





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	REV/2021/0002
Address	8 Richards Avenue MARRICKVILLE NSW 2204
Proposal	S8.2 review Determination No. 2020/0489 dated 13 October 2020 to carry out alterations and additions to a dwelling house
Date of Lodgement	03 February 2021
Applicant	Burrell Threlfo Pagan Pty Ltd
Owner	Mr Eddy Younan Mrs Jocelyn Younan
Number of Submissions	Nil
Value of works	\$80,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10% Previous Panel determination
Main Issues	FSR Bulk & Scale Character
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	DA/2020/0489 IWLPP Report and Recommendation
Attachment E	Draft Conditions (if panel approves)
	
LOCALITY MAP	
Subject Site	 Objectors  
Notified Area	 Supporters 

1. Executive Summary

A Development Application to carry out alterations and additions to existing dwelling was refused by the Local Planning Panel under Determination No 2020/0489 on 13 October 2020 for the following reasons:

1. *The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Local Environmental Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*
 - a. *Clause 1.2 - Aims of Plan;*
 - b. *Clause 4.4 - Floor Space Ratio.*
2. *The applicant has not made a written request pursuant to Clause 4.6 of the Marrickville Local Environmental Plan 2011 to vary the Floor Space Ratio development standard, despite the design including a gross floor area in excess of the maximum permissible Floor Space Ratio.*
3. *The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*
 - a. *Part 2.6 – Acoustic and Visual Privacy;*
 - b. *Part 4.1 – Low Density Residential Development; and*
 - c. *Part 9.30 – Strategic Context.*
4. *The proposed development is inconsistent and has not demonstrated compliance with the Draft Inner West Local Environmental Plan 2020, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*
 - a. *Clause 3.2 - Zoning Objectives and Land Use Table*
5. *The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.*
6. *The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.*
7. *The public submission raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.*

The decision of the panel was unanimous.

A copy of the report on the application is included as Attachment D to this report.

The applicant has requested that Council review the determination under Section 8.2 of the *Environmental Planning and Assessment Act, 1979*. It should be noted that the plans and supporting documentation submitted with the application for review remain unchanged from those submitted and assessed in the refusal determination of the original DA with the exception of the submission of a Clause 4.6 variation request.

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

The main issues that have arisen from the application include:

- Exceedance of the maximum floor space ratio applicable to the site;
- Bulk and scale of the increased height, pitch and addition of dormer windows to the new attic office space; and
- Uncharacteristic design and negative contribution to the streetscape.

The non-compliances are considered unacceptable and therefore the application is recommended for refusal.

2. Proposal

The application has been lodged seeking a review under Section 8.2 of the Environmental Planning and Assessment Act 1979 of the refusal of DA/2020/0489 for alterations and additions to a dwelling house.

The proposal as lodged under the subject review application involves alteration and additions to an existing dwelling house at 8 Richards Avenue, Marrickville. Specifically:

- Construction of a new third storey of approximately 19sqm;
- Construction of two dormer windows on the north east and south east side elevations;
- Increase building height to 9.5m;
- Minor internal alterations to the first floor to accommodate for the additional staircase; and
- Reconfiguration of first floor windows on the northeast elevation.

3. Site Description

The subject site is located on the north western side of Richard Street, between Holts Crescent and Premier Street, Marrickville.

The site consists of one allotment and is of an L – Shape with a total area of 369.4 sqm and is legally described as Lot 1 DP 1116566. The site has a frontage to Richards Street of 12 metres. The site supports a two storey detached dwelling.

The adjoining properties support a one storey detached dwelling and a two storey detached dwelling. The land is zoned R2 Low Density Residential as shown in the figure below.



Figure 1: zoning map

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
DA/2020/0489	Alterations and additions to existing dwelling	13/10/2020 Refused – Local Planning Panel
DA200600323.01	To adjust the common boundary between 8 and 10 Richards Avenue and erect a swimming pool in the rear yard	12/02/2007 Approved
DA200600323	To adjust the common boundary between 8 and 10 Richards Avenue and erect a swimming pool in the rear yard	01/09/2006 Refused
Building Approval No. 510/97	To adjust the common boundary between 8 and 10 Richards Avenue and erect a swimming pool in the rear yard	23/09/1997 Approved

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 8.2 and 4.15 of the *Environmental Planning and Assessment Act 1979*.

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Marrickville Local Environmental Plan 2011*

The following provides further discussion of the relevant issues:

5(a)(ix) *State Environmental Planning Policy No 55—Remediation of Land*

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. MDCP 2011 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

5(a)(x) Marrickville Local Environment Plan 2011 (MLEP 2011)

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

Standard	Proposal	non compliance	Complies
Height of Building Maximum permissible: 9.5 m	9.5m	N/A	Yes
Floor Space Ratio Maximum permissible: 0.6:1 or 221.64 sqm 369.4sqm site	0.68:1 or 251sqm	29.36sqm or 13.2%	No

Address of Reasons for Refusal

Given that the plans submitted with the application for review do not include any amendments to the refused application. It is considered appropriate that assessment against the provisions of *Marrickville Local Environment Plan 2011 (MLEP 2011)* and *Marrickville Development Control Plan 2011 (MDCP 2011)* be in the form of an analysis against the reasons for refusal of the original determination. This is provided as follows:

REASON 1

1. *The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Local Environmental Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*
 - a. *Clause 1.2 - Aims of Plan;*
 - b. *Clause 4.4 - Floor Space Ratio.*

- a. *Clause 1.2 - Aims of Plan;*

By virtue of the excessive bulk and scale and impacts on the streetscape, the proposal is still considered to be inconsistent with the following aims of the Plan which require development to:

- (h) *to promote a high standard of design in the private and public domain*

The plans provided with the development application fail to illustrate the adjoining site context adequately in elevation with only elevations of the subject house provided.

Notwithstanding, a visual analysis of the street identifies that the site is one of three 2 storey dwelling houses in the street with the remainder presenting as single storey to the street. These 2 storey dwelling houses are generally consistent in height with tile roofs.

The height of the new roof form/ 3rd floor is considerably taller than nearby development and results in a building which is considerably large and tall and at odds with adjoining development. Specifically, the proposal is 1.845 metres taller than the adjoining 2 storey dwelling house at 6 Richards Avenue and is 4.65 metres taller than the adjoining single storey dwelling house at 10 Richards Avenue, thereby failing to provide an adequate transition between adjoining development.

Furthermore, the applicant is seeking to provide corrugated roof sheeting for the new portion of the roof which is at odds with the 2 smaller tiled gabled roofs on the dwelling which are to

be retained, and also inconsistent with the prevailing character of neighbouring development in the street which is comprised predominantly of tiled roofs.

The design, roof form, selected finishes and pitch are uncharacteristic of the street and the height of the proposal would appear to be at odds with the prevailing character. The height would also set an adverse precedent for future development, further eroding the character of the street.

b. Clause 4.4 - Floor Space Ratio.

As outlined in table above, the proposal results in a breach of the Clause 4.4 - Floor space ratio (FSR) development standard.

The applicant seeks a variation to the FSR development standard by 13.2% or 29.36sqm. It should be noted that the existing dwelling exceeds the maximum FSR permissible for the site by 10.36sqm or 4.7% and that the proposed third floor would increase this by 19sqm or a further 8.6%.

Clause 4.6 of MLEP 2011 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable or unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of MLEP 2011 below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of MLEP 2011 justifying the proposed contravention of the development standard which is summarised as follows:

- a. The additional floor area is only 19sqm and is located in an attic room within a new roof space. The resulting roof form has a pitch of 32° and the increase in ridge height is only 1300mm. This roof form is suitable for the existing house.*
- b. The additional floor area does not detract from the desired future character for the Warren Estate Precinct, which is addressed in the review report.*
- c. There are no adverse impacts on the adjoining properties.*
- d. The new roof design provides a suitable presentation to the public domain.*
- e. The existing building exceeds the FSR standard.*
- f. The double garage was approved by Council in about 1995 and the current method of calculating GFA/FSR came into effect after that year. It would be unreasonable of Council to require part of the double garage to be removed to achieve compliance.*
- g. The attic room is located in a new roof form with a roof pitch of 32° that actually improves the presentation of the existing house.*
- h. The addition floor space in the roof does not increase the building footprint nor the building wall height. The increase in the volume of the building is very minor resulting in an increase in the roof pitch from 23° to 32°.*
- i. The existing house has been the long term residence for the current owners. The existing roof is leaking and needs to be replaced. The owners are taking the opportunity to create some addition floor area in the new roof space.*

The applicant's written rationale has not adequately demonstrated compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. It is not considered that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- Whilst the applicant contends the additional height is *only* 1.3 metres, it should be noted that having regard to the adjoining site context, the building would be more than 1.8 metres taller than the adjoining 2 storey dwelling at 6 Richards Avenue and more than 4.6 metres taller than the single storey dwelling at 10 Richards Avenue, which is contextually inappropriate and excessively bulky; and
- The further increase in FSR exceedance is clearly attributed to the attic level which is already an unsympathetic design solution
- There are no unique site circumstances that would warrant an exceedance and the proposed exceedance is to the detriment of the streetscape.

Whilst it is considered the development is consistent with the objectives of the R2, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011, it is considered the development is not in the public interest because it is inconsistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011 for the following reasons:

- (a) *to establish the maximum floor space ratio,*
- (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) *to minimise adverse environmental impacts on adjoining properties and the public domain.*

The development fails to comply with the maximum floor space ratio established for the site in accordance with objective (a). The proposed non-compliance adds unnecessary bulk and excessive scale to the existing dwelling through the addition of a larger roof form which is of an uncharacteristic style to the existing dwelling being corrugated roof sheeting and absent of the decorative gable end. The addition of the two side dormers and increased pitch will result in additional bulk to the street failing to satisfy objective (b). The 13.2% non-compliance results in a third floor which is uncharacteristic to the streetscape and therefore fails to meet objective (c) as it would have a detrimental impact on the public domain.

The proposed development is not consistent with the desired future character of the area and is not consistent with the bulk and scale of the adjoining properties and therefore is not supported.

Consequently, it is considered the applicant has provided insufficient environmental planning grounds to justify the non-compliance to the development standard, and therefore the development is not in the public interest. As a result, the Clause 4.6 request is not supported and the review proposal is recommended to the Panel for refusal.

REASON 2

As outlined above a Clause 4.6 variation was submitted with the application for review, as such, Reason 2 for refusal, being "*The applicant has not made a written request pursuant to Clause 4.6 of the Marrickville Local Environmental Plan 2011 to vary the Floor Space Ratio development standard.....*" is no longer relevant. Notwithstanding this it is not considered that the Clause 4.6 variation is not well founded therefore the request to vary the FSR development standard is not supported.

REASON 3

- b. *The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*
- a. *Part 2.6 – Acoustic and Visual Privacy;*
 - b. *Part 4.1 – Low Density Residential Development; and*
 - c. *Part 9.30 – Strategic Context.*

Part 2.6 – Acoustic and Visual Privacy

The relevant objectives and controls are as follows:

O1 To ensure new development and alterations and additions to existing buildings provide adequate visual and acoustic privacy for the residents and users of surrounding buildings.

O2 To design and orientate new residential development and alterations and additions to existing residential buildings in such a way to ensure adequate acoustic and visual privacy for occupants

The applicant contends in their review submission that the proposed dormer windows are orientated facing the side boundaries of the site which is a reduced impact when compared to orientating these to the front and rear. Whilst Control C3 requires first floor windows and balconies face the front and rear of the site, it is considered in this instance that if windows were required, facing the side boundaries would be considered to have a lesser impact than facing the street (impacting streetscape presentation) or rear (facing private open space). However, it is considered that the windows would allow for views into the first floor windows of the adjoining property at No.6 Richards Avenue and the two storey dwelling at No.12 Richards Avenue given the adjoining property at No.8 is single storey. Privacy measures have not been proposed and the review submission states that views of the roofs of the adjoining properties would be the outlook and no objections were received so there should be no concern. However, it is considered that there would be some overlooking into adjoining properties. If the application was supported appropriate conditions could be included to protect the privacy of adjoining properties, however as the dormers are not supported for other reasons, the application is recommended for refusal.

Part 4.1 – Low Density Residential Development

The relevant objectives and controls are as follows:

O10 To ensure development is of a scale and form that enhances the character and quality of streetscapes.

C7 Maximum permissible FSR and height for any development must be consistent with the height and FSR standards prescribed on the Height of Buildings (HOB) and FSR Maps of MLEP 2011.

C8 Notwithstanding compliance with the numerical standards, applicants must demonstrate that the bulk and relative mass of development is acceptable for the street and adjoining dwellings in terms of:

- i. *Overshadowing and privacy;*
- ii. *Streetscape (bulk and scale);*

- iii. Building setbacks;*
- iv. Parking and landscape requirements;*
- v. Visual impact and impact on existing views (Council encourages view sharing between surrounding residences);*
- vi. Any significant trees on site; and*
- vii. Lot size, shape and topography.*

C40 The use of dormers in new buildings and major new additions shall be determined on merit. Most importantly the proportions of contemporary dormers shall be mindful of traditional models, and have solid cheeks, and no eaves.

C41 Dormers should not dominate the roof plane, or appear as a second storey.

C43 Do not use dormer windows where they are not suited to the architectural style of the building.

C51 New dormers on contemporary buildings must be consistent with the existing roof forms in the street.

The applicant contends in the review application that the proposal is consistent with the objectives and controls contained in Part 4.1 of MDCP in that:

- j. The streetscape is a mix of one and two storey buildings.*
- k. The proposal involves a room in the roof form and the roof pitch is only 32°. The new roof and attic room does not have any presentation as a third storey.*
- l. The proposal also complies with the height of building standard of 9.5m.*
- m. The house on the site will continue to be a single dwelling house, thus maintaining the low density form of development.*
- n. The new roof with a 32° pitch actually improves the presentation of the building. A shallow roof pitch is not characteristic with the traditional roof form of houses in Marrickville.*

As set out in the first assessment report, the proposal constitutes a third storey given that two large dormers proposed are required to create side walls to enable useability of the office area. Contrary to Control C7 the third storey is in breach of the maximum permissible FSR for the site. Notwithstanding the proposal has not demonstrated that it satisfies Control C8, which requires that the bulk and relative mass be acceptable for the street, given that the proposal fails to respect existing roof forms, and the predominately single and two storey streetscape. The increased pitch of the roof and height of the dwelling overall would be significantly higher than any of the other dwellings in the street. The style of the roof form and material would also be uncharacteristic of the style of the existing dwelling and contrary to objective O10 as it would diminish the contribution of the dwelling to the character of the street and set an undesirable precedent.

Control C40 allows the use of dormers in contemporary buildings to be determined on merit. Given their lateral expanse and direct presentation to the street, the proposed dormers are considered to dominate the roof plane and appear as a full third storey, contrary to Control C41. In accordance with Control C43, it is considered that dormer windows do not suit the architectural style of the building as they do not utilise existing roof space and create a complex roof form which is not sympathetic to the existing dwelling. Roof forms are major generators of building form and in this case the removal of the existing roof form and replacement with the proposed design is considered detrimental to the streetscape. Furthermore, contrary to C51, the use of dormers is considered inconsistent with the other existing roof forms in the street. Therefore, it is considered the proposal does not enhance the character and quality of the streetscape and fails to satisfy the relevant objective. The material submitted with the

application for review fails to address the suitability of the dormers and roof design and the application is therefore not supported.

9.30 – Strategic Context

Given the excessive bulk and scale and adverse amenity impacts the development fails to make a positive contribution to the streetscape and would set an undesirable precedent for redevelopment in the area. The proposal is therefore considered to be inconsistent with the Desired Future Character of the precinct and is recommended for refusal.

The proposal is required to ensure that the new work responds to its setting and makes a positive contribution to the streetscape and as demonstrated throughout this report, the proposal fails to achieve this.

Given the above, it is considered that the reasons for refusal of the original application remain valid and the material submitted with the application for review does not justify a change of determination on the proposed works.

REASON 4

- c. *The proposed development is inconsistent and has not demonstrated compliance with the Draft Inner West Local Environmental Plan 2020, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*

- a. *Clause 3.2 - Zoning Objectives and Land Use Table*

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The Draft IWLEP 2020 contains provisions for the amendments to the zone objectives of the R2 - Low Density Residential zone, as well as new objectives of Clause 4.4 Floor Space Ratio. Given the bulk and scale and amenity concerns raised in this report the proposal is considered to be inconsistent with the following draft objectives to the R2 zone;

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

REASON 5

- d. *The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.*

Given the proposed development includes a non-compliant floor space for the site resulting in excessive bulk and scale, the development is still considered to have detrimental environmental and amenity impacts on the streetscape and wider locality and would set an undesirable precedent for future development in the street and therefore this reason for refusal remains valid.

REASON 6

- e. *The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.*

As outlined in this review report against the first 3 reasons for refusal of the original application, the proposal continues to have adverse impacts and is therefore still considered unsuitable for the site.

REASON 7

- f. *The public submission raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.*

There were no public submissions in response to the notification of the review application. However, given that the attic level would have impacts on the visual bulk and scale of the dwelling when viewed from the public domain and potential privacy impacts to neighbouring development, it is considered that the development remains contrary to the public interest.

5(d) The Likely Impacts

The assessment of the Development Application and subject review application demonstrates that the proposal will have an adverse impact on the locality due to the excessive bulk and scale of the new roof form and dormer windows. The development would result in visual privacy impacts and is considered to set an undesirable precedent for redevelopment in the vicinity of the site.

5(e) The suitability of the site for the development

It is considered that the proposal will have an adverse impact on the adjoining properties and character of the streetscape and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(f) Any submissions

The application was notified in accordance with Council's Community Engagement Framework for a period of 14 days to surrounding properties, no submissions were received in response to the notification.

5(g) The Public Interest

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

The proposed further variation of the maximum floor space ratio standard permitted for the site is considered unjustified in the context of the site and would therefore be contrary to the public interest.

6 Referrals

No internal or external referrals applicable

7. Section 7.12 Levy

Section 7.12 levies are not payable for the proposal having regard to the cost of works.

8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011.

The application proposes a variation of 13.2% to the maximum permitted floor space ratio for the site. The floor space would be within a new third floor being requiring an increased roof pitch and larger roof form with dormer windows which would be uncharacteristic of the streetscape. The development would result in adverse impacts in terms of bulk and scale and amenity and is not considered to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

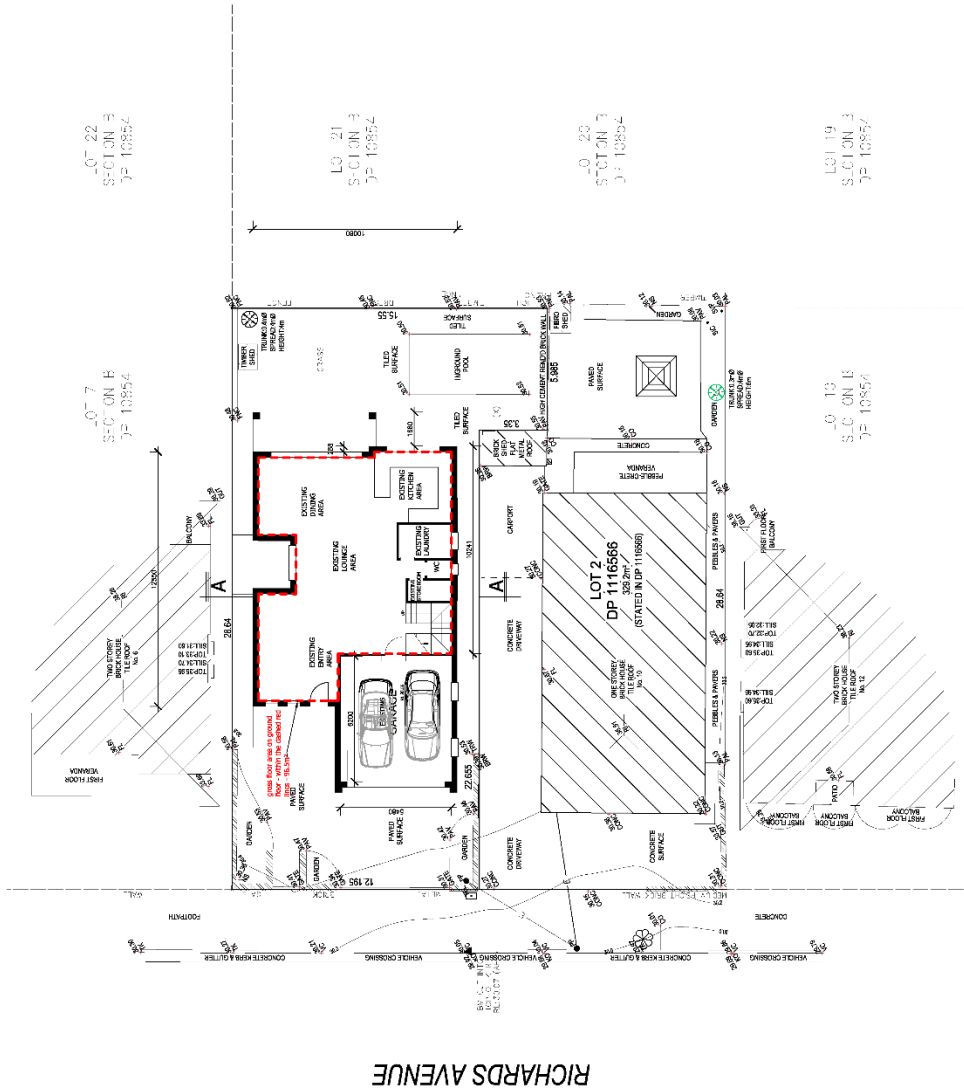
9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is necessary in the circumstance of the case. There are insufficient environmental grounds to support the variation and the variation is not considered in the public interest.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. REV/2021/0002 for s8.2 review Determination No. 2020/0489 dated 13 October 2020 to carry out alterations and additions to a dwelling house at 8 Richards Avenue MARRICKVILLE NSW 2204 for the following reasons.

Attachment A – Reasons for Refusal

1. The proposed development does not demonstrate compliance with the following Clauses of *Marrickville Local Environmental Plan 2011*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2 - Aims of Plan; and
 - b. Clause 4.4 - Floor Space Ratio.
2. The proposed development is inconsistent with the objectives and controls contained within the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979* with regard to:
 - a. Part 2.6 – Acoustic and Visual Privacy;
 - b. Part 4.1 – Low Density Residential Development; and
 - c. Part 9.30 – Strategic Context.
3. The proposed development is inconsistent with Clause 3.2 - Zoning objectives and land use table under *Draft Inner West Local Environmental Plan 2020*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*.
4. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*.
5. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
6. The application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B – Plans of proposed development



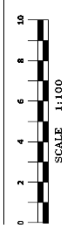
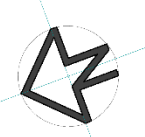
amendments - 7/08/20

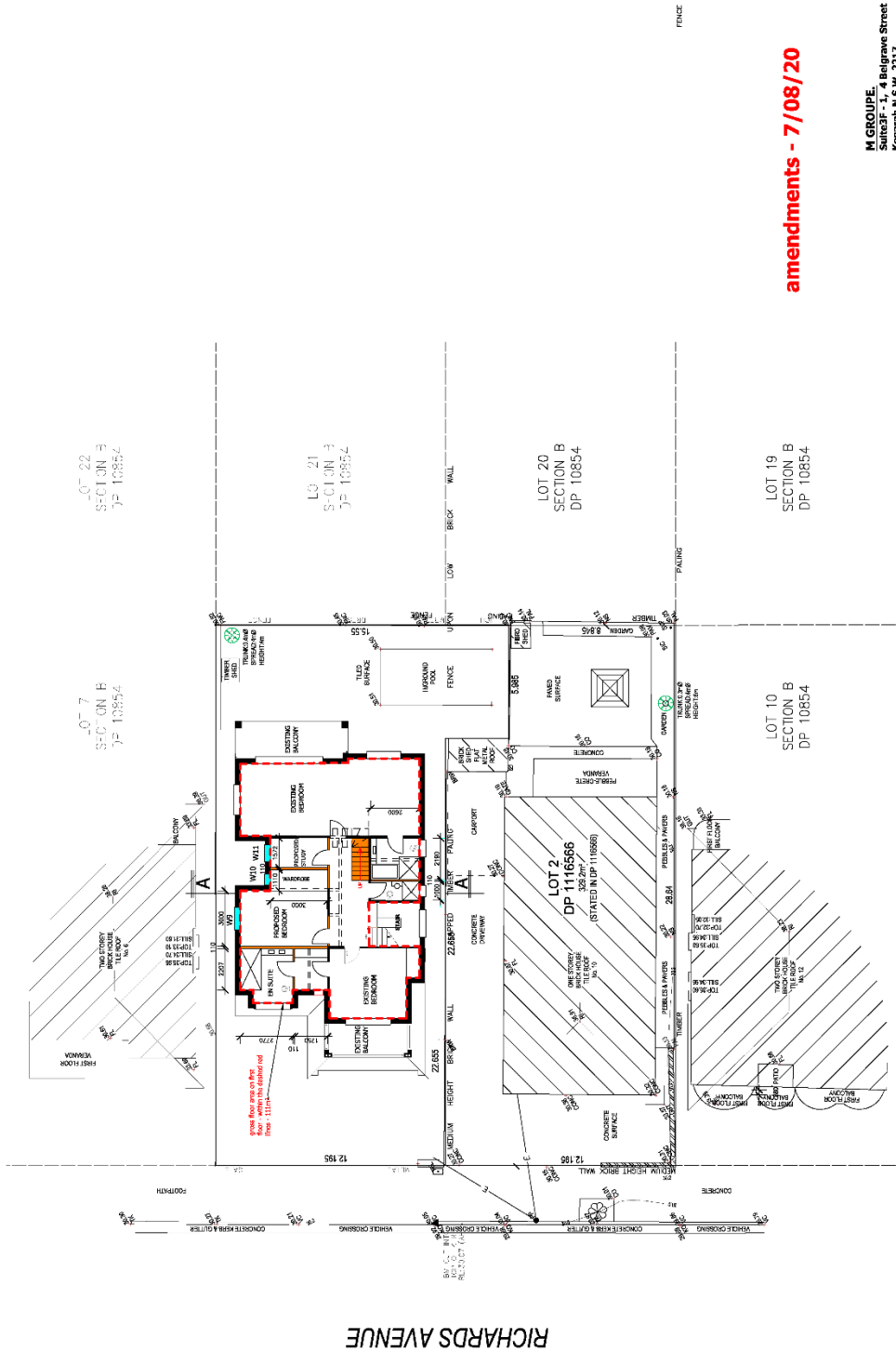
M GROUPE, 819 Graves Street
 Parramatta, N.S.W. 2127
 Tel: 95538777
 Mob: 0411035824
 Email: john@mgroup.com.au
**PROPOSED ALTERATIONS AND
 AUDITIONS**
 At: No. 8 Richard Avenue, Murrumbidgee
 NSW 2570, Australia
 DRAWN BY: JM SCALE 1:100
 DATE: June '20
 DRAWING No. 2009/20 SHEET 2

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GROUND FLOOR PLAN





amendments - 7/08/20

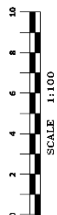
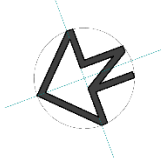
M.GROUPE
 11 Redgrave Street
 Kingsford NSW 2217
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 Email: john@mgroupe.com.au

PROPOSED ALTERATIONS AND ADDITIONS
 At: No. 8 Richards Avenue, Marrickville
 DRAWN BY: JAY SCALE 1:100
 DATE: June 20
 DRAWING No.: 20069/20 SHEET : 3

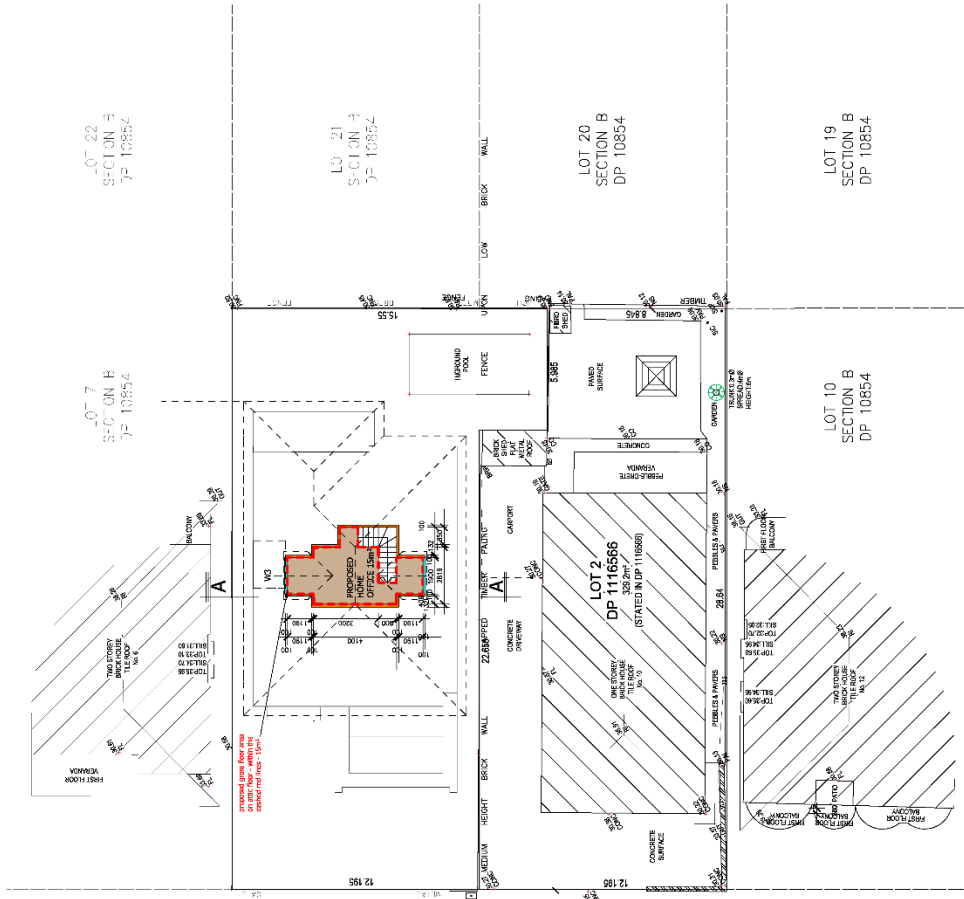
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FIRST FLOOR PLAN



(PROJECT) (NO) (SCALE) (SHEET)



amendments - 7/08/20

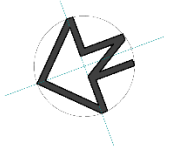
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PROPOSED ALTERATIONS AND ADDITIONS
 At: No. 8 Richard Avenue, Marrickville
 DRAWN BY: JMS SCALE 1:100
 DATE: June 20
 DRAWING No.: 20069/20 SHEET - 4

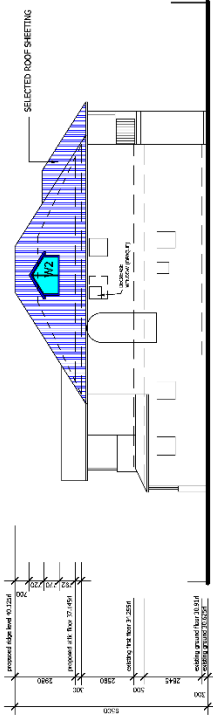
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 Full Member, National Building
 Construction Association
 Membership Number: 0561-07

DO NOT CUT UP OR REMOVE. Use April dimensions only if
 necessary. All dimensions are in millimeters unless
 otherwise stated. In the event of any discrepancy,
 the dimensions on this drawing shall prevail. All work
 must be set out without written consent. Ask the IBCB.

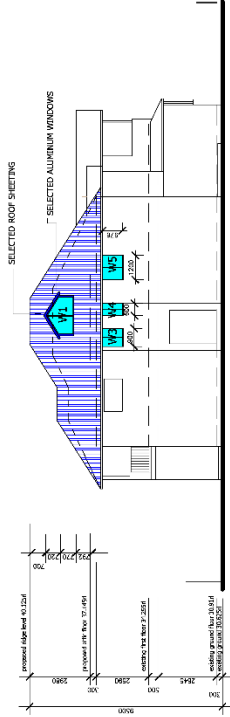
PROPOSED ATTIC FLOOR PLAN



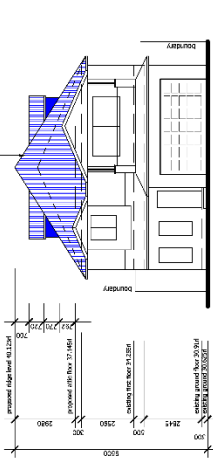
LOT 1
 DP 1116566
 30/11-1116566
 (STATED IN RP 118596)
 (MAY BE USED FOR THE PURPOSES OF THIS DRAWING)
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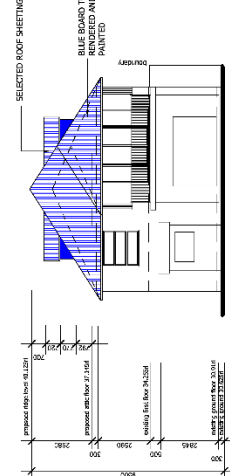
SOUTH WEST ELEVATION SCALE 1:100



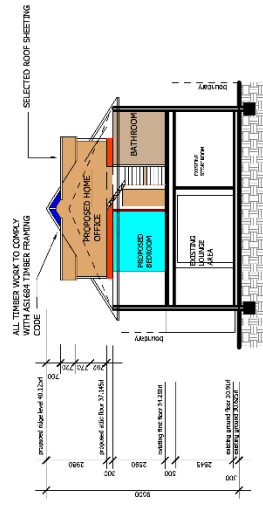
NORTH EAST ELEVATION SCALE 1:100



NORTH WEST ELEVATION SCALE 1:100



SOUTH EAST ELEVATION SCALE 1:100



SECTION A-A SCALE 1:100

NOTES :

1. Builder to check all building and Boundary Dimensions Prior to Commencement of work so that the work can be carried out in accordance to Australian Authorities.
2. All Building work to comply with Australian building codes and Local Council Requirements.
3. Provide Termite Protection in Accordance with AS3660.1-1995 Requirements.
4. All Dimensions shown are Theoretical only and are subject to Site Measure during Construction.
5. Do not Scale of Drawings.
6. All work to be provided where necessary to confirm Boundary Position in Accordance with Adjoining Properties and Services.
7. Wet area waterproofing shall comply with Part 3.9 of B.C.A.
8. All stair balustrades to comply with Part 3.9 of B.C.A.
9. Mechanical ventilation to all internal bedrooms and w.r.'s shall comply with Part 3.9.5 of B.C.A.
10. All glazing to comply with Part 3.6 of B.C.A.
11. All glazing to comply with Part 3.6 of B.C.A.
12. W.C. doors to comply with Part 3.8.3.3 of the B.C.A. (Housing Provisions)

amendments - 7/08/20

M GROUP
 11/11-1116566
 30/11-1116566
 (STATED IN RP 118596)
 (MAY BE USED FOR THE PURPOSES OF THIS DRAWING)
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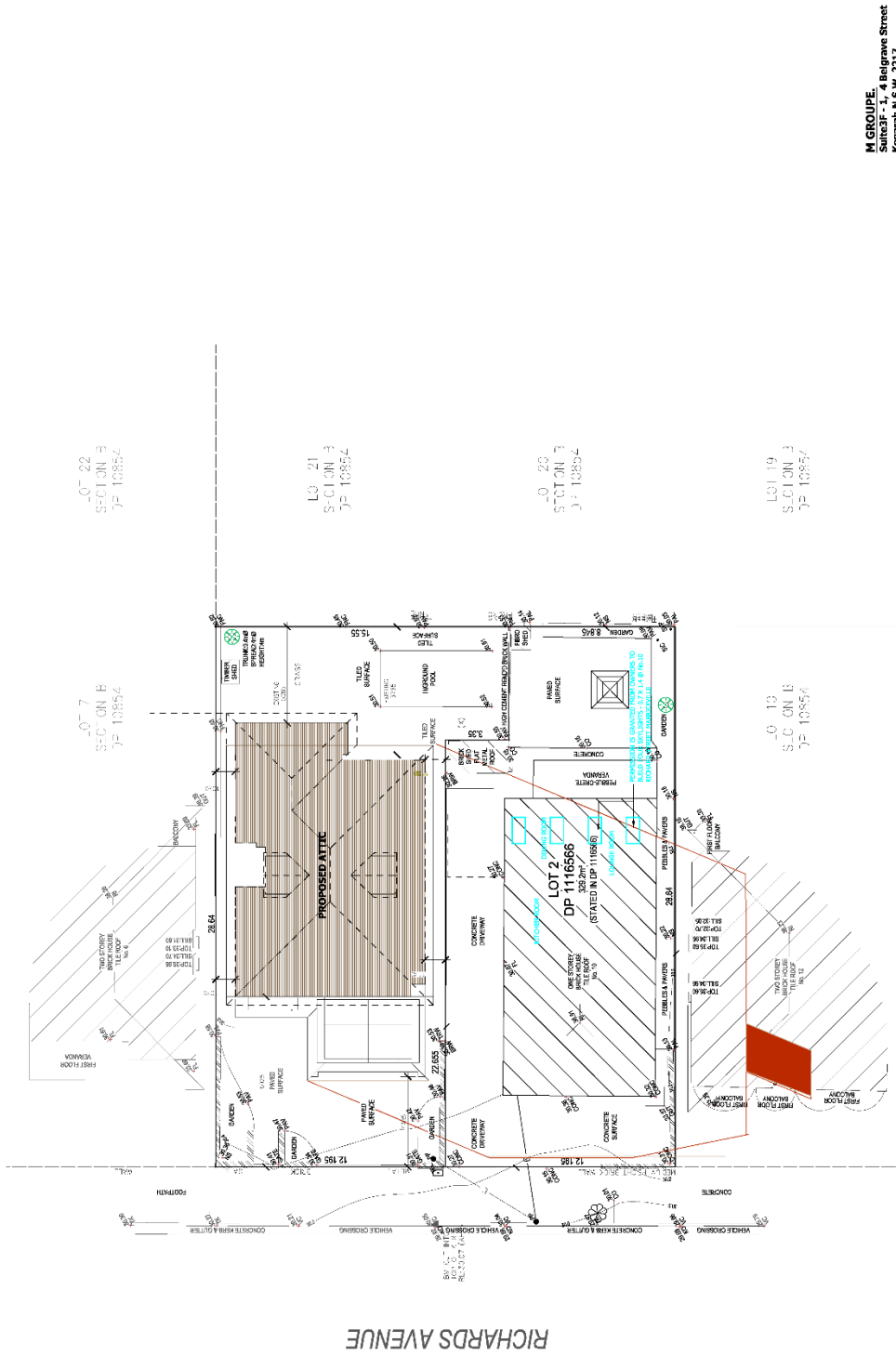
PROPOSED ALTERATIONS AND ADDITIONS
 At: No. 8 Richard Avenue, Merrimackville
 NSW 2150
 DRAWN BY: J. P. YOUNG
 DATE: 20/08/20
 SCALE: 1:100
 DRAWING No: 2009/9/20 SHEET: 5

BASIS REQUIREMENTS

Additional Insulation Requirements	Additional Insulation Requirements (Existing)
Floor above existing dwelling or building	Nil
external wall - Formed (concrete/brick, etc.) metal cladding (ROOF)	Nil (SIP OR R70 Insulation construction)
external wall - Formed (concrete/brick, etc.) metal cladding (ROOF)	Nil

ALL NEW WINDOWS TO BE STANDARD ALUMINIUM SINGLE GLAZED WITH LOW E GLASS AND THERMALLY BROKEN EXCEPT FOR WINDOWS ON V.A.S. AND WALL TO HAVE EXTERNAL LOUVER/SLIDING (ADJUSTABLE)

The product must be installed in accordance with the manufacturer's installation instructions.



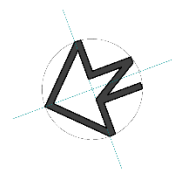
Accredited Building Designer -
 M. GROUPE
 Accreditation Number: 6316
 Full Member, NSW Building Professionals Board
 Membership Number: 0561-07

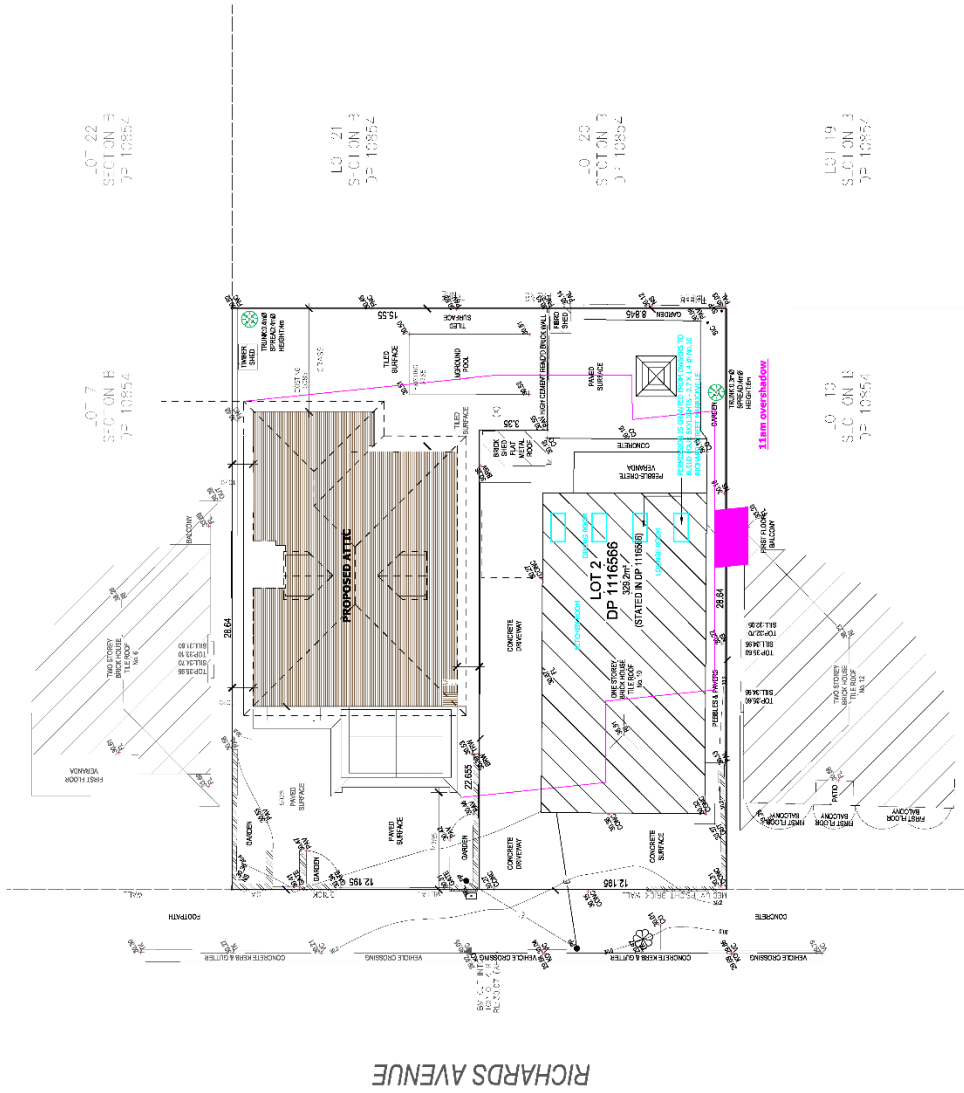
M GROUPE
 11 Redgrave Street
 Kingsford NSW 2217
 Tel: 95538777
 Mob: 0411035824
 Email: john@mgroup.com.au

PROPOSED ALTERATIONS AND ADDITIONS
 At: No. 8 Richards Avenue, Marrickville
 DRAWN BY: JMG SCALE: 1:100
 DATE: June 20
 DRAWING No.: 20069/20 SHEET: 7

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OVERSHADOW LINES @ 9am JUNE 21





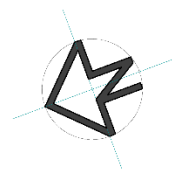
M GROUPE
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 Tel: 95538777
 Mob: 0411035824
 Email: john@mgroup.com.au

PROPOSED ALTERATIONS AND ADDITIONS
 At: No. 8 Richards Avenue, Marrickville
 DRAWN BY: JMS SCALE: 1:100
 DATE: June 20
 DRAWING No.: 20069/20 SHEET: 9

Accredited Building Designer -
 Accreditation No.: 6316
 Full Member, NSW Building Professionals
 Council
 Membership Number: 0561-07

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OVERSHADOW LINES @ 11am JUNE 21



Attachment C- Clause 4.6 Exception to Development Standards

Burrell Threlfo Pagan Pty Ltd TOWN PLANNING CONSULTANTS

48 Victoria Road Rozelle NSW 2039
 phone: 9818 8333 e-mail: bruce@btpplan.com.au
 ABN 55 078 022 447
 January 2021

8 Richards Avenue, Marrickville

Clause 4.6 Submission - Exception to development standard (floor space ratio)

There is a minor non-compliance with the FSR standard of 0.6:1 because the existing building exceeds the FSR standard and there will be an increase in GFA of 19m².

Site area = 369.4m².

	Existing	Proposed
GFA	231.9m ²	251m ²
FSR	0.62:1	0.67:1

The original DA submission in 2019 excluded the 2 car spaces in the double garage from the FSR calculation.

I agree that only 1 car space in the double garage should be excluded from the GFA/FSR calculation. However, the double garage was approved by Council in about 1995 and the current method of calculating GFA/FSR came into effect after that year.

Criteria

A properly formulated Clause 4.6 submission provides jurisdiction to a consent authority to enable consent to be granted for development that would contravene a development standard if:

1. the applicant has made a written request seeking to justify the contravention; and
2. the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause 4.6(3); that is:

- 4.6(3)(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- 4.6(3)(b) *that there are sufficient environmental planning grounds to justify contravening the development standard; and*

the consent authority is satisfied that:

- 4.6(4)(a) *the consent authority is satisfied that--*
- (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*
- 4.6(4)(b) *the concurrence of the Planning Secretary has been obtained.*

In accordance with the guidelines provided by decisions of the Land and Environment Court and in particular the judgments in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, the submission in this Statement addresses the requirements of clause 4.6 in turn.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. The subsequent cases referred to above have confirmed that these ways are equally applicable under the clause 4.6 regime. The 5 matters to consider are whether:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The objective is not relevant to the development.*
3. *The objective would be defeated or thwarted if compliance was required.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*
5. *The zoning of the land is unreasonable or inappropriate.*

These 5 matters are discussed below.

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of the FSR development standard are

- (a) *to establish the maximum floor space ratio,*
- (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) *to minimise adverse environmental impacts on adjoining properties and the public domain.*

These objectives are achieved despite the non-compliance with the numerical control because:

- The additional floor area is only 19m² and is located in an attic room within a new roof space. The resulting roof form has a pitch of 32° and the increase in ridge height is only 1300mm. This roof form is suitable for the existing house.
- The additional floor area does not detract from the desired future character for the Warren Estate Precinct, which is addressed in the review report.
- There are no adverse impacts on the adjoining properties.
- The new roof design provides a suitable presentation to the public domain.

2. The objective is not relevant to the development.

This contention is not relied upon.

3. The objective would be defeated or thwarted if compliance was required.

This contention is not relied upon.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*

This contention is not relied upon.

5. *The zoning of the land is unreasonable or inappropriate.*

This contention is not relied upon.

Why is compliance unreasonable or unnecessary?

In the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827, Chief Justice Preston outlined the rationale for development standards and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his decision Preston CJ noted:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

Compliance with the development standard is unreasonable or unnecessary because:

- The existing building exceeds the FSR standard.
- The double garage was approved by Council in about 1995 and the current method of calculating GFA/FSR came into effect after that year. It would be unreasonable of Council to require part of the double garage to be removed to achieve compliance.
- The attic room is located in a new roof form with a roof pitch of 32° that actually improves the presentation of the existing house.
- The addition floor space in the roof does not increase the building footprint nor the building wall height. The increase in the volume of the building is very minor resulting in an increase in the roof pitch from 23° to 32°.

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

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- The additional floor area is located in an attic room. The resulting roof form is suitable for this building.
- There is no increase in building footprint.
- There is no increase in wall height of the existing house.
- The attic room is located in a new roof form with a roof pitch of 32° that actually improves the presentation of the existing house.
- There are no adverse impacts on the adjoining properties.
- The design provides a suitable presentation to the public domain.

Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

The objectives of the FSR standard have been addressed above. The proposal is consistent with the objectives. Further, strict compliance is considered to be unreasonable in the circumstances.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

The objectives for development within the R2 Low Density residential 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 provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.*
- *To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.*
- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*

The proposal is consistent with these objectives because

- The existing house has been the long term residence for the current owners. The existing roof is leaking and needs to be replaced. The owners are taking the opportunity to create some addition floor area in the new roof space.
- The additional floor area is only 19m² and is located in an attic room within a new roof space. The resulting roof form has a pitch of 32° and the increase in ridge height is only 1300mm. This roof form is suitable for the existing house.
- The other objectives are not relevant to the proposal

Concurrence of the Director-General

The concurrence of the Director-General may be assumed by Council.







Council must also consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning*
- the public benefit of maintaining the development standard*

- There are no matters of significance for State or regional environmental planning
- The proposal is considered to be neutral in terms of the public interest.

Prepare by Bruce Threlfo.

Attachment D – DA/2020/0489 IWLPP Report and Recommendation

 DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2020/0489			
Address	8 Richards Avenue MARRICKVILLE NSW 2204			
Proposal	Alterations and additions to existing dwelling			
Date of Lodgement	29 June 2020			
Applicant	Mr John Moshonis			
Owner	Mr Eddy Younan Mrs Jocelyn Younan			
Number of Submissions	One objection			
Value of works	\$80,000			
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%			
Main Issues	<ul style="list-style-type: none"> • Non-compliance with Clause 4.4 Floor space ratio, Request for variation to development standard Clause 4.6 not submitted • Visual bulk • Neighbouring amenity impacts (Privacy) 			
Recommendation	Refusal			
Attachment A	Reasons for refusal			
Attachment B	Draft conditions (if not refused)			
Attachment C	Plans of proposed development			
				
LOCALITY MAP				
Subject Site		Objectors		↑ N
Notified Area		Supporters		

Inner West Local Planning Panel

ITEM 5

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing dwelling at 8 Richards Avenue, Marrickville.

The application was notified to surrounding properties and one submission was received.

The main issues that have arisen from the application include:

- Non-compliance with the maximum floor space ratio per Clause 4.4 of the MLEP 2011
- No Clause 4.6 submitted in respect of FSR variation
- Visual bulk
- Neighbouring amenity impacts (Privacy)

The non-compliance relating to the floor area is a result of the applicant not calculating the gross floor area in accordance with the definitions contained in the MLEP 2011; the stairs and the second (non-required) car space have been incorrectly excluded from the gross floor area total.

A formal written request for an exception to the development standard under Clause 4.6 of the MLEP 2011, was not submitted. Therefore, insufficient environmental planning grounds to justify a non-compliance with the development standard have been provided and the legal machinery to grant consent is not in place.

In addition, the proposal results in adverse amenity impacts (visual bulk and privacy) and is not in keeping with the low-density residential area. As a result, the application is recommended for refusal.

2. Proposal

The application involves alteration and additions to an existing dwelling house at 8 Richards Avenue, Marrickville. Specifically;

- Construction of a new third storey of approximately 19sqm;
- Construction of two dormer windows on the north east and south east side elevations;
- Increase building height to 9.5m;
- Minor internal alterations to the first floor to accommodate for the additional staircase; and
- Reconfiguration of first floor windows on the northeast elevation.

3. Site Description

The subject site is located on the north western side of Richard Street, between Holts Crescent and Premier Street, Marrickville. The site consists of one allotment and is of an L – Shape with a total area of 369.4 sqm and is legally described as Lot 1 DP 1116566.

The site has a frontage to Richards Street of 12 metres. The site supports a two storey detached dwelling. The adjoining properties support a one storey detached dwelling and a two storey detached dwelling.

The land is zoned R2 Low Density Residential as shown in the figure below.



Figure 1: Zoning map

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Determination
DA200600323.01	To adjust the common boundary between 8 and 10 Richards Avenue and erect a swimming pool in the rear yard	12/02/2007 Approved
DA200600323	To adjust the common boundary between 8 and 10 Richards Avenue and erect a swimming pool in the rear yard	01/09/2006 Refused
Building Approval No. 510/97	To adjust the common boundary between 8 and 10 Richards Avenue and erect a swimming pool in the rear yard	23/09/1997 Approved

4(b) Application history

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

Date	Discussion / Letter / Additional Information
29 June 2020	Lodged
9 July – 1 August 2020	Community consultation

Inner West Local Planning Panel

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24 July 2020	<p>Council wrote to the applicant advising as follows;</p> <ul style="list-style-type: none"> - The proposal exceeds the FSR development standard; - A Clause 4.6 must be submitted; - Notwithstanding, additional concerns regarding; <ul style="list-style-type: none"> o Solar access to the neighbouring property at 10 Richards Avenue o Privacy impacts from third floor windows o Dormer windows not being consistent with the street scape o Visual bulk of the three-storey appearance
13 July 2020	<p>The applicant provided amended plans which reduced the proposed third floor from 50sqm to 19sqm and reduced overshadowing. However, the proposal still exceeds the FSR development standard and a Clause 4.6 was not submitted.</p>

As per Councils Development Advisory and Assessment Policy, no further opportunities to submit amended plans were provided, and the current assessment is based on the amended plans/additional information provided by the applicant on the 13 July 2020.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. MDCP 2011 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that "the site is, or can be made, suitable for the proposed use" prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

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

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

5(a)(iii) Marrickville Local Environment Plan 2011 (MLEP 2011)

The application was assessed against the following relevant clauses of the MLEP 2011;

Inner West Local Planning Panel

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Control	Proposed	Compliance
Clause 1.2 Aims of Plan	By virtue of the excessive bulk and scale and adverse amenity impacts, the proposal is considered to be inconsistent with the following aims of the Plan; <i>(b) to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,</i> <i>(h) to promote a high standard of design in the private and public domain.</i>	No
Clause 2.3 Zone objectives and Land Use Table <i>R2 Low Density Residential</i>	Dwelling houses are permissible with consent within the zone. The development is consistent with the objectives of the R2 zone.	Yes
Clause 2.7 Demolition	The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.	Yes, subject to conditions
Clause 4.3 Height <i>(Max: 9.5m)</i>	The development has a compliant building height of approximately 9.5 metres.	Yes
Clause 4.4 Floor Space Ratio <i>(Max: 0.6:1 or 221.6 sqm)</i>	The development proposes a floor space area of 0.67:1 or 251 sqm. This is a non-compliance of 29.4 sqm or 13.2%.	No - See discussion below
Clause 4.5 Calculation of floor space ratio and site area	The site areas and floor space ratios for the proposal have been calculated in accordance with the clause.	Yes

(i) Floor Space Ratio (Clause 4.4)

Clause 4.4(2A) of MLEP 2011 specifies a maximum floor space ratio for a dwelling house on land labelled "F" on the Floor Space Ratio Map. The maximum floor space ratio (FSR) of 0.6:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

The property has a site area of 369.4sqm. The existing dwelling has an FSR variation of 10.2sqm or 4.4%, which equates to an FSR of 0.62:1 and Gross floor Area (GFA) of 231.9sqm or 0.62:1.

The proposed development has a GFA of 251sqm which equates to a FSR of 0.67:1 on the 369.5sqm site which does not comply with the FSR development standard. The application was not accompanied by a written submission in relation to the contravention of the FSR development standard in accordance with Clause 4.6 of MLEP 2011.

The applicant contends that the proposed Floor Space Ratio does not exceed the development standard. It is noted that the calculations by the applicant differ from that calculated by Council. The applicant's GFA calculations exclude the second car space, and stairs on level 2 and 3, that would constitute GFA (as defined).

Inner West Local Planning Panel**ITEM 5**Clause 4.6 Exceptions to Development Standards

As outlined above, the proposal exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011 by 29.4sqm or 13.2%.

A written request has not been submitted to Council in accordance with Clause 4.6(3) of the Marrickville local environmental plan.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard needs to be assessed against the objectives and provisions of Clause 4.6 of the Marrickville local environmental plan.

The non-compliance with the FSR development standards results in a development that adds unnecessary bulk and scale to the adjoining properties and the 13.2% non-compliance results in a third floor which is uncharacteristic to the streetscape. Additionally, the proposal would result in a floor area of 19sqm for the third floor which results in a poor planning outcome both for the neighbouring properties in relation to visual bulk and also to the occupants of the site as the third floor would result in poor amenity due to the size of the third floor.

The proposed development is not consistent with the desired future character of the area and is not consistent with the bulk and scale of the adjoining properties and therefore is not supported.

Consequently, insufficient environmental planning grounds to justify a non-compliance with the development standard has been provided, and therefore the development is not in the public interest. As a result, the current proposal is recommended to the Panel for refusal.

5(b) Draft Environmental Planning Instruments

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

Draft Marrickville Local Environmental Plan 2011 (Amendment 4)

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft LEP Amendment are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft LEP Amendment.

Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*.

The Draft IWLEP 2020 contains provisions for the amendments to the zone objectives of the zone R2 - Low Density Residential, as well as new objectives of Clause 4.4 Floor Space Ratio. Given the bulk and scale and amenity concerns raised in this report the proposal is considered to be inconsistent with the following draft objectives to the R2 zone;

Inner West Local Planning Panel

ITEM 5

- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011. The following provides discussion of the relevant issues:

MDCP 2011 Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	No – see discussion
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes
Part 2.11 – Fencing	Yes
Part 2.16 – Energy Efficiency	Yes
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 4.1 – Low Density Residential Development	No – see discussion
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

Part 2.6 – Acoustic and Visual Privacy

The relevant objectives and controls are as follows:

O1 To ensure new development and alterations and additions to existing buildings provide adequate visual and acoustic privacy for the residents and users of surrounding buildings.

O2 To design and orientate new residential development and alterations and additions to existing residential buildings in such a way to ensure adequate acoustic and visual privacy for occupants

C3 Visual privacy

- i. Private open spaces of new residential development must be located and designed to offer a reasonable level of privacy for their users;*
- ii. Elevated external decks for dwelling houses must generally be less than 10m² in area and have a depth not greater than 1.5 metres so as to minimise privacy and noise impacts to surrounding dwellings;*
- iii. First floor windows and balconies of a building that adjoins a residential property must be located so as to face the front or rear of the building;*
iv. Where it is impractical to locate windows other than facing an adjoining residential building, the windows must be offset to avoid a direct view of windows in adjacent buildings;
- iv. Where the visual privacy of adjacent residential properties is likely to be significantly affected from windows or balconies (by way of overlooking*

Inner West Local Planning Panel

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into the windows of habitable areas and private open spaces), one or more of the following measures must be applied:

- a. Fixed screens of a reasonable density (minimum 75% block out) to a minimum height of 1.6 metres from finished floor level must be fitted to balconies in a position suitable to alleviate loss of privacy;*
- b. Windows must have minimum sill height of 1.6 metres above finished floor level or fixed opaque glazing to any part of a window less than 1.6 metres above finished floor level; and*
- c. Screen planting or planter boxes in appropriate positions may supplement the above two provisions in maintaining privacy of adjoining premises.*

The proposed third storey includes dormer windows, with a sill height of 800mm and face the side boundaries. The proposed third floor windows fail to comply with C3, which require first floor windows and balconies to face the front or rear of the building, and/or the provision of privacy measures such as minimum sill heights of 1.6m, or fixed opaque glazing.

Given the windows service a third floor, the potential for overlooking is significant and unresolved by the design, and therefore the proposal fails to satisfy the relevant objectives.

Part 4.1 – Low Density Residential Development

Built form and character & Dormer Windows

The relevant objectives and controls are as follows:

O10 To ensure development is of a scale and form that enhances the character and quality of streetscapes.

C7 Maximum permissible FSR and height for any development must be consistent with the height and FSR standards prescribed on the Height of Buildings (HOB) and FSR Maps of MLEP 2011.

C8 Notwithstanding compliance with the numerical standards, applicants must demonstrate that the bulk and relative mass of development is acceptable for the street and adjoining dwellings in terms of:

- i. Overshadowing and privacy;*
- ii. Streetscape (bulk and scale);*
- iii. Building setbacks;*
- iv. Parking and landscape requirements;*
- v. Visual impact and impact on existing views (Council encourages view sharing between surrounding residences);*
- vi. Any significant trees on site; and*
- vii. Lot size, shape and topography.*

C40 The use of dormers in new buildings and major new additions shall be determined on merit. Most importantly the proportions of contemporary dormers shall be mindful of traditional models, and have solid cheeks, and no eaves.

C41 Dormers should not dominate the roof plane, or appear as a second storey.

C43 Do not use dormer windows where they are not suited to the architectural style of the building.

C51 New dormers on contemporary buildings must be consistent with the existing roof forms in the street.

Inner West Local Planning Panel

ITEM 5

The proposal includes a new third storey which is contrary to Control C7, as the entire third storey is in breach of the maximum permissible FSR. Notwithstanding the proposal has not demonstrated Control C8, in that the bulk and relative mass is acceptable for the street, given that the proposal fails to respect existing roof forms, and the predominately single and two storey streetscape.

The proposal includes two side-facing dormer windows to service the third storey. Control C40 allows the use of dormers in contemporary buildings to be determined on merit. Given their lateral expanse and direct presentation to the street, the proposed dormers are considered to dominate the roof plane and appear as a full third storey, contrary to Control C41. In accordance with Control C43, it is considered that dormer windows do not suit the architectural style of the building as they do not utilise existing roof space and create a complex roof form which is not sympathetic to the existing dwelling. Furthermore, contrary to C51, the use of dormers is considered inconsistent with the other existing roof forms in the street.

Therefore, it is considered the proposal does not enhance the character and quality of the streetscape, and fails to satisfy the relevant objective.

9.30 – Strategic Context

By virtue of the excessive bulk and scale and adverse amenity impacts, the proposal is considered to be inconsistent with the following Desired Future Character of the precinct;

- 3. To maintain distinctly single storey streetscapes that exist within the precinct.*
- 6. To preserve the predominantly low density residential character of the precinct.*
- 11. To ensure that new residential development responds to its setting and makes a positive contribution to the streetscape.*

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in terms of bulk and scale, and amenity.

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

It is considered that the proposal will have an adverse impact on the adjoining properties and the desired future character of the area and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to the surrounding properties. One submission was received, which raised the following issues already discussed in this report:

- The increase in visual bulk from the development – see Section 5 (d)
- Privacy implications from the new balcony – see Section 5 (d)

5(h) The Public Interest

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

The proposal is contrary to the public interest.

Inner West Local Planning Panel

ITEM 5

7. Referrals

No internal or external referrals applicable.

8. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable for the proposal.

8. Conclusion

The proposal generally does not comply with the aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and *Marrickville Development Control Plan 2011*.

The development would result in adverse impacts in terms of bulk and scale and amenity and is not considered to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

- A. The applicant has not made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011* to vary the Floor Space Ratio development standard, despite the design including a gross floor area in excess of the maximum permissible Floor Space Ratio. The Panel is not able to approve the application, regardless of any merit it may exhibit.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2020/0489 for alterations and additions to existing dwelling at 8 Richards Avenue, Marrickville for the following reasons:

Attachment A – Reasons for Refusal

1. The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Local Environmental Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2 - Aims of Plan;
 - b. Clause 4.4 - Floor Space Ratio.
2. The applicant has not made a written request pursuant to Clause 4.6 of the Marrickville Local Environmental Plan 2011 to vary the Floor Space Ratio development standard, despite the design including a gross floor area in excess of the maximum permissible Floor Space Ratio.
3. The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Part 2.6 – Acoustic and Visual Privacy;
 - b. Part 4.1 – Low Density Residential Development; and
 - c. Part 9.30 – Strategic Context.
4. The proposed development is inconsistent and has not demonstrated compliance with the *Draft Inner West Local Environmental Plan 2020*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 3.2 - Zoning Objectives and Land Use Table
5. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*.
6. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
7. The public submission raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B - Draft conditions (if not refused)

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DRAWING No 20009/20 sheet 2	Ground floor plan	7 August 2020	JM
DRAWING No 20009/20 sheet 3	First floor plan	7 August 2020	JM
DRAWING No 20009/20 sheet 4	Proposed attic plan	7 August 2020	JM
DRAWING No 20009/20 sheet 5	Elevations and sections	7 August 2020	JM
DRAWING No 20009/20 sheet 6	Concept storm water plan	7 August 2020	JM

As amended by the conditions of consent.

FEES

2. Long Service Levy

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

3. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$8,266.00 if development involves substantial demolition
Inspection Fee:	\$236.70

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

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

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

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

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

GENERAL CONDITIONS

4. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

5. Erosion and Sediment Control

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

6. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

7. Advising Neighbors Prior to Excavation

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

8. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE

9. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above

requirements without result in demolition of elements marked on the approved plans for retention.

10. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION

11. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

12. Stormwater Drainage System

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

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

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

ADVISORY NOTES

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Inner West Local Planning Panel

ITEM 5

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Inner West Local Planning Panel

ITEM 5

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe.

Inner West Local Planning Panel

ITEM 5

Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

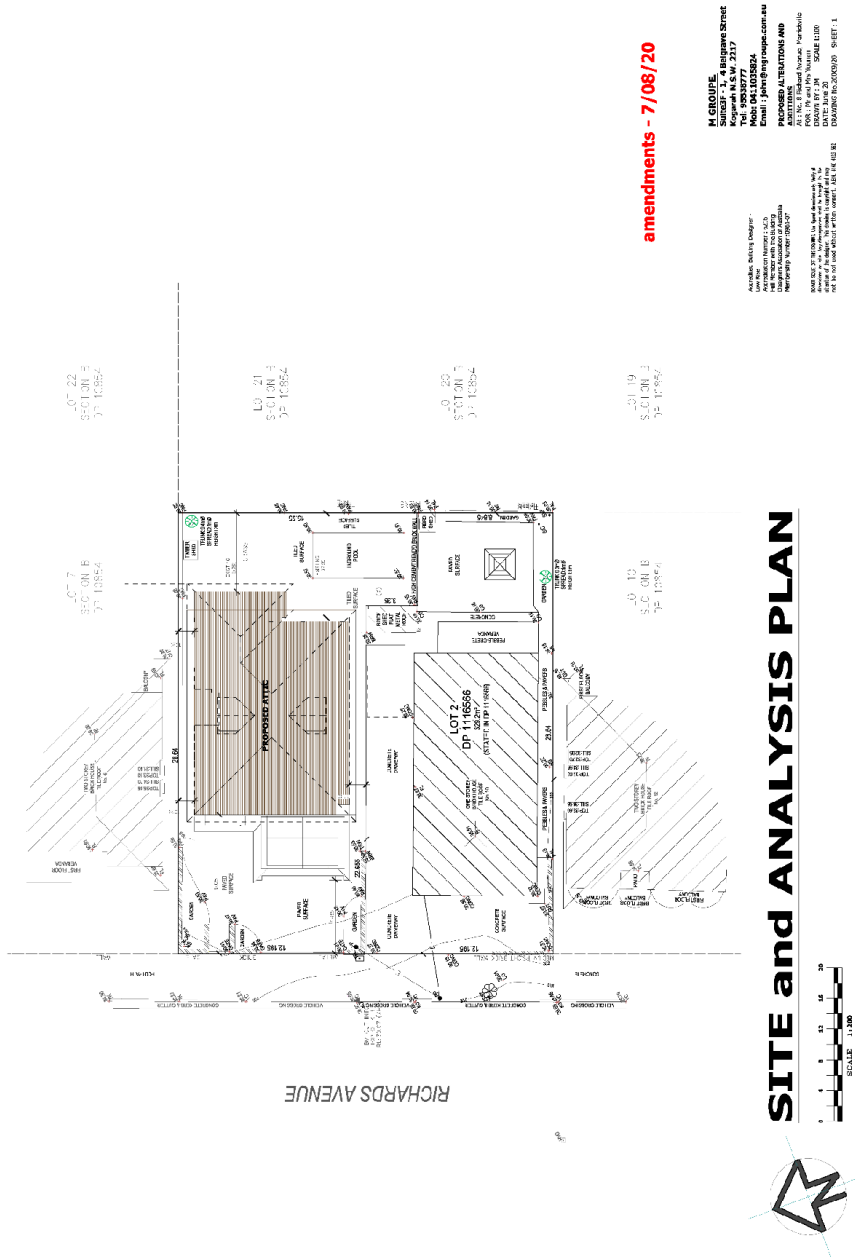
Dial before you dig

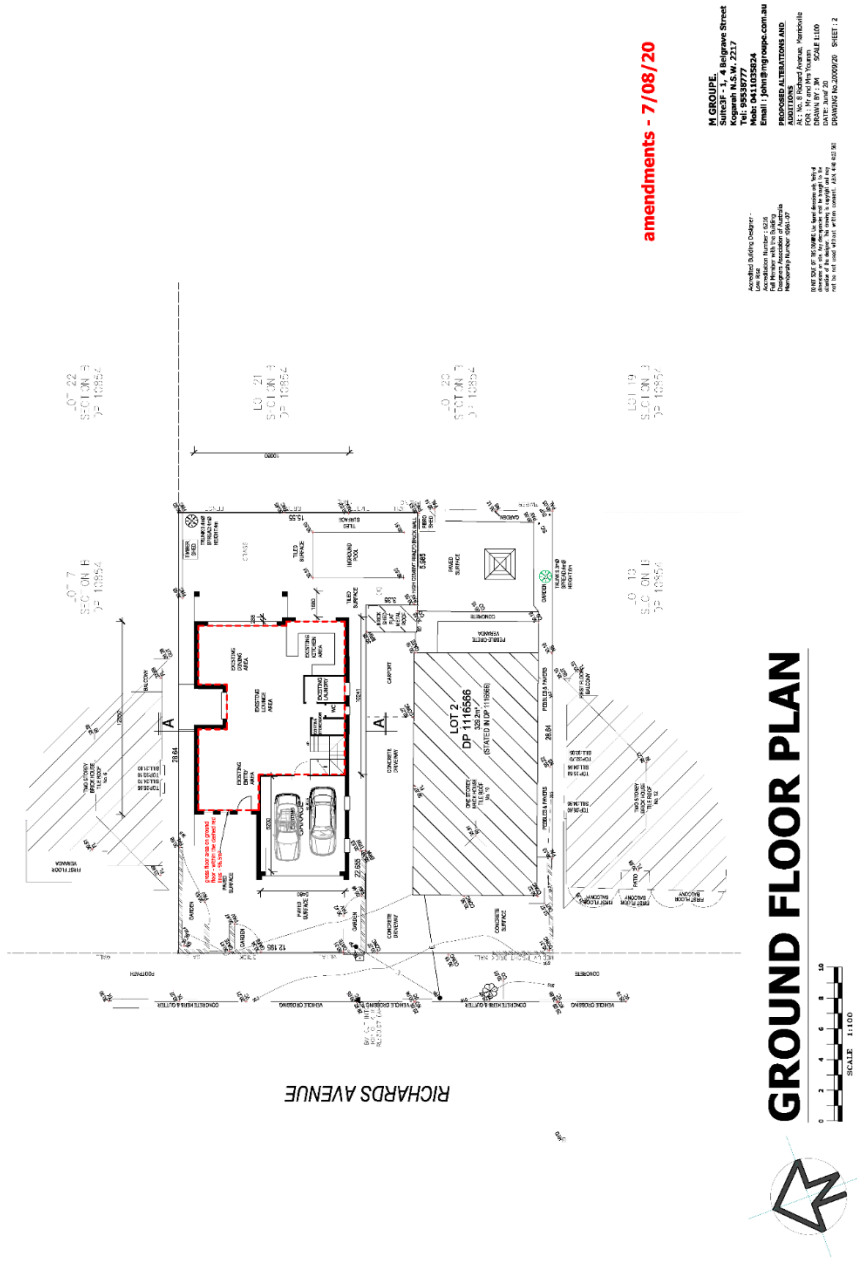
Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior.toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diyasafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Attachment C - Plans of proposed development



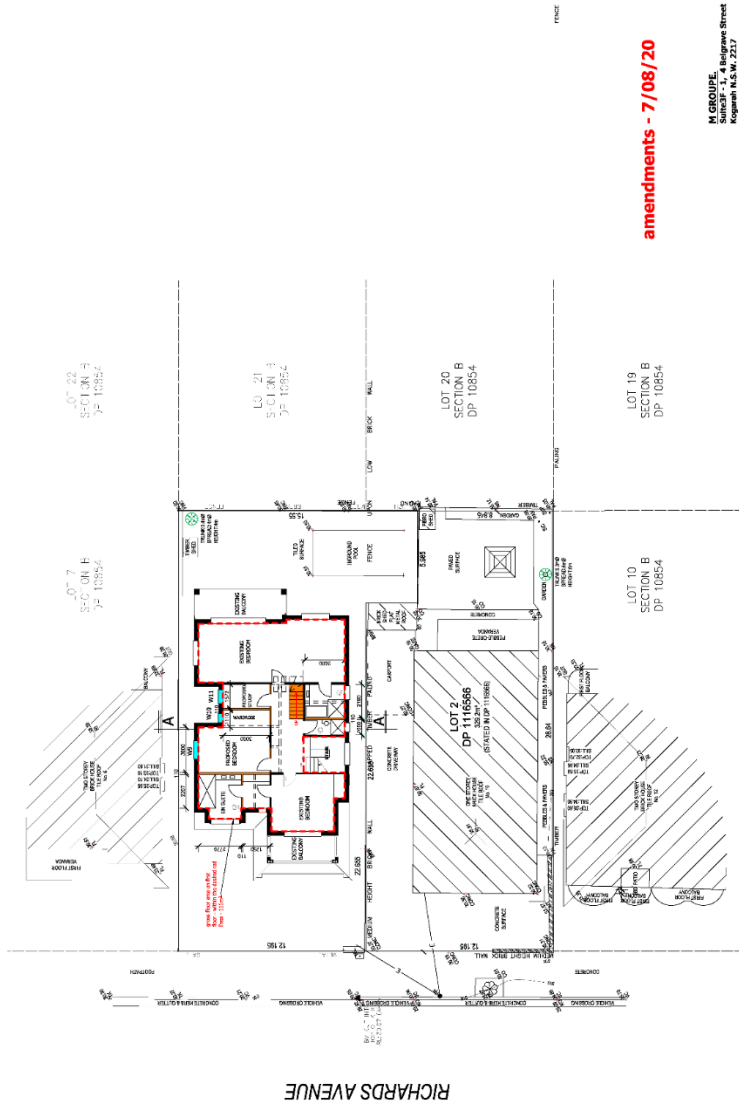


amendments - 7/08/20

M GROUP
 14 Redgrave Street
 Kogarah NSW 2217
 Tel: 99334777
 Fax: 99334776
 Email: john@imgroup.com.au

PROPOSED ALTERATIONS AND ADDITIONS
 14 Redgrave Street, Kogarah NSW 2217

DATE: 14/08/20
 DRAWN BY: J.P.
 CHECKED BY: J.P.
 APPROVED BY: J.P.



amendments - 7/08/20

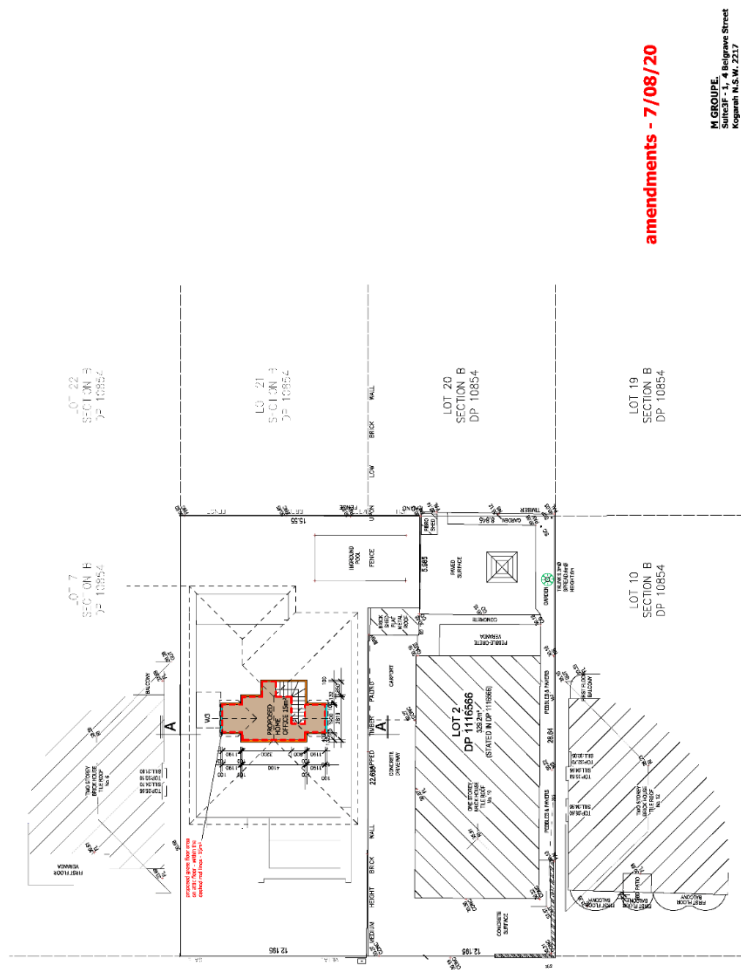
M GROUP
 11 Redgrave Street
 Kogarah NSW 2217
 Tel: 99331777
 Fax: 99331788
 Email: john@imgroup.com.au

PROPOSED ALTERATIONS AND ADDITIONS
 11 Redgrave Street, Kogarah NSW 2217
 DP 10854
 LOT 10 SECTION B
 DATE: 10/08/20
 DRAWING NUMBER: 20/200201 - SHEET 1.3

Architect/Building Designer:
 M Group
 License Number: 1274
 Certificate Number: 1274
 Registration Number: 1274

DATE OF PLAN: 10/08/20
 DATE OF PLAN: 10/08/20
 DATE OF PLAN: 10/08/20
 DATE OF PLAN: 10/08/20

FIRST FLOOR PLAN



amendments - 7/08/20

M GROUP
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 Fax: 99337774
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**PROPOSED ALTERATIONS AND
 ADDITIONS**
 111 Regent Street, Kogarah
 NSW 2217
 DP 10854
 SHEET 14

**PROPOSED ATTIC FLOOR
 PLAN**



SCALE: 1:100

LOT 1
DP 1116566
STATEN DP 11666

SOUTH WEST ELEVATION SCALE 1:100

NORTH WEST ELEVATION SCALE 1:100

SOUTH EAST ELEVATION SCALE 1:100

NORTH EAST ELEVATION SCALE 1:100

SECTION A-A SCALE 1:100

amendments - 7/08/20

NOTES:

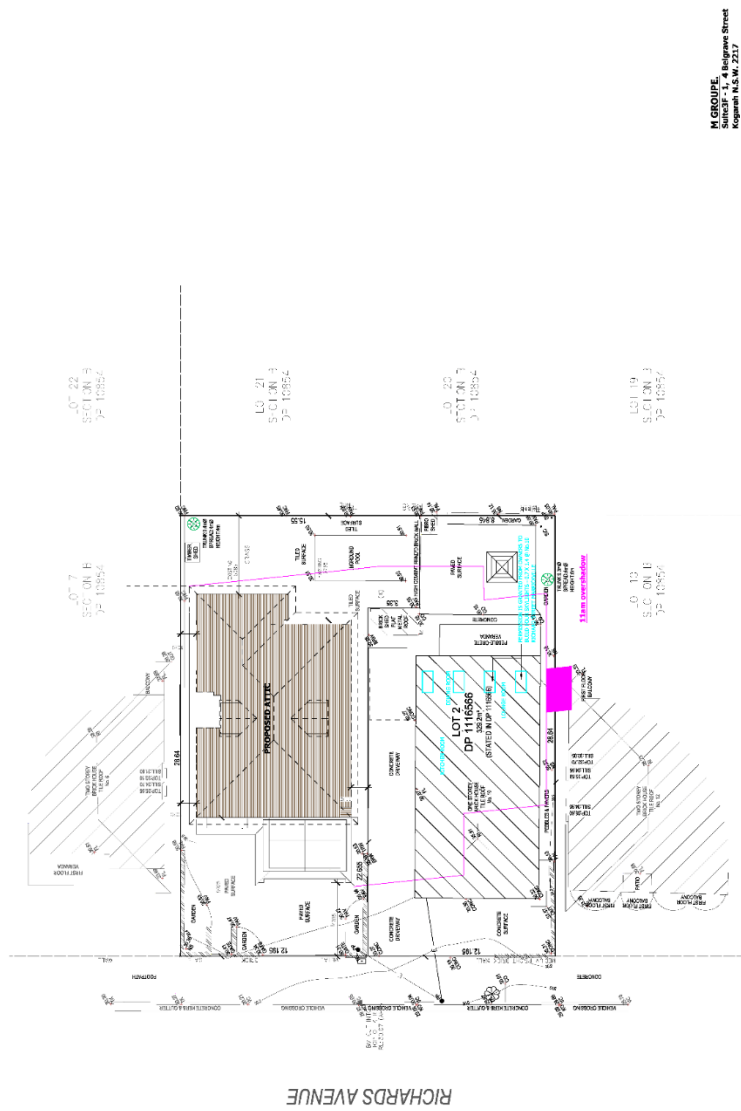
1. Builder to check all Building and Boundary Dimensions Prior to Commencement of Construction.
2. All Building work to comply with Australian Building Code and Local Council Requirements.
3. All Dimensions shown are Theoretical only and are subject to Site Measure during Construction.
4. All Dimensions shown are Theoretical only and are subject to Site Measure during Construction.
5. Do not Scale Off Elevation.
6. Site Boundary Survey to be provided where necessary to confirm Boundary.
7. Work area surrounding shall comply with Part 3.8.1 of B.C.A.
8. All rain fall water to comply with Part 3.3.0 of B.C.A.
9. All rain fall water to comply with Part 3.3.0 of B.C.A.
10. All rain fall water to comply with Part 3.3.0 of B.C.A.
11. All rain fall water to comply with Part 3.3.0 of B.C.A.
12. W.C. must comply with Part 3.8.3.2 of the B.C.A. (Health Provisions)

BASIC REQUIREMENTS

Approved Building Requirements -
 Approved Building Code of Australia (AS/NZS 1170)
 Approved Building Code of Australia (AS/NZS 1171)
 Approved Building Code of Australia (AS/NZS 1172)
 Approved Building Code of Australia (AS/NZS 1173)
 Approved Building Code of Australia (AS/NZS 1174)
 Approved Building Code of Australia (AS/NZS 1175)
 Approved Building Code of Australia (AS/NZS 1176)
 Approved Building Code of Australia (AS/NZS 1177)
 Approved Building Code of Australia (AS/NZS 1178)
 Approved Building Code of Australia (AS/NZS 1179)
 Approved Building Code of Australia (AS/NZS 1180)
 Approved Building Code of Australia (AS/NZS 1181)
 Approved Building Code of Australia (AS/NZS 1182)
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 Approved Building Code of Australia (AS/NZS 1193)
 Approved Building Code of Australia (AS/NZS 1194)
 Approved Building Code of Australia (AS/NZS 1195)
 Approved Building Code of Australia (AS/NZS 1196)
 Approved Building Code of Australia (AS/NZS 1197)
 Approved Building Code of Australia (AS/NZS 1198)
 Approved Building Code of Australia (AS/NZS 1199)
 Approved Building Code of Australia (AS/NZS 1200)

M. GROUPE, Building Street
Agarwood NSW 2217
TEL: 99330777
FAX: 99330778
Email: john@mggroup.com.au

PROPOSED ALTERNATIONS AND
AMENDMENTS
 Approved Building Code of Australia (AS/NZS 1170)
 Approved Building Code of Australia (AS/NZS 1171)
 Approved Building Code of Australia (AS/NZS 1172)
 Approved Building Code of Australia (AS/NZS 1173)
 Approved Building Code of Australia (AS/NZS 1174)
 Approved Building Code of Australia (AS/NZS 1175)
 Approved Building Code of Australia (AS/NZS 1176)
 Approved Building Code of Australia (AS/NZS 1177)
 Approved Building Code of Australia (AS/NZS 1178)
 Approved Building Code of Australia (AS/NZS 1179)
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 Approved Building Code of Australia (AS/NZS 1189)
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 Approved Building Code of Australia (AS/NZS 1196)
 Approved Building Code of Australia (AS/NZS 1197)
 Approved Building Code of Australia (AS/NZS 1198)
 Approved Building Code of Australia (AS/NZS 1199)
 Approved Building Code of Australia (AS/NZS 1200)



RICHARDS AVENUE

OVERSHADOW LINES @ 11am JUNE 21

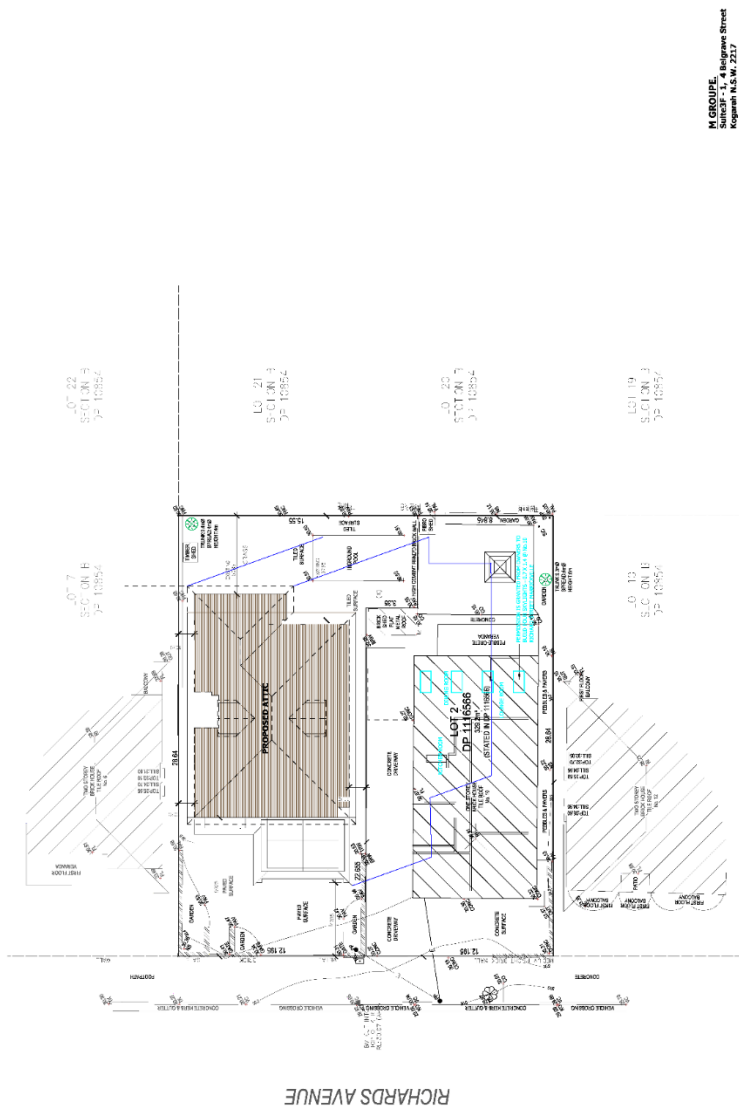


M. GROUPE - Regional Street
 Kogarah N.S.W. 2217
 Tel: 99331777
 Email: john@gmgpaec.com.au

**PROPOSED ALTERATIONS AND
 ADDITIONS**
 FOR: 11000 Kings Highway, Northcote
 CITE: 10000-20
 DRAWING NUMBER: 10000020-01 SHEET 1/3

Approved Planning Overlay:
 Information Number: 1274
 Information Number: 1275
 Information Number: 1276
 Information Number: 1277

DATE OF ISSUE: 10/06/2020
 DATE OF REVISION: 10/06/2020
 DATE OF APPROVAL: 10/06/2020
 DATE OF REVISION: 10/06/2020
 DATE OF APPROVAL: 10/06/2020

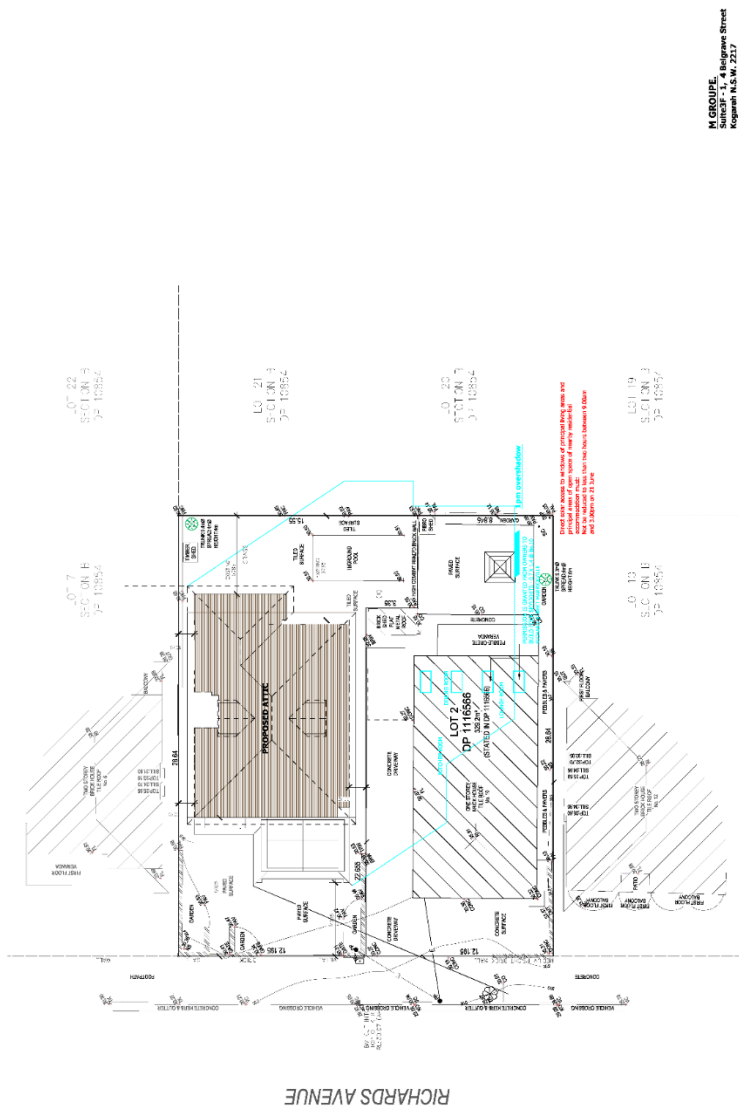


OVERSHADOW LINES @ 12noon JUNE 21

M. GROUPE, Registered Architect
 14 Regent Street
 Kogarah NSW 2217
 Tel: 99331777
 Fax: 99331778
 Email: john@gmgpaec.com.au

PROPOSED ALTERATIONS AND ADDITIONS
 14 Regent Street, Kogarah NSW 2217
 DP 114566

DATE: 20/06/2020
 SHEET 1 OF 1



OVERSHADOW LINES @ 1pm JUNE 21



M. GROUPE, Registered Professional Engineer
 10/100-1000, Richmond Street
 Agnes Street, W. 2217
 Tel: 99334777
 Email: john@gmgpaec.com.au

PROPOSED ALTERNATIONS AND AMENDMENTS
 FOR THE PROPOSED DEVELOPMENT
 OF A 10/100-1000, Richmond Street, W. 2217
 (DP 114566)

DATE: 20/06/2023
 SHEET: 11

Attachment E – Draft Conditions (if panel approves)

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DRAWING No 20009/20 sheet 2	Ground floor plan	7 August 2020	JM
DRAWING No 20009/20 sheet 3	First floor plan	7 August 2020	JM
DRAWING No 20009/20 sheet 4	Proposed attic plan	7 August 2020	JM
DRAWING No 20009/20 sheet 5	Elevations and sections	7 August 2020	JM
DRAWING No 20009/20 sheet 6	Concept storm water plan	7 August 2020	JM

As amended by the conditions of consent.

FEES

2. Long Service Levy

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

3. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$8,266.00 if development involves substantial demolition
Inspection Fee:	\$236.70

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

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

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

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

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

GENERAL CONDITIONS

4. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

5. Erosion and Sediment Control

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

6. Works Outside the Property Boundary

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

7. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Windows W1 & W2 on the attic level being amended in the following manner:

- a. Fixed and obscure glazing to a minimum level of 1.6 metres above the floor level.

PRIOR TO ANY DEMOLITION

8. Advising Neighbors Prior to Excavation

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

9. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**10. Structural Certificate for retained elements of the building**

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

11. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION**12. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

13. Stormwater Drainage System

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

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

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

ADVISORY NOTES**Prescribed Conditions**

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.djysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au

WorkCover Authority of NSW 13 10 50
www.workcover.nsw.gov.au
Enquiries relating to work safety and asbestos removal and disposal.

REASONS FOR REFUSAL

1. The proposed development does not demonstrate compliance with the following Clauses of *Marrickville Local Environmental Plan 2011*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2 - Aims of Plan; and
 - b. Clause 4.4 - Floor Space Ratio.
2. The proposed development is inconsistent with the objectives and controls contained within the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979* with regard to:
 - a. Part 2.6 – Acoustic and Visual Privacy;
 - b. Part 4.1 – Low Density Residential Development; and
 - c. Part 9.30 – Strategic Context.
3. The proposed development is inconsistent with Clause 3.2 - Zoning objectives and land use table under *Draft Inner West Local Environmental Plan 2020*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*.
4. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*.
5. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
6. The application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the *Environmental Planning and Assessment Act 1979*.