

2 February 2024

The Chief Executive Officer
Northern Beaches Council
Attention: Mr Jordan Howard

STATEMENT OF ENVIRONMENTAL EFFECTS - ADDENDUM
39 Starkey Street, FORESTVILLE. DA2023/1109 for Subdivision of one lot into three and alterations and additions to the existing development

Dear Sir,

This information responds to matters raised in Council's request for information correspondence dated 5 January 2024. The submission is accompanied and supported by the following amended documents:

- architectural plans, including but not limited to, shadow diagrams, and excavation plan
- landscape plan
- stormwater plan
- arborist assessment report.

1 Overview of the key design amendments

Various design amendments have been made in response to the preliminary assessment of the DA. A list of changes is provided below by HAO Design Pty Ltd:

- Deletion of Lot 3 front yard turning bay
- Deletion of proposed works to existing vehicle crossing, adopt existing vehicle crossing
- Reduction in proposed driveway pavement works to enable retention of Tree 1 (Bottle Brush) & Tree 2 (Saanqua) located at the front boundary
- Addition of Lot 2 and Lot 3 in-ground OSD tanks & relocation of rain water tanks
- Addition of bi-fold gates in front of proposed visitor and resident parking and Lot 3 living room window modification.
- Partial demolition of Lot 2 living room and cover deck to enable addition of 2 x visitor parking spaces and relocation of 4 resident parking spaces
- Associated adjustments to landscaping works
- Associated adjustments to sub-division boundaries & easement.

2 Warringah Local Environmental Plan 2011 (WLEP 2011)

2.1 Clause 1.2 Aims of Plan

Issue

The application provides an unbalanced subdivision pattern and contains noncompliances with WDCP controls (outlined below in this letter). The newly created lots are inconsistent with the predominate pattern, size and configuration of existing lots in the locality, and are not in harmony with the established subdivision pattern consisting of predominately larger lot sizes.

In this regard, the proposal is inconsistent with Clause 1.2(2)(d) regarding residential development.

Response

2.2 Mixed allotment pattern

It is observed that there is a mixed allotment pattern within the local area, including a mix of housing types, albeit within a low density setting. Figure 1 depicts features of the local allotment and housing pattern.

The existing lot is approximately 28m wide and 33.5m deep (more square than rectangular in shape), and 935.8m² in area.

Taking guidance from the planning principle for 'compatibility of a proposal with surrounding development', established in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 at 22-31, a proposed development does not need to be the same in order to be in harmony / compatible. There is a mixed allotment pattern and the existing and proposed lots are compatible with this mixed character.

The proposed allotments are predominantly 14m wide (minimum 13m under C1(1)(a) of the DCP) and 33.5m deep (minimum 27m under C1(1)(b) of the DCP), with no minimum area applicable to Community Title subdivision in the R2 zone under cl4.1 of the LEP.

The proportions of the proposed allotments (further addressed within 3.3 below) satisfy the DCP, the corollary of which is that they are consistent with the pattern of allotments within the R2 zone.

The proportions of the proposed allotments are more consistent with the predominant pattern (rectangular shape, proportions, area) within the local area than the existing lot.

There are no inappropriate amenity or streetscape outcomes arising from the proposed allotment proportions and configuration. The proposed lots appropriately relate to the existing dwellings and the proposed vehicle access on the property.

2.3 Aims of the LEP

The aims of the LEP under Clause 1.2(2)(d) regarding residential development state:

"(d) in relation to residential development, to—

(i) protect and enhance the residential use and amenity of existing residential environments, and

(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and

(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,

Response

The proposed residential development of the site is assessed as satisfying the relevant aims of the LEP for the reasons explained within the Statement of Environmental Effects, the accompanying expert assessment reports, and noting:

- The allotment configuration and indicative buildable areas satisfy the relevant environmental planning controls and assessment considerations.
- The proposed development outcome is assessed as being compatible with the local area for the reasons provided above and within the DA in response to the relevant assessment considerations.
- The proposal will increase the supply and availability of housing, in response to population growth and housing demand which is established as being strong within the Northern Beaches LGA by the Local Strategic Planning Statement and the adopted Housing Strategy. The proposed housing allotments can be created without having adverse effects on the character and amenity of the local area.

For these reasons we respectfully submit that the proposed development provides an appropriate subdivision outcome that satisfies the relevant planning controls and that is consistent with the aims of the LEP.

2.4 Zone R2 Low Density Residential

Issue

The proposed subdivision is inconsistent with Councils strategic intention to establish minimum lot size within the R2 zone, which will have cumulative adverse impact on the ability to protect those values within the R2 zone.

Note: The application seeks to rely on WLEP 2011 Clause 4.1AA Minimum Subdivision lot size for Community Title Schemes to avoid the minimum lot size standard of 600sqm for the R2 zone (established by WLEP 2011 Clause 4.1 Minimum subdivision lot size), and the submission of a clause 4.6 variation request. Whilst it is agreed the minimum lot size standard does not apply to a Community Title Subdivision within a R2 zone, the proposal does not satisfy the objectives of the R2 Low Density zone and presents variations to the other development controls (outlined below in this letter) which will set an undesirable precedent.

Response

The objectives of the R2 zone are:

To provide for the housing needs of the community within a low-density residential environment.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone' assessing the DA. The LEP does not require the DA to be consistent with the zone objectives. Notwithstanding, it is assessed that the proposed development is consistent with the zone objectives in that:

- It will provide for the housing needs of the community within a low density residential environment. Approval of the DA would have the effect of removing the 60 square metre gross floor area limit on the existing secondary dwelling, providing the future opportunity to expand this dwelling to meet the housing needs of the community. It would have the effect of enabling a future extension to the existing secondary dwelling, enabling it to be made available on the housing market and separately owned.
- The proposed development involves modest physical changes to the existing property (relating mainly to car parking, vehicle access, and stormwater). The existing lot has a significant 28m wide street frontage. The existing dwellings (dwelling house and a second dwelling), each with street frontages, are established and largely proposed to be maintained (for example, heights, setbacks, landscaped setting). Therefore, the DA maintains the low density residential character of the property.
- The resulting allotments are appropriately proportioned and configured to accommodate the existing dwellings that are developed on the property in a manner that satisfies the key relevant planning controls (addressed further in section 3.3).
- The proposed subdivision involves improvements to the existing vehicle access arrangements, and such will improve the on-site car parking provision and vehicle access circumstances.

The LEP establishes under cl4.1AA that community title subdivision does not need to satisfy the minimum lot size requirement under LEP clause 4.1. An undesirable precedent cannot be established by development that is permitted, consistent with the LEP and that satisfies the provisions of the development controls including the relevant objectives of those controls.

The proposed development will not have cumulative adverse impacts on the zone, noting, for example:

- There will be no inappropriate amenity impacts
- There will be no inappropriate streetscape impacts
- Adequate vehicle access and on-site car parking is proposed
- The site's existing landscape setting will be maintained and enhanced in accordance with the accompanying landscape plan which proposes additional planting on the property.

The applicant respectfully submits that the proposal has had sufficient regard to the zone objectives, as required by Clause 2.3(2) of the LEP, and satisfies the relevant provisions of the LEP. There is no statutory impediment to the granting of consent.

3 Warringah Development Control Plan (WDCP)

3.1 Clause C1 Subdivision

Issue

The development presents lots with insufficient dimensions to meet these requirements. Furthermore, the Clause outlines matters related to access, design

and construction, drainage, restrictions, and environmental constrained land. The proposal is not adequate from an access or drainage perspective, as outline in the Development Engineering and Water Management referral responses below. Furthermore, as will be outlined in this letter, the lot configuration is unable to provide the required number of parking spaces as per Appendix 1 Car Parking Requirements of the WDCP.

The proposal is inconsistent with the provisions of this Clause of the WDCP.

Response

3.2 Context and characterisation of the issue

As detailed above, proposed Lot 1 is a small utility lot for the purposes of visitor car parking and vehicle access to the car parking spaces (2) behind it. It will form part of the access driveway,

Proposed Lot 1 is 32.4m² (6m x 5.4m), centrally located near the front of the site, forward of the proposed dwelling houses. It occupies a 5.4m length of the 33.525m common side boundary resulting in a technical (and theoretical) exception of 16% to the minimum lot width.

In terms of its visual appearance, Lot 1 is proposed to comprise a surface driveway / car parking space. As a separate lot it will be imperceptible to a casual observer. No material amenity or streetscape impacts result from this aspect of the proposal.

The proposed 11.020m width of lots 2 and 3 for a 5.4m depth does not in any material way adversely impact the ability for the proposed development to provide housing that satisfies the relevant provisions of the LEP and DCP. The specific objectives of the lot width requirement are addressed below.

3.3 DCP Control C1 Objectives

The objectives of C1 are:

To regulate the density of development.

To limit the impact of new development and to protect the natural landscape and topography.

To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.

To maximise and protect solar access for each dwelling.

To maximise the use of existing infrastructure.

To protect the amenity of adjoining properties.

To minimise the risk from potential hazards including bushfires, land slip and flooding.

Response

In terms of regulating the density of development, the proposed subdivision satisfies the standards relating to density in the LEP. The property contains two dwellings and therefore the DA does not propose any significant material increase in housing density. The DCP serves the LEP and cannot derogate from it, including provision of sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from each site.

The site is not topographically constrained. The land is not environmentally constrained in terms of key considerations like: bushfire, threatened ecology, land contamination, land slip, flooding, riparian, or heritage. Being of modestly sloping topography and unconstrained in relation to key environmental sensitivities, the site is entirely suitable for the land subdivision proposed.

The allotments resulting from the proposed subdivision are each capable of complying with the various residential dwelling controls in the DCP and preserving an appropriate amenity to adjoining properties and each lot / dwelling within the proposed subdivision.

Proposed allotments 2 and 3 will accommodate a dwelling houses that are compliant with the key built controls including building height, wall height, side boundary envelopes, setbacks, landscaped area and car parking. Creation of the subdivision will have the effect of changing the secondary dwelling to a dwelling house providing for the housing needs of the community consistent with the first zone objective.

There are no works proposed that would further limit solar access to the existing dwellings. Solar access in accordance with DCP clause D6 is achieved to each of the proposed allotments.

Each proposed allotment can be serviced by key utilities like electricity, water, sewer; the detailed locations of these being subject to service authority endorsement / certification.

The amenity of adjoining properties will not be inappropriately disturbed by the lot width exception.

The lot width exception identified in relation to utility Lot 1 is identified as technical in nature, minor in extent, without any adverse amenity or streetscape consequences. The exception is entirely appropriate when assessed against the objectives of the controls.

In these circumstances, having regard to section 4.15(3A)(b) of the Act, it is appropriate that Council applies flexibility to allow reasonable alternative solutions that achieve the objectives of the control.

3.4 Clause C3 Parking Facilities

Issue

This Clause requires carparking to be provided in accordance with Appendix 1 Car Parking Requirements of the WDCP.

Appendix 1 requires two (2) off-street parking spaces for a dwelling house. Furthermore, the appendix states the following:

"Community title subdivisions are to include provision for one visitor parking space per five dwellings or part thereof. These spaces are to be located within the neighbourhood property lot."

Therefore, the proposed Community Title subdivision requires a total of five (5) car parking spaces (2 per dwelling house and 1 visitor). One (1) space must be provided in the Community Title lot.

The proposed subdivision has an insufficient provision of car parking and is deficient by one (1) space. Whilst Lot 2 and Lot 3 can accommodate two (2) cars each, there is no readily available solution to provide car parking in Lot 1 (the Community Lot) due to its dimension, location in the front setback and location over the access driveway for Lot 2 and Lot 3.

Response

- The amended proposal provides 1 visitor space for each proposed housing lot (lots 2 and 3).
- The amended proposal provides a total of 6 on-site car parking spaces, 3 spaces for each lot in a tandem configuration, including a visitor parking space per lot. It is understood that these amendments satisfy this issue.
- Notwithstanding the above, in our opinion this provision is intended to relate to larger subdivisions (for example, 15 lots) where an access road may be owned under a community title lot and where typically the road is reduced to the minimum width resulting in insufficient space for roadside car parking. In such circumstances 3 visitor parking spaces would be provided in designated parking bays. Such a circumstance is not applicable to the subject site where Starkey Street and nearby streets are of adequate width to accommodate on-street car parking for visitors.
- Compliant landscape areas (greater than 40%) are maintained, as shown on drawing 05.

4 Landscape

Issue

“....Under a development application determination Council may impose conditions for retention of exempt species should the significance of the species be warranted. However in this instance this is not the case and the exempt species proposed for retention (T2 Golden Cane Palms and T3 Crepe Myrtle) do not provide adequate landscape amenity worthy of retention. Rather, Landscape Referral as assessed following a site review consider that retention of the two existing prescribed trees proposed for removal under this application should be preserved and protected. Existing trees T1 Bottlebrush and T2 Sasanqua are both located at the front boundary and provide softening of the existing built form and thus are able to provide softening of any proposed development when retained, and the existing trees additionally provide streetscape amenity. The retention of these two trees satisfies the WDCP requirements of both D1 and E1.

The proposed development layout within the frontage includes extensive hardstand areas that if approved does not allow adequate areas for replacement tree planting to provide the necessary landscape outcome to satisfy WDCP control D1 Landscaped Open Space and Bushland Setting, where the requirements are to: enable planting to maintain and enhance the streetscape; and provide for landscaped open space with high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

It is Landscape Referral's assessment that the proposed layout impacts upon the viability for retention of existing trees of amenity value and worthy of retention, and amendments should be attended to providing a design layout solution that is able to satisfy the requirements of the WDCP, including:

- *realignment of turning area away from T1 Bottlebrush and reduction of widened driveway (refer Figure 1 below),*
- *retention of existing hardstand around T2 Sasanqua and reduction of widened driveway (refer Figure 2 below).*

Response

The submission is accompanied by an amended landscape plan which addresses the issues raised above, including retention of the trees identified and a suitable range of replacement plant species to maintain and enhance the property's landscape setting.

The submission is also accompanied by an amended arborist report which addresses the issues raised above, including retention of the trees within the property frontage. The report finds that the trees can be retained subject to appropriate mitigation measures, as detailed below from the arborist report:

*"9.1.3 The proposed new driveway and associated turning areas are located within the TPZs of Trees T1 (Weeping Bottlebrush), T2 (Sasanqua Camellia), T3 (Crepe Myrtle) and T4 (Golden Cane Palm). In the case of T1 & T2, the proposed works will not result in any increase in encroachment from the present situation. As such, the proposed works will not result in any adverse impact on these trees. In the case of T3 & T4, the encroachment to the TPZs is 19% and 22% respectively, which exceeds acceptable limits under AS 4970:2009. However, these trees will tolerate the level of encroachment proposed. It should be noted that both of these trees are exempt from Council's Tree Management Controls. In order to avoid any adverse impact on these trees, the existing driveway pavement should be demolished (where required) in accordance with **Section 10.8** and all excavations for the new pavement sub-grade within the TPZs should be undertaken in accordance with **Section 10.9**.*

*9.1.4 New stormwater pipelines are proposed to be installed within the TPZ of T1 (Weeping Bottlebrush). This will result in a cumulative encroachment (inclusive of the existing/proposed driveway) of 32%, which exceeds acceptable limits under AS 4970:2009. Open trenching for the pipelines has the potential to result in severance and damage to woody roots of the tree, leading to an adverse impact. However, any adverse impact can be mitigated by undertaking all open trenching for the stormwater pipelines within the TPZ using non-destructive methods under the direct supervision of the Project Arborist in accordance with **Section 10.11**.*

9.1.5 No other trees will be adversely affected by the proposed development".

5 Development Engineering and Water Management

Development Engineering and Water Management matters are separated addressed within the accompanying amended plans and reports.

6 Conclusion

We trust that the additional information appropriately responds to the matters raised and will assist Council in its assessment of the development application. Please don't hesitate to contact me if you wish to clarify any of these matters.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners

Annexure – plans and images

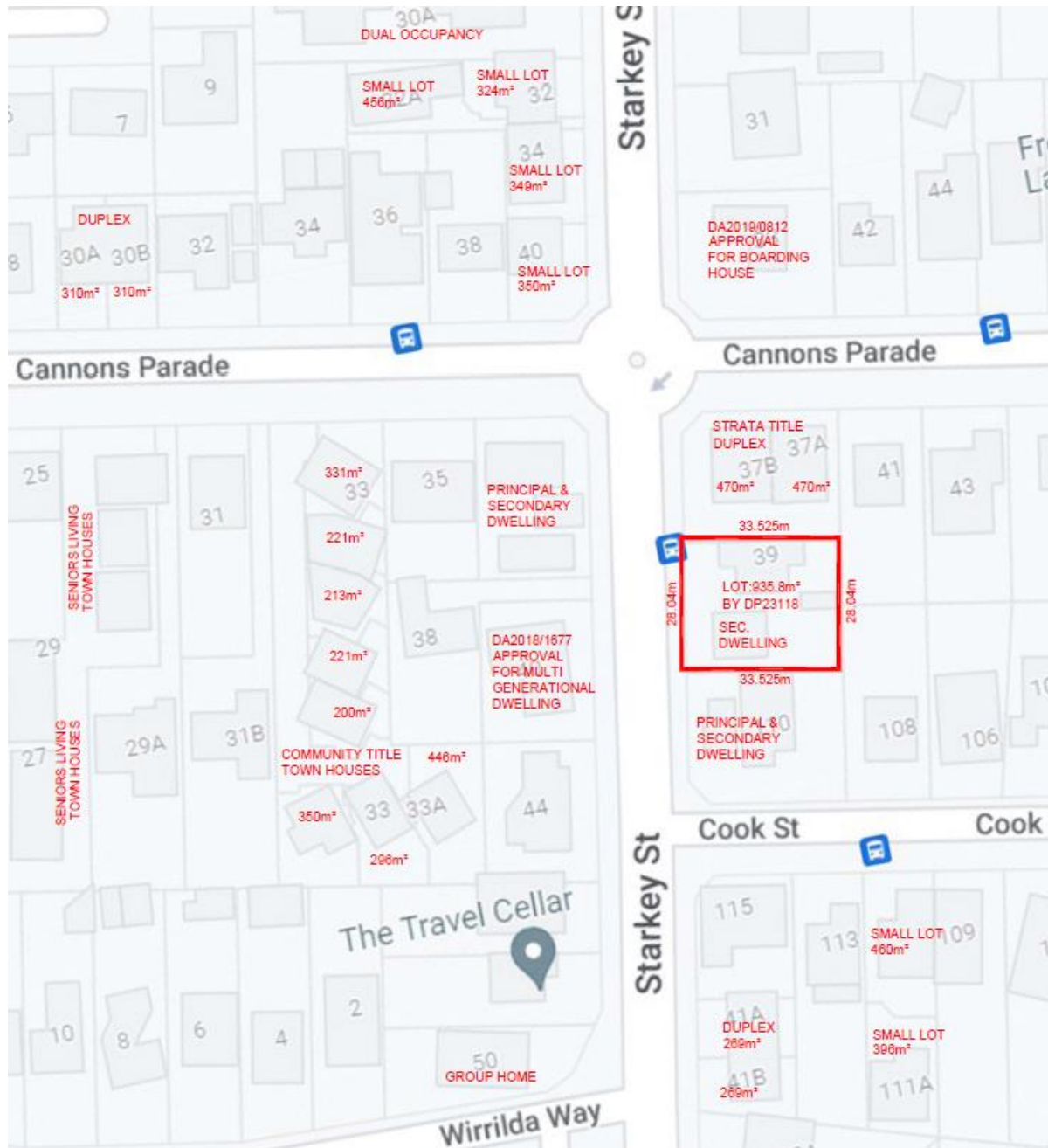


Figure 1 – mixed pattern of allotment sizes, orientations, and configurations within the local area



Figure 2 – existing development



Figure 3 – proposed development

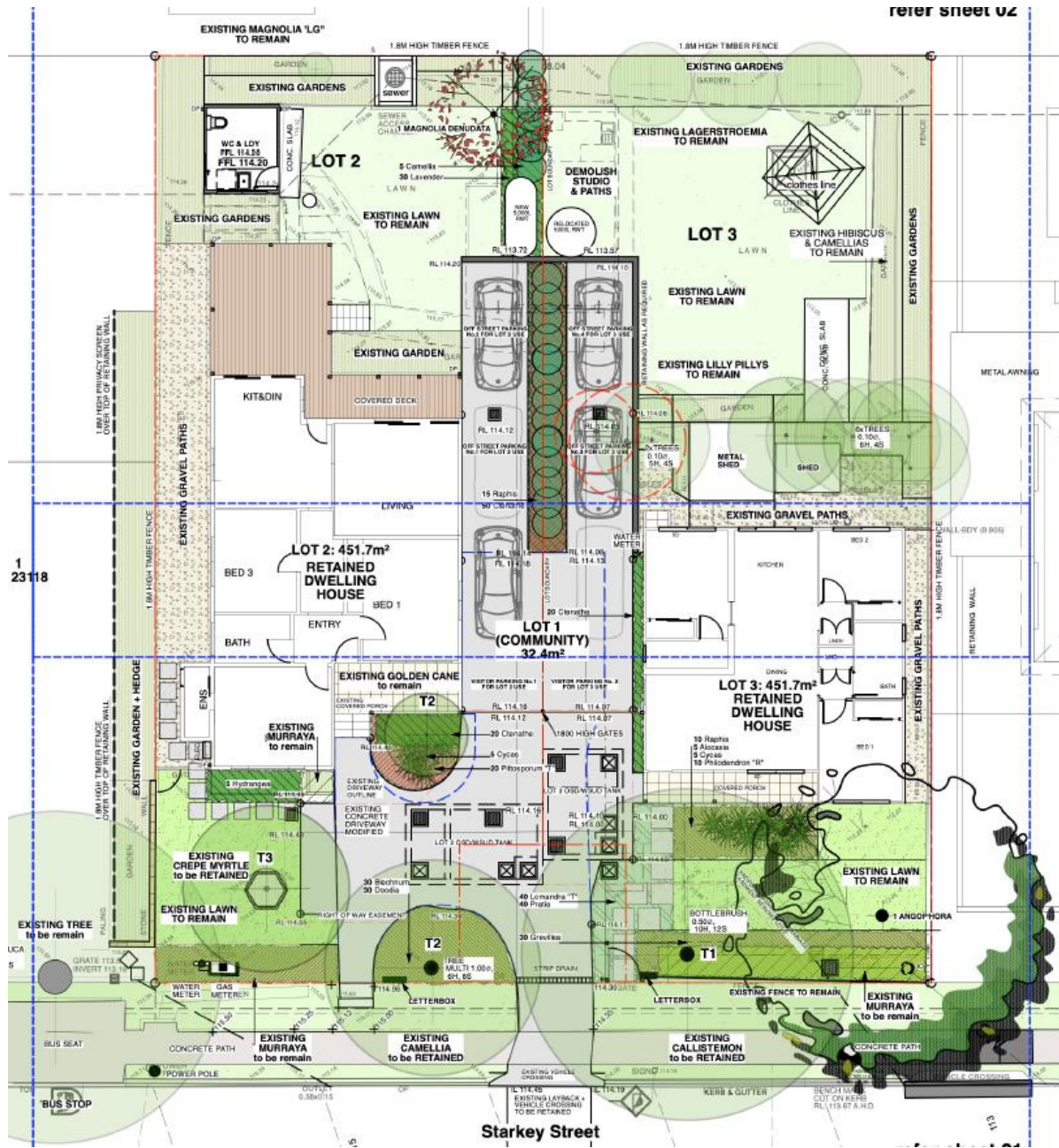


Figure 4 – proposed landscape plan

PLANT SCHEDULE

Botanical name	Common name	Hgt	Spg	Qty	Size
TREES					
Angophora costata	Smooth Barked Apple	12m		1	100L
Backhousia citriodora	Lemon Myrtle	8m		2	100L
Magnolia denudata	Yulan Magnolia	8m		1	100L
SHRUBS					
Alocasia Black Magic		1.5m	3m2	5	250mm
Camellia sasanqua 'Early Pearly'	Camellia	2m	1.5m2	5	300mm
Calathea	Calathea	0.75m	3m2		250mm
Ctenanthe		0.75m	3m2	70	250mm
Cycas revoluta	Cycad	1m	1.5m2	10	35L
Hydrangea x macrophylla	Hydrangea	1.5m	1.5m2	5	300mm
Lavendula Angustifolia	English Lavender	0.75m	4m2	30	140mm
Philodendron 'Rubra'		1.5m	4m2	10	250mm
Pittosporum tobira 'Miss Muffet'		0.75m	3m2	20	250mm
Rhapis excelsa	Lady Palm	2m	1.5m2	25	35L
Rhaphiolepis 'Snow Maiden'		0.75m	1.5m2		300mm
Rosmarinus officinalis	Rosemary	1.5m	1.5m2		200mm
GRASSES and GROUNDCOVERS					
Blechnum		500mm	5m2	30	150mm
Doodia aspera	Rasp Fern	0.75m	5m2	30	150mm
Grevillea rhvolutica x juniperina 'Cherry Cluster'		0.75m	4m2	30	Tube
Lomandra 'Tanika'		0.75m	6m2	40	Tube
Pratia		0.30m	6m2	40	Tube

Figure 5 – Proposed planting schedule will improve the landscape quality of the site through increased plantings