

 DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA/2021/0653
<b>Address</b>	96 Elizabeth Street ASHFIELD NSW 2131
<b>Proposal</b>	Alterations and additions to an existing building which includes the fit out and use of the ground floor as a medical centre and additions to the first floor residence including a terrace
<b>Date of Lodgement</b>	23 July 2021
<b>Applicant</b>	Urbanism Pty Ltd
<b>Owner</b>	Mr Nicholas D Varkas Mrs Helen Varkas
<b>Number of Submissions</b>	Initial: 0
<b>Value of works</b>	\$30,000.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%
<b>Main Issues</b>	Variation to Floor Space Ratio Development Standard
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards








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 INNER WEST COUNCIL

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**LOCALITY MAP**

Subject Site		Objectors		
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing building which includes the fit out and use of the ground floor as a medical centre and additions to the first floor residence including a terrace at 96 Elizabeth Street, Ashfield.

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

The main issues that have arisen from the application include:

- Variation to Floor Space Ratio Development Standard

The non-compliance is acceptable given that the proposal will have no significant adverse amenity impacts to the adjoining properties or impacts on the public domain, and therefore the application is recommended for approval.

## 2. Proposal

The proposal seeks consent for the following works:

- Change of use of the ground floor to a medical centre (health service facility) and first floor to a residential dwelling.
- Changes to external colours and finishes of the existing building
- Changes to existing public art
- Changes to the ground floor of the existing building including fitout of front reception, workspace and clinic area, conversion of the existing ground floor kitchen to a laundry and toilet and enclosure of the rear courtyard and car space to accommodate a motorcycle parking space, car parking space and storage/plant room.
- Changes to the first floor of the existing building including conversion of the existing bedroom to a lounge/dining room, conversion of the existing sunroom to a kitchen and new rooftop terrace adjoining the new kitchen including awning and privacy screens.

## 3. Site Description

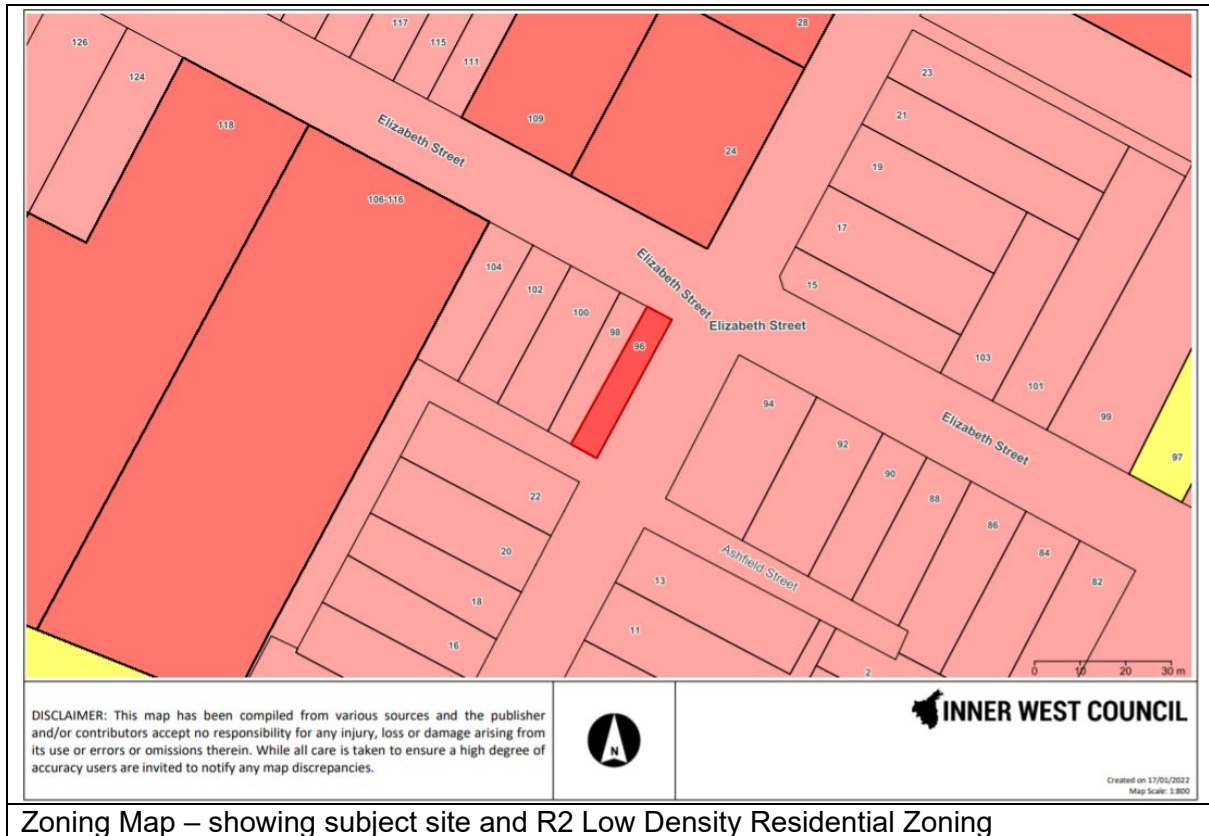
The subject site is located on the southern side of Elizabeth Street, between Alt Street and Benalla Avenue. The site consists of one allotment and is generally rectangular shaped with a total area of 161.51 sqm and is legally described as Lot 2 DP DP229273 or 96 Elizabeth Street Ashfield.

The site has a frontage to Elizabeth Street of 5.23 metres and a secondary frontage to Alt Street of 30.48 metres. The site is affected by an easement including a 0.23 metre wide party wall shared with No. 98 Elizabeth Street.

The site supports a two storey brick building which contains both residential and commercial uses. The adjoining properties support one and two storey residential dwellings.

The subject site is listed as a heritage item. The property is not located within a conservation area. The property is identified as a flood prone lot.

There are no trees located on the subject site and within the vicinity that would be affected by the proposed development.



## 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/2021/0165	Development Application - Change of use to medical centre, alterations and additions to the existing residential unit including the addition of a first floor covered deck.	10/05/2021 - Withdrawn by Applicant
009.2019.00000073.001	PREDA - Change of Uses to Mixed Use, ground floor Medical centre and first Floor Residential. Alteration and Additions including internal fitout and new deck and awning to rear.	13/12/2019 - Advice Letter Issued

**Surrounding Properties - 94 Elizabeth St, Ashfield**

Application	Proposal	Decision & Date
010.2019.00000030.002	Modification - Amendment to approved non-habitable store room including new window and change in materials	01/08/2019 - Approved
010.2019.00000030.001	Development Application - Alterations and additions to existing unit including first floor extension and new carport	20/05/2019 - Approved
010.2017.00000060.001	Development Application - Proposed balustrade and pergola to the existing dwelling.	27/07/2017 - Approved
010.2014.00000200.001	Development Application - residential flat buildings (alts & adds)- Alterations and addition to dwelling/in the existing dual occupancy development including first floor addition	21/10/2014 - Approved

**4(b) Application history**

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

Date	Discussion / Letter / Additional Information
07 October 2021	Council wrote to applicant requesting additional information including: <ul style="list-style-type: none"> <li>- updated floor plans clearly differentiating between existing and proposed works</li> <li>- a revised Flood Risk Management Plan</li> <li>- updated elevations showing the retention of existing public art</li> <li>- revised plans demonstrating that the operation of the medical centre including access is independent to the residential premises</li> <li>- party wall consent.</li> </ul>
28 October 2021	Additional information lodged with Council including updated floor plans, Flood Risk Management Plan and party wall consent.

**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 No. 64 – Advertising and Signage*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

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. Inner West Comprehensive Development Control Plan (DCP) 2016 (IWCDCP 2016) 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 No. 64 - Advertising and Signage (SEPP 64)**

The following is an assessment of the proposed development under the relevant controls contained in *SEPP 64*.

*SEPP 64* specifies aims, objectives, and assessment criteria for signage as addressed below. Schedule 1 of *SEPP 64* specifies assessment criteria for signage relating to character of the area, special areas, views and vistas, streetscape, setting or landscaping, site and building, illumination and safety. The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of *SEPP 64*.

***Signs and Advertising Structures***

The application seeks consent for the erection of the following signage:

- 1 x window sign measuring approximately 1800mm (width) by 1800mm (height) fronting Alt Street reading “Ashfield Denture Clinic 96 Elizabeth St 9799 3223”
- 1 x window sign measuring approximately 1800mm (width) by 1800mm (height) fronting Elizabeth Street reading “Ashfield Denture Clinic 96 Elizabeth St 9799 3223”
- 1 x awning fascia sign fronting Alt Street and Elizabeth Street reading “Tomident Ashfield Denture Clinic”
- 1 x end of awning fascia sign fronting Alt Street and Elizabeth Street reading “Ashfield Denture Clinic”

The quantum and extent of the proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of *SEPP 64*. It is considered sympathetic to the built form and will not appear obtrusive or out of character for the existing commercial building.

**5(a)(iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities.

**5(a)(iv) Ashfield Local Environment Plan 2013 (ALEP 2013)**

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 2013*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 5.21 - Flood Planning
- Clause 6.1 - Earthworks

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R2 - Low Density Residential under the ALEP 2013. The ALEP 2013 defines the development mixed use development comprising:

*medical centre means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.*

and,

*dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile*

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R2 zone.

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

Standard	Proposal	Non Compliance	Complies
<b>Height of Building</b> Maximum permissible: 8.5m	12m	41.18%	No – however variation relates only to the existing building on site which exceeds the permissible height control. The proposal does not include any changes to the height of the existing building and the proposed new structures at the rear of the site are 6.8m in height and comply with the maximum height control under this Clause.
<b>Floor Space Ratio</b>	1.29:1 or	84.99% or	No – refer to Clause 4.6 below

(FSR) Maximum permissible: 0.7:1 or 113.05sqm	209.136sqm	96.10sqm	
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With regard to the proposed FSR variation it should be noted that the existing building on the site currently exceeds the maximum FSR prescribed under Clause 4.4 of the ALEP 2013. The FSR of the existing building on the site is 1.23:1 and the additional gross floor area proposed under this application which relates to the enclosed rear courtyard, accounts for approximately 9.8sqm.

(ii) Clause 4.6 - Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard:

- Clause 4.4 - Floor Space Ratio

The application seeks a variation to the FSR development standard under Clause 4.4 of the ALEP 2013 by 84.99% or 96.10sqm.

Clause 4.6 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 and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the ALEP 2013 below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the ALEP 2013 justifying the proposed contravention of the development standard which is summarised as follows:

- The development is modest in scale and the additional gross floor area is minor and does not contribute to additional bulk or scale.
- The proposed development does not detract from the amenity of the locality or impose a density, bulk or scale that has not already been historically established as a result of the earlier subdivision pattern and buildings of the Victorian period and more recent developments within the vicinity.
- The proposed development does not cause any adverse impact on surrounding development.
- The development does not propose a change to the front setback nor the side setbacks.
- The development does not result in additional load on infrastructure, increase vehicle generation or the requirement for increased parking on the site. The development does not change pedestrian traffic in any way.
- The development increases the amount of private open space on site in a more accessible location with direct access to the residential component of the dwelling.
- The proposed works will provide for improved amenity for the occupants, which promotes good design

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R2 zone, in accordance with Clause 4.6(4)(a)(ii) of the ALEP 2013 for the following reasons:

- a) *To provide for the housing needs of the community within a low-density residential environment.*
  - b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- The development is compatible with the zone objectives as the existing building will continue to be used as a residential dwelling at the first floor.
  - The proposal does not change the current housing provision of the site as it will continue to provide a single residence at the first floor.
  - The proposed variation to the FSR development standard does not render the development incompatible with the zone.
  - The proposal maintains a use on the ground floor that meets the medical needs of residents

It is considered the development is in the public interest because it is consistent with the objectives of the FSR development standard, in accordance with Clause 4.6(4)(a)(ii) of the ALEP 2013 for the following reasons:

- a) *to establish standards for development density and intensity of land use,*
  - b) *to provide consistency in the bulk and scale of new development with existing development,*
  - c) *to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
  - d) *to protect the use or enjoyment of adjoining properties and the public domain,*
  - e) *to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.*
- The proposal is consistent in terms of bulk and scale with the existing building and adjoining development.
  - The proposal is compatible with the Heritage Conservation Area and does not result in any adverse impacts to the streetscape
  - The proposal does not result in adverse impacts to neighbouring properties or the public domain in terms of amenity or visual bulk and scale.
  - The proposed addition is sensitively designed to complement the existing building and is compatible with the prevailing pattern of development along Elizabeth Street and Alt Street.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the ALEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from FSR development standard and it is recommended the Clause 4.6 exception be granted.

(iii) Clause 5.10 - Heritage Conservation



The subject property is listed as an individual heritage item under Part 1 of Schedule 5 of the ALEP 2013. In addition, there are a pair of adjacent houses that are also listed as local heritage items at No. 20-22 Alt Street, Ashfield.

The application was accompanied by information addressing heritage management and impacts on heritage significance of the Item. This documentation was reviewed and considered to be satisfactory however, concerns were raised regarding retention of heritage features and significant fabric, choice of materials and finishes, heritage detailing and damp issues. The following conditions were recommended by Council's Heritage Officer in order to address these concerns:

### **X. Design Change**

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

- a) *Re-instatement of the French Doors at First Floor Level*  
*Multi-paned French Doors are to be installed to the rear terrace. If the examples that were stored on the first floor in 2019 no longer survive, then this form of door should be replicated or salvaged doors of a similar style employed. Additional lighting can be provided by sidelights if the width of the French Doors differs from the width of the existing openings.*
- b) *Signage*  
*The signage to the shop windows should be installed from the interior, to avoid further damage to the shopfronts.*
- c) *Original detailing*  
*Original details such as the terrazzo step to the corner shop and the shop windows and vents above are to be retained, including the security grilles to the shop windows.*
- d) *Screening to the Terrace*  
*The terrace screening is to be redesigned to utilise a similar palette of materials to the main building, including battened fibre cement rather than colourbond and timber rather than aluminium and the roof will need to be insulated if this area is to function as an outdoor living area.*
- e) *Modern Paint Finishes*  
*Modern paint films are not to be utilised on historic masonry surfaces. Existing recent finishes that have bubbled or blistered should be removed and an appropriate breathable paint employed so that the problem does not continue.*
- f) *Kitchen Fit Out*  
*To prevent damp from the party wall causing rot in the kitchen cabinets the kitchen fit out should be set off from the walls by at least 100mm and employ a waterproof (villaboard or similar) dado with steel fixings, with a shelf on top. One panel should be removable to allow inspection.*

Overall, it is considered that the proposal is acceptable, subject to the above conditions being imposed on any future consent. The application satisfies the objectives and controls of this Clause and is therefore, recommended for approval.

#### (iv) Clause 5.21 - Flood Planning

The subject site is identified as a flood control lot. The application was accompanied by a flood risk management report. This document was reviewed by Council's Development

Engineer and was found to be unsatisfactory with regard to addressing the flood affection of the site and the sensitive use being proposed (medical centre).

A revised flood risk management report was subsequently submitted by the applicant which addressed the above concerns. As such, the proposal is considered acceptable, subject to conditions which are included in the recommendation.

5(b) 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 amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan 2016 (IWCDCP 2016).

IWCDCP2016	Compliance
<b>Section 1 – Preliminary</b>	
B – Notification and Advertising	Yes
<b>Section 2 – General Guidelines</b>	
<b>A – Miscellaneous</b>	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
3 - Flood Hazard	Yes – refer to discussion under Section 5(a)(v)
4 - Solar Access and Overshadowing	Yes
5 - Landscaping	Yes – there is currently no landscaping on site and the proposal maintains the existing situation.
6 - Safety by Design	Yes
7 - Access and Mobility	Yes
8 - Parking	No – see discussion below
9 - Subdivision	N/A
10 - Signs and Advertising Structures	Yes – refer to discussion under Section 5(a)(ii)
11 - Fencing	Yes
12 - Telecommunication Facilities	N/A
13 - Development Near Rail Corridors	Yes
14 - Contaminated Land	Yes
15 - Stormwater Management	Yes
<b>B – Public Domain</b>	
1 – Active Street Frontage	N/A
2 – Awning to Buildings Over Public Land	Yes
3 – Street Trees	N/A
4 – Wind Effect to Buildings	N/A

5 – Reflectivity of Buildings	N/A
6 – Public Domain Plan	N/A
7 – Public Footways	N/A
8 – External Lighting	N/A
9 – Undergrounding of Services	N/A
10 – Public Art	No – see discussion below
<b>C – Sustainability</b>	
1 – Building Sustainability	Yes
2 – Water Sensitive Urban Design	Yes
3 – Waste and Recycling Design & Management Standards	Yes
4 – Tree Preservation and Management	Yes
5 - GreenWay	N/A
6 – Tree Replacement and New Tree Planting	N/A
<b>D – Precinct Guidelines</b>	N/A
<b>E1 – Heritage items and Conservation Areas (excluding Haberfield)</b>	
1 – General Controls	Yes
2 – Heritage Items	Yes – see discussion below and under Section 5(a)(iii).
3 – Heritage Conservation Areas (HCAs)	N/A
4 – Building Types and Building Elements within HCAs	N/A
5 – Retail and Commercial Buildings	Yes – see discussion below and under Section 5(a)(iii).
6 – Apartments and Residential Flat Buildings	N/A
7 – Subdivision and lot consolidation affecting heritage items or in heritage conservation areas	N/A
8 - Demolition	Yes
9 – Heritage Conservation Areas, Character Statements and Rankings	Yes
<b>E2 – Haberfield Heritage Conservation Area</b>	N/A
<b>F – Development Category Guidelines</b>	
1 – Dwelling Houses and Dual Occupancy	NA
2 – Secondary Dwellings	N/A
3 – Neighbourhood Shops and Shop Top Housing in R2 zones	Yes – see discussion below
4 – Multi Dwelling Housing	N/A
5 – Residential Flat Buildings	N/A
6 – Boarding Houses and Student Accommodation	N/A
7 – Residential Care Facilities	N/A
8 – Child Care Centres	N/A
9 – Drive-in Take Away Food Premises	N/A
10 – Sex Industry Premises	N/A
11 – Car Showrooms	N/A

The following provides discussion of the relevant issues:

Chapter A – Part 8 Parking

A total of 4 parking spaces are required for the proposed medical centre use and the proposal results in a shortfall of 3 spaces. The proposed variation is considered acceptable for the following reasons:

- The proposal seeks alterations and additions to an existing heritage listed building to formalise the existing commercial ground floor and residential first floor arrangement on the site.
- The existing single car parking space is retained on the site and a motorcycle space is provided.
- The footprint of the site remains unchanged, and the proposal does not seek additional gross floor area associated with habitable areas.
- The shortfall in parking will not result in adverse impacts to existing on-street parking within the vicinity or exacerbate the existing traffic conditions in the area given the limited size and scope of the ground floor medical centre.
- The site is located within walking distance to public transport and appropriately located to encourage alternative forms of transport.

As such, the proposal is considered acceptable and satisfies this Part of the IWCDCP 2016 and is recommended for approval.

#### Chapter B – Part 10 Public Art

The proposal includes the removal of existing public art along the Alt Street frontage, in place of business identification signage. This is not considered appropriate within the context of the locality or the existing heritage building on the subject site.

Additional information was requested from the applicant for the proposal to be amended to retain all existing public art along the Alt Street Frontage. Alternatively, that any new public art be appropriate and relevant to the context of the area.

Amended plans were subsequently submitted however did not include any changes to the proposed business identification signage along this frontage which is considered to be contrary to objectives of Chapter B of the Inner West Comprehensive Development Control Plan 2016 (IWCDCP 2016) and Ashfield Council Public Art Policy 2017.

As such, a condition is recommended for the proposed wall art / business identification signage along the Alt Street elevation to be deleted and for all existing public art to be retained.

#### Chapter E1 – Heritage items and Conservation Areas (excluding Haberfield)

The proposal involves alterations and addition to an existing heritage item to facilitate a medical centre at the ground floor and a residential dwelling at the first floor.

As discussed previously, the application was accompanied by information addressing heritage management however, concerns were raised regarding the retention of heritage features and significant fabric, choice of materials and finishes, heritage detailing and damp issues. Suitable conditions are recommended to address these concerns and ensure that the original fabric and features of the Heritage item are retained, and the proposed additions are complimentary to the existing building.

With regard to the proposed medical centre at the ground floor, suitable conditions are also recommended to ensure that the proposed signage is appropriately installed to avoid further damage building and to retain the original detailing of the shopfront.

As such, the proposal is considered acceptable, subject to conditions, and satisfies this Part of the IWCDCP 2016 and is recommended for approval.

#### Chapter F – Part 3 Neighbourhood Shops and Shop Top Housing in R2 zones

The proposal seeks to change the use of the existing commercial area at the ground floor to a medical centre and carry out alterations and additions to the existing residential dwelling at the first floor.

##### *Dwelling*

The proposal seeks to retain the existing first floor residential dwelling and convert an existing sunroom to a laundry and kitchen with access to a rear terrace.

As discussed previously, the proposal is considered acceptable with regard to Heritage significance and the works will not detract from the existing Heritage item. The proposed first floor terrace is sympathetic with the prevailing pattern of development along Alt Street and does not result in adverse bulk and scale impacts when viewed from the street. The proposed terrace seeks to improve the amenity to the residential dwelling by providing a useable area of private open space directly accessible from the living areas which receives adequate solar access and ventilation. This is considered to be a positive outcome given the limitations of providing private open space at the ground floor of the site.

As such, the proposal is considered acceptable with regard to this Part of the IWCDCP 2016 and recommended for approval.

##### *Hours of operation*

The proposed seeks consent for the following hours of operation:

- Monday to Friday: 8:00am to 6:00pm
- Saturday: 8:00am to 2:00pm
- Sunday: No service

The proposed hours are considered acceptable within the context of the site and are unlikely to result in adverse impacts to adjoining properties or the public domain.

##### *Parking*

As discussed previously, the proposal results in a shortfall of parking however, given the scope of the proposed works, context of the site and proximity to public transport networks, the shortfall is considered acceptable in this instance and will not result in adverse traffic or parking impacts within the locality.

##### *Design and Amenity*

The proposed ground floor medical centre has been appropriately designed to minimise amenity impacts to adjoining properties and the public domain and will not result in adverse noise, light pollution, privacy or overshadowing impacts. The proposed changes have been sensitively designed to compliment the existing heritage building and the ground floor premises makes a positive contribution to the streetscape and public domain in terms of signage, finishes, detailing and retention of original fabric.

##### *Operation / Use of Medical Centre*

Concerns were raised with the applicant regarding the application as originally lodged and the ongoing viability and operation of the medical centre with regard to the use and access

of the residential dwelling. Changes were requested to ensure that the operation of the medical centre including access, would be independent of the residential premises.

Additional information was submitted which responded to Council's concerns including relocating the laundry to the first floor to be used solely by the residential dwelling. However, it is still likely that the day-to-day operation of the medical centre would conflict with the access and use of the residential dwelling as the two uses are not completely independent of one another as internal stairwells are maintained.

Given the existing layout of the Heritage listed building it is considered that further amendments to the internal layout of the building would result in loss of original fabric and degradation of the Heritage Item. Furthermore, it is noted that the current owners intend to occupy the entire building and that the first floor residence is not intended to be rented out as a separate component.

As such, a condition is included in the recommendation requiring the entire building to be used as a single occupancy to tie the two uses together,, unless an application is made with Council.

Overall, the proposed ground floor medical centre and first floor residential dwelling are considered acceptable and satisfy the provisions of the Part of the IWCDP 2016. The application is therefore recommended for approval.

#### 5(d) The Likely Impacts

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

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

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

#### 5(f) Any submissions

The application was notified in accordance with the 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 proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Building Certification – Acceptable subject to conditions
- Development Engineering – Acceptable subject to conditions
- Health – Acceptable subject to conditions
- Heritage – Acceptable subject to conditions
- Waste – Acceptable subject to conditions

### 6(b) External

N/A

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal given the proposal retains the existing commercial ground floor and residential first floor on the site and seeks alterations and additions to formalise this arrangement.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

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

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

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Ashfield Local Environmental Plan 2013* to vary Clause 4.4 of the LEP. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- 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*, grant consent to Development Application No. DA/2021/0653 for alterations and additions to an existing building which includes the fit out and use of the ground floor as a medical centre and additions to the first floor residence including a terrace at 96 Elizabeth Street ASHFIELD subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### 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
DA02 Rev 3	Floor Plans	26/10/2021	Machinations
DA03 Rev 3	Roof and Sections	26/10/2021	Machinations
DA04 Rev 3	Elevations	26/10/2021	Machinations
DA05 Rev 3	Elevations	26/10/2021	Machinations
DA07 Rev 3	Materials and Colours Schedule	26/10/2021	Machinations
DA07A Rev 3	Signage	26/10/2021	Machinations
DA08 Rev 3	Concept Stormwater Management Plan	26/10/2021	Machinations
0745-FR-B-01	Flood Risk Management Plan	25/10/2021	Broadcrest Consulting Pty Ltd
-	Plan of Management	22/02/2021	Tomident Pty Ltd T/A Ashfield Denture Clinic

As amended by the conditions of consent.

#### DESIGN CHANGE

##### 2. Design Change

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

- a. Re-instatement of the French Doors at First Floor Level  
Multi-paned French Doors are to be installed to the rear terrace. If the examples that were stored on the first floor in 2019 no longer survive, then this form of door should be replicated or salvaged doors of a similar style employed. Additional lighting can be provided by sidelights if the width of the French Doors differs from the width of the existing openings.
- b. Original detailing  
Original details such as the terrazzo step to the corner shop and the shop windows and vents above are to be retained, including the security grilles to the shop windows.
- c. Screening to the Terrace  
The terrace screening is to be redesigned to utilise a similar palette of materials to the main building, including battened fibre cement rather than colourbond and timber rather than aluminium and the roof will need to be insulated if this area is to function as an outdoor living area.
- d. Modern Paint Finishes



Modern paint films are not to be utilised on historic masonry surfaces. Existing recent finishes that have bubbled or blistered should be removed and an appropriate breathable paint employed so that the problem does not continue.

- e. Kitchen Fit Out  
To prevent damp from the party wall causing rot in the kitchen cabinets the kitchen fit out should be set off from the walls by at least 100mm and employ a waterproof (villaboard or similar) dado with steel fixings, with a shelf on top. One panel should be removable to allow inspection.
- f. Signage  
The signage to the shop windows is to be installed from the interior, to avoid further damage to the shopfronts.
- g. Wall Art  
The proposed wall art located on the South-Eastern (Alt Street) Elevation is deleted and all existing public art is retained.

**FEES**

**3. Security Deposit - Custom**

Prior to the commencement of demolition works or prior to the 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.

<b>Security Deposit:</b>	\$2254.00
<b>Inspection Fee:</b>	\$241.50

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

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

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

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

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

**4. Long Service Levy**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed

rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

### **GENERAL CONDITIONS**

#### **5. Separation of Commercial and Residential Waste and Recycling**

The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained.

#### **6. 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.

#### **7. 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.

#### **8. Standard Street Tree Protection**

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

#### **9. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

#### **10. Works Outside the Property Boundary**

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

### **PRIOR TO ANY DEMOLITION**

#### **11. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

#### **12. Dilapidation Report**

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

adjoining property at No. 98 Elizabeth Street, Ashfield to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

### **13. Advising Neighbours 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.

### **14. 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**

### **15. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

### **16. Stormwater Drainage System – Minor Developments (OSD is not required)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank, by gravity to the kerb and gutter of a public road;
- b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- c. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm event. Major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank;
- e. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- f. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- g. The design must make provision for the natural flow of stormwater runoff from adjacent property;
- h. No nuisance or concentration of flows to other properties;
- i. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- j. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- k. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;

- l. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- m. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; and
- n. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

#### 17. Flood Affected Site

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer that the works comply with the following specific requirements:

- a. All electrical equipment and wiring must be waterproofed or installed at or above RL 18.35 m AHD;
- b. A structural engineer's certificate must be submitted stating that the proposed building has been designed to withstand the forces of flood water, debris and buoyancy up to the PMF level;
- c. The existing ground levels throughout the site must be maintained so as not to alter the existing overland flow path. Details of all obstructions or changes in level within the overland flow paths must be detailed on the plan; and
- d. Any new fencing within the overland flow path must be of an open type so as to allow for the free flow of water throughout the site so as to maintain existing flows.

#### 18. Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The Plan must be prepared/amended to make provision for the following:

- a. The plan must be generally in accordance with the recommendations of the Flood Risk Management Plan prepared by Broadcrest Consulting Pty Ltd and dated 25 October 2021;
- b. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
  - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris;
  - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections;
  - iii. Flood warning signs/depth indicators for areas that may be inundated;
  - iv. A flood evacuation strategy; and
  - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- c. All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below:
  - i. Building Code of Australia;
  - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level;

- iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood; and
- iv. Flood hazard level (FHL) Flood Planning Level (FPL).

#### **19. Engineering Design - Structural Engineer Plans and Certification**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that incorporate the following recommendations of the Flood Risk Management Plan prepared by Broadcrest Consulting Pty Ltd and dated 25 October 2021.

The design must be prepared to make provision for the following:

- a. Structural integrity of all structures from immersion and/or impact of velocity and debris; and
- b. Waterproofing works, where applicable.

#### **20. Party Walls**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Structural Certificate from a practising structural engineer which verifies that the structural integrity of the existing "Party Walls" are adequate to accept the additional loads imposed thereon by the proposal. A copy of the Structural Certificate must be provided to all owners of the party wall/s.

#### **21. 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.

#### **22. 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**

#### **23. Documentation of Demolition and Construction Waste**

All waste docketts from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

#### **24. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);

- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

"Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

#### **25. Survey Prior to Footings**

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **26. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

#### **27. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

#### **28. Flood Risk Management Plan - Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified practising Civil Engineer that all aspects of the Flood Risk Management Plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

**29. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

**ON-GOING**

**30. Bin Storage**

All bins are to be stored within the site.

**31. Documentation of Businesses Waste Services**

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

**32. Flood Risk Management Plan**

The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

**33. Hours of Operation**

- a. The hours of operation of the premises must not exceed the following:

Day	Hours
Monday to Friday	8:00am to 6:00pm
Saturday	8:00am to 2:00pm
Sunday	No Service

**34. Ongoing Use**

The building shall be occupied by the same tenant on the ground floor medical centre and the Class 4 residential unit above as the fire egress relies on a single tenancy for the building. As such, the building (comprising all floor levels) must only be occupied by one or joint owner, lessee, tenant, or other occupier to the exclusion of any other owner, lessee, tenant, or other occupier. The building (comprising all floor levels -ground floor medical centre and first floor class 4 residential unit) must not, at any time, be occupied in any other capacity.

**ADVISORY NOTES**

**Permits**

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 veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

**Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

**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.

**Disability Discrimination Access to Premises Code**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

**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.

**Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a. Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b. Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

**Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular*

*Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

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

**Street Numbering**

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Attachment B – Plans of proposed development

### SITE PLAN + WASTE MANAGEMENT PLAN + SOIL EROSION & SEDIMENTATION CONTROL PLAN

**WASTE MANAGEMENT PLAN + SOIL EROSION & SEDIMENTATION CONTROL PLAN**

THIS PLAN IS BASED ON SURVEY COMPLETED BY SURVEYOR [NAME] ON [DATE]. COMMENTS ARE FOR SYDNEY BASIN.

STORM & LEAK WASTEWATER: FLOW TO WASTE TREATMENT PLANT.

"Sediment Basins" - Constructed above ground in sunny area.

**LEGEND - WASTE MANAGEMENT**

- BOUNDARY
- GROUND LINE (ASHP/PI)
- BUILDING ABOVE
- BUILDING BELOW
- SEDIMENT FENCE
- SEWER LINE (ASPECT)
- ELECTRICAL LINE (ASPECT)
- CAS LINE (ASPECT)

**LEGEND - LINE TYPES**

- BOUNDARY
- GROUND LINE (ASHP/PI)
- BUILDING ABOVE
- BUILDING BELOW
- SEDIMENT FENCE
- SEWER LINE (ASPECT)
- ELECTRICAL LINE (ASPECT)
- CAS LINE (ASPECT)

**PROPOSED DEVELOPMENT CONTROL REQUIREMENTS & NOTES**

THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE LOCAL COUNCIL AND THE NSW GOVERNMENT.

THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE LOCAL COUNCIL AND THE NSW GOVERNMENT.

THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE LOCAL COUNCIL AND THE NSW GOVERNMENT.

**COMMITMENT**

The applicant is committed to the development of the site in accordance with the approved plans and conditions of the DA.

The applicant is committed to the development of the site in accordance with the approved plans and conditions of the DA.

The applicant is committed to the development of the site in accordance with the approved plans and conditions of the DA.

**CLIENT**

TO MIDCENT

**PROJECT ADDRESS**

96 ELIZABETH STREET  
ASHFIELD NSW 2131

**PROJECT STATUS**

DEVELOPMENT APPLICATION

**NO**

3

4

5

6

7

8

9

**DESCRIPTION**

PROJECT INTENT

DESIGN & CONSTRUCTION

DRAFT DA ISSUE

DA ISSUE REVISED

DA ISSUE REVISED

DA ISSUE REVISED

DA ISSUE REVISED

**DATE**

20/07/2021

22/07/21

24/08/21

20/08/21

21/08/21

21/08/21

**PROJECT NUMBER**

VAR19

**DATE**

JUN21

**SCALE**

As indicated

**DRAWN BY**

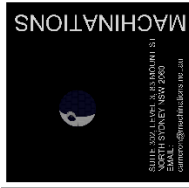
CR

**CHECKED BY**

CR

**DA01**

KU 80 955 L2020192



**COMPONENT:** ARCHITECTURAL PLAN OF MAINTENANCE, ALTERATIONS, ADDITIONS AND REPAIRS TO EXISTING DEVELOPMENT.  
**NOTES:** 1. ALL WORK TO BE COMPLETED IN ACCORDANCE WITH THE LOCAL GOVERNMENT'S DEVELOPMENT CONTROL BY-LAWS.  
 2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE LOCAL GOVERNMENT.  
**REVISIONS:** 1. 27/01/2020 - 1st issue - Issue for Council.  
 2. 02/02/2020 - 2nd issue - Issue for Council.  
**REVISIONS TO THE ARCHITECT APPROVED:** 1. 02/02/2020 - 2nd issue - Issue for Council.  
 2. 02/02/2020 - 2nd issue - Issue for Council.

**Client's Name**  
 TOMIDENT  
**Project Address**  
 96 ELIZABETH STREET  
 ASHFIELD NSW 2131

**Project Status**  
 DEVELOPMENT APPLICATION


No.	Description	Date
4	MAINTENANCE & ALTERATIONS	20/21/20
5	ISSUE FOR COUNCIL	20/21/20
6	MATERIALS & COLOURS	20/22/20
7	DA ISSUE	20/22/20
8	ISSUE FOR COUNCIL	20/22/20
9	REVISIONS & MODIFICATIONS	21/02/20
10	DA ISSUE REV 01	21/02/20
11	DA ISSUE REV 02	21/02/20

**FLOOR PLANS**  
 Project number: VART19  
 Date: JUN21  
 Drawn by: CR  
 Checked by: CR  
**DA02**  
 Scale: 1 : 100



1A DA GROUND FLOOR - EXISTING 1:20  
 1B DA GROUND FLOOR - PROPOSED 1:100  
 2A DA FIRST FLOOR - EXISTING 1:100  
 2B DA FIRST FLOOR - PROPOSED 1:100  
 Scale: 0 5 10 m

R:\44059727\2019\05\09\19



**MACHINATIONS**  
SUITE 302, LEVEL 3, 81 ROCKWELL ST  
ROCKHURST NSW 2068  
CAMERON@MACHINATIONS.NET.AU

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**NOTES:**  
1. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
2. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
3. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
4. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
5. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
6. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
7. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
8. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
9. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
10. This drawing is to be read in conjunction with the DA and any other documents referred to herein.

**COMMENTS:**  
1. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
2. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
3. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
4. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
5. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
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8. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
9. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
10. This drawing is to be read in conjunction with the DA and any other documents referred to herein.

**REVISIONS:**  
1. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
2. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
3. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
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8. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
9. This drawing is to be read in conjunction with the DA and any other documents referred to herein.  
10. This drawing is to be read in conjunction with the DA and any other documents referred to herein.

**PROJECT STATUS:**  
Project Name: TOMIDENT  
Project Address: 96 ELIZABETH STREET, ASHFIELD NSW 2131

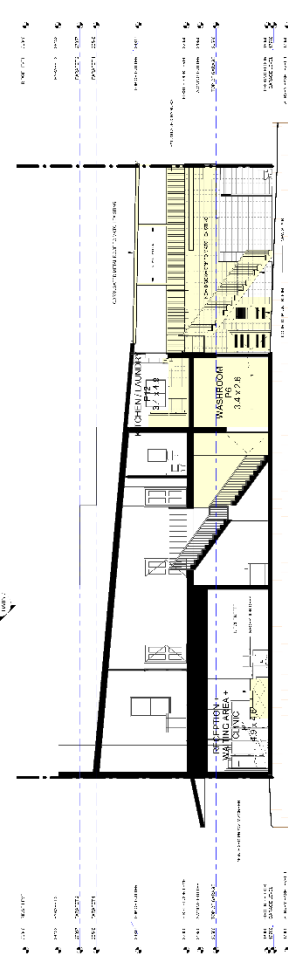
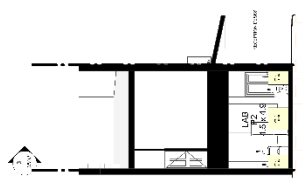
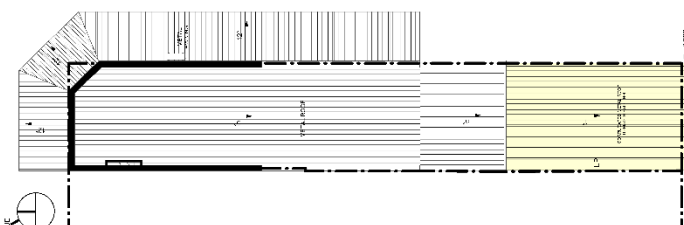
**DEVELOPMENT APPLICATION**

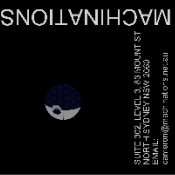
No.	Description	Date
4	PRELIMINARY COLOURS 2017/5	
5	DRAFT DA ISSUE	2017/5
6	FINAL COLOURS 2017/5	
7	AMENDMENTS	
8	DA ISSUE REVISED	2017/5
9	ROOF & NOTATIONS	2/18/25
10	DA ISSUE REVISED	2/18/25

Sheet Name: ROOF & SECTIONS

Project number: VART19  
Date: JUN21  
Drawn by: CR  
Checked by: CR

DA03  
Scale: 1 : 100





**SURTELL ENGINEERING & ARCHITECTURE**  
 30/11-13/15 SYDNEY NSW 2000  
 02 9550 1234  
 www.machinations.com.au

**COMPONENTS:** ARCHITECTURE, ENGINEERING, SURVEYING, LANDSCAPE ARCHITECTURE, INTERIOR DESIGN, PROJECT MANAGEMENT, CONSTRUCTION MANAGEMENT, PROJECT FINANCIAL MANAGEMENT, PROJECT RISK MANAGEMENT, PROJECT SCHEDULING, PROJECT REPORTING, PROJECT COMMUNICATIONS, PROJECT COLLABORATION, PROJECT INNOVATION, PROJECT SUSTAINABILITY, PROJECT RESILIENCE, PROJECT FLEXIBILITY, PROJECT ADAPTABILITY, PROJECT SCALABILITY, PROJECT SECURITY, PROJECT COMPLIANCE, PROJECT ETHICS, PROJECT INTEGRITY, PROJECT TRANSPARENCY, PROJECT ACCOUNTABILITY, PROJECT RESPONSIBILITY, PROJECT COMMITMENT, PROJECT PASSION, PROJECT ENTHUSIASM, PROJECT ENERGY, PROJECT POSITIVITY, PROJECT OPTIMISM, PROJECT CONFIDENCE, PROJECT COURAGE, PROJECT BRAVERY, PROJECT PERSEVERANCE, PROJECT DETERMINATION, PROJECT RESOLVE, PROJECT COURAGE, PROJECT BRAVERY, PROJECT PERSEVERANCE, PROJECT DETERMINATION, PROJECT RESOLVE.

**CONTACTS:**  
 SURTELL ENGINEERING & ARCHITECTURE  
 30/11-13/15 SYDNEY NSW 2000  
 02 9550 1234  
 www.machinations.com.au

**NOTES:**  
 1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
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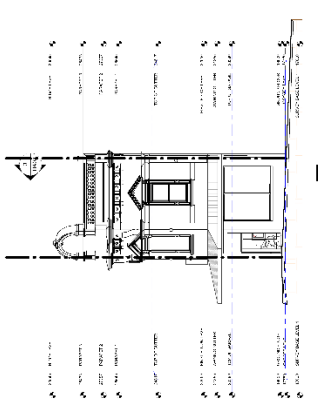
**TOMIDENT**  
 Project Address:  
**96 ELIZABETH STREET  
 ASHFIELD NSW 2131**

**DEVELOPMENT APPLICATION**

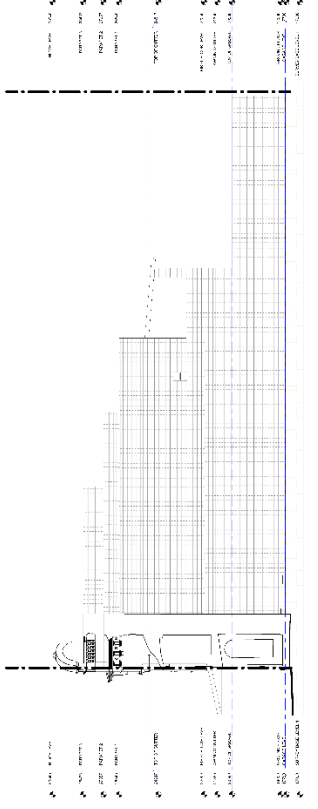
No.	Description	Date
3	DRAFT DA ISSUE & SIGNAGE	20/02/20
4	DRAFT DA ISSUE & SIGNAGE	20/02/20
5	DRAFT DA ISSUE & SIGNAGE	20/02/20
6	DRAFT DA ISSUE & SIGNAGE	20/02/20
7	DA ISSUE REVISED	20/02/20
8	DA ISSUE REVISED	20/02/20
9	DA ISSUE REVISED	20/02/20
10	DA ISSUE REVISED	21/03/20

Sheet Name:  
**ELEVATIONS**


Project Number: **VARI19**  
 Date: **JUN21**  
 Drawn By: **CR**  
 Checked By: **CR**  
**DA04**  
 Scale: **1 : 100**



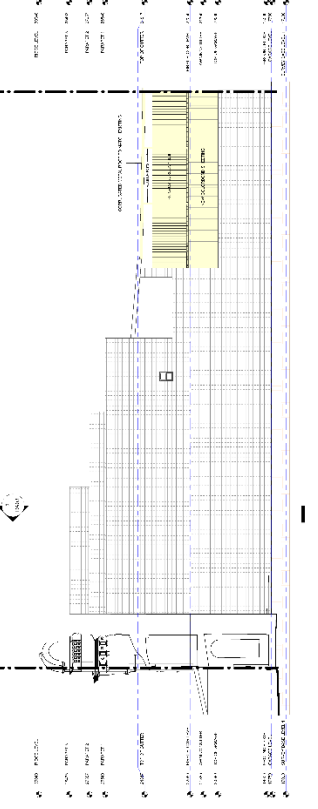
**1 DA NORTH-EAST ELEVATION - EXISTING & PROPOSED**  
 1 : 100




**2 DA NORTH-WEST ELEVATION - EXISTING**  
 1 : 100

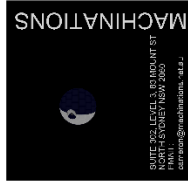


**3 DA NORTH-EAST ELEVATION - PROPOSED**  
 1 : 100



**3 DA NORTH-WEST ELEVATION - PROPOSED**  
 1 : 100





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**NOTES:**  
 1. Refer to the site plan for the location of the building.

**DISCLAIMER:**  
 MACHINATIONS does not warrant the accuracy of the information provided in this document and is not responsible for any errors or omissions. The user of this document should verify the accuracy of the information provided and consult with their professional advisors.

**CONTRACT:**  
 This document is prepared in accordance with the contract between MACHINATIONS PTY LTD and the client.

**DATE:**  
 2012/06/12

**PROJECT:**  
 96 ELIZABETH STREET  
 ASHFIELD NSW 2131

**TO IDENTIFY**  
 Project Address:  
**96 ELIZABETH STREET  
 ASHFIELD NSW 2131**

**DEVELOPMENT APPLICATION**

No.	Description	Date
1	DRAFT DA ISSUE	2012/06
2	MATERIALS & COLOURS	2012/05
3	DA ISSUE	2012/05
4	MATERIALS & COLOURS	2012/05
5	DA ISSUE	2012/05
6	MATERIALS & COLOURS	2012/05
7	DA ISSUE	2012/05
8	DA ISSUE	2012/05
9	DA ISSUE	2012/05
10	DA ISSUE	2012/05

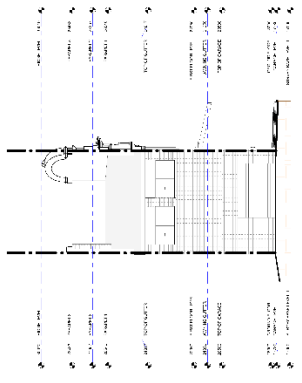
Sheets:  
 1: 1:100

Project Number: **VARI19**  
 Date: **JUN21**  
 Drawn by: **CR**  
 Checked by: **CR**

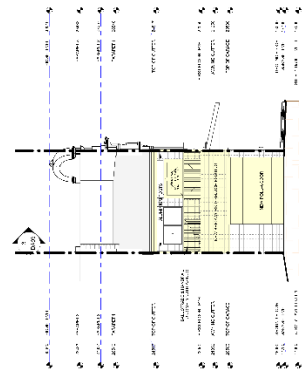
**DA05**

Scale: **1:100**

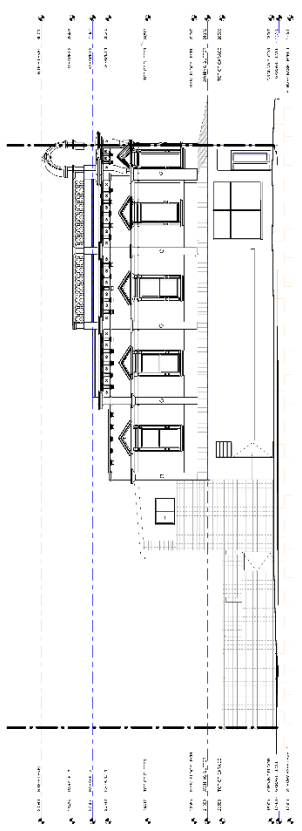
26/01/2021 05:56:12 PM



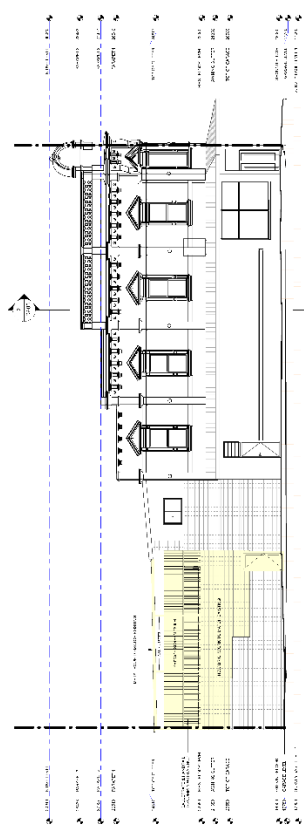
**3 DA SOUTH-WEST ELEVATION-EXISTING**  
 1:100



**4 DA SOUTH-WEST ELEVATION-PROPOSED**  
 1:100




**1 DA SOUTH-EAST ELEVATION-EXISTING**  
 1:100



**2 DA SOUTH-EAST ELEVATION-PROPOSED**  
 1:100





SUITE 302 - LEVEL 3, 88 MOUNT ST  
MURTH STONEY NSW 2050  
contact@machinations.com.au

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LEVELS:  
1. GROUND LEVEL  
2. FIRST FLOOR LEVEL  
3. SECOND FLOOR LEVEL  
4. ROOF LEVEL

DATE: 20/10/2023  
DRAWN BY: [Name]  
CHECKED BY: [Name]

PROJECT NO: [Number]  
SHEET NO: [Number]

CLIENT: [Name]  
PROJECT ADDRESS: [Address]

PROJECT STATUS: [Status]

DEVELOPMENT APPLICATION

NO. Description Date  
1 DRAFT DA ISSUE 20/10/23  
2 REVISED DA ISSUE 20/10/23  
3 DRAFT DA ISSUE 20/10/23  
4 MATERIALS & COLOURS 20/10/23  
5 MATERIALS & COLOURS 20/10/23  
6 REVISED DA ISSUE 20/10/23  
7 DA ISSUE REVISED 20/10/23  
8 DA ISSUE REVISED 20/10/23  
9 DA ISSUE REVISED 20/10/23

Project number: VART19  
Date: JUN21  
Drawn by: CR  
Checked by: CR  
Status: DA06  
As indicated

**COMPLIANCE TABLE:**

SITE AREA = 161.51M2  
BUILDING FOOTPRINT = 114.90M2  
GROSS FLOOR AREA = 194.10M2  
(96.90M2 + 97.20M2)  
MAXIMUM FSR (0.7:1) = 113.05M2  
EXISTING FSR (1.2:1) = 194.10M2  
PLUS: YARD AREA = 6.80M2  
PROPOSED FSR (1.24:1) = 200.90M2  
BUILDING HEIGHT (MAX) = 08.50M  
EXISTING = 12.58M  
PROPOSED = 12.58M  
CAR PARKING - 1 SPACE PER 25SQM  
CAR PARKING REQUIRED = 7.76  
CAR PARKING ONSITE = 1 x CAR

**LEGEND - COMPLIANCE**

1:50

- BUILDING FOOTPRINT
- 1:100M SPACED (1:1:10)
- ORIGIN LINE AREA
- YARD AREA
- NEW BUILDINGS AREA
- STORAGE & GARAGE AREAS

**COMPLIANCE - GROUND FLOOR** 1:1:50

**COMPLIANCE - FIRST FLOOR LEVEL** 2:1:100

10 m

Proj 9: 2019-2020-2021-2022

**MACHINATIONS**  
 SUITE 302 LEVEL 3/8 MOUNT ST  
 DAIRY POINT NSW 2202  
 carl.mccormack@machinations.net.au

Information for the applicant is available on the MACHINATIONS PPT CD. This CD will be issued, together with the MACHINATIONS PPT CD, to the applicant. The CD contains the following information:  
**LEVELS:** The levels of the building and the site.  
**DIMENSIONS:** The dimensions of the building and the site.  
**NOTES:** The notes to the drawings.  
**REFERENCES:** The references to the drawings.  
**REVISIONS:** The revisions to the drawings.  
**APPENDICES:** The appendices to the drawings.

**NOTICE TO THE APPLICANT:**  
 All information, drawings & building is to be used for the purpose of the application only. It is not to be used for any other purpose without the written consent of MACHINATIONS Pty Ltd.

**WARNING TO THE APPLICANT:**  
 MACHINATIONS Pty Ltd is not responsible for the accuracy of the information provided in this document. It is the responsibility of the applicant to verify the accuracy of the information provided in this document.

**CLIENT'S NAME:** TOMIDENT  
**PROJECT ADDRESS:** 96 ELIZABETH STREET ASHFIELD NSW 2131

**Project Status:** DEVELOPMENT APPLICATION

No.	Description	Date
3	DA07 MATERIALS & COLOURS	2019/09
4	MATERIALS & COLOURS	2019/09
5	DA07 MATERIALS & COLOURS	2019/09
6	MATERIALS & COLOURS	2019/09
7	DA ISSUE AMENDMENTS	2019/09
8	DA ISSUE	2019/09
9	DA ISSUE	2019/09
10	DA ISSUE	2019/09

**Project Name:** MATERIALS & COLOURS SCHEDULE

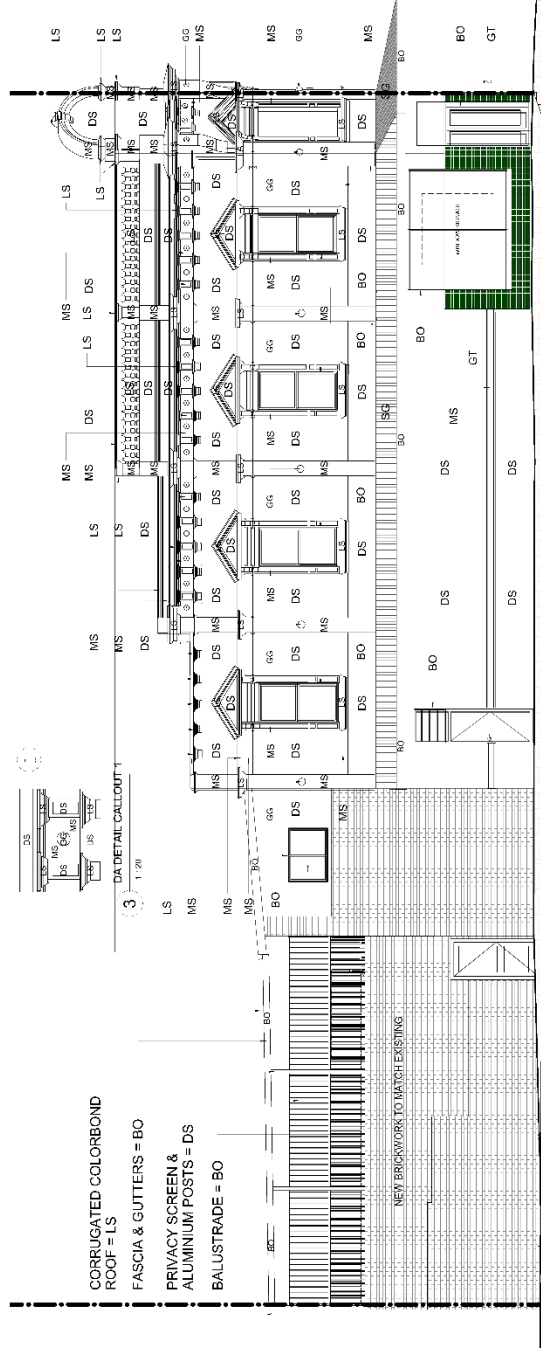
**Project number:** VART19  
**Date:** JUN21  
**Drawn by:** CR  
**Checked by:** CR  
**Scale:** DA07  
 As indicated

**MATERIALS & COLOURS SCHEDULE:**


**COLOURS:**  
 BLANK WALLS = DARK STONE  
 CORNER ELEMENTS (CORNICE, CORBEL, LINCEPIZZ, ARCHITRAVES) = MIDSTONE  
 HORIZONTAL ELEMENTS (CORNICE, CORBEL, LINCEPIZZ, ARCHITRAVES) = MIDSTONE  
 DETAIL ELEMENTS (COLUMN-CAPITALS, BALUSTRADE-KEYSTONES) = LIGHT STONE  
 WINDOW LINTELS & SILLS = LIGHT STONE  
 WINDOW SILL & SILL CASING = LIGHT STONE  
 DOOR & WINDOW FRAMES = BLACK OLIVE  
 AWNING/TERRACE ROOF = LIGHT STONE  
 PRIVACY SCREEN & POSTS = DARK STONE  
 BALUSTRADE, FASCIA & GUTTERS = BLACK OLIVE

**WALL TILES:**  
 ITALIAN DARK GREEN CERAMIC VITRIFIED GLOSS CRACKLE TILE  
 (150MM X 75MM) - HERITAGE TILE CO

NOTE: PAINT COLOURS - DULUX RANGE & TILES - HERITAGE TILE CO



DA SOUTH-EAST ELEVATION - MATERIAL & COLOURS  
 1 / 1-88



**MACHINATIONS**  
ARCHITECTURAL, INTERIOR & EXTERIOR DESIGN  
15/151 BROWN STREET, SYDNEY NSW 2010  
02 9550 1234  
www.machinations.com.au

The Architect's professional liability insurance policy covers the Architect's liability for negligence in the performance of his or her professional duties. It does not cover the Architect's liability for other causes of loss or damage. The Architect's professional liability insurance policy does not cover the Architect's liability for other causes of loss or damage. The Architect's professional liability insurance policy does not cover the Architect's liability for other causes of loss or damage.

**NOTES:**  
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.  
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.  
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.  
4. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.  
5. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.  
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9. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.  
10. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.

**PROJECT NAME**  
TOMBENT

**PROJECT ADDRESS**  
96 ELIZABETH STREET  
ASHFIELD NSW 2131

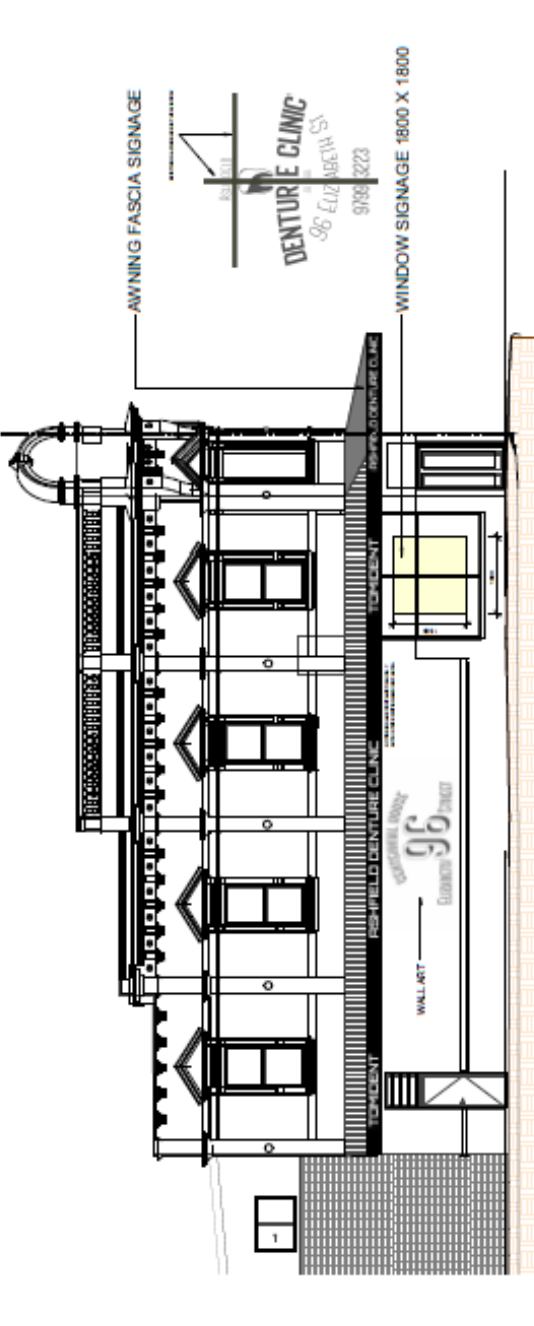
**DEVELOPMENT APPLICATION**

No.	Description	Date
1	AWNING FASCIA SIGNAGE	2023.06
2	WINDOW SIGNAGE	2023.06
3	AWNING FASCIA SIGNAGE	2023.06
4	WINDOW SIGNAGE	2023.06
5	AWNING FASCIA SIGNAGE	2023.06
6	WINDOW SIGNAGE	2023.06
7	AWNING FASCIA SIGNAGE	2023.06
8	WINDOW SIGNAGE	2023.06
9	AWNING FASCIA SIGNAGE	2023.06
10	WINDOW SIGNAGE	2023.06

**SIGNAGE**

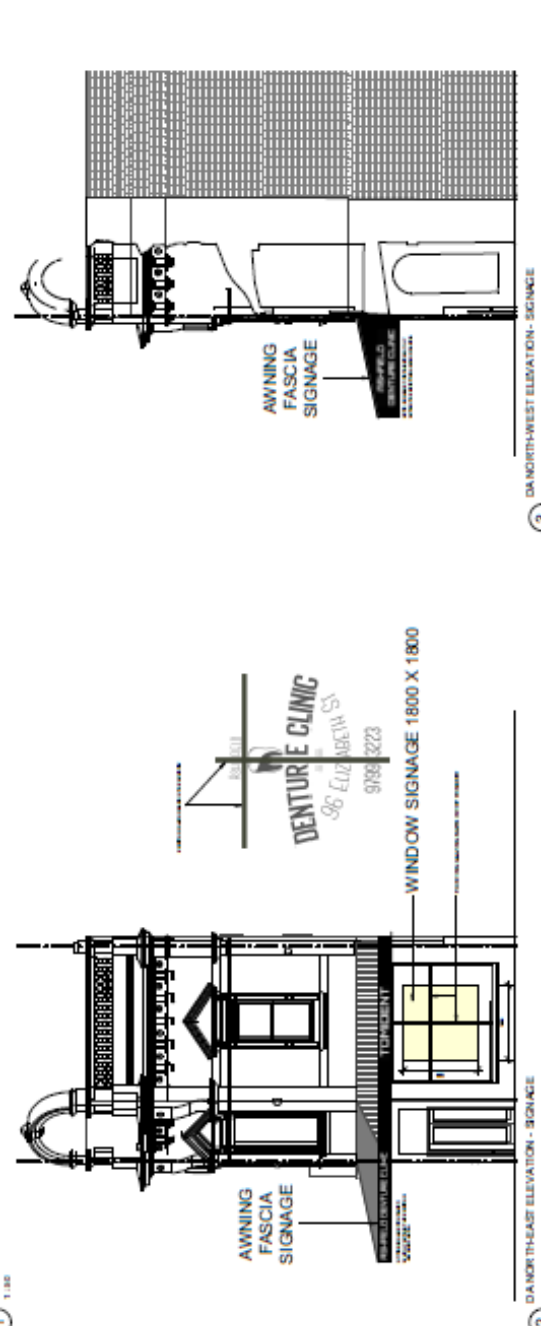
Project Number: VAR19  
Date: JUN21  
Drawn by: CR  
Checked by: CR

DA07A  
Scale: 1 : 50



**1 SOUTH-EAST ELEVATION - SIGNAGE**  
1:50

Labels: AWNING FASCIA SIGNAGE, WINDOW SIGNAGE 1800 X 1800, DENTURE CLINIC, 96 ELIZABETH ST, 9136 3223, WALL ART, DENTURE CLINIC, 96 ELIZABETH ST, 9136 3223, WINDOW SIGNAGE 1800 X 1800.



**3 DA NORTH-WEST ELEVATION - SIGNAGE**  
1:50

Labels: AWNING FASCIA SIGNAGE, WINDOW SIGNAGE 1800 X 1800, DENTURE CLINIC, 96 ELIZABETH ST, 9136 3223, WINDOW SIGNAGE 1800 X 1800.

Wed 22/05/2018 5:55:22 PM

**SNOUTMATIONS**

SUNTECH LEVELS, 61 MOUNT ST  
NORTH STONEY NSW 2089  
EMAIL: info@snoutmations.com.au  
OFFICE: 02 9594 9100 (M-F 9:00am - 5:30pm)

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**LEVELS:** All levels are based on the datum indicated on the site plan unless otherwise stated. All levels are to be finished levels.

**DIMENSIONS:** Dimensions are given in millimetres unless otherwise stated.

**NOTES:** 1. All dimensions are to be finished levels unless otherwise stated.  
2. All dimensions are to be finished levels unless otherwise stated.  
3. All dimensions are to be finished levels unless otherwise stated.

**VARIATIONS TO THE AUTHORITY APPROVED:**  
This plan is a variation to the authority approved. It is subject to the approval of the relevant authority.

**DOCUMENTS:** This plan is a variation to the authority approved. It is subject to the approval of the relevant authority.

**Client Name:** TOMIDENT

**Project Address:** 96 ELIZABETH STREET  
ASHFIELD NSW 2131

**Project Status**

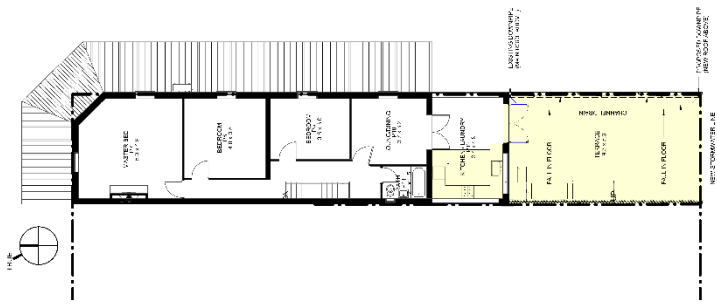
**DEVELOPMENT APPLICATION**

No.	Description	Date
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4	DRAFT DA ISSUE & COLOURS & SHADING	20/11/18
5	DRAFT DA ISSUE	20/12/18
6	DRAFT DA ISSUE & COLOURS & SHADING	20/12/18
7	DA ISSUE	20/12/18
8	DA ISSUE REV01	21/01/19
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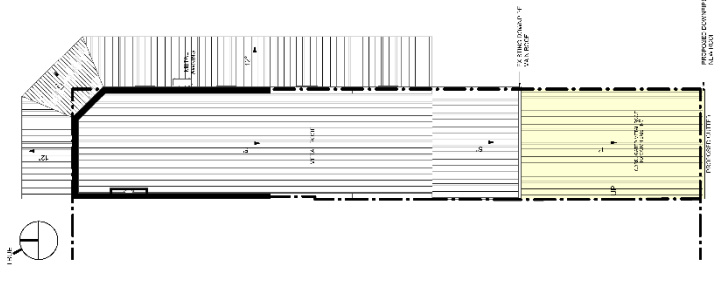
**Sheet Name**

**CONCEPT STORMWATER MANAGEMENT**

Project Number	VAR19
Date	JUN21
Drawn by	CR
Checked by	CR
Scale	DA08 1 : 100



2 DA STORMWATER CONCEPT - FIRST FLOOR  
1:100



1 DA STORMWATER CONCEPT - ROOF  
1:100



**COMPONENT:** This is the name of the component that will be used in the development. It should be a unique name for this component. It should be a unique name for this component. It should be a unique name for this component.

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Client Name  
 Project Address  
**96 ELIZABETH STREET  
 ASHFIELD NSW 2131**

Project Status  
**DEVELOPMENT  
 APPLICATION**

No.	Description	Date
3	DRAFT DA ISSUE	201209
4	MATERIALS & COLOURS	201316
5	DRAFT DA ISSUE	201316
6	MATERIALS & COLOURS AMENDMENTS	201323
7	DA ISSUE	201324
8	MATERIALS & COLOURS	201325
9	DA ISSUE REV001	201325

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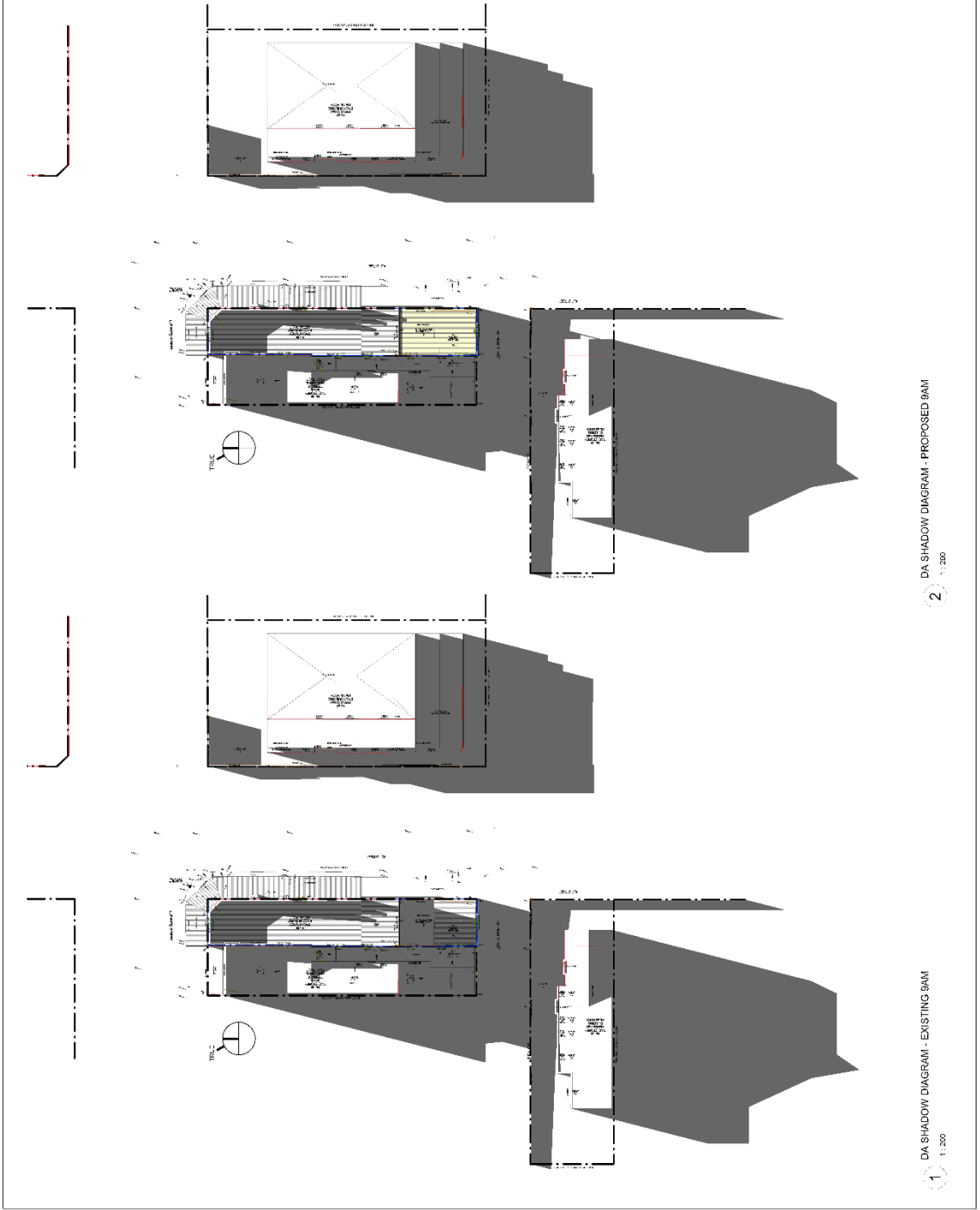
Project Number  
**VAR19**

Date  
**JUN21**

Drawn by  
**CR**

Checked by  
**CR**

Scale  
**DA09  
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**COMPASSION:** We are a not-for-profit organisation that provides support and services to people in need. We are committed to making a difference in the lives of those who are less fortunate.

**BOUNDARIES:** All work is to be done within the boundaries of the site. All work is to be done within the boundaries of the site.

**NOTES:** The site is located at the intersection of the site and the site. The site is located at the intersection of the site and the site.

**VARIATIONS TO THE AUTHORITY APPROVED:** The site is located at the intersection of the site and the site. The site is located at the intersection of the site and the site.

Client Name: TOMIDENT  
 Project Address: 96 ELIZABETH STREET, ASHFIELD NSW 2131

Project Status  
**DEVELOPMENT APPLICATION**


No.	Description	Date
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4	VALUERS & COLOURS	2015/10
5	DRAFT DA ISSUE	2015/11
6	MATERIALS & COLOURS	2015/12
7	DA ISSUE	2016/01
8	DA ISSUE REV02	2016/02
9	DA ISSUE REV03	21/05/16

Sheet Name: SHADOW DIAGRAMS 12PM  
 Project number: VAR19  
 Date: JUN21  
 Drawn by: CR  
 Checked by: CR

Scale: 1 : 200  
 DA10



File: R2955\_12020\_292



**MACHINATIONS**  
 SUITE 100 LEVEL 3, 85 MOUNT ST  
 NORTH SYDNEY NSW 2060  
 Sydney@machinations.net.au

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**Project Status:** DEVELOPMENT APPLICATION

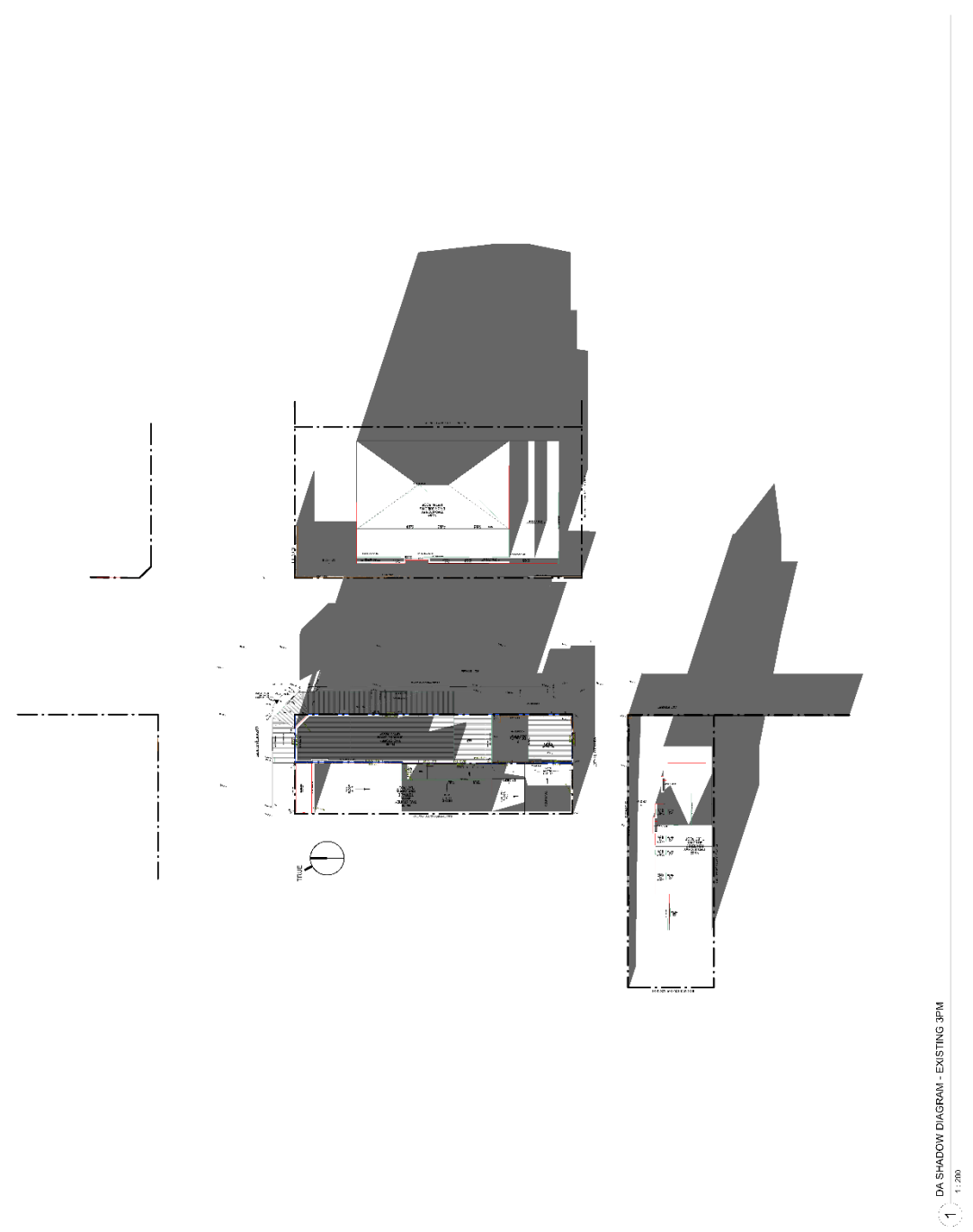
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7	DA ISSUE REV02	20/224
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10	DA ISSUE REV03	21/006

**Sheet Name:** SHADOW DIAGRAMS 3PM

**Project number:** VAR19  
**Date:** JUN21  
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**Checked by:** CR

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**Scale:** 1 : 200



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Kid 06/92/5 1/2021/02



**MACHINATIONS**  
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 All levels are in Australian Height Datum (AHD) unless otherwise stated.

**DIMENSIONS:**  
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**BOUNDARIES:**  
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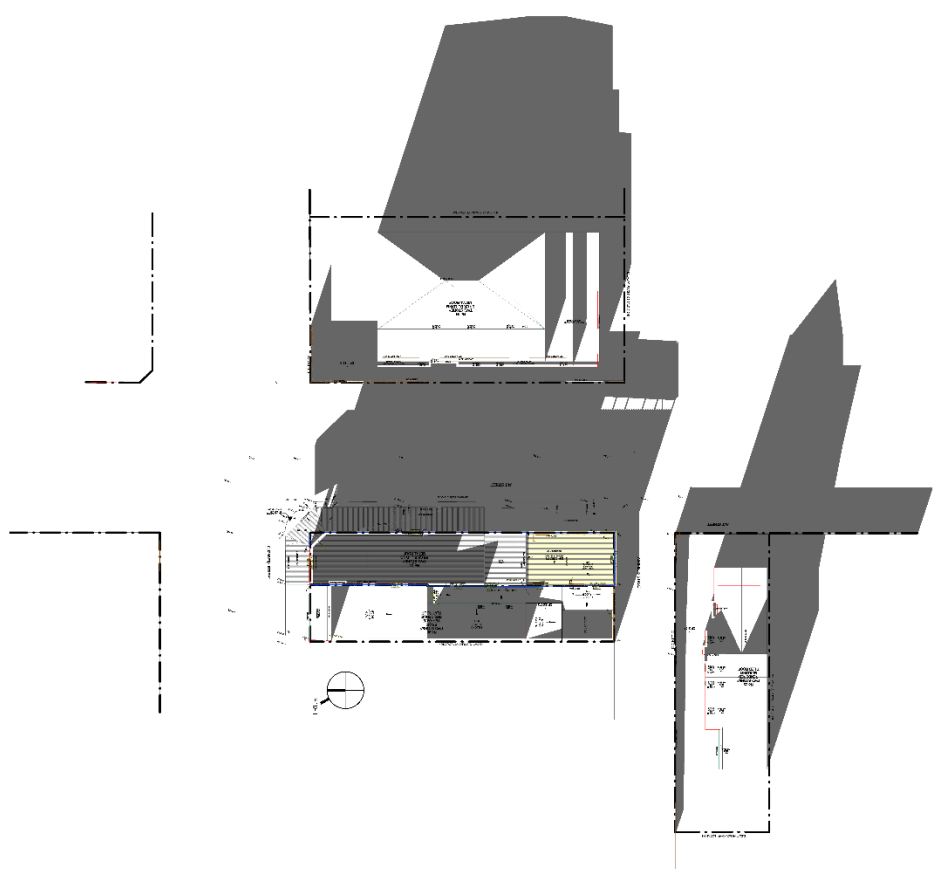
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**SURVEY:**  
 This document is based on the information provided by the surveyor. All dimensions, levels, bearings and areas are shown as shown on the survey.

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**Client Name:**  
 TOMIDENT

**Project Address:**  
 96 ELIZABETH STREET  
 ASHFIELD NSW 2131



Project Status  
**DEVELOPMENT APPLICATION**

No	Description	Date
3	DRAWING DA ISSUE	20/10/20
4	MATERIALS & COLOURS	20/12/15
5	TOMIDENT DA ISSUE	20/12/15
6	MATERIALS & COLOURS	20/12/23
7	DA ISSUE	20/12/24
8	DA ISSUE REV02	20/06/20
9	DA ISSUE REV03	21/12/20

Sheet Name  
**SHADOW DIAGRAMS 3PM**

Project Number  
 VAR19

Date  
 JUN21

Drawn by  
 CR

Checked by  
 CR


**DA12**

Scale  
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DA SHADOW DIAGRAM - PROPOSED 3PM  
 1  
 1/2021



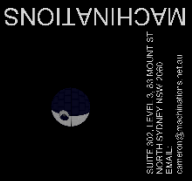
Ref: K9955-1-0001-26




**1** 22 ALT - NORTH-EAST ELEVATION - EBAM  
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**2** 22 ALT - NORTH-EAST ELEVATION - PBAM  
1:100



SUITE 300 LEVEL 3, 83 MOUNT ST  
NORTH SYDNEY NSW 1585  
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Client's Name: **TOMIDENT**  
Project Address: **96 ELIZABETH STREET  
ASHFIELD NSW 2131**

Project Status: **DEVELOPMENT APPLICATION**

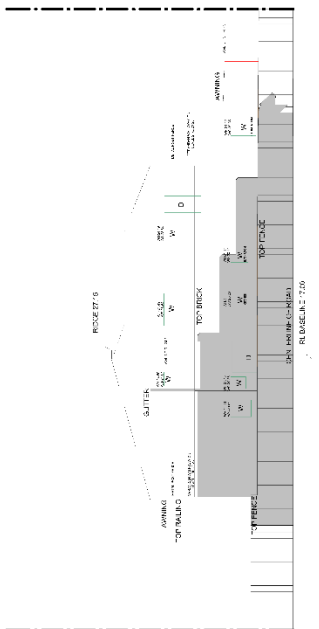
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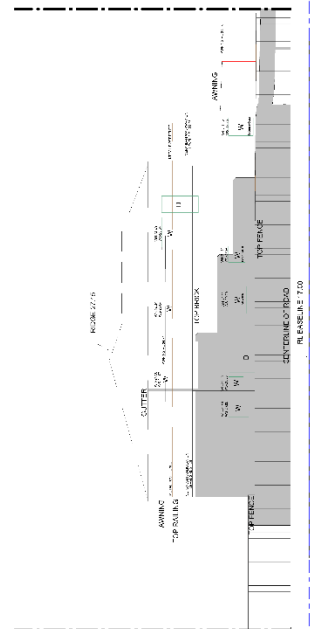
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Date: **JUN21**  
Drawn by: **CR**  
Checked by: **CR**

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**1**  
94 ELIZABETH - NORTHWEST ELEVATION - E3PM  
1:100



**2**  
94 ELIZABETH - NORTHWEST ELEVATION - P3PM  
1:100

**MACHINATIONS**

SUN - 8/24 LEVEL 3, 8/30000 S.I.  
15/01/2021 (15/01/2021 2:00)  
EVAL -  
car@mo@machinations.com.au

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Project Address <b>96 ELIZABETH STREET ASHFIELD NSW 2131</b>	
Client Name	
Project Status	
<b>DEVELOPMENT APPLICATION</b>	
No.	Date
9	CA ISSUE 06/02 200829
10	CA ISSUE 04/09 417029
Sheet Name <b>SHADOW DIAGRAMS ELEVATIONS - N094 ELIZABETH</b>	
Project number	VART19
Date	JUN21
Drawn by	CR
Checked by	CR
<b>DA14</b>	
Scale	1 : 100

## Attachment C- Clause 4.6 Exception to Development Standards



96 ELIZABETH STREET, ASHFIELD

### ALTERATIONS AND ADDITIONS TO AN EXISTING MIXED USE BUILDING

#### CLAUSE 4.6 VARIATION OF MAXIMUM FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF THE ASHFIELD LOCAL ENVIRONMENTAL PLAN 2013

---

Proposal: Alterations and additions to an existing 2-storey mixed use building  
Address: 96 Elizabeth Street, Ashfield  
Applicant: Wesley Folitarik - Urbanism

---

#### 1.0 Introduction

This variation request is made pursuant to the provisions of Clause 4.6 of Ashfield Local Environmental Plan 2013 (ALEP2013). It is requested that Council supports a variation to the maximum floor space ratio as described in Clause 4.4 of ALEP 2013.

#### 2.0 Background

Clause 4.4 establishes the floor space ratio for development on this site and refers to the maximum floor space ratio noted within the "Floor Space Ratio Map".

The relevant floor space ratio for this site is 0.7:1 and is considered to be a 'development standard' as defined by Section 4 of the *Environmental Planning and Assessment Act 1979*. The existing building has an FSR of 1.2:1 owing to its historical subdivision as a narrow (5.23m) 161.51sqm allotment and construction as a Victorian-era terrace (row) house of the late 1880's.

The proposed alterations and additions include a new first floor terrace over the existing rear year yard and carport thus enclosing the space and increasing the total floor area of the site. The enclosure of the rear yard increases the GFA by 6.8sqm and the FSR on the site to 1.24:1.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.4 are considered to be a development standard as defined in the *Environmental Planning and Assessment Act, 1979*.

Urbanism Pty Ltd  
ACN 130 715 436  
L 26, 1 Bligh Street  
Sydney, NSW  
Phone: (02) 9053 7373  
[www.urbanism.sydney](http://www.urbanism.sydney)

### 3.0 Purpose of Clause 4.6

The ALEP 2013 contains Clause 4.6 (as per the Standard Instrument LEP) to allow a departure from a development standard. Clause 4.6 of ALEP 2013 is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been considered in this request for a variation to the development.

### 4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the residential component on the 1<sup>st</sup> floor currently has no direct access to private open space. The small rear courtyard (approx. 24sqm) on the ground floor is accessed via the commercial premises and is located immediately adjacent to the southern wall of the existing 2-storey building and thus enjoys little solar access. The balance of the rear yard area contains a carport which approx. 22sqm in area.

The proposed first floor terrace will provide a 42.8sqm private open space area with direct access to the residential component of the building. This will significantly improve the amenity of the residential component of the building.

The proposal is consistent with the stated Objectives of the R2 Low Density Residential Zone in ALEP 2013, which are noted as:

- *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.*

As sought by the zone objectives, the proposed alterations and additions to an existing 2-storey mixed use building will provides for the housing needs of the community in a low density

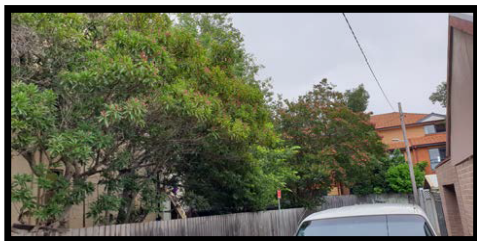
setting. The existing non-compliance with the floor space ratio control does not detract from the amenity of the locality or impose a density, bulk or scale that has not already been historically established as a result of the earlier subdivision pattern and buildings of the Victorian period and more recent developments.



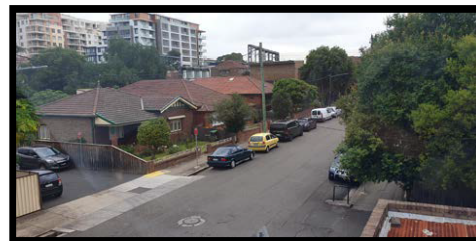
Picture 1: Mixed use development opposite corner



Picture 2: Residential flat building development opposite (4-storey)



Picture 3: Residential flat building development to the west (3-storey)



Picture 4: High density residential apartment tower development nearby

The external building materials and colours and roof form of the alterations and additions will be consistent with the existing building.

Notwithstanding the non-compliance with the maximum floor space ratio control, the works will maintain an attractive mixed use development that will not detract from the character and function of the local residential neighbourhood.

**5.0 Onus on Applicant**

Clause 4.6(3) provides that:

*“Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

*contravening the development standard.”*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

#### **6.0 Justification of Proposed Variation**

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument & Woollahra Local Environmental Plan 2014 (WLEP 2014) should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

*“Clause 4.6 of LEP 2014 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl4.6(4)(a)(i)).”*

#### **Precondition 1 - Consistency with zone objectives**

The proposed development of and use of the land within the R2 Low Density Residential Zone is consistent with the zone objectives, which are noted over as follows:

- *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.*

As sought by the zone objectives, the proposed alterations and additions to an existing 2-storey mixed use building will provides for the housing needs of the community in a low density setting. The existing non-compliance with the floor space ratio control does not detract from the amenity of the locality or impose a density, bulk or scale that has not already been historically established as a result of the earlier subdivision pattern and buildings of the Victorian period

and more recent developments.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum floor space control, whilst maintaining consistency with the zone objectives.

**Precondition 2 - Consistency with the objectives of the standard**

The objectives of Clause 4.4 are articulated at Clause 4.4(1) as follows:

- *to establish standards for development density and intensity of land use,*
- *to provide consistency in the bulk and scale of new development with existing development,*
- *to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
- *to protect the use or enjoyment of adjoining properties and the public domain,*
- *to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.*

As discussed previously, the proposed development does not detract from the amenity of the locality or impose a density, bulk or scale that has not already been historically established as a result of the earlier subdivision pattern and buildings of the Victorian period and more recent developments (refer to photos provided).

A Heritage Impact Statement (HIS) has been provided with the development under separate cover. The HIS concluded in reference to the new additional terrace the following:

*“The proposal involves the extension of the existing ground floor to the site’s rear (south) boundary, with a rooftop terrace above. The terrace will include an open-awning structure, balustrades, and a privacy screen on the western boundary adjoining the neighbouring property. The proposed extension has been designed to be clearly secondary in scale to both the primary Victorian-era structure and the later twentieth century two storey addition. This will ensure the extension does not dominate the existing elements of the site and will maintain the hierarchy of structures on site. The open-nature of the proposed awning and balustrading reduce the bulk and solidity of the proposed additions and will have little impact on the overall form of the structure.”*

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

**Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides alterations and additions to existing 2-storey mixed use building development.

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.7:1.

It is considered that the proposal achieves the Objectives of Clause 4.4 and that the development is justified.

The development is modest in scale only contributing a further 6.8sqm (3.5%) breach of the FSR standard and does not add bulk or scale as demonstrated in NSW Land and Environment Court in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, which considered scale and density in the context of the surrounding area which formed the following planning principle: Compatibility in the urban environment.

The planning principles provides: The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

In order to test whether a proposal is compatible with its context, two questions should be asked.

- i. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites*

In relation to the physical impacts, consideration is given to noise, overlooking, overshadowing and constraining development potential which can be assessed with relative objectivity (as was applied in this principle).

As discussed previously, the proposed development does not detract from the amenity of the locality or impose a density, bulk or scale that has not already been historically established as a result of the earlier subdivision pattern and buildings of the Victorian period and more recent developments (refer to photos provided).

The proposed development does not cause any adverse impact or inhibition upon any surrounding development.

- ii. Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character. As this site is not located within a conservation area the test is applied to **building height, setbacks and landscaping**.

The principle provides that buildings do not have to be the same height to be compatible. The



alterations and additions do not affect the existing building height which is consistent with the neighbouring developments.

The principle notes front and rear setbacks are an important element of urban character and determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way. The development does not propose a change to the front setback nor the side setbacks.

Notwithstanding, in the most common sense, the Commissioner provides that most people "experience the urban environment without applying the kind of analysis described above" and simply moving around a city is enough for a person to respond to their surroundings and like in the planning principle that if simply taking a walk in this neighbourhood there is little chance that with the alterations and additions that this development would be seen "out of context" and therefore within a compatible **Scale and density in the context of the surrounding area.**

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

**Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed**

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.7:1 for the subject site.

The alterations and additions include the enclosure of the rear yard that increases the floor space ratio for the site. The FSR permitted for the site is 0.7:1 (GFA 113.05sqm). The FSR of the existing development is 1.2:1 with the proposed works a contribution of GFA 6.8sqm (3.5%) for an FSR of 1.24:1.

The development is justified in this instance for the following reasons:

- The development does not result in additional load on infrastructure, increase vehicle generation or the requirement for increased parking on the site. The development does not change pedestrian traffic in anyway.
- The development is contained within the subject site and within the existing setbacks of the existing development. The development increases the amount of private open space on site in a more accessible location with direct access to the residential component of the dwelling.
- The development proposes materials consistent with the existing palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality without impact on the character and amenity of the area.
- The proposed works will provide for improved amenity for the occupants, which promotes good design which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable

environmental planning ground which justifies the flexible application of the development standard.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor space ratio.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The decision on appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2016 the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

*"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

Accordingly, in regard to the proposed development at 96 Elizabeth Street, Ashfield, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed alterations and additions are considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants, which is consistent with

the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard

- The variation to the floor space control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

- i. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

**Comment:** Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

- ii. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

**Comment:** It is considered that the purpose of the standard is relevant and the purpose is satisfied.

- iii. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Comment:** Compliance does not defeat the underlying object of the standard development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

- iv. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

**Comment:** Not applicable.

- v. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

**Comment:** The development standard is applicable to and appropriate to the zone.

**7.0 Conclusion**

This development proposed a departure from the maximum floor space ratio development standard, with the proposed alterations and additions provide a maximum floor space ratio of 1.24:1

This objection to the maximum building height specified in Clause 4.4 of the ALEP 2013 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality. Strict compliance with the maximum floor space ratio would be unreasonable and unnecessary in the circumstances of this case and should be supported.

Kind regards



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