




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2022/0037
Address	61-63 Lincoln Street STANMORE NSW 2048
Proposal	Alterations and additions to existing dwelling, construction of a swimming pool, landscaping and associated works.
Date of Lodgement	22 January 2022
Applicant	William Wachsmann
Owner	Mr William P Wachsmann & Ms Susan L Plimsoll
Number of Submissions	Nil
Value of works	\$400,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Heritage conservation
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Variation Request
	
LOCALITY MAP	
Subject Site	
Objectors	  N
Notified Area	

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing dwelling, construction of a swimming pool, landscaping and associated works at 61-63 Lincoln Street Stanmore.

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

The main issues that have arisen from the application include:

- Clause 4.6 request to vary maximum floor space ratio; and
- Impacts on heritage conservation area

Despite the issues noted above, it is considered that the proposed development is capable of generally complying with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Marrickville Local Environmental Plan 2011*, and Marrickville Development Control Plan 2011 subject to the imposition of conditions included in the recommendation.

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable, given the context of the site and the desired future character of the precinct.

Given the above, the application is considered suitable for approval subject to the imposition of appropriate terms and conditions.

2. Proposal

The application proposes alterations and additions to an existing two storey dwelling house. The dwelling house is comprised of two semi-attached terrace houses that have since been utilised as a single dwelling house via openings to the party wall. Specifically, the proposed works are as follows:

- Demolition to the rear portion of the dwelling and rear yard
- Construction of a new open plan kitchen, dining and living area, and bathroom to rear of ground floor
- Demolition to party wall to provide opening at entry hallways to ground floor
- Demolition to party wall to first floor to consolidate bedroom 2
- Construction of new ensuite and robe and bathroom to first floor
- Demolition to party wall to provide opening and provision of storage space and bathroom at attic and associated dormer window
- Replacement of non-original windows
- New pool, associated decking and landscaping works to rear

3. Site Description

The subject site is located on the eastern side of Lincoln Street, between Rosevear Street and Ravenue Lane. The site consists of two (2) allotments, legally described as Lots 39 and 40, Section N in DP 2915 and is generally rectangular with a total area of 334.6sqm.

The site has a frontage to Lincoln Street of 10.97metres and a secondary frontage of approximate 10.97 metres to Lincoln Lane.

The site supports two (2) three storey semi-attached terrace houses. The adjoining properties support single and two storey dwelling houses.

The property is located within a heritage conservation area.

The following trees are located on the site and within the vicinity.

- T1 - *Callistemon viminalis* / (Weeping Bottlebrush), Council verge
- T2-3 - *Plumeria sp.* / (Frangipani), Front
- T4 - *Eucalyptus nicholii* (Narrow-leaved Black Peppermint), Rear



Figure 1: Zoning map



Figure 2: Aerial map

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
PDA/2021/0281	Alterations and additions to existing dwelling.	Issued 30/09/2021
DA200600328	to demolish two rooms, an attached outbuilding and a deck and to construct a new deck at the rear	Approved 23/10/2006
CDC2004/0213	to install two openings between the two dwelling houses.	Approved 13/05/2004
DA200100600	to carry out alterations and additions to a dwelling house.	Approved 02/11/2001

4(b) Application history

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

Date	Discussion / Letter / Additional Information
06 July 2022	Council requested that additional information be submitted to address the following matters: <ul style="list-style-type: none"> • Heritage conservation • Height of building • Solar access & overshadowing • Tree Management
18 July 2022	Council officers met with applicant on site to discuss the above matters.
02 August 2022	Additional information was submitted by the applicant. This information forms the basis of the following assessment.

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 (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

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

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

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

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

5(a)(iii) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Chapter 2 Vegetation in non-rural areas

State Environmental Planning Policy (Biodiversity and Conservation) 2021 concerns the protection and removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council’s DCP.

The application seeks the removal of one (1) *Eucalyptus nicholii* (Narrow-leaved Black Peppermint) located in the rear setback of 63 Lincoln St. Council’s Tree Management Officers has indicated that the proposed removal of this vegetation is generally acceptable due to its perceived age and expectant longevity, subject to suitable replacement planting.

Overall, the proposal is considered acceptable with regard to the SEPP and MDCP 2011 subject to the imposition of conditions, which have been included in the recommendation of this report.

5(a)(iv) *Marrickville Local Environment Plan 2011 (MLEP 2011)*

The application was assessed against the following relevant clauses of the *Marrickville Local Environmental Plan 2011 (MLEP 2011)*.

Part 1 – Preliminary

Control	Proposed	Compliance
Clause 1.2 Aims of Plan	The proposal satisfies the relevant aims of the Plan as follows: <ul style="list-style-type: none"> the proposal has been designed to conserve the environmental and cultural heritage of Marrickville; the proposal is considered to result in a satisfactory impact on the private and public domain. 	Yes

Part 2 – Permitted or prohibited development

Control	Proposed	Compliance
Clause 2.3 Zone objectives and Land Use Table <i>R2 Low Density Residential</i>	The proposal satisfies this clause as follows: <ul style="list-style-type: none"> The application alterations and additions to a dwelling house, which is permissible with consent in the R2 Low Density Residential zone; and, The proposal satisfies the relevant objectives of the zone as it provides for housing that meets the needs of the community in a low density residential environment. 	Yes
Control	Proposed	Compliance
Clause 2.7 Demolition requires development consent	The proposal satisfies the clause as follows: <ul style="list-style-type: none"> Demolition works are proposed, which are permissible with consent; and Standard conditions are recommended to manage impacts which may arise during demolition. 	Yes - subject to conditions

Part 4 – Principal development standards

Control	Proposed		Compliance
Clause 4.3 Height of building	Maximum	J – 9.5m	Yes
	Proposed	9.4m	
Clause 4.4 Floor space ratio	Maximum	0.7:1 (234.2sqm)	No - see Cl.4.6 discussion
	Proposed	0.97:1 (326.7sqm)	
	Variation	39% (92.5sqm)	

Clause 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the clause.	Yes
Clause 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Clause 4.6 to vary Cl.4.4(2A)	Yes - see below

Clause 4.6 Exceptions to Development Standards

The applicant seeks a variation to the floor space ratio (FSR) development standard under Clause 4.4 of the *Marrickville Local Environmental Plan 2011* by 39% (92.5sqm).

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 *Marrickville Local Environmental Plan 2011* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *MLEP 2011* justifying the proposed contravention of the development standard, a summary of the main points of this are provided as follows:

- The subject site consists of two (2) lots, each containing one of a pair of semi-detached terrace houses. Previous alterations to the pair allow them to be used as a single dwelling (approved 13/05/2004, under CDC004/0213), however, each terrace maintains appearance as a pair of separate dwelling houses.
- It is arguable that the appropriate development standard for the site is that applicable to the lot sizes of 167.3m² (that is, a maximum FSR of 1:1) rather than that applicable to the total site area (that is, 0.7:1). The proposed FSR of 0.91:1 complies with the FSR that would be applicable to the building considered as a pair.

The applicant's written rationale adequately demonstrates compliance with the development standard is 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 Low Density Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the *MLEP 2011*, which read:

- *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.*

The proposal is considered to be consistent with the relevant zone objectives for the following reasons:

- The proposal is considered to provide housing to meet the needs of the community within a low density residential environment and improves amenity for occupiers of site;
- The proposal does not inhibit the ability of other land uses that provide facilities or services to meet the day to day needs of residents.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the *MLEP 2011*, which read:

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

The proposal is considered to be consistent with the relevant objectives of the development standard for the following reasons:

- The proposed additional floor area will not increase population *density* on site, as the proposed additional floor area is predominantly to the original courtyard spaces at the ground floor, not visible within the public domain and therefore not increasing perceived *building bulk*. Further, the proposed conversion of the existing attic space to Lot 39 and inclusion of a dormer is not considered to increase the perceived building *bulk*.
- The proposed additions are considered to have been designed in accordance with the built character of the building, Lincoln Lane and in accordance with the desired future character of the Kingston West Heritage Conservation Area.
- As noted throughout this report, the proposal has been appropriately designed to minimise adverse environmental impacts, particularly with regard to maintaining solar access and privacy to adjoining properties. Further, the proposed development is considered unlikely to result in any impacts that would adversely impact the public domain.

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 *MLEP 2011*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the maximum Floor space ratio development standard and it is recommended the Clause 4.6 exception be granted.

Part 5 – Miscellaneous provisions

Control	Proposed	Compliance
<p>Clause 5.10 Heritage conservation</p>	<p>The proposal achieves the objectives of this clause as follows:</p> <ul style="list-style-type: none"> • The subject sites contains two contributory buildings located within the Kingston West Heritage Conservation Area (HCA 7); • The proposal was amended during assessment with respect to maintaining the character of the contributory building and surrounding HCA. The amendments required changes to the proposed dormer window and reinstatement of previously replaced original windows to the rear elevation, and a reworking of the proposed bathroom to the original courtyard at the ground floor to retain form and fabric of the original dwelling; • As such, the proposed development has been adequately designed to preserve contributory elements and fabric of the existing buildings as the alterations to the original dwellings will not be visible from the street; • It is considered that the development adequately responds to the significance of the HCA and has been designed to conserve the environmental and cultural heritage of Marrickville. <p>Given the above, the development preserves the environmental heritage of the Inner West.</p>	<p>Yes</p>

Part 6 – Additional local provisions

Control	Proposed	Compliance
<p>Clause 6.2 Earthworks</p>	<p>The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.</p>	<p>Yes</p>
<p>Clause 6.5 Development subject to aircraft noise</p>	<p>The site is located within the ANEF 20-25 contour, and as such an Acoustic Report was submitted with the application. The proposal can satisfy this clause as follows:</p> <ul style="list-style-type: none"> • A condition has been included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions Cl. 6.5 <i>MLEP 2011</i> and Part 2.6 of the <i>MDCP 2011</i>, respectively. 	<p>Yes – subject to conditions</p>

5(b) Other Environmental Planning Instruments

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

(i) Inner West Local Environmental Plan 2022

The *Inner West Local Environment Plan 2022* (IWLEP) was gazetted on the 12th of August 2022. As per Section 1.8A – Savings provisions, of this plan, as the subject development application was made before the commencement of this Plan, the application is to be determined as if the IWLEP 2022 had not commenced.

Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* requires consideration of any Environmental Planning Instrument (EPI), and (1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 22 January 2022, at this date, the IWLEP was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

The IWLEP 2022 contains provisions for amendments to the aims of aims of Clause 1.2 Aims of Plan and objectives for the R2 Low Density Residential zone. The development is considered acceptable having regard to the provisions of the IWLEP 2022.

5(c) Development Control Plans

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

Part 2 – Generic Provisions

Control	Proposed	Compliance
Part 2.1 Urban Design	The proposal satisfies the relevant provisions of the Part as follows: <ul style="list-style-type: none"> • The proposal does not impact the definition between the public and private domain and is appropriate for the character of the locality given its form, massing, siting and detailing; and • The proposal preserves the existing character of the streetscape and protects the street elevation of the existing dwelling. 	Yes
Part 2.6 Acoustic and Visual Privacy	The proposal will have a satisfactory impact on visual and acoustic levels of the surrounds in accordance with the Part as follows: <ul style="list-style-type: none"> • The windows proposed face into the site, thereby protecting existing privacy levels for surrounding occupiers; • The principal living areas and areas of POS are located on the ground floor; • The pool is located towards the rear of the site away from bedroom areas of the adjoining dwellings; and 	Yes, subject to conditions

	<ul style="list-style-type: none"> • Conditions have been included to ensure that the noise levels associated with the pool pump unit will not result in adverse noise impacts for surrounding properties. 	
Part 2.7 Solar Access and Overshadowing	<p>The proposal satisfies the relevant provisions of the Part as follows:</p> <ul style="list-style-type: none"> • A minimum of 2 hours direct solar access to windows of principal living areas and principal areas of open space of nearby residential properties between 9:00am and 3:00pm on 21 June is retained. • The development will not result in adverse amenity impacts as a result of overshadowing; • At least one habitable room of the dwelling has a window having an area not less than 15% of the floor area of the room, positioned within 30 degrees east and 20 degrees west of true north and will allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9:00am and 3:00pm on 21 June; and • The private open space provided for the dwelling house receives a minimum two hours of direct sunlight over 50% of its finished surface between 9.00am and 3.00pm on 21 June. 	Yes
Part 2.18 Landscaping and Open Spaces	<ul style="list-style-type: none"> • The entire front setback is to consist of pervious landscaping with the exception of the pathway and driveway; • The Landscape Plan identifies that 115sqm, in excess of the minimum requirement (67sqm, being 20% of the total site area), with no dimension being less than 3 metres is to be retained as private open space (POS); and • The Landscape Plan does not indicate the minimum requirement that in excess of 50% (57.5sqm) of POS be pervious landscaping. As such, a condition of consent is included with the recommendation to increase pervious landscaping on site. A concrete area to the rear of Lot 39 is considered adequate to afford the additional pervious landscaping. 	Yes, subject to condition
Part 2.21 Site Facilities and Waste Management	<p>The proposal satisfies the relevant provisions of the Part as follows:</p> <ul style="list-style-type: none"> • The application was accompanied by a waste management plan in accordance with the Part; and • Standard conditions are recommended to ensure the appropriate management of waste during any upgrade works and ongoing use of the premises of a dwelling house. 	Yes, subject to condition
Part 2.25 Stormwater Management	Standard conditions are recommended to ensure the appropriate management of stormwater.	Yes, subject to condition

Part 4 – Low Density Residential Development

Control	Assessment	Compliance
Part 4.1.4 Good Urban Design Practice	The height, bulk and scale of the development complement existing developments in the street and the architectural style of the proposal is in keeping with the character of the area.	Yes
Part 4.1.5 Streetscape and Design	<ul style="list-style-type: none"> • The application does not seek to alter the existing streetscape presentation to Lincoln Street; • The proposal has been appropriately designed to complement the characteristic elements of the building and surrounds. 	Yes
Part 4.1.6 Built form and character <u>Front setback</u> <ul style="list-style-type: none"> • Consistent with adjoining developments <u>Side setbacks</u> <ul style="list-style-type: none"> • Lot width <8m – on merit <u>Rear setback</u> <ul style="list-style-type: none"> • On merit <u>Site coverage</u> On merit (0-300m ² allotments)	<ul style="list-style-type: none"> • The existing front setback of the dwelling is to remain unaltered by the proposal; • The side setbacks proposed are considered satisfactory, as the proposal has an acceptable impact on adjoining properties in terms of overshadowing, visual bulk and privacy. In addition, the proposed side setbacks are consistent with the established setback pattern of the street; • The proposed ground and first floor rear setbacks are considered appropriate, as they will not create adverse impacts on adjoining properties in terms of visual bulk, overshadowing or privacy; and • The proposal seeks to increase the existing site coverage by a minor amount. The overall site coverage of the development is considered acceptable, as it is consistent with the pattern development of the street and will have an acceptable impact on adjoining properties. 	Yes
Part 4.1.8 Dormer windows	The proposal satisfies the relevant provisions of the Part as follows: <ul style="list-style-type: none"> • The proposed dormer has been designed in accordance with the style and character of the building and appropriately complements the proportions of the existing attic extension to the dwelling at adjoining Lot 40. 	Yes

Part 8 – Heritage

Control	Assessment	Compliance
Part 8.2.9 Kingston West Heritage Conservation Area (HCA 7)	<ul style="list-style-type: none"> The development maintains the existing building and elements on the site which were constructed during the period of significance of the conservation area. 	Yes
Part 8.3.2.3 Building setbacks	<p>The proposal includes changes to the original lightwells which modifies the original side setbacks at the ground floor. The proposed infilling of the lightwells is considered acceptable in the circumstances as follows:</p> <ul style="list-style-type: none"> The proposed infilling of the lightwell to Lot 39 is considered appropriate as the original openings to the courtyard had previously been altered or removed. Further, the addition of the bathroom to the lightwell at Lot 40 has been designed to retain original openings, reinstates an archway and utilises a glass roof to retain legibility of the lightwell within the building. 	Yes
Part 8.3.2.4 Building heights	<ul style="list-style-type: none"> The proposed additions to the contributory dwelling are no higher than the existing roof form and height of the original building and do not overwhelm the existing built form. 	Yes
Part 8.3.2.5 Building form	<ul style="list-style-type: none"> The proposed additions to the dwelling are not visible from the main street frontage and is consistent with the overall form and massing of the building. 	Yes
Part 8.3.2.6 Roof form	<ul style="list-style-type: none"> The development maintains the original roof form to the front elevation and for the length of the main roof to the side elevations. The development maintains existing chimneys. The materials to the original roof and suitable to the building and conservation area. 	Yes
Part 8.3.2.7 Building facades	<ul style="list-style-type: none"> The façade of the dwelling is unchanged by the development and is retained. 	Yes
Part 8.3.2.8 Verandahs and porches	<ul style="list-style-type: none"> The porch of the dwelling is unchanged by the development and is retained. 	Yes
Part 8.3.2.9 Windows and doors	<ul style="list-style-type: none"> The development maintains original front doors and windows in their original position. The new windows to the rear of the property have limited visibility and are of proportions appropriate the conservation area and dwelling. 	Yes
Part 8.3.2.10 Façade materials	<ul style="list-style-type: none"> The original materials to the front portion of the dwelling are maintained. The new additions to the rear exhibit materials that are compatible with the conservation area. 	Yes

Part 9 – Strategic Context

Control	Assessment	Compliance
Part 9.3 Stanmore North (Precinct 3)	<ul style="list-style-type: none"> • The proposal protects the existing contributory dwelling on the site; • The proposal protects the pair of buildings and retains their original built form including roof forms, original detailing and finishes. 	Yes

5(e) 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(f) 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(g) 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(h) The Public Interest

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

The proposal is not contrary to the public interest.

5(i) Other matters

As discussed within this report, the dwelling spans over two (2) lots, given the works are over the two lots, a condition is included with the recommendation to consolidate the lots.

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.

- Heritage
- Development engineer
- Urban Forest

7. Section 7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$4,000.00 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

The development will not result in any significant impacts on the amenity of the adjoining properties, the streetscape or wider heritage conservation area 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 *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio 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/2022/0037 for alterations and additions to existing dwelling, construction of a swimming pool, landscaping and associated works. at 61-63 Lincoln Street, Stanmore 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
DA00 Rev. D	Cover Sheet	20/07/22	Sydesign Pty Ltd
DA01 Rev. D	Proposed Site Plan	20/07/22	Sydesign Pty Ltd
DA02 Rev. B	Ground Floor Demolition Plan	20/07/22	Sydesign Pty Ltd
DA03 Rev. B	First Floor Demolition Plan	20/07/22	Sydesign Pty Ltd
DA04 Rev. B	Attic Floor Demolition Plan	20/07/22	Sydesign Pty Ltd
DA05 Rev. D	Proposed Ground Floor Plan	20/07/22	Sydesign Pty Ltd
DA06 Rev. D	Proposed First Floor Plan	20/07/22	Sydesign Pty Ltd
DA07 Rev. D	Proposed Attic Floor Plan	20/07/22	Sydesign Pty Ltd
DA08 Rev. D	Proposed Roof Plan	20/07/22	Sydesign Pty Ltd
DA09 Rev. D	North Elevation	20/07/22	Sydesign Pty Ltd
DA10 Rev. D	South Elevation	20/07/22	Sydesign Pty Ltd
DA11 Rev. C	Existing West Elevation (Front Streetscape)	20/07/22	Sydesign Pty Ltd
DA12 Rev. D	Proposed East Elevation/External Finishes Schedule	20/07/22	Sydesign Pty Ltd

DA13 Rev. D	Proposed Section A-A	20/07/22	Sydesign Pty Ltd
A444536_02	BASIX Certificate	19/01/22	Sydesign Pty Ltd

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 an additional area of a minimum of 18sqm of pervious landscaping be provided in the rear yard.

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.

Security Deposit:	\$8,432.00
Inspection Fee:	\$350.00

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. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Marrickville Section 94/94A Contributions Plan 2014*.

Note: Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:

\$4,000.00

*Indexing of the Section 7.12 contribution payment:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000)*. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact**

Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.

5. 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

6. Stormwater Drainage System – Simple

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

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

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road.

Stormwater drainage must be located such that any waters leaving the pool must drain to pervious areas prior to potentially draining to the site stormwater drainage system.

7. Tree Protection

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :

Tree No.	Botanical/Common Name	Location
T1	<i>Callistemon viminalis</i> / (Weeping Bottlebrush)	Council verge
T2-3	<i>Plumeria</i> sp. / (Frangipani)	Front

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed;

NOTE: Reference should be made to the *Arboricultural Impact Assessment Report prepared by Naturally Trees, dated 19/07/2022 for tree numbering and locations*.

8. Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
T4 - <i>Eucalyptus nicholii</i> (Narrow-leaved Black Peppermint) / Rear	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

9. Noise Levels and Enclosure of Pool/spa Pumping Units

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed within a building so as not to create an offensive noise

as defined under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.

10. 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.

11. 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.

12. 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.

13. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

14. 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.

15. 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.

16. 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.

17. 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 all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

PRIOR TO CONSTRUCTION CERTIFICATE

18. 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.

19. Consolidation of Lots

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that the separate lots comprising the development have been consolidated into one lot and under one title and registered at NSW Land Registry Services.

20. 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

21. Acoustic Report – Aircraft Noise

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

DURING DEMOLITION AND CONSTRUCTION

22. Tree Protection

To protect the following tree, trunk and branch protection must be installed prior to any works commencing in accordance with the approved *Tree Protection Plan* and/or with Council's *Development Fact Sheet—Trees on Development Sites*:

Tree No.	Botanical/Common Name/Location
T1	<i>Callistemon viminalis</i> / (Weeping Bottlebrush)

23. Construction Hours – Class 1 and 10

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

PRIOR TO OCCUPATION CERTIFICATE**24. 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.

25. 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.

26. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of one (1) x 200 litre size additional native tree, which will attain a minimum mature height of ten (10) metres and a minimum mature canopy spread of six (6) metres, must be planted within the rear setback of the property. It should not be planted less than 2.5m from a dwelling house or garage, and may not be planted less than 1m from other structures or services, allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. Tree species listed on C7 Tree Minor Works of the DCP, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement tree is found to be faulty, damaged, dying or dead within twelve (12) months of planting then it must be replaced with the same species (up to 3 occurrences). If the tree is found dead before it reaches a height where it is protected by Council's Tree Management Controls, it must be replaced with the same species.

27. Aircraft Noise –Alterations and Additions

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with a report from a suitably qualified person demonstrating that each of the commitments listed in Aircraft Noise Assessment Report required by this consent has been satisfied.

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 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

- i. The name of the owner-builder; and
- ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Swimming Pools

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

All drainage, including any overland waters associated with the pool/spa, must be pipe-drained via the filter to the nearest sewer system in accordance with the requirements of Council & Sydney Water. No drainage, including overflow from the pool or spa must enter Council's stormwater system.

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*.

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.

Useful Contacts

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

Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA 1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development

ALTERATIONS/ ADDITIONS TO EXISTING DWELLING HOUSE
WILLIAM WACHSMANN
61-63 LINCOLN ST STANMORE NSW 2048

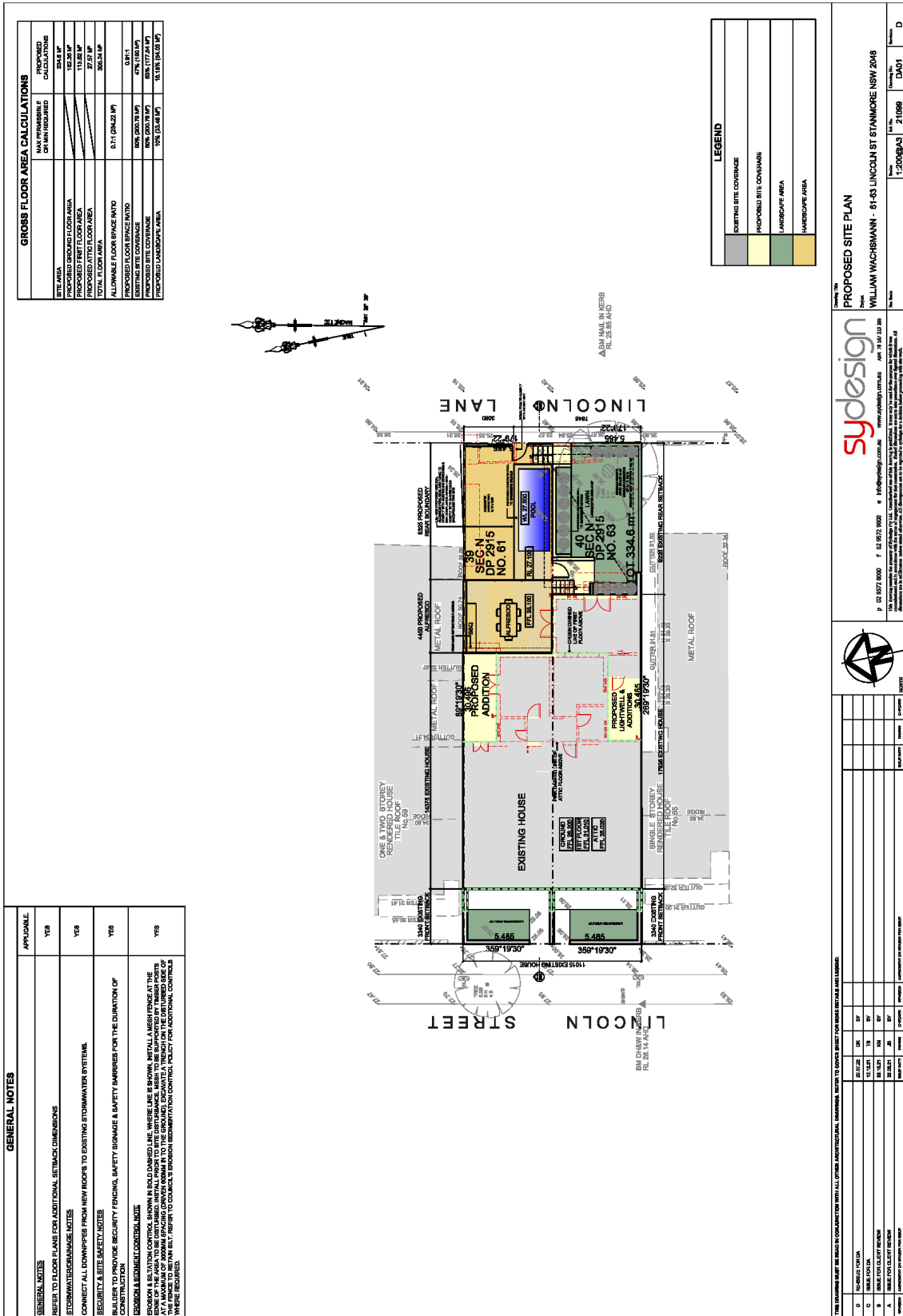
Table with 3 columns: DWG. NO., DRAWING TITLE, REV. Includes drawing list for existing plans such as COVER SHEET, PROPOSED SITE PLAN, etc.

WINDOW SCHEDULE (HOUSE) table with columns: BASIS Window No., Length x Height, Glass Type. Lists windows W 01 to W 08 and SK01 to SK04.

GENERAL NOTES table with columns: NOTE NO., NOTE, APPLICABLE. Contains 12 numbered notes regarding architectural drawings, compliance, and engineering details.

LEGEND table with columns: SYMBOL, DESCRIPTION. Lists architectural symbols for levels, doors, windows, and materials.

COVER SHEET information including sydesign logo, project name (WILLIAM WACHSMANN - 61-63 LINCOLN ST STANMORE NSW 2048), and drawing number (DA00).



GROSS FLOOR AREA CALCULATIONS

DESCRIPTION	AREA (SQ M)	PERCENTAGE OF TOTAL GROSS FLOOR AREA
EXISTING HOUSE	334.6	100%
PROPOSED ADDITION	112.30	33.56%
PROPOSED POOL	112.30	33.56%
PROPOSED PATIO	27.72	8.28%
PROPOSED DECK	282.24	84.38%
PROPOSED TOTAL	867.16	259.10%

GENERAL NOTES

DESCRIPTION	APPLICABLE
REFER TO FLOOR PLANS FOR ADDITIONAL SETBACK DIMENSIONS	YES
STORMWATER/DRAINAGE NOTES	YES
CONNECT ALL DOWNPIPES FROM NEW ROOFS TO EXISTING STORMWATER SYSTEMS	YES
SECURITY & SITE SAFETY NOTE	YES
GENERAL REMARKS/NOTES	YES

PROPOSED SITE PLAN

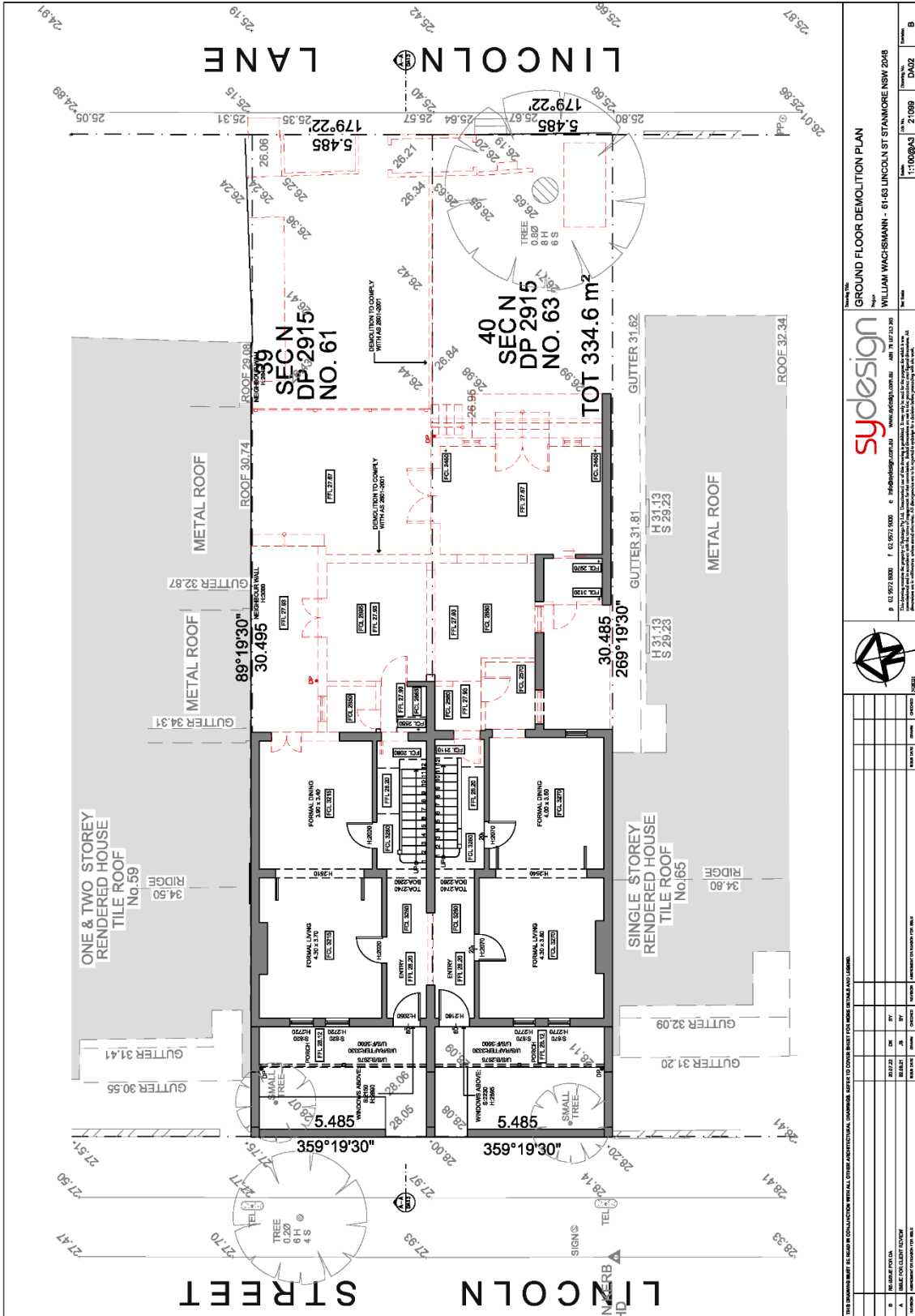
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WILLIAM WACHSMANN - 61-63 LINCOLN ST STANMORE NSW 2048

DATE: 17/06/2023

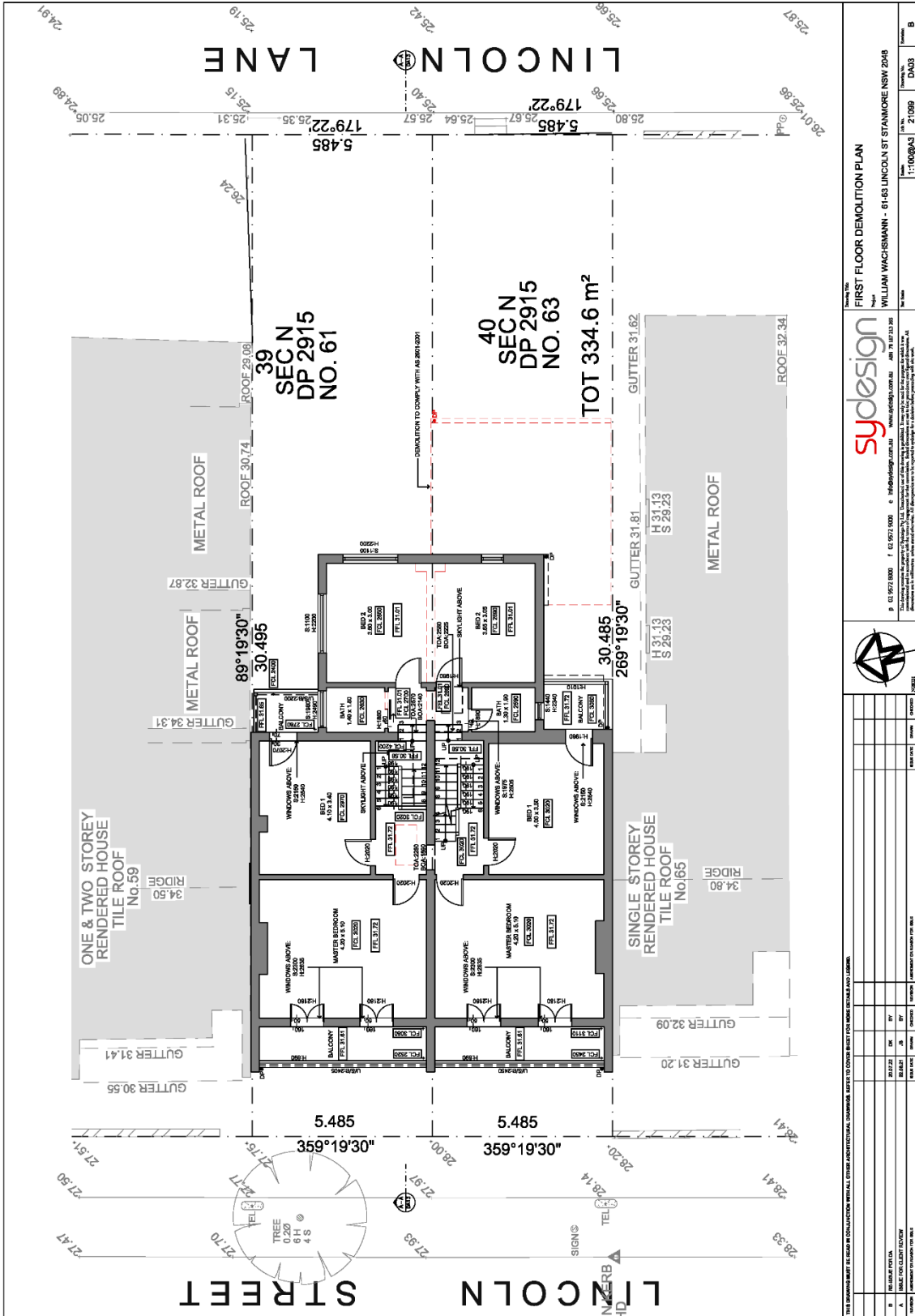
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SCALE: 1:200



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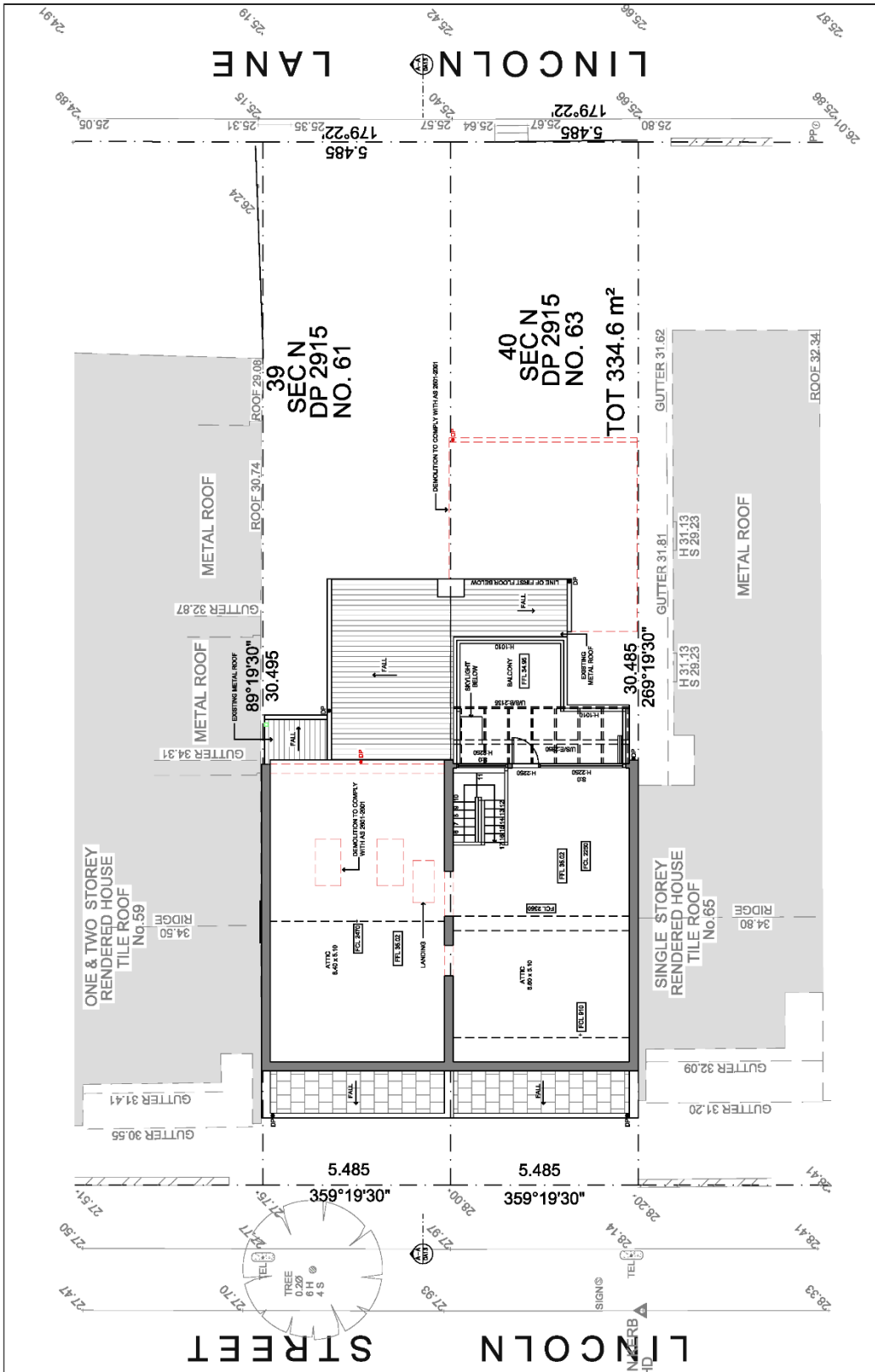
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WILLIAM WAGSCHMANN	WILLIAM WAGSCHMANN	02 9971 0000
ADDRESS		
61-63 LINCOLN ST STANMORE NSW 2048		
SYDESIGN ARCHITECTURAL DESIGNERS		
SYDESIGN ARCHITECTURAL DESIGNERS	21/06/2022	1:100 @ A3
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PROJECT NO.	DATE	SCALE
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CLIENT INFORMATION		
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ADDRESS		
61-63 LINCOLN ST STANMORE NSW 2048		
SYDESIGN ARCHITECTURAL DESIGNERS		
SYDESIGN ARCHITECTURAL DESIGNERS	21/06/2022	1:100 @ A3
WILLIAM WAGSCHMANN	WILLIAM WAGSCHMANN	02 9971 0000



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NO.	REVISION/DESCRIPTION	DATE	BY	CHK
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Version: 1, Version Date: 09/08/2022



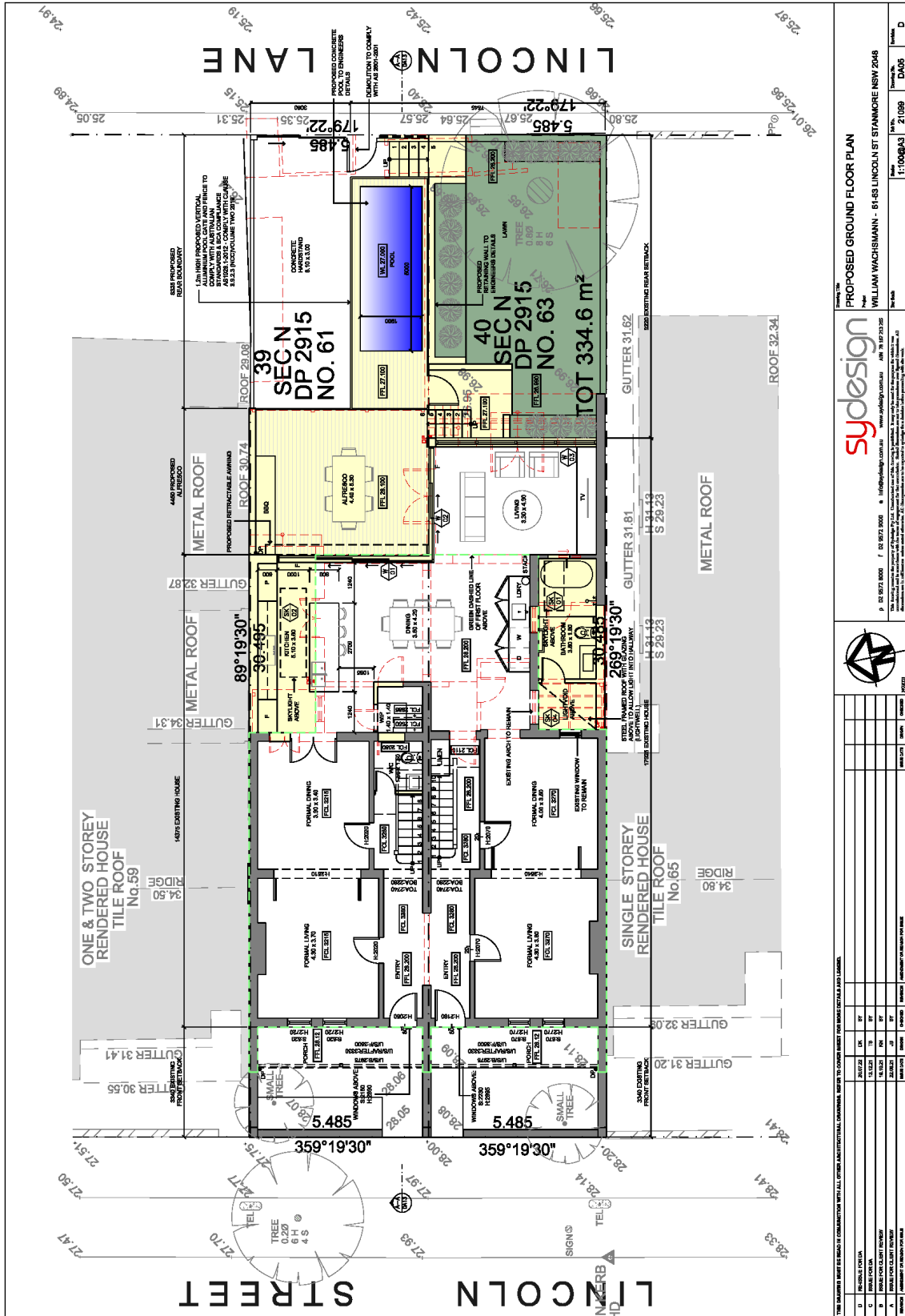
ATTIC FLOOR DEMOLITION PLAN

sydesign

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ATTIC FLOOR DEMOLITION PLAN
WILLIAM WACHSMANN - 6143 LINCOLN ST STANMORE NSW 2048

NO.	DESCRIPTION	DATE	BY	CHK	APP	REVISED	REVISION
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PROPOSED GROUND FLOOR PLAN

sydesign

WILLIAM WACHSMANN - 61-63 LINCOLN ST STANMORE NSW 2048

P 02 9272 8000 F 02 9272 8002 www.sydesign.com.au

DATE: 11/06/2022

SCALE: 1:100

PROJECT: DP 2915

NO: 61 & 63

TITLE: PROPOSED GROUND FLOOR PLAN

DATE: 11/06/2022

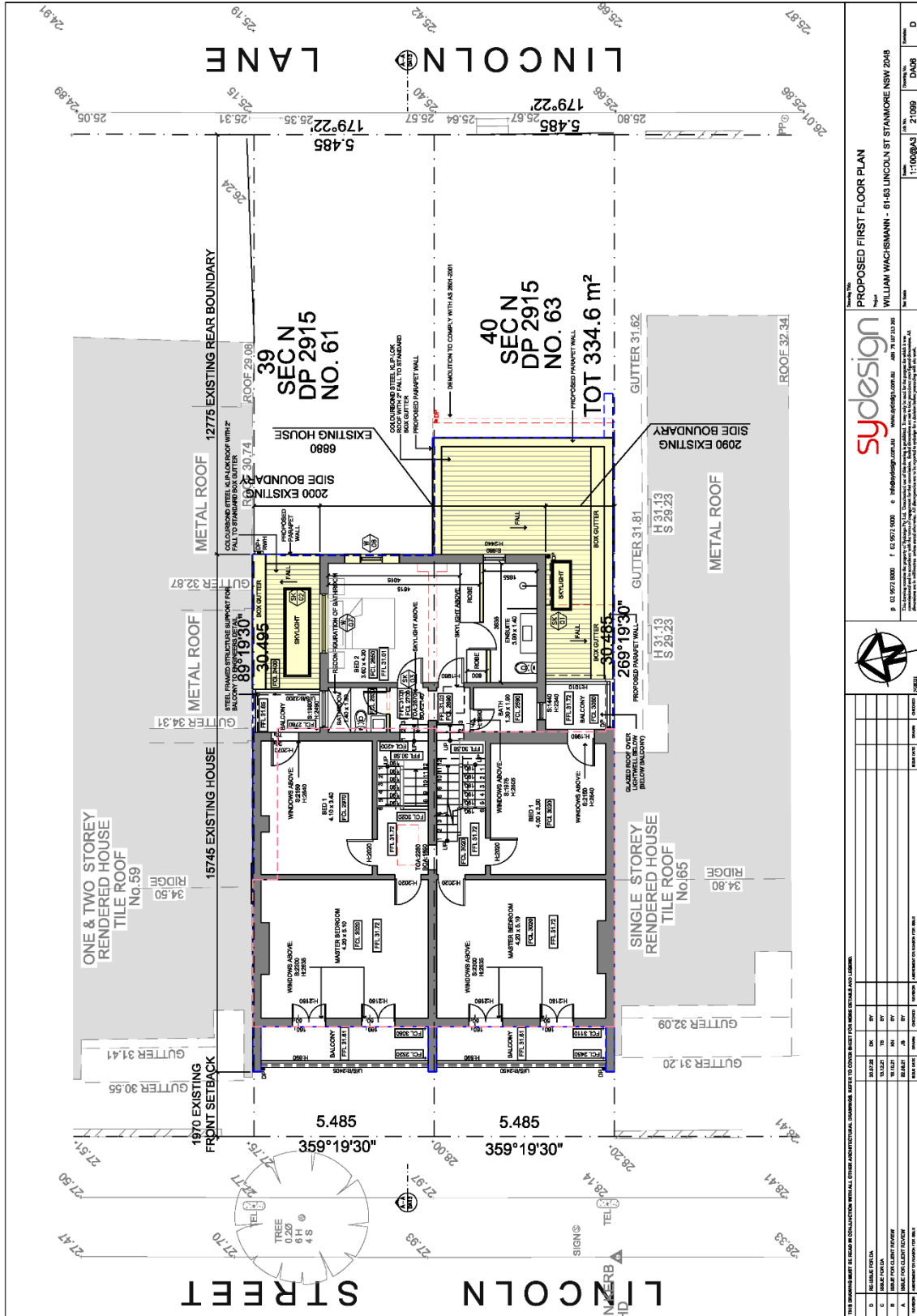
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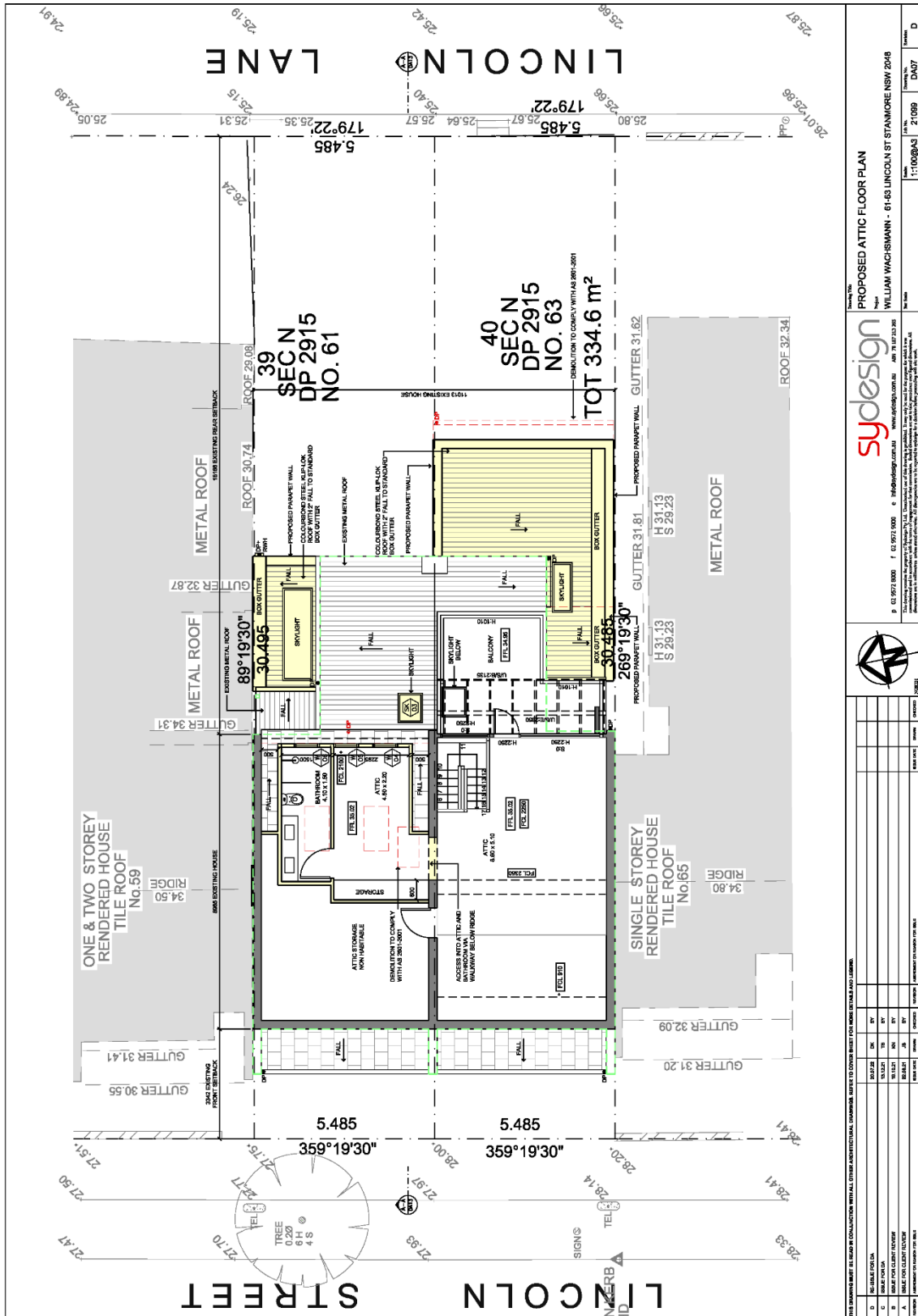
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PROPOSED ATTIC FLOOR PLAN

Project No: **WILLIAM WACHS-MANN - 61-63 LINCOLN ST STANMORE NSW 2048**

P: 02 9971 8000 F: 02 9971 8000 E: info@sydesign.com.au W: www.sydesign.com.au A: 107 WILSON ST SYDNEY NSW 2000

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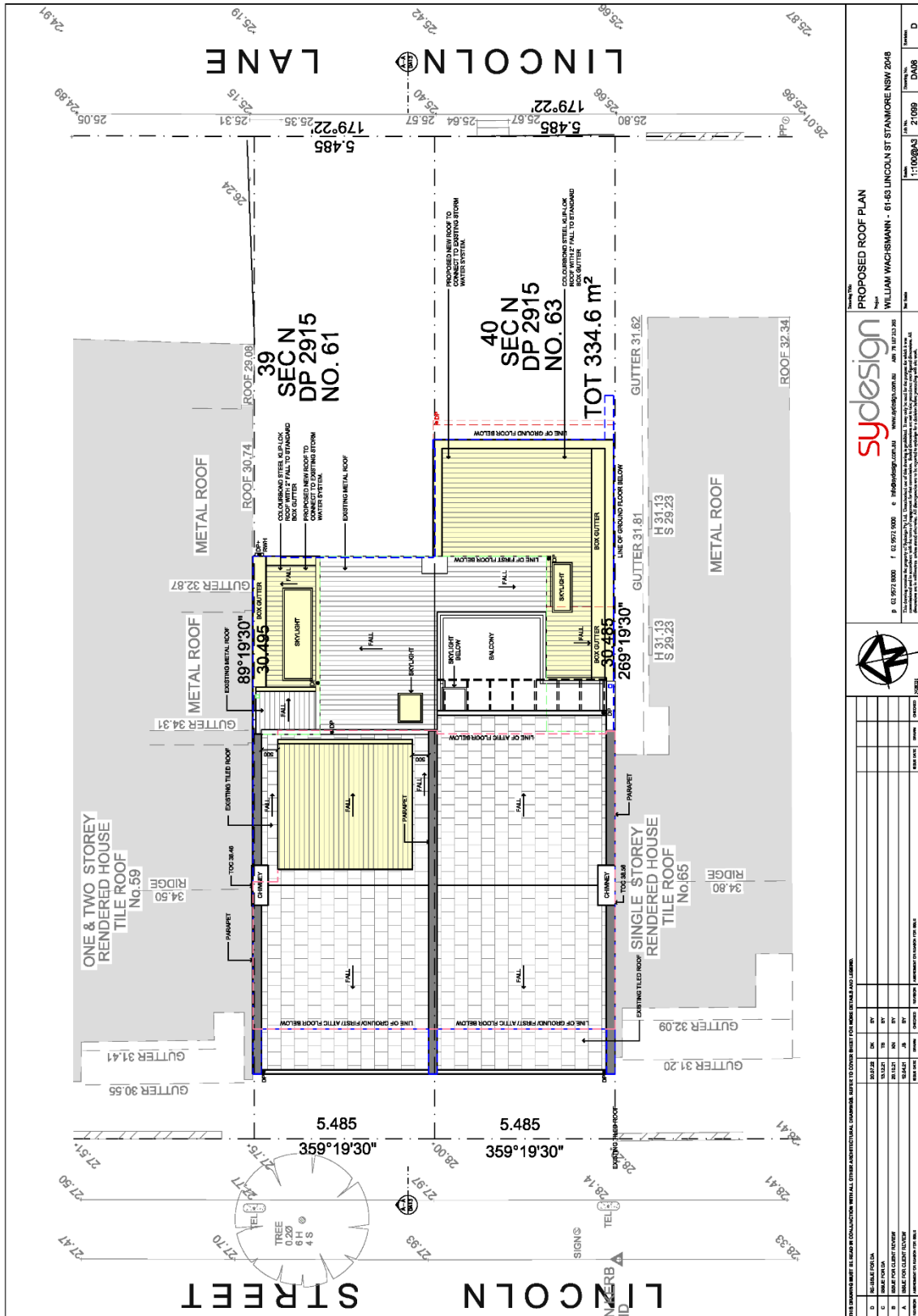
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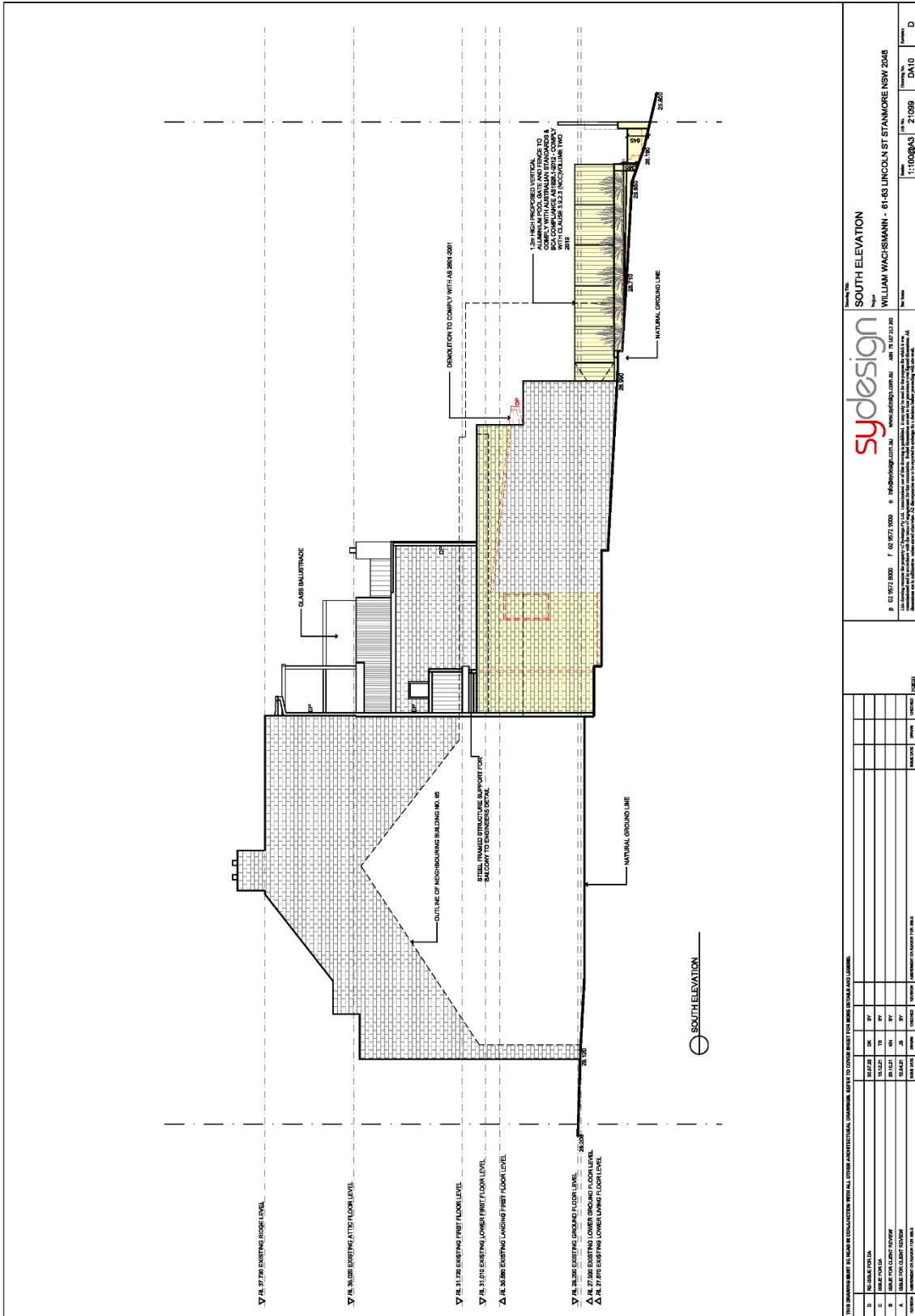
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PROPOSED ROOF PLAN
 WILLIAM WACHS-MANN - 61-63 LINCOLN ST STANMORE NSW 2048

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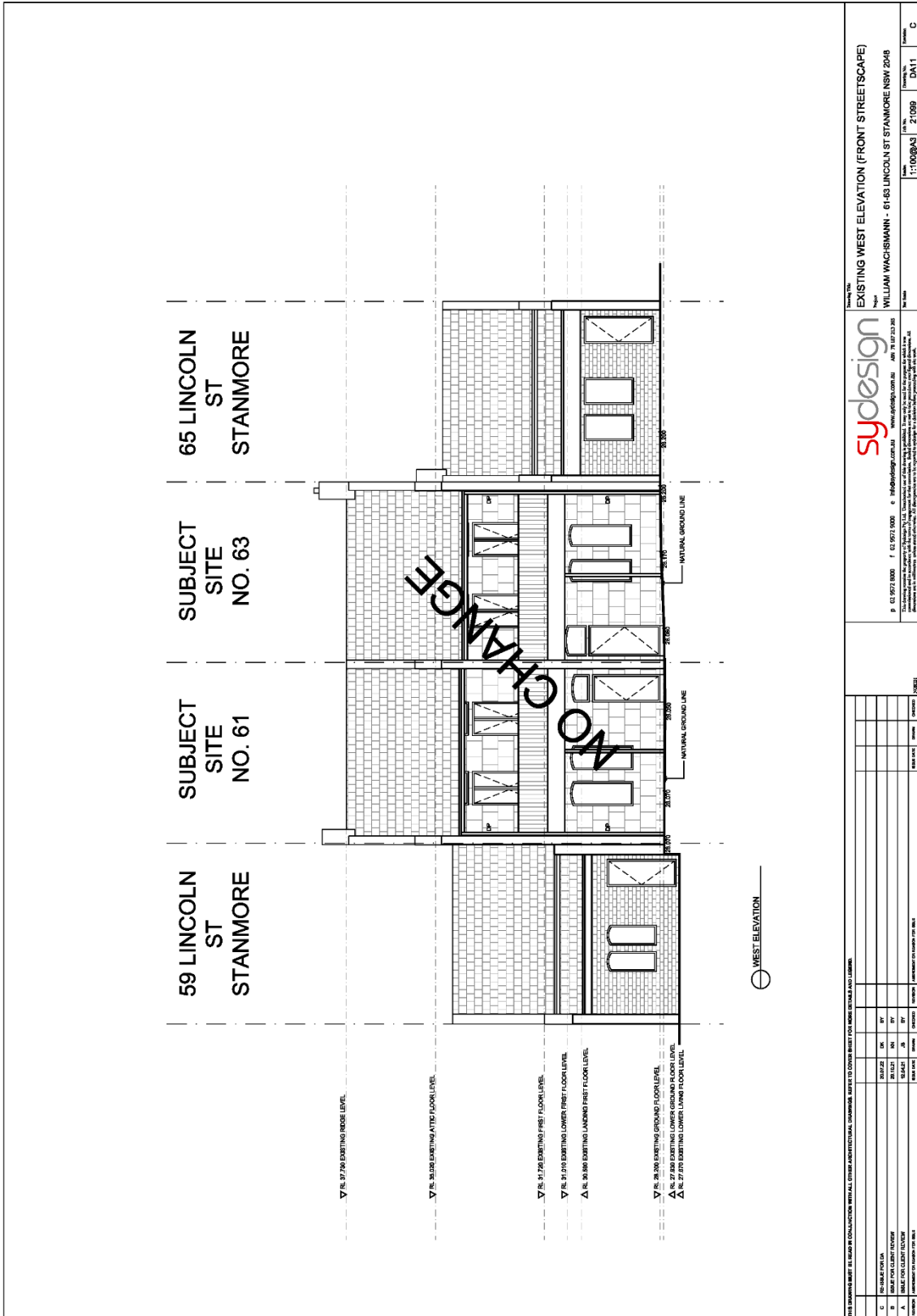
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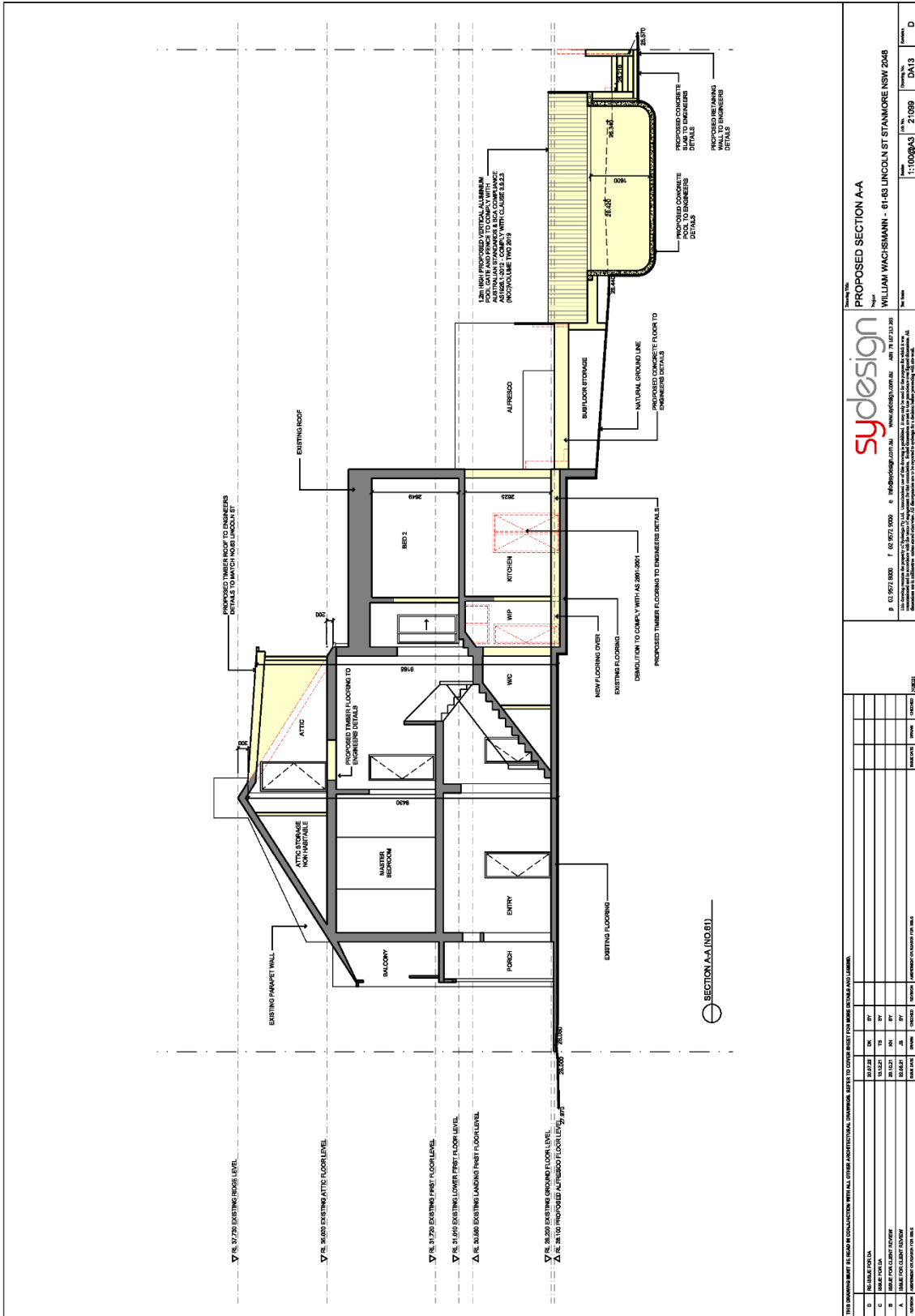
SOUTH ELEVATION

Project No: **SOUTH ELEVATION**
 Client: **WILLIAM WAGERSMANN - 61-83 LINCOLN ST STANMORE NSW 2068**
 Date: **21/09/22**
 Scale: **1:100**
 Drawing No: **DA10**
 Sheet: **D**

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Attachment C- Clause 4.6 Exception to Development Standards

CLAUSE 4.6 SUBMISSION
(floor space ratio)

for
Proposed alterations and additions to dwelling house

at
61-63 Lincoln Street, Stanmore

for
William Wachsmann

prepared by
John Pagan

Burrell Threlfo Pagan Pty Ltd
TOWN PLANNING CONSULTANTS
48 Victoria Road, Rozelle 2039

phone: 9818 8333
email: john@btpplan.com.au

January 2022

61-63 Lincoln Street, Stanmore : Clause 4.6 Submission (floor space ratio)

1. INTRODUCTION

This submission accompanies a development application for alterations and additions to the existing house at 61-63 Lincoln Street, Stanmore, as shown in the drawings numbered 21099 DA00-DA13 dated 13 December 2021 prepared by Sydesign Pty Ltd. As set out in the Statement of Environmental Effects accompanying the application, the proposal will increase the floor space ratio (FSR) of the building above the maximum allowed under *Marrickville Local Environmental Plan 2011* (the LEP). Because the building as proposed to be extended exceeds the development standard for FSR, a submission under clause 4.6 of the LEP is required seeking an exception to the standard.

2. MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011

2.1 Floor space ratio

The site is marked F on the Floor Space Ratio Map, representing a maximum floor space ratio (FSR) of 0.6:1; however, clause 4.4(2A) allows a maximum FSR of 1:1 for a site between 150 and 200m² in area and 0.7:1 for a site between 300 and 350m² in area.

The site comprises two lots, each 167.3m² in area. The 0.7:1 FSR applicable to the total site area of 334.6m² allows a gross floor area (GFA) of 234.2m². The Architect has calculated that the proposal will increase the GFA of the house from 288m² to 305m², which represents an FSR of 0.91:1 and does not comply with the standard.

The extent of the non-compliance is 71m², a 30.3% variation to the standard.

Because the proposal does not comply with the development standard for floor space ratio, an exception to the standard is sought under clause 4.6 of the LEP.

2.2 Exception to Development Standard (Floor space ratio)

Clause 4.6 allows consent to be granted for development that would contravene a development standard if:

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(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 and*
- the consent authority is satisfied that
 - (4)(a)(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- the concurrence of the Secretary has been obtained

61-63 Lincoln Street, Stanmore : Clause 4.6 Submission (floor space ratio)

The FSR control contained in clause 4.4 of the LEP is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6. In accordance with the guidelines provided by decisions of the Land and Environment Court, this submission addresses the requirements of clause 4.6 in turn.

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

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

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

The judgment in *Wehbe* identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. Subsequent cases including *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 have confirmed that these ways are equally applicable under the clause 4.6 regime.

The first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Wehbe* at 42 and 43).

The objectives of the floor space ratio standard are set out in clause 4.4(1) of the LEP:

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

Objective (a)

Establish the maximum floor space ratio:

To the extent that this is a meaningful objective, it has been achieved by the gazettal of the LEP.

61-63 Lincoln Street, Stanmore : Clause 4.6 Submission (floor space ratio)

Objective (b)

Control building density and bulk in relation to the site area in order to achieve the desired future character for different areas:

The development standard and this objective both relate to “site area”, in relation to which clause 4.5(3) of the LEP provides

*In determining the site area of proposed development for the purpose of applying a floor space ratio, the **site area** is taken to be –*

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or*
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out*

The subject site consists of two lots, each containing one of a pair of semi-detached terrace-style houses. Although internal alterations have been made to allow the pair to be used and occupied as a single dwelling house (in accordance with an approval dated 13 May 2004 to CDC2004/0213), to the external observer the site continues to appear to contain two houses; and if the owners preferred it, they could reinstate the property as two separate dwellings each on its own lot.

For these reasons it is arguable that the appropriate development standard for the site is that applicable to the lot sizes of 167.3m² (that is, a maximum FSR of 1:1) rather than that applicable to the total site area (that is, 0.7:1). The proposed FSR of 0.91:1 complies with the FSR that would be applicable to the building considered as a pair.

The proposed additional floor area will not increase the population *density* on the site and, as it is achieved by infill of side courtyards at ground-floor level that are not visible from outside the site, will not add to perceived *building bulk*. (The proposed rear roof extension for a walk-in wardrobe and bathroom is non-habitable space in an attic and is not assessable as GFA or included in the calculation of FSR.)

The proposal will not significantly increase existing *building bulk* on the site, which will remain consistent with that on the site, compatible with surrounding built form in Lincoln Street and consistent with the relevant provisions of *Marrickville Development Control Plan 2011* and in particular with those for the Kingston West Heritage Conservation Area.

Objective (c)

Minimise adverse environmental impacts on adjoining properties and the public domain:

The proposal is designed to minimise impacts on streetscape and neighbouring amenity due to bulk and scale, which will be consistent with that surrounding. In particular, the proposed additions are at the rear and will not materially affect the access to sunlight, privacy or viewlines of surrounding properties.

61-63 Lincoln Street, Stanmore : Clause 4.6 Submission (floor space ratio)

Draft Inner West Local Environmental Plan 2020 (Draft LEP) was placed on public exhibition from 16 March to 24 April 2020 and is therefore a matter for consideration in assessment of the application under section 4.15 of the *Environmental Planning and Assessment Act*. At its meeting on 23 June 2020, Council adopted the Draft LEP with minor amendments and it has been submitted to the NSW Department of Planning, Industry and Environment for finalisation.

The Draft LEP contains amended and expanded objectives of the floor space ratio standard as set out in clause 4.4(1):

- (a) to appropriately regulate the density of development, built form and land use intensity based on the capacity and location of existing and planned infrastructure*
- (b) to ensure that development is compatible with the desired future character*
- (c) to provide an appropriate transition between development of different densities*
- (d) to minimise adverse environmental and amenity impacts on adjoining properties, the public domain, heritage conservation areas and heritage items*
- (e) to provide a suitable balance between landscaping, open space, and built form to increase the tree canopy and to protect the use and enjoyment of private properties and public domain*

Objective (a)

Appropriately regulate density, built form and land use intensity based on the capacity and location of existing and planned infrastructure

The proposed additional floor area will not increase the population *density* on the site. It will only marginally increase *land use intensity* and will not significantly affect *built form*. The proposed development will not materially affect *the capacity of existing or planned infrastructure* on any of these bases.

Objective (b)

Ensure development is compatible with desired future character

The proposal will maintain the existing housing style, built form and setbacks consistent with the relevant provisions of *Marrickville Development Control Plan 2011* and in particular with those for the Kingston West Heritage Conservation Area.

Objective (c)

Provide an appropriate transition between development of different densities

The site is not in an area of *transition between development of different densities* and, consistent with the second method in *Wehbe*, this objective is not relevant to the proposed development.

61-63 Lincoln Street, Stanmore : Clause 4.6 Submission (floor space ratio)

Objective (d)

Minimise adverse environmental and amenity impacts on adjoining properties, the public domain, heritage conservation areas and heritage items

The proposal is designed to minimise impacts on streetscape and neighbouring amenity due to bulk and scale, which will be consistent with that surrounding. In particular, the proposed additions are at the rear and will not materially affect the access to sunlight, privacy or viewlines of surrounding properties.

Objective (e)

Provide a suitable balance between landscaping, open space and built form to increase the tree canopy and to protect the use and enjoyment of private properties and public domain

The proposed development meets Council's requirements for open space and landscaping, will be suitable for the use and enjoyment of residents and retains the existing mature tree.

The arguments set out above show that in the circumstances compliance with the development standard is unreasonable and unnecessary because the relevant objectives of the development standard will be achieved by the proposed development despite the numerical non-compliance.

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

The following environmental planning grounds are relevant:

- The proposal will substantially maintain existing built form consistent with heritage conservation values and the qualitative criteria for development in the neighbourhood.
- The proposed built form will maintain the contribution of the site to the streetscape of Lincoln Street.
- In the context (a two-storey terrace in the form of a pair of semi-detached houses with non-matching additions within a mix of single-storey and two-storey late nineteenth-century and early twentieth-century houses), the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact.
- With regard to the other applicable development standard, the proposed additions comply with the building height control.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will not appreciably affect solar access to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.

61-63 Lincoln Street, Stanmore : Clause 4.6 Submission (floor space ratio)

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

Any proposed development that achieves the objectives of a development standard must also be consistent with the objectives of the standard, as the threshold for consistency is lower than that for achievement. The discussion above in response to clause 4.6(3)(a) has demonstrated that the proposed development will achieve the objectives of the standard; therefore it will also be consistent with those objectives.

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

In relation to the objectives of the R2 Low Density Residential zone:

- *to provide for the housing needs of the community within a low density residential environment*

By enhancing the standard of accommodation on the site within a low-density built form compatible with surrounding development, the proposed alterations and additions will contribute towards meeting the demand for housing in the locality.

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

This objective is not applicable to the proposed development.

The *Draft Inner West Local Environmental Plan 2020* retains the R2 zone objectives set out above and includes additional objectives as set out and addressed below:

- *to provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas*

The proposal is designed to be compatible in pattern, orientation and character with the existing and surrounding buildings in Lincoln Street and is consistent with Council's planning controls for the Conservation Area.

- *to provide landscaped areas for the use and enjoyment of existing and future residents*

The proposed development meets Council's requirements for landscaped open space and will be suitable for the use and enjoyment of residents.

- *to ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area*

This objective is not relevant to the proposal.

- *to protect and enhance the amenity of existing and future residents and the neighbourhood*

The proposal will provide an improved standard of housing on the site without material adverse impacts on neighbouring properties.

61-63 Lincoln Street, Stanmore : Clause 4.6 Submission (floor space ratio)

Concurrence of the Secretary

The concurrence of the Secretary can be assumed by Council. The implications of a house development not complying with a floor space ratio development standard of the Marrickville LEP are local in scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The non-compliance is justified as set out above. The variation sought will enhance the utility and amenity of the development, furthering the objectives of the *Environmental Planning and Assessment Act 1979*, without material adverse impacts on neighbouring amenity or the public domain.

3. CONCLUSION

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and with those of the R2 Low Density Residential zone.

John Pagan BTP MPIA
Town Planner

14 January 2022