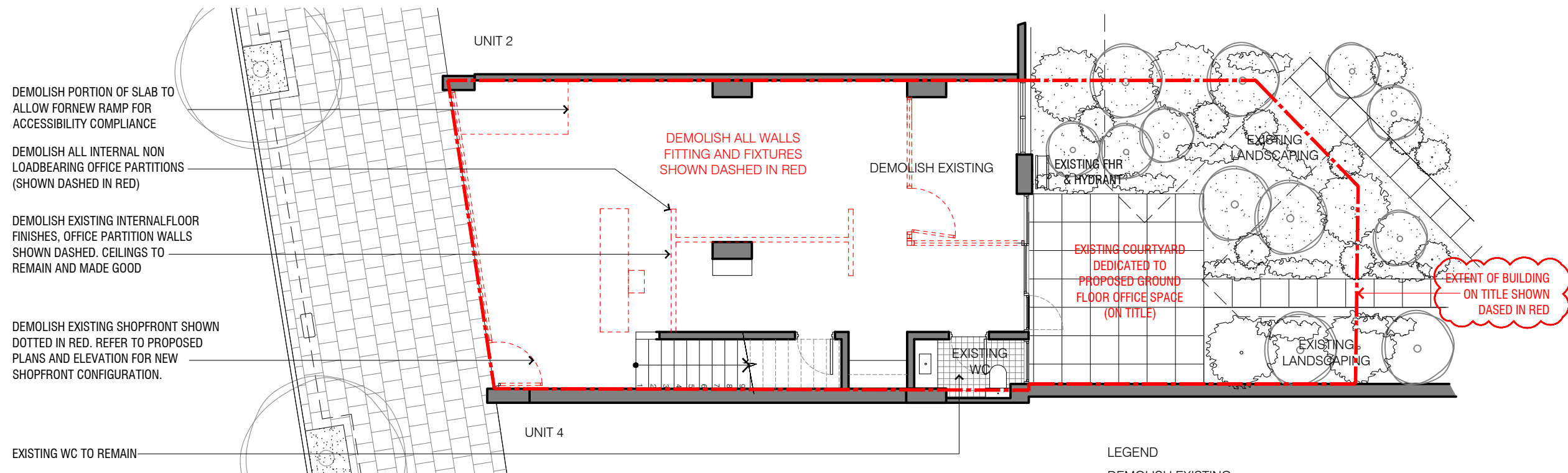


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 issued for
 Development Application

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DA 03b	B
scale @ A3 1:100	document date 01.10.21
drawn by JL	



1 PROPOSED LEVEL 1 FLOOR PLAN



2 PROPOSED LEVEL 1 FLOOR PLAN

LEGEND	
	DEMOLISH EXISTING
	EXISTING WALLS/STRUCTURE
	STEEL STUD WALL PBOARD
	GLAZED WINDOWS & DOORS
	TIMBER FLOORING
	TILES
	FC SHEET RENDERED & PAINTED

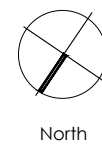


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project
Fatore Pty Ltd

project
Alterations and Additions to:
U3, 102 Alfred St Milsons Point

Rev#	Description	Date
A	Development Application	08.09.21
B	Further Details of Existing Floor Plans	01.10.21



title

Demolition Plans

issued for
Development Application

drawing #

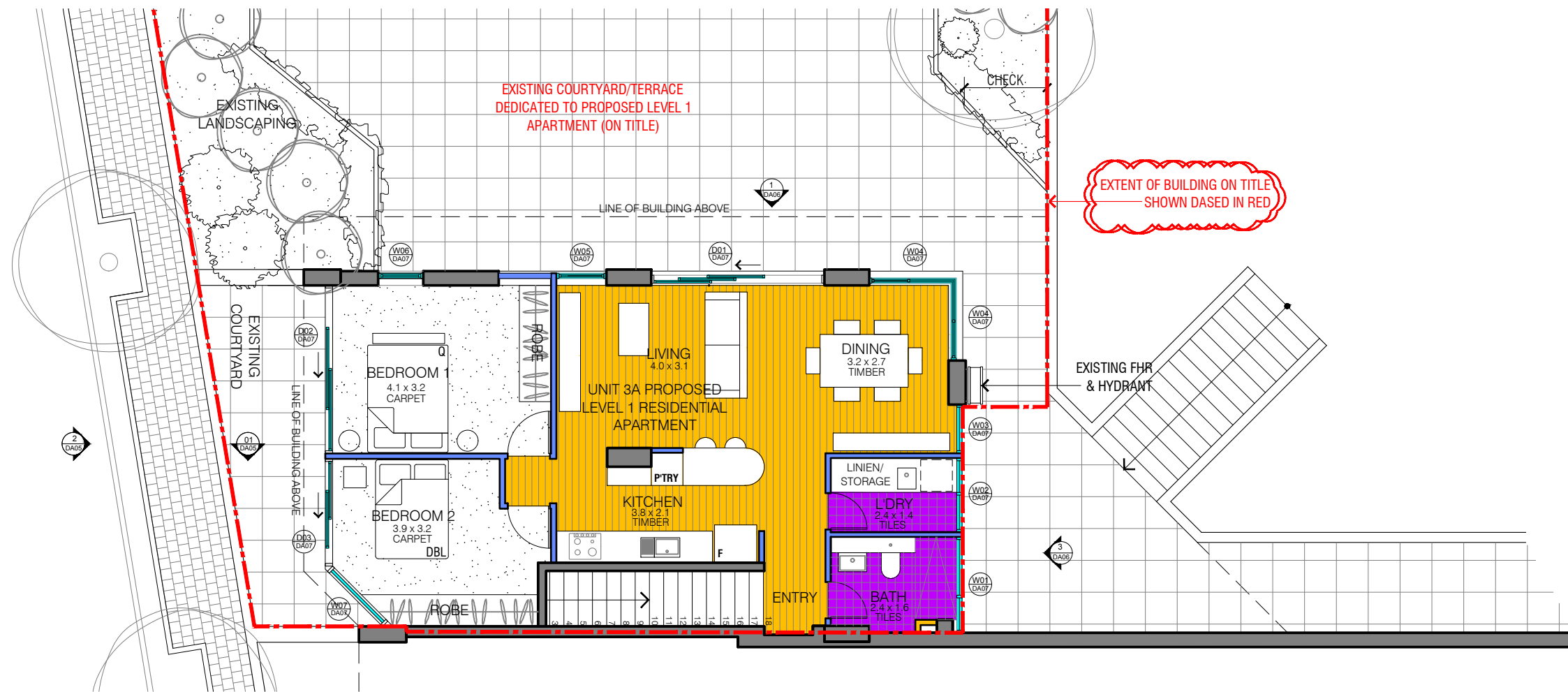
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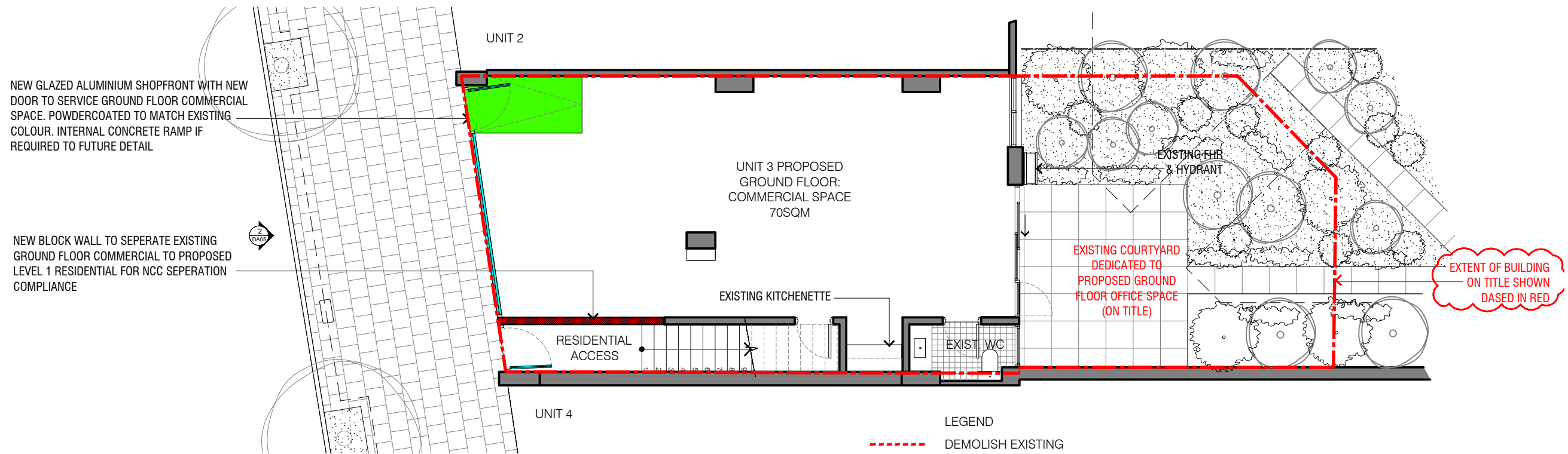
revision

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document date
01.10.21
drawn by
JL



1 PROPOSED LEVEL 1 FLOOR PLAN



2 PROPOSED LEVEL 1 FLOOR PLAN

- LEGEND
- - - - DEMOLISH EXISTING
 - EXISTING WALLS/STRUCTURE
 - STEEL STUD WALL PBOARD
 - GLAZED WINDOWS & DOORS
 - TIMBER FLOORING
 - TILES
 - FC SHEET RENDERED & PAINTED

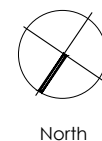


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project
 Fatore Pty Ltd

project
 Alterations and Additions to:
 U3, 102 Alfred St Milsons Point

Rev#	Description	Date
A	Development Application	08.09.21
B	Further Details of Existing Floor Plans	01.10.21



title
Proposed Floor Plans: Ground Floor & Level 1

issued for
 Development Application

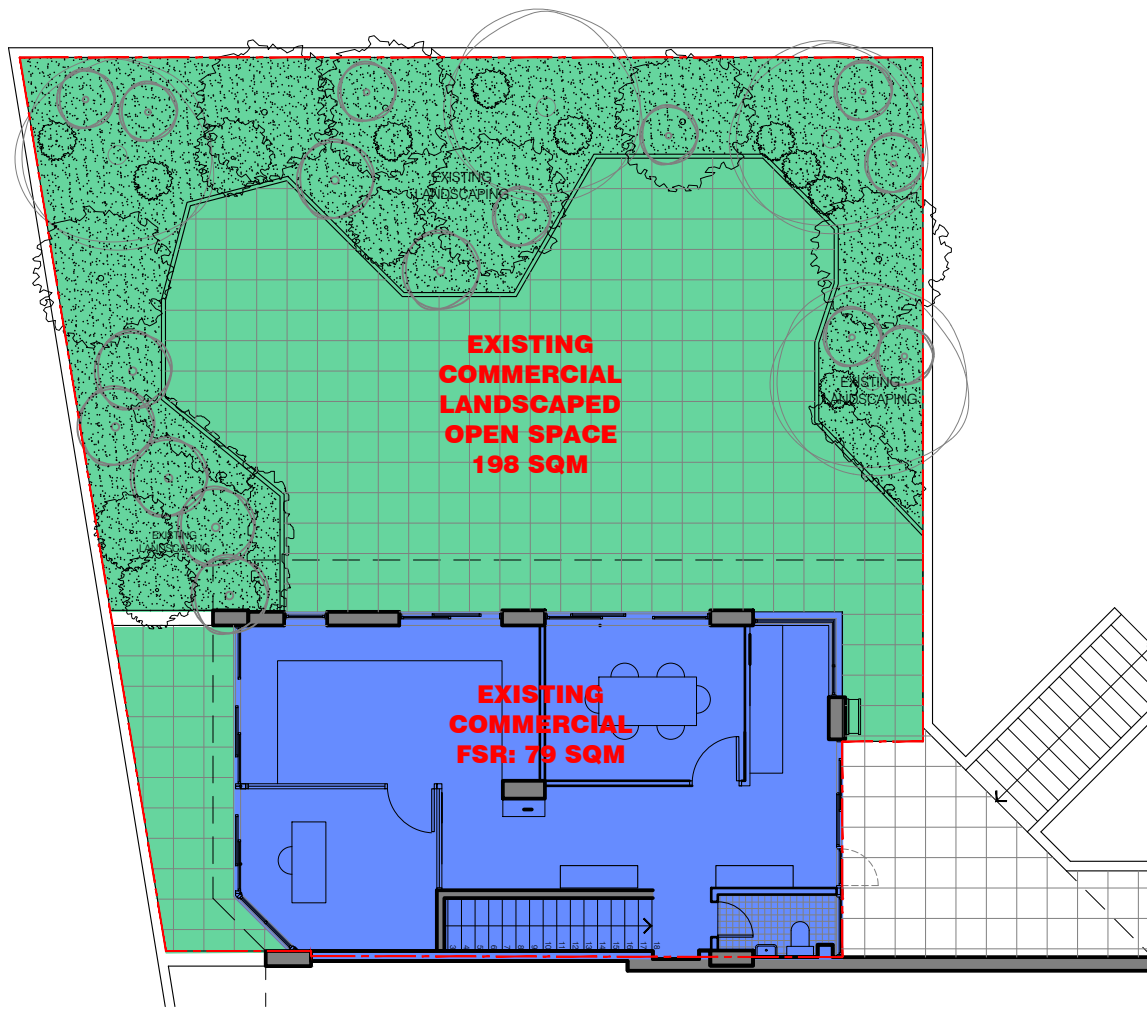
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drawing #
DA 04

document date
 01.10.21

revision
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1 EXISTING LEVEL 1 FSR



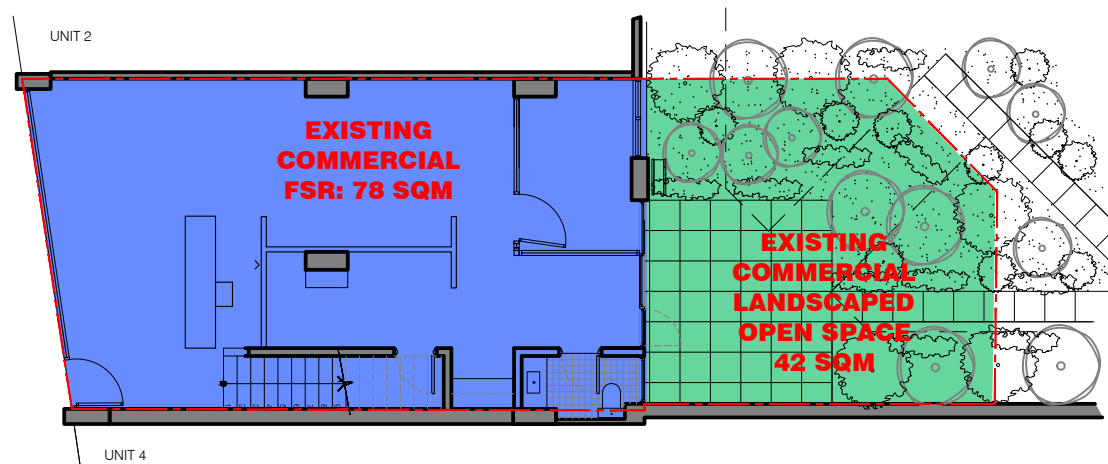
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Existing Floor Space Calcs		
	Commercial (sqm)	Residential (sqm)
Ground Floor	78	0
First Floor	79	0
Total	157	0

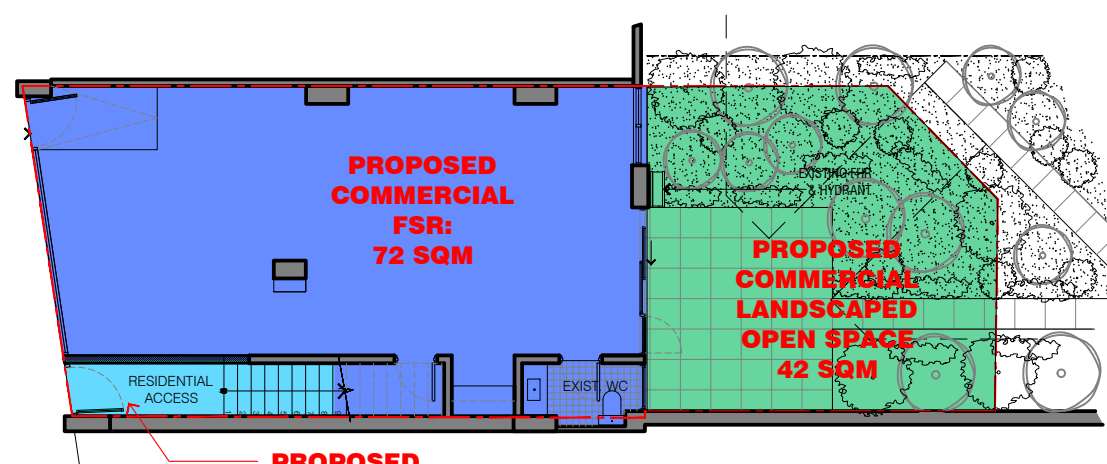
Proposed Floor Space Calcs		
	Commercial (sqm)	Residential (sqm)
Ground Floor	78	0
First Floor	0	79
Total	78	79

Existing Landscaping		
	Commercial (sqm)	Residential (sqm)
Ground Floor	42	0
First Floor	198	0
Total	240	0

Proposed Landscaping		
	Commercial (sqm)	Residential (sqm)
Ground Floor	42	0
First Floor	0	198
Total	42	198



2 EXISTING GROUND FLOOR PLAN



4 PROPOSED GROUND FLOOR PLAN

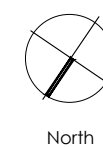


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project
 Fatore Pty Ltd

 project
 Alterations and Additions to:
 U3, 102 Alfred St Milsons Point

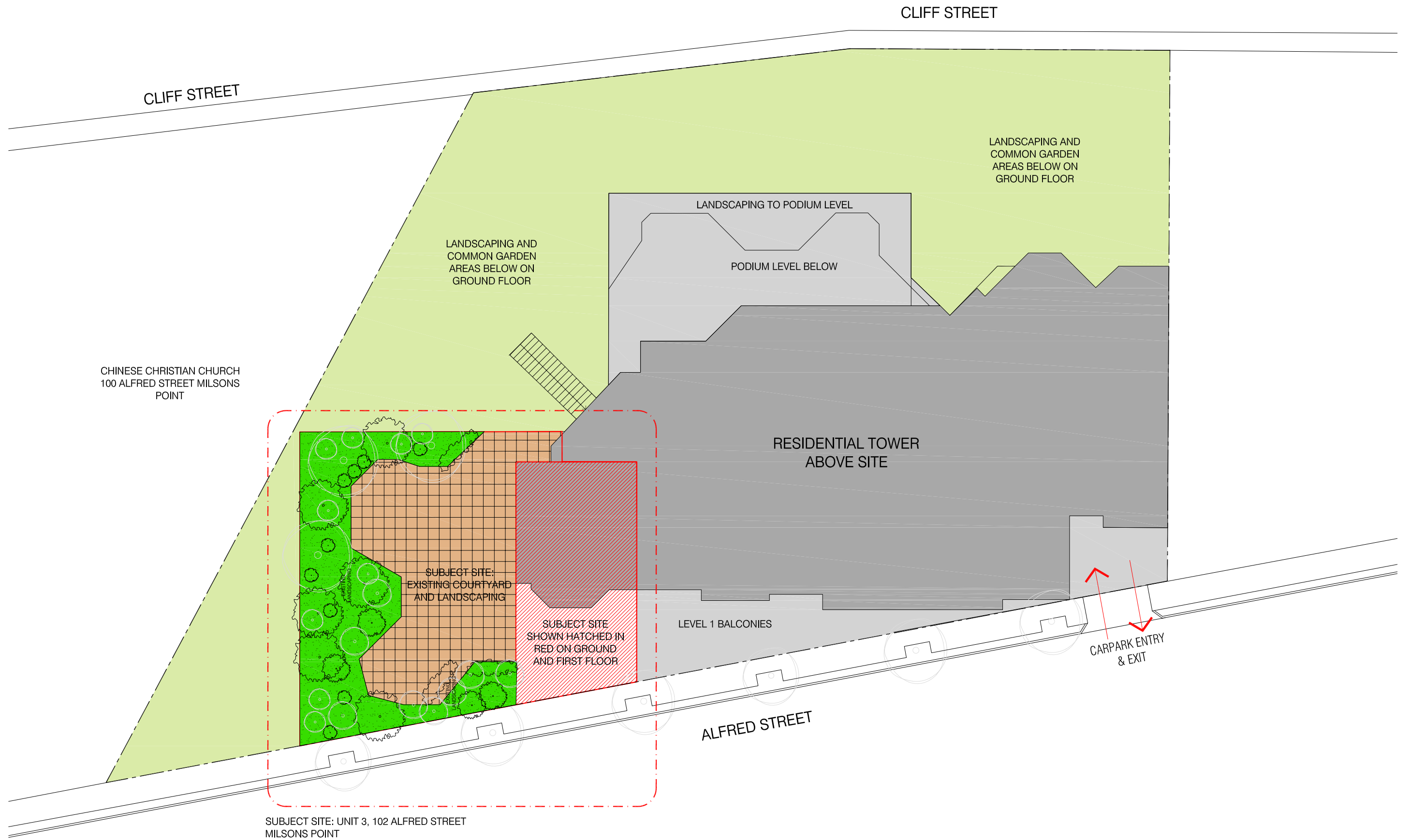
Rev#	Description	Date
A	FSR Calcs requested by Council	01.10.21



title
Existing & Proposed FSR Diagrams

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 Development Application

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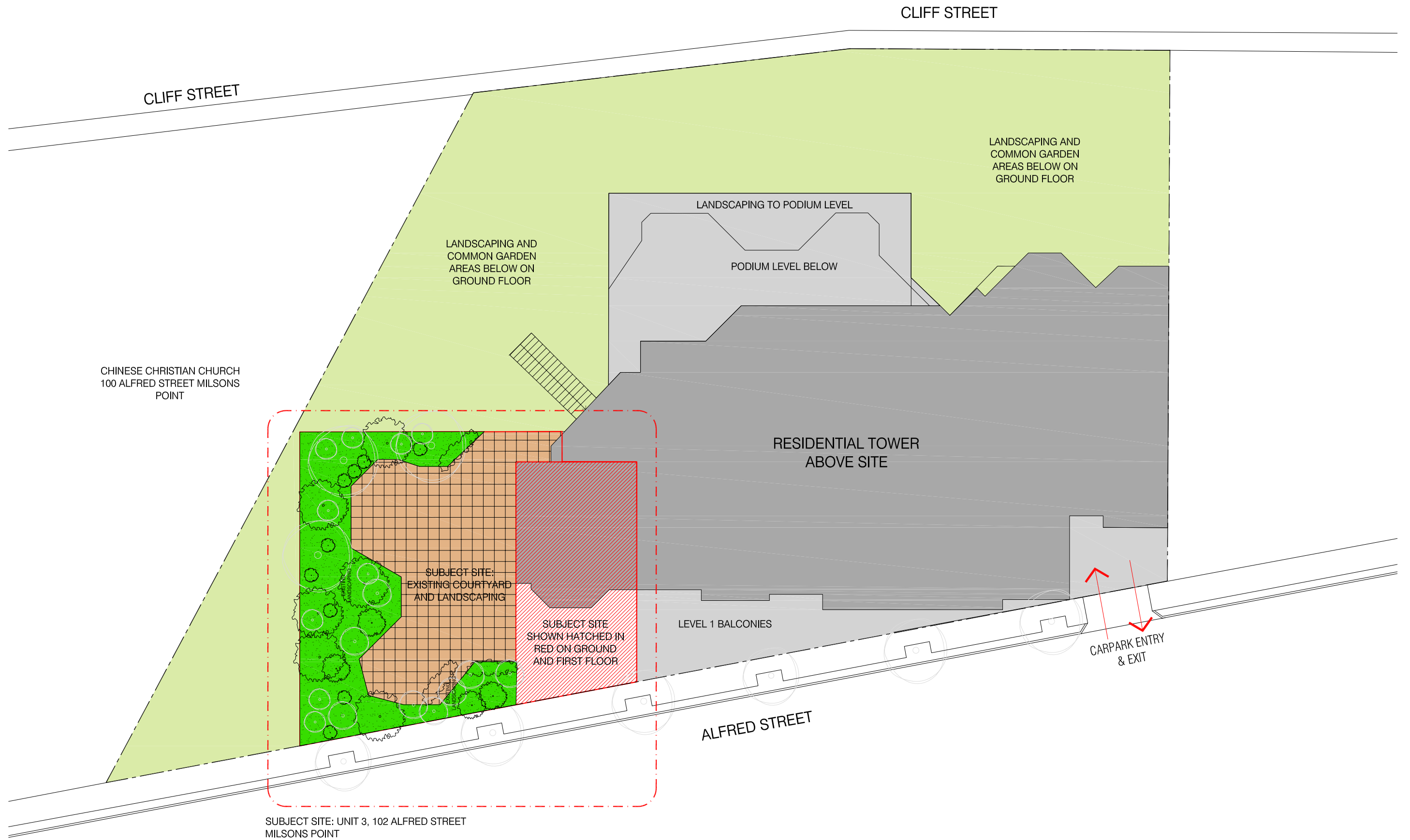


1 SITE ANALYSIS PLAN

Project		
Alterations & Additions to: Suite 3, 102 Alfred St Milsons Point		
Client	A	08.09.21
Fatore Pty Ltd.	issue	date
		amendment
		DEVELOPMENT APPLICATION



drawing	drawn by	scale	no. in set	drawing no.
SITE PLAN	JL	1:200@A3	2 OF 7	DA02
ISSUE FOR:	checked	job no.	date	
DEVELOPMENT APPLICATION	EM	0921	FEB 2021	

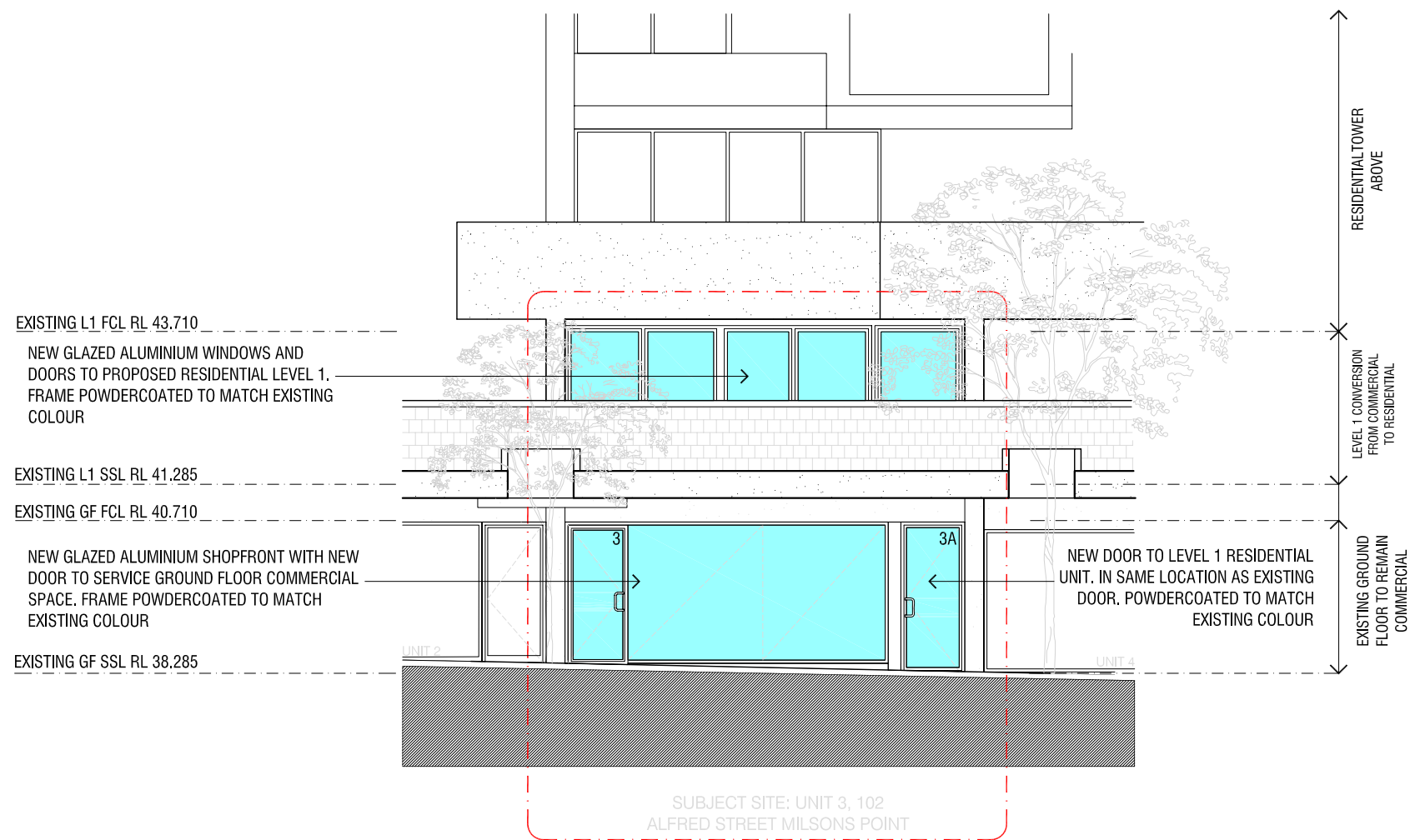


1 SITE ANALYSIS PLAN

Project		
Alterations & Additions to: Suite 3, 102 Alfred St Milsons Point		
Client	A	08.09.21
Fatore Pty Ltd.	issue	date
		amendment
		DEVELOPMENT APPLICATION



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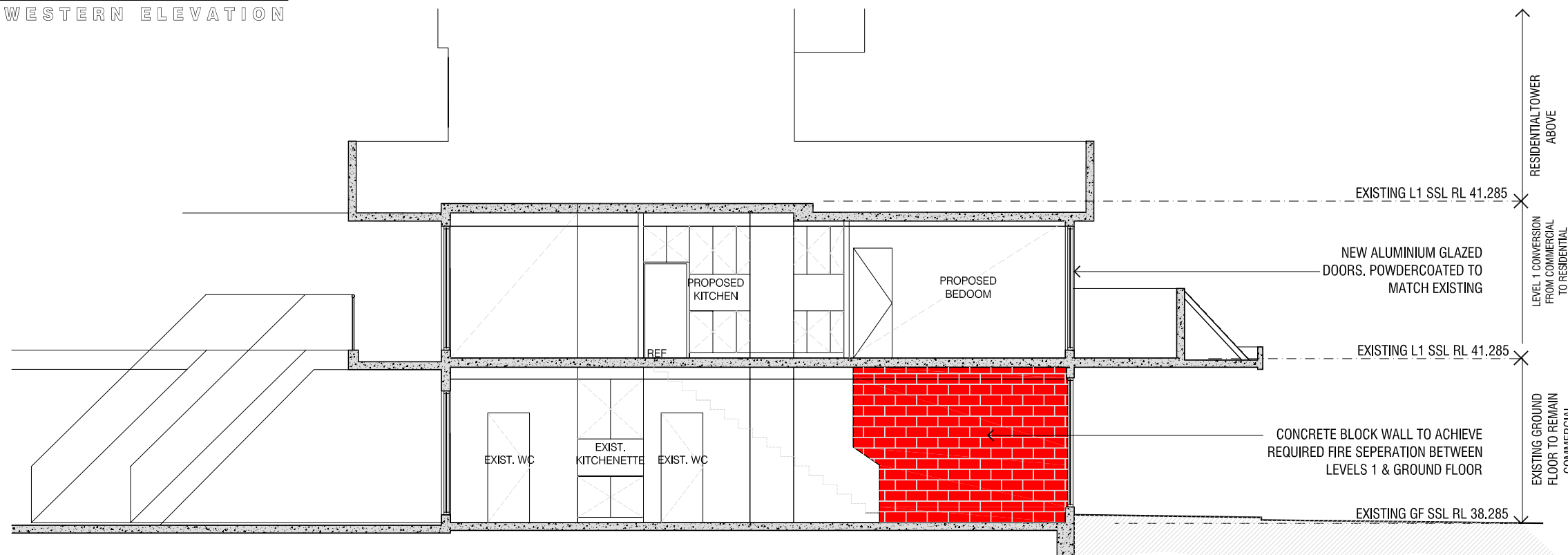


3 EXISTING STREET FRONTAGE

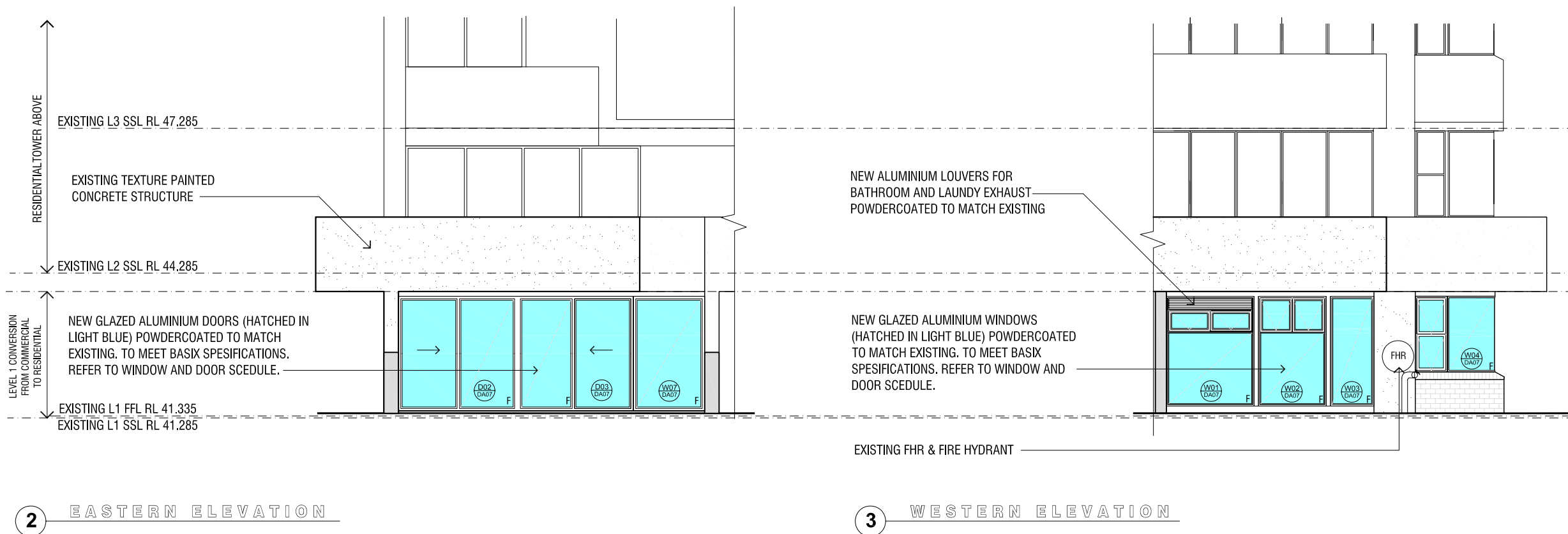
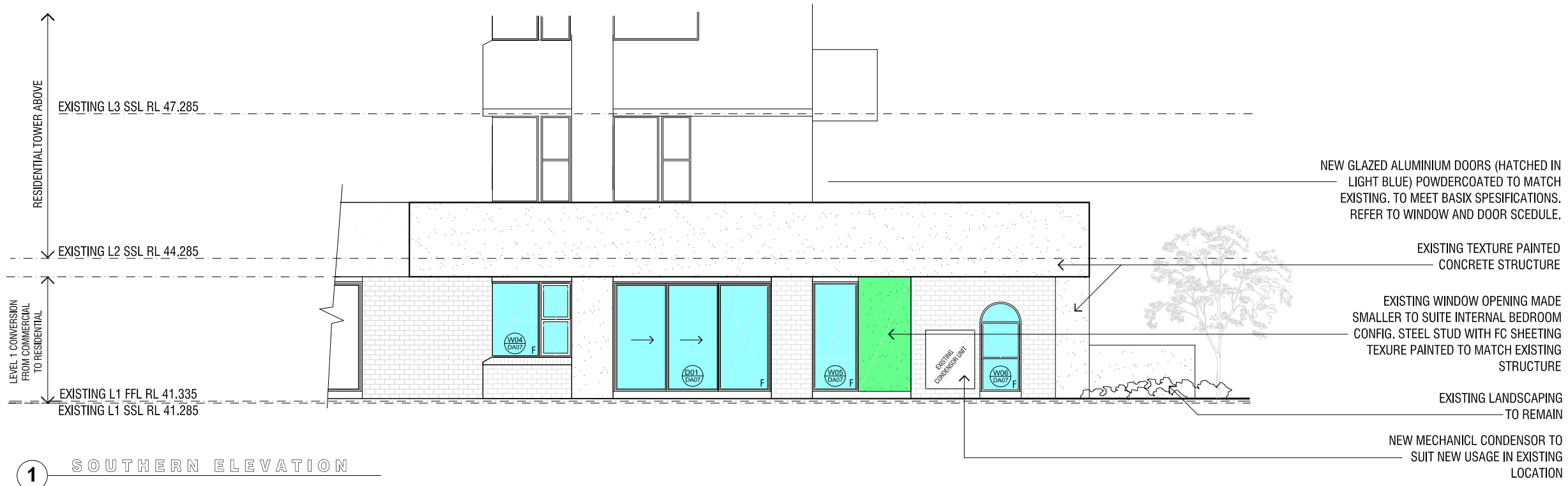


3 EXISTING STREET FRONTAGE

2 PROPOSED STREET FRONTAGE WESTERN ELEVATION



1 PROPOSED SECTION AA

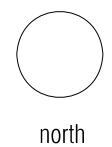


3 WESTERN ELEVATION

LEGEND

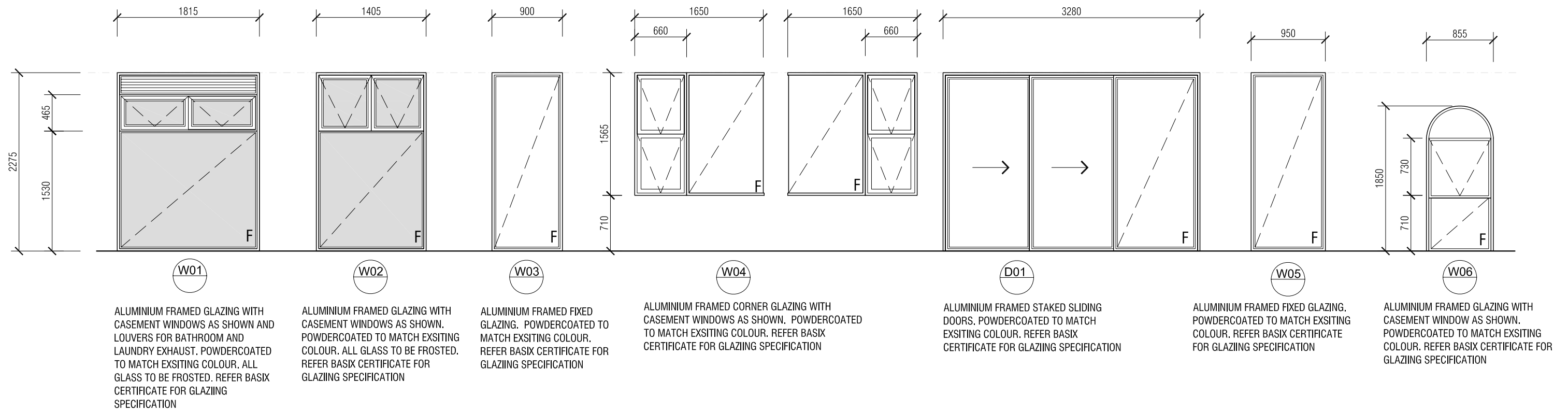
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	EXISTING WALLS/STRUCTURE		TIMBER FLOORING		FC SHEET RENDERED & PAINTED
	STEEL STUD WALL PBOARD				

Project		
Alterations & Additions to: Suite 3, 102 Alfred St Milsons Point		
Client		
Fatore Pty Ltd.		
issue	date	amendment
A	08.09.21	DEVELOPMENT APPLICATION

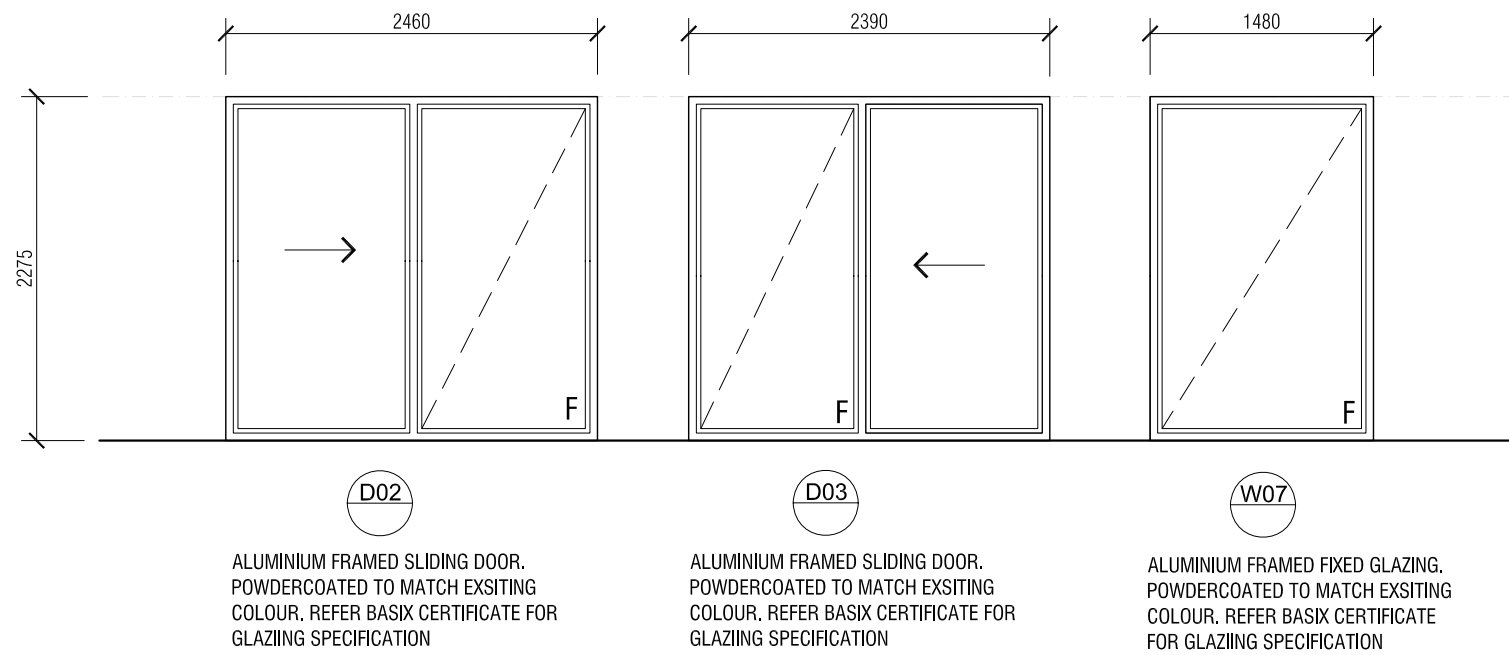


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ISSUE FOR: DEVELOPMENT APPLICATION	

drawn by	scale	no. in set	drawing no.
JL	1:100@A3	6 OF 7	DA06
checked	job no.	date	
EM	0921	FEB 2021	



BASIX REQUIREMENTS



Windows and glazed doors glazing requirements						
Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing		Shading device	Frame and glass type
			Height (m)	Distance (m)		
W1	W	3.5	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2	W	3.1	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W3	W	2	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W4	W	2.5	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W5	S	2.5	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W6	S	7.4	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W7	S	2.1	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W8	S	1.5	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W9	E	5.5	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)
W10	E	5.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)
W11	NE	3.3	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)

1 WINDOW & DOOR SCHEDULE



lighthouse planning
urban planning consultants

CLAUSE 4.6

VARIATION TO NON-RESIDENTIAL FLOOR SPACE RATIO

SUITE 3, 102 ALFRED STREET
MILSONS POINT

PREPARED FOR
FATORE PTY LTD

PREPARED BY




LIGHTHOUSE PLANNING PTY LTD
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PROJECT NO. 154A
SEPTEMBER 2021
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1	9/11/2021		LETTER ATTACHMENTS

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ATTACHMENT 1 – LETTER FROM REAL ESTATE AGENT

ATTACHMENT 2 – LETTER FROM OWNER

1 INTRODUCTION

1.1 PURPOSE

This submission has been prepared for Fatore Pty Ltd to accompany a Development Application (DA) to North Sydney Council relating to the property known as Suite 3, 102 Alfred Street, Milsons Point. It seeks a variation to the non-residential floor space ratio standard contained at Clause 4.4A of the North Sydney Local Environmental Plan 2013 (NSLEP 2013).

1.2 THE PROPOSAL

The application generally proposes the following:

- Demolition of selected structures.
- Alterations and additions resulting in a commercial suite at ground level and a two-bedroom unit on the level above.
- Associated landscaping works.

1.3 VARYING A DEVELOPMENT STANDARD

The NSW Department of Planning and Environment's publication "Varying Development Standards: A Guide" (August 2011), states that:

The NSW planning system currently has two mechanisms that provide the ability to vary development standards contained within environmental planning instruments:

- Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP).
- State Environment Planning Policy No 1 – Development Standards (SEPP1).

SEPP 1 no longer applies and NSLEP 2013 is a Standard Instrument LEP.

This proposal seeks to vary the minimum non-residential FSR development standard applicable to the Site and not introduce new controls across an area. Therefore, the use of Clause 4.6 to vary the non-residential FSR is appropriate in this instance.

2 NATURE OF THE VARIATION

2.1 WHAT IS THE APPLICABLE PLANNING INSTRUMENT AND ZONING?

The NSLEP 2013 is the local environmental planning instrument that applies to the Site. The Site is zoned B4 Mixed Use under NSLEP 2013, in accordance with the Land Zoning Map.

2.2 WHAT ARE THE ZONE OBJECTIVES?

The relevant objectives of the B4 Zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

2.3 WHAT IS THE STANDARD BEING VARIED?

The standard being varied is the non-residential floor space ratio development standard contained in Clause 4.4A(2) of NSLEP 2013.

2.4 IS THE STANDARD TO BE VARIED A DEVELOPMENT STANDARD?

Yes, the minimum non-residential FSR standard is a development standard in accordance with the definition contained in Section 1.4 of the Environmental Planning and Assessment Act 1979 (as amended) (EP&A Act).

2.5 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

No, the development standard is a numeric control.

2.6 WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?

The objectives of Clause 4.4A of NSLEP 2013 are as follows:

- *to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
- *to encourage an appropriate mix of residential and non-residential uses,*

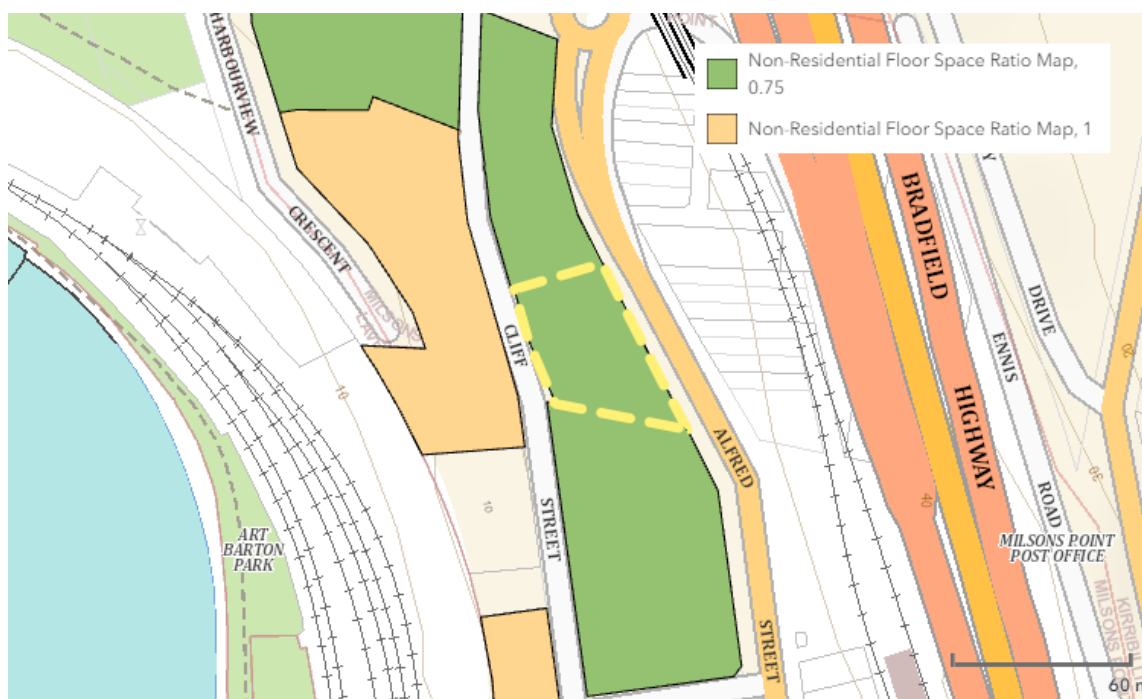
- *to provide a level of flexibility in the mix of land uses to cater for market demands,*
- *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

In summary, the underlying purpose of the development standard is to ensure a continuous and activated frontage in desired areas and to flexibly apply an appropriate mix of residential and non-residential uses.

2.7 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Subclause 4.4A(2), in association with the Non-Residential Floor Space Ratio Map of the NSLEP 2013, establishes a minimum non-residential FSR of 0.75:1 for the Site. The site has an area of 1749.4m², which requires a non-residential Gross Floor Area of 1,312.05m².

FIGURE 1: EXCERPT FROM THE NON-RESIDENTIAL FSR MAP



SOURCE: NSW PLANNING PORTAL

2.8 WHAT IS THE PROPOSED NUMERIC VALUE OF THE VARIATION IN THE DEVELOPMENT APPLICATION?

Based on review of the original approved DA calculations (DA 797/85), the existing development has a commercial floor area of 888.43m², resulting in a non-residential FSR of 0.5:1, a variation of 0.25:1. The subject development proposes to facilitate a change of use at Level 1 of the existing commercial premises to residential accommodation.

This will reduce the overall non-residential floor space across the site by 75m² and result in a non-residential FSR of 0.46:1, a reduction of non-residential FSR equating to 0.04:1.

2.9 WHAT IS THE CONTEXT OF THE VARIATION?

Suite 3 of 102 Alfred Street, Milsons Point is part of a larger mixed-use development with 12 storeys of residential above an active, commercial podium and frontage. Suite 3 is currently a two-storey commercial premises with internal stair access fronting Alfred Street.

The Ground Level of the development at 102 Alfred Street has a total gross floor area of 607.1m² including the residential lobby. This equates to a footprint of approximately one third of the site area (34%). The development as approved in 1986 was designed to use the remainder of Ground Level predominantly for landscaping and recreation spaces.

The required minimum non-residential FSR of 0.75:1 would normally be readily accommodated on ground floor alone, as most buildings in the surrounding area cover the majority of their respective sites, with basement parking accessed via the Cliff Street to the west. This achieves the desired continuous active street frontage within selected mixed-use areas. The proposed development is able to achieve a similar outcome in terms of retaining a continuous, activated streetscape to the Alfred Street frontage notwithstanding numeric non-compliance.

The intention to facilitate a change of use at Level 1 to a dwelling reflects the difficulty in viably tenanting a commercial space across the two levels. This has been exacerbated by recent circumstances surrounding COVID-19. Evidence to this effect is provided as Attachments 1 & 2 to this Clause 4.6 Report. The proposed residential unit provides additional housing opportunities while retaining an active street frontage and presenting a more desirable commercial premises for businesses that require interaction with the public domain.

The existing layout and location of the suite is also unique, with direct access to a private courtyard and the split levels of commercial across two storeys. The unique context of this suite lends itself to the proposed change of use to residential on the upper level without establishing a precedent across the building or broader locality.

3 ASSESSMENT OF VARIATION

3.1 OVERVIEW

Clause 4.6 of NSLEP 2013 establishes the framework for varying development standards applying under the instrument. Council must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating:

'4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Subclause 4.6(4)(a) mandates that development consent must not be granted for a development that contravenes a development standard unless Council is satisfied:

- (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and....'*

Relevant case law to Clause 4.6 Variation Requests

This request has been prepared having regard to the principles established by the Court when considering the assessment of Clause 4.6 requests (including applicable principles adopted from consideration of SEPP 1 requests), contained in the following guideline judgments:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130

This variation adopts Method 1 in *Wehbe* which requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

3.2 IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Yes - in this instance, strict numerical compliance with the development standard for non-residential FSR is unreasonable and unnecessary for the following reasons that are specific to this site and proposal:

- The reasons and context discussed in the section above.
- Despite numerical non-compliance, the proposal remains consistent with the relevant environmental and planning objectives of the B4 Zone and non-residential FSR development standard. This is explored further in Section 3.4 of this report.
- The variation retains a continuous, active street frontage to Alfred Street and is only a minor reduction in non-residential floor space relative to that currently on the site.
- Strict compliance with the development standard would result in no difference to the built form outcome or visual appearance of the development and hinders the ability for separate home ownership and compatible, desirable commercial premises in the area. This outcome would result in no discernible benefit to the site or surrounding locality.

3.3 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

Yes. In the circumstances of the case, there are sufficient environmental planning grounds to justify the variation to the development standard, namely:

- The reasons and context discussed in the sections above.
- The public interest is served by supporting the variation as it allows the opportunity for an additional dwelling under separate ownership while maintaining an active commercial frontage at ground level.
- The proposal satisfies the objectives of the B4 Mixed Use Zone and the objectives of the non-residential FSR development standard, having regard to the particular nature of the development and the particular circumstances of the Site. This is discussed further in section 3.4.
- The variation to the non-residential FSR standard will not have any visual impact or change to the built form outcome. The extent of variation solely relates to the use which has no bearing on appearance or character.

3.4 PUBLIC INTEREST

The public involvement in the planning process shapes and endorses the objectives that underpin the relevant development standard. The standards are derived as a means of achieving the public interest in delivering development that meets the objectives. Compliance with the Development Standard is accepted as being one method by which the objectives are met. Equally, the public interest can be served if the objectives are met, notwithstanding a variation to the development standard.

Approval of the proposed variation to the non-residential FSR is in the wider public interest as the underlying objectives are met. This is detailed in the below section.

THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE B4 MIXED USE ZONE:

The proposal remains consistent with the relevant Zone objectives outlined in Clause 2.3 and the Land Use Table of the NSLEP 2013, despite the non-compliance, as demonstrated below:

- *To provide a mixture of compatible land uses.*

The proposal results in a mix of permissible and current uses on the site that are compatible with the locality and B4 Zoning.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposal provides commercial and residential opportunities in an accessible location.

- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*

The proposal retains an active street frontage that contributes to a safe and vibrant mixed-use centre. Opportunities for passive surveillance are provided from Level 1.

- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

The proposal retains commercial use on the Ground Level while allowing residential on the higher level.

THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE NON-RESIDENTIAL FLOOR SPACE RATIO DEVELOPMENT STANDARD:

The proposal remains consistent with the relevant objectives of the non-residential floor space ratio development standard outlined in subclause 4.4A(1) of the NSLEP 2013, despite the numerical non-compliance with subclause 4.4A(2), as demonstrated below:

- *to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*

The proposal retains a continuous, active street frontage to Alfred Street in the B4 Zone.

- *to encourage an appropriate mix of residential and non-residential uses,*

The proposal results in an appropriate mix of residential and non-residential uses as it retains commercial to ground floor and provides an additional residential unit on the upper levels.

- *to provide a level of flexibility in the mix of land uses to cater for market demands,*

The proposal seeks to apply a level of flexibility to proposed uses as a direct response to market demands.

- *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

The proposal still results in a suitable level of non-residential floor space, with the entire ground level dedicated to commercial. The variation is a result of the smaller building footprint at ground level, as approved in the 1980s.

3.1 WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 1.3 OF THE ACT?

Relevant objects in Section 1.3 of the Act include the following:

- *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- *to promote the orderly and economic use and development of land,*
- *to promote the delivery and maintenance of affordable housing,*

- *to promote good design and amenity of the built environment,*
- *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

The proposed non-compliance with the development standard would support, rather than hinder the attainment of the objects of Section 1.3 of the EP&A Act. These objectives are to encourage social and economic welfare of the community, the proper management of built and natural resources, good design and to promote and coordinate orderly and economic use and development of land.

In this instance, strict compliance with the development standard would not result in any discernible benefits. It therefore stands that the environmental planning grounds and outcomes that are particular to this development and this Site are such, that a departure from the development standard in that context would promote the proper and orderly development of land.

4 CONCLUSION

This report accompanies a Development Application for alterations and additions, facilitating a partial change of use from a commercial premises to a residential unit. An exception is sought, pursuant to Clause 4.6 of the North Sydney Local Environmental Plan 2013 to the minimum non-residential floor space ratio prescribed by subclause 4.4A(2) of the NSLEP 2013.

The proposed variation is minor in nature and retains the existing built form presentation to the street. This reflects the desired, activated outcome for the Alfred Street frontage. The proposal enables a well-considered development that addresses the streetscape and relevant objectives of both the standards and the zone.

The report finds that the variation will not result in unreasonable environmental impacts. Accordingly, a variation of the development standard is justified.

ATTACHMENT ONE – LETTER FROM REAL ESTATE AGENT



Level 8, 75 Miller Street
North Sydney NSW 2060

PO Box 721
North Sydney NSW 2059

Telephone 02 9955 9211
Facsimile 02 9955 9212

www.hartiganbolt.com.au

28 October 2021

Francis Henry-May
43 Bungaloe Avenue
Balgowlah Heights NSW 2093

Dear Francis,

LEASING OF UNIT 3, 102 ALFRED STREET SOUTH, MILSONS POINT

I refer to your request for an update on the above.

We commenced discussions regarding re-letting unit back in March 2021 as you were aware that the previous tenant would be vacating.

Formal marketing commenced in May 2021 to seek a new tenant.

We have had a number of groups inspect but to date have not received a lease offer.

We will keep you advised and if you need anything further, please let me know.

Kind regards

A handwritten signature in black ink that reads 'David Bolt'.

David Bolt

Director

0439 032 008

ATTACHMENT 2 – LETTER FROM OWNER

25th October 2021

North Sydney Council
PO Box 12
North Sydney NSW 2059
council@northsydney.nsw.gov.au

Attention: Assessment Officer, Sophie Griffiths

Dear Sophie,

RE: DA 277/21
SUITE 3, 102 ALFRED STREET, MILSONS POINT

We refer to the above address and DA, and the letter from David Hoy dated 30th September 2021.

With respect to item 4 – “Revised Clause 4.6 Written Request”, we hereby confirm the premises remains vacant, with no letter of intent or lease agreement in place.

The premises was listed for lease with Haritgan Bolt commercial Real Estate Agents seven months ago in March 2021. It is a 2 storey commercial office space.

Within Milsons Point there currently are five similar office spaces vacant, three of these are two storey offices. Furthermore, there are three shops in Alfred Street that are vacant, two of which have been vacant for two years. There is currently 10,000m² of vacant commercial space in Milsons Point.

In Kirribilli there are two similar office spaces vacant, both with offices above ground floor. Additionally, there are three shops vacant, with one of those having been vacant for 2 years.

We trust this meets your requirement.

Please do not hesitate to contact me on 0411 172 501 should you require further information.

Yours faithfully,



Francis Henry-May
Owner