





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0200
Address	20 Fort Street PETERSHAM
Proposal	Alterations and additions to an existing dual occupancy and landscaping works
Date of Lodgement	22 March 2023
Applicant	Ms Jianing Liu
Owner	Mr Ziqun Zheng Ms Jianing Liu
Number of Submissions	Initial: One (1)
Value of works	\$794,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	<ul style="list-style-type: none"> • Permissibility • Clause 4.6 request to vary the maximum floor space ratio under the <i>IWLEP 2022</i> • Solar access and overshadowing
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards



Figure 1: Locality Map

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for Alterations and additions to an existing dual occupancy and landscaping works at 20 Fort Street, Petersham.

The application was notified to surrounding properties and one (1) submission was received in response to the initial notification.

The main issues that have arisen from the application include:

- Permissibility
- The application results in an additional variation to the floor space ratio development standard of 38.98sqm or 35.27%
- Solar access and overshadowing

Subject to recommended conditions, the proposal generally complies with the aims and objectives of the *Inner West Local Environmental Plan 2022* and the *Marrickville Development Control Plan 2011*. The proposal is considered acceptable and recommended for approval.

2. Proposal

The application seeks development consent for alterations and additions to an existing dual occupancy and associated landscaping works. Specifically, the following is proposed:

- Partial demolition of the existing dual occupancy, including the demolition of the existing kitchen, bathroom and laundry, and breakfast room at the rear of Unit 1 and Unit 2, including demolition of internal walls;
- Demolition of the portico and concreting at the rear of the site;
- Construction of new bathroom, laundry, kitchen and lounge area at the rear of Unit 1 and 2;
- Construction of terrace area at the rear of Unit 2; and
- Associated landscaping works at the rear and along the eastern boundary of the site.

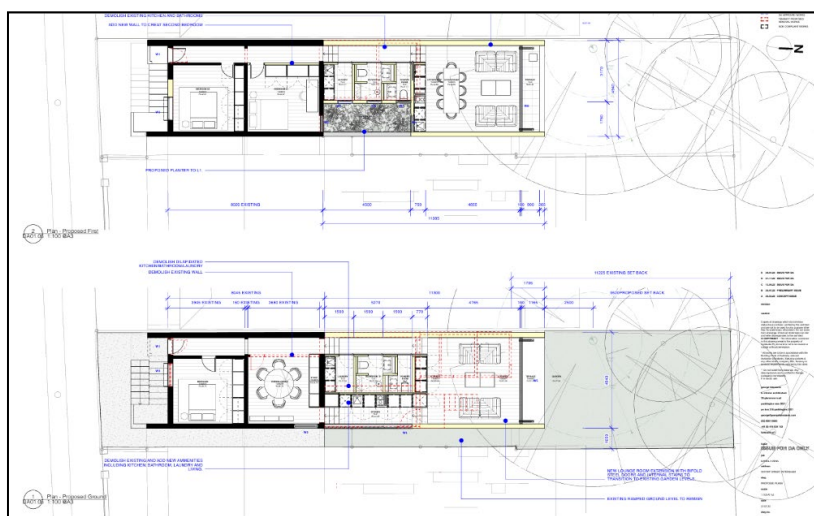


Figure 2: Proposed floor plans, as amended, submitted by the applicant

3. Site Description

The subject site is located on the northern side of Fort Street, between Railway Street and Petersham Street, Petersham. The site consists of one allotment and is generally rectangular shaped with a total area of 184.2sqm and is legally described as Lot A in DP 439133.

The site has a frontage to Fort Street of 6.115 metres. The site is affected by a number of easements including a 1.19 metre wide right of footway, and a 9.065-metre-long brick party wall, shared with no. 18 Fort Street, Petersham.

The site supports a two storey, dual occupancy, with Unit 1 located on the ground floor, and Unit 2 located on the first floor. The adjoining properties support one and two-storey dwelling houses and are dominated by residential uses.

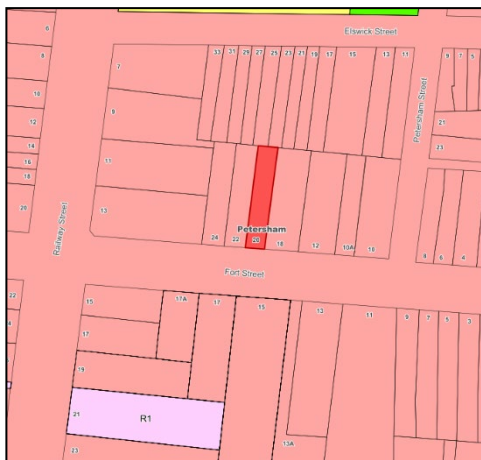


Figure 3: Zoning Map (subject site highlighted red).

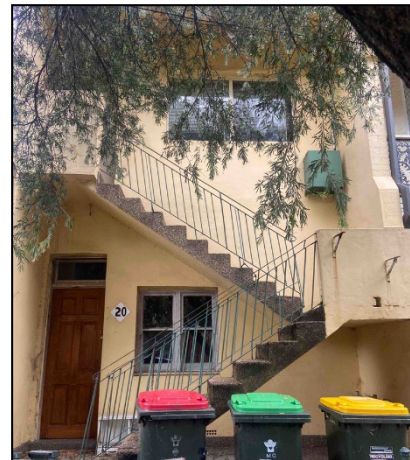


Figure 4: Photo of the existing front facade

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

None of relevance

Surrounding properties

None of relevance

4(b) Application history

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

Date	Discussion / Letter / Additional Information
15/03/2023	The subject DA was submitted with Council.
05/04/2023 – 21/04/2023	The application was notified. One (1) submission was received.
24/04/2023	Site inspection undertaken.
16/06/2023	<p>A Request for Further Information (RFI) letter was sent from Council to the applicant. In summary, the concerns identified within this letter related to:</p> <ul style="list-style-type: none"> • Insufficient information provided to establish existing use rights; • Works to the party wall; • Works within the Right of Footway; • Impacts to the one (1) Eucalyptus grandis (Flooded Gum) along the western boundary of the rear yard; • Visual bulk and scale impacts to neighbouring properties due to proposed setbacks, height and roof form; • Acoustic impacts due to first floor terrace; • Visual impacts due to proposed balcony; • Insufficient information to determine overshadowing impacts to no. 18 Fort Street, Petersham; and • Amendments to the waste management plan to ensure all proposed waste is stored within the property boundaries.
31/07/2023	<p>The applicant submitted additional information addressing the above concerns. In particular, the following amendments were made, and additional information was provided:</p> <ul style="list-style-type: none"> • Additional information to establish existing use rights; • Works within the Right of Footway deleted; • Amended arborist report provided; • Reduction in overall bulk and scale, and increase of rear setback; • Amended shadow diagrams; and • Amended waste management plan. <p>The amended plans did not require renotification, in accordance with the Community Engagement Framework as they are considered to have a reduced impact compared to the original plans. The amended plans are the subject of this report.</p>
05/09/2023	Council requested an amended Clause 4.6 be submitted, showing the amended proposal calculations.
05/09/2023	The applicant submitted an amended Clause 4.6 via the NSW Planning Portal.

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 (EPA 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 (Transport and Infrastructure) 2021*
- *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 (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and has been referred for comment for 21 days.

Ausgrid has identified that the subject site is within the vicinity of underground and overhead cables. Ausgrid raised no objection to the proposed development, subject to suitable conditions ensuring that the development is constructed with consideration to Ausgrid's Network Standards. These conditions are included in the recommendation of this report.

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

Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

5(a)(v) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3 – Height of buildings
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management
- Section 6.4 – Terrestrial biodiversity
- Section 6.8 – Development in areas subject to aircraft noise

Section 1.2 Aims of Plan

The proposal is consistent with the relevant aims of the plan as follows:

- The proposal is considered to conserve and maintain the natural, built and cultural heritage of Inner West;
- The proposal provides housing for, and enhances the amenity of, residents in the Inner West;
- The proposal promotes a high standard of design; and
- The proposal will not result in adverse social, economic or environmental impacts.

Section 2.3 Land Use Table and Zone Objectives

The subject site is zoned R2 Low Density Residential under the *IWLEP 2022*. The application proposes alterations and additions to a an existing dual occupancy (attached), which is defined as two attached dwellings on one lot of land but does not include a secondary dwelling.

Dual occupancies are not a permissible form of development under the zoning provisions (R2 Low Density Residential) applying the land within *IWLEP 2022*. The proposal, therefore, relies on existing use rights, which is addressed below.

Assessment of Existing Use Rights

The existing building on the subject site constitutes a dual occupancy, which is not a permissible form of development under the zoning provisions of the R2 Low Density Residential land within the *IWLEP 2022*. The proposal, thus, relies on existing use rights.

(i) Environmental Planning and Assessment Act 1979

Division 4.11 (Part 4.65-4.68) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) contains provisions that provide a framework for the definition of an 'existing use' and provides further limitations and regulation for the continuation and development of existing uses.

Firstly, Part 4.65 of the Act provides a definition of an existing use. In plain terms, an existing use is defined in the following manner:

- It is a use that was lawfully commenced
- It is a use that is currently prohibited
- It is a use that has not been abandoned since the time that it became a prohibited use

The applicant has provided the following information to demonstrate that the site benefits from existing use rights:

- Permit No. 3315 was approved by Council on February 10th, 1965, for the conversion of an existing two storey dwelling house into two self-contained units.
- A Statutory Declaration from the director of the real estate agency who managed the property until 2021, stating that Unit 1 had been occupied for almost 47 years and Unit 2 had a continuous tenancy lease from 2008 until 2021.

The applicant has also provided supplementary evidence, including confirmation from Council of approval history, and images of separate water meters to substantiate the above.

It is noted that Part 4.67(3) of the Act specifies that:

“An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.”

As such, the provisions contained in *IWLEP 2022* do not apply to the development to the extent that it relates to the dual occupancy use. Rather, Division 4.11 of the Act services to enable the continuation of an existing use and refers to the relevant regulations (Environmental Planning and Assessment Regulation 2021) with respect to the premises being enlarged, expanded or intensified; or being altered or extended for the existing use.

(ii) Environmental Planning and Assessment Regulation 2021

Sections 163 - 165 of the EPA&A Regulations 2021 are relevant to the development as they set out the matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for alterations and additions to an existing use.

Comment:*Clause 163 - Certain development allowed*

The proposal involves alterations and additions to the existing dual occupancy development, which is permitted by Clause 163(1) of the EPA&A Regulations 2021.

*Clause 164 - Enlargement, expansion and intensification of existing uses; and
Clause 165 - Alteration of buildings and works*

Enlargement/expansion of the existing residential use is sought. However, this is proposed to be undertaken for the existing use and for no other use and will be carried out on the land on which the existing use as carried out immediately before the relevant date. The proposed works would be for the existing use of the buildings as a dual occupancy, thereby, satisfying Clauses 164 and 165 of the EPA&A Regulations 2021.

(iii) Land and Environment Court Planning Principles – Existing Use Rights

An assessment of the proposed alterations and additions to the dual occupancy has been carried out in accordance with the NSW Land and Environmental Court planning principles in relation to the assessment of development applications based on existing use rights, which were stated by Senior Commissioner Roseth *in Fodor Investments V Hornsby Shire Council [2005]*.

(a) Principle 1 – How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?Height

While numerical controls for height do not apply to sites with existing use rights, a maximum building height of 9.5 metres applies to the land and immediately adjoining sites. The proposal has a maximum height of approximately 7.9 metres, therefore, complying with the building height limit and surrounding development. It is noted that the height of the front portion of the existing building exceeds the 9.5m maximum; however, it is not proposed to be altered and all new works remain entirely with the 9.5m maximum. The proposed building is consistent with the height anticipated on surrounding sites under the planning controls within *IWLEP 2022*.

Floor Space Ratio

While numerical controls for floor space ratio do not apply to sites with existing use rights, the site is afforded an FSR of 0.6:1 in accordance with Clause 4.4 in *IWLEP 2022*.

The subject site is labelled “F” on the Floor Space Ratio Map in accordance with Clause 4.4(2C); however, the development constitutes a dual occupancy. Hence, this clause is not applicable. Should the development constitute only a dwelling house, attached dwelling or semi-detached dwelling, the allowable FSR would be 1:1.

The dual occupancy proposes an FSR of 0.81:1 (149.5sqm), which exceeds the maximum allowable FSR of 0.6:1. The proposed variance to the control, as detailed below in this report, is deemed acceptable, as the proposal is consistent with neighbouring dwellings, the proposal does not result in any undue privacy or solar access impacts, and the overall bulk and scale of the proposal is consistent with surrounding sites.

Setbacks

Side Setbacks

- Nil setback along the ground and first floor western elevations, and
- 900mm setback along the ground and first floor eastern elevations.

Front Setback

- No change is proposed to the existing front setback.

Rear Setback

- 9.52m rear setback

The proposed building setbacks are considered to be acceptable in the site circumstances – refer to more detailed discussion under Part 4.1 of the MDCP 2011.

(b) Principle 2 – What is the relevance of the building in which the existing use takes place?

The development would continue to be used as an attached dual occupancy.

(c) Principle 3 – What are the impacts of the development on adjoining land?

The impacts of the proposed alterations and additions have been assessed elsewhere in this report and are generally considered to be acceptable.

(d) Principle 4 – What is the internal amenity?

The proposed alterations and additions would result in improved internal amenity for the occupants of each of the dwellings.

Concluding Remarks

The proposal has been assessed against the four (4) planning principles established by the NSW Land and Environment Court in relation to existing use rights. The proposal is not considered to result in undue or adverse impacts to adjoining properties or the streetscape. Whilst the FSR does not comply with the *IWLEP 2022* requirements, it is a technical breach as a result of dual occupancies being excluded from the operation of clause 4.4(2A) of *IWLEP 2022*.

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 4.15 of the *Environmental Planning & Assessments Act 1979*.

Section 2.7 – Demolition requires development consent

The proposal satisfies this section as demolition works are proposed which are permissible with consent.

Section 4 Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
Floor Space Ratio Maximum permissible: 0.6:1 or 110.52sqm	149.5sqm or 0.81:1	35.27%	No
Building Height Maximum permissible: 9.5m	7.9m	N/A	Yes

Section 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 section.

Section 4.6 – Exceptions to Development Standards

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

- Floor Space Ratio

The applicant seeks a variation to the floor space ratio development standard under Section 4.6 of the *IWLEP 2022* by 35.27% (38.98sqm), noting that the applicant’s calculations and Council’s calculations differ by 5.5sqm.

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

Whilst, as outlined elsewhere in this report, floor space ratio has no application for an assessment of applications that rely on existing use rights, a written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The breach is considered to be a technical breach, as the proposal would be fully compliant with the development standard if the site was a dwelling house.*
- *The proposal maintains two attached dwellings, which contributes to housing in the area. The well-designed upgrades to the existing dwellings will suit the housing needs of the residents.*
- *The proposal maintains its existing two-storey built form, including the front portion of the dual occupancy. The existing maximum building height, front and side setbacks will also be maintained. The proposed rear setback appropriately aligns with that of neighbouring dwellings and the proposal will retain all existing trees.*
- *The proposal will maintain the existing building height and new works will be located below the ridgeline with the setbacks consistent with the existing dual occupancy and neighbouring dwellings. This will minimise the perceived bulk and will ensure the dual occupancy remains compatible with the surrounding context.*
- *The proposed rear addition will be subordinate to the existing built form.*
- *The density of the site would remain consistent with the immediate area and in some cases appear on the less dense side than surrounding developments*

It is considered that, would the FSR development standard be applicable, the applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable and 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 Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

The objectives of the R2 zone are 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.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The application is considered to be consistent with the objectives listed above, as the proposal will maintain the existing character of the built and natural environment of the area, and results in a development that is low-density in nature. The proposed works, subject to conditions, will maintain the existing character of the building, and the proposed ground and first floor extensions are modest in nature and will not impact the existing housing needs of the community.

As outlined previously, whilst the numerical FSR control (development standard) has no application in this instance, the objectives of the standard have relevance to the assessment of the application. In this regard, the objectives of the FSR development standard for residential development are as follows:

- a. *to establish a maximum floor space ratio to enable appropriate development density,*
- b. *to ensure development density reflects its locality,*
- c. *to provide an appropriate transition between development of different densities,*
- d. *to minimise adverse impacts on local amenity,*
- e. *to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

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 Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposal enables appropriate density for the subject site and locality;
- The proposed bulk and scale is similar with other development in the vicinity
- The proposed built form, as detailed elsewhere in this report, will not create undue visual or acoustic privacy, undue overshadowing impacts to neighbouring dwellings;
- The proposal protects the existing tree canopy on the site, and, subject to recommended tree planting conditions, will increase the tree canopy on the site;
- The proposed development provides adequate private open space and landscaping for both units;
- The proposal protects the use and enjoyment of the subject site and 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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Floor Space Ratio and it is recommended the Section 4.6 exception be granted.

Section 6.2 – Earthworks

The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.

Section 6.5 - Development in areas subject to aircraft noise

A majority of the site is located within the ANEF 20-25 contour, with a small portion of the rear corner of the site located within a 25-30 contour. The proposal is capable of satisfying this section as 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 of section 6.8 *IWLEP 2022*.

5(d) Development Control Plans

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

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

The following provides discussion of the relevant issues:

Part 2.6 – Acoustic and Visual Privacy

Unit 1 (Ground Floor)

W4 (also shown as W7 on Dwg 02.02, Rev D) is a glass door located along the western boundary and serves the kitchen and provides access to the passageway along the boundary. In addition, the wall adjacent to the kitchen is proposed to be textured glass block, as demonstrated in the submitted materials and finishes schedule. The glass doors proposed are considered to not create undue visual or acoustic privacy impacts to the immediate neighbour, as the doors are adequately offset from any adjoining ground floor

windows. The proposed glass block wall is not considered to create undue visual privacy impacts as the wall is offset from adjoining neighbouring windows.

W5, located along the northern elevation serving the terrace, is considered to be acceptable, as blade walls are proposed to the sides of the terrace, and the opening faces into the rear of the site, thus, the proposed window will not result in undue visual privacy impacts.

Unit 2 (First Floor)

The application, as amended, proposes planter boxes along the western elevation of the first floor. Subject to recommended conditions ensuring that this area is non-trafficable, it is considered that the planter will not create additional undue visual or acoustic privacy impacts to the immediate neighbour.

Moreover, windows W5, W6 and W7, located along the same elevation, are setback from the neighbouring property by 2.6m, and are proposed to have sill heights of 2.2 metres, thus no undue visual privacy impacts are created as a result of these windows.

W8, located along the northern elevation serving the proposed terrace, is considered to have an acceptable impact as the proposed terrace will be screened by blade walls on the eastern and western sides and faces into the rear of the site. In addition, overlooking into the neighbouring private open spaces will be minimised given the amended rear setback proposed. Thus, the proposed terrace and W8 is not considered to create undue visual privacy impacts.

Part 2.7 – Solar Access and Overshadowing

A submission was received during the initial notification regarding loss of solar access to the glass block windows on the ground and first floor along the eastern elevation of no. 18 Fort Street, Petersham.

The proposal, as amended, has significantly reduced the bulk of the design and overall height in response to this submission and request by Council. Amended shadow diagrams in plan and elevation for June 21 between 9am and 3pm have been provided.

The following assessment against C2(ii) of part 2.17 of MDCP 2011 and the Planning Principle regarding sunlight, established in ***The Benevolent Society v Waverley Council [2010] NSWLEC 1082*** has been made. The assessment is as follows:

- The subject site is located within the R2 Low Density Residential zone under the *IWLEP 2022*. The neighbouring windows face the western side boundary (shared with no. 20 Fort Street), and are constructed to the boundary; thus, solar access to these windows is difficult to protect, particularly given the north-south orientation of the sites. It is noted that these are not operable windows and are comprised of glass blocks. These windows are not the primary source of light to the associated rooms they adjoin as there are operable windows on the ground and first floor which provide solar access to these spaces at present.

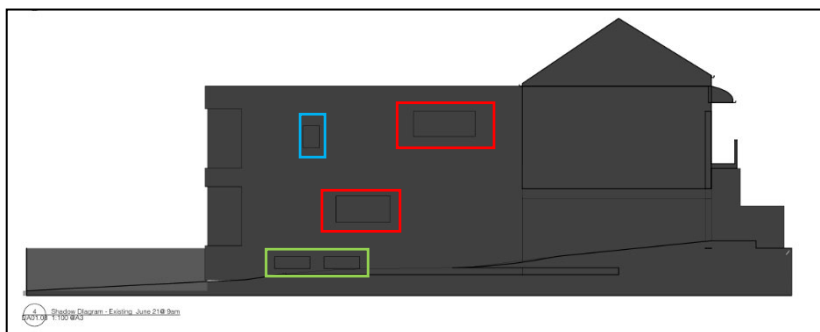


Figure 5: Elevational shadow diagram of no. 18 Fort Street, Petersham, at 9am June 21, submitted by the applicant. Windows outlined in red serve principal living and lounge areas, windows outlined green serve a rumpus / home office, and the window outlined in blue serves a bedroom, according to floor plans provided on RealEstate.com

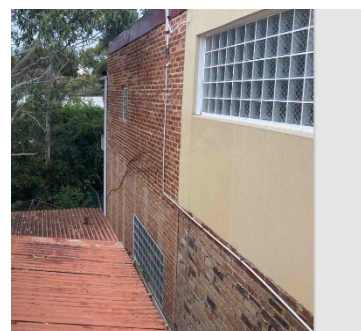


Figure 6: Image of windows along the western elevation of no. 18 Fort Street, Petersham

- Given the orientation of the site, the windows located along the western elevation of no. 18 Fort Street do not currently receive solar access until 1pm on 21 June. While solar access to the ground floor window is almost entirely lost as a result of the proposal, solar access is still provided to the first-floor window serving a secondary lounge from 1pm and will be only partially overshadowed.
- Notwithstanding the above, the lower ground floor contains a rumpus room which is not the primary living area but does have an alternate north facing operable opening, whilst the ground floor window on the western elevation of 18 Fort Street that is affected by additional overshadowing by the proposal serves a living room/ kitchen area. This space is open plan and contains operable openings along the eastern and northern elevations ensuring that this room serving the primary living area still receives compliant solar access and the glass block windows located on the western boundary are a secondary source of light to this space and should not be relied upon for solar access.
- As detailed elsewhere in this report, the development proposes a FSR that is reasonable, and similar to surrounding sites. It is also noted that reasonable floor to ceiling heights and setbacks are proposed.
- The proposal will result in no overshadowing to the private open space at the rear of no. 18 Fort Street.

Adequate solar access for the subject site is retained and complies with the relevant provisions of this Part.

Part 2.18 – Landscaping and Open Space

The proposed development will provide 58sqm of private open space at the rear of the site, with 100% of this area being landscaped. In addition, both units have terraces proposed at the rear of the living areas.

The private open space provided is considered acceptable, as sufficient space for landscaping, tree canopy planting and outdoor recreation, in accordance with the relevant objectives of this Part, is provided.

Part 2.20 – Tree Management

The proposal, as amended, has increased the rear setback so that the building works will not impact the existing *Eucalyptus grandis* tree. The proposal was referred to Council’s Tree

Management Officer, who is supportive of the proposal, subject to recommended conditions requiring the new concrete slab to be designed in a manner that will involve minimal excavation and damage to tree roots. Conditions to this effect are included in the recommendation of this report.

Given the extent of existing trees located at the rear of the site, additional tree planting is not required.

Part 4.1 Low Density Residential

Part 4.1.6.2 Building setbacks

Front setbacks

No change is proposed to the existing front setback.

Side setbacks

The lot width is less than 8m, and as such, the side setbacks are considered on merit in accordance with the requirements within the MDCP 2011. The proposed development provides a nil side setback along the western elevation, and a 900mm setback from the eastern elevation. The side setbacks proposed are considered satisfactory, as the proposal has acceptable impact on neighbouring properties with regard to visual and acoustic privacy, solar access and visual bulk.

Rear setbacks

The proposed rear setbacks, as amended, are considered acceptable as the rear setbacks will not create undue visual or acoustic privacy impacts to the immediate neighbours. Further, the proposal maintains adequate private open space for the subject site, and retains existing trees within the site. In addition, the proposed setbacks are consistent with neighbouring properties and the established setback found along the street.

4.1.6.3 Site Coverage

As the lot size is less than 300sqm, the total site coverage is a merit assessment. The proposed increase in site coverage is considered to be acceptable, as the proposal maintains adequate outdoor recreation space and areas for landscaping. In addition, the proposed site coverage is consistent with surrounding developments and the character of neighbouring dwellings.

Part 4.1.10 Residential period buildings

While the existing façade has been modified to include unsympathetic additions (i.e., the outdoor staircase), the site is considered to be a period building under this Part. As such, the proposed amendments to the façade are considered to be in accordance with the controls and objectives of this part, in particular, the changes proposed to the existing windows and doors.

The proposal seeks to replace the existing front doors with glass doors and alter the size of W4 to be square. Control C73 is repeated as follows:

New doors and windows visible from the street must be compatible with the style and materials of the residential period dwelling building.

The proposed alterations to the front are considered to be incompatible with the style of the period building and are inconsistent with the windows and doors of neighbouring period dwellings. As such, a design change condition has been recommended to ensure that W4 is vertically proportioned, with timber framing, and the doors (W1 and W3) are to remain as existing and made good.

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.

One (1) submission was received in response to the initial notification.

The following issues raised in submissions have been discussed in this report:

- Privacy implications given rear alignment – see Section 5(d), Part 2.6
- Overshadowing to neighbouring property – see Section 5(d), Part 2.7

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: *Materials are proposed to be stored along the wall of no. 18 Fort Street, which could damage the glass tiles along this elevation, as well as create water build up and dampness due to storage.*

Comment: An amended waste management plan was submitted during the assessment in response to the above concern, demonstrating that materials will no longer be stored along the passageway between no. 18 and no. 20 Fort Street. Materials are now to be stored at the front of the property.

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.

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.

- Urban Forest
- Development Engineering

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid

7. Section 7.11 Contributions/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 \$7,940 would be required for the development under Inner West Local Infrastructure Contributions Plan 2023. 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 *Inner West Local Environmental Plan 2022* and Marrickville Development Control Plan 2011.

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 Section 4.6 of the *Inner West Local Environmental Plan 2022*. 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 development 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/2023/0200 for Alterations and additions to an existing dual occupancy and landscaping works at 20 Fort Street PETERSHAM 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
Dwg 00.01, Rev E	Drawing Register and Materials and Finishes Schedule	27.07.2023	George Livissianis
Dwg 01.00, Rev E	Site Location	27.07.2023	George Livissianis
Dwg 01.02, Rev E	Proposed Demolition Site Plan	27.07.2023	George Livissianis
Dwg 01.03, Rev E	Proposed Roof Plan	27.07.2023	George Livissianis
Dwg 01.04, Rev D	Existing Site Plan	27.07.2023	George Livissianis
Dwg 01.05, Rev E	Proposed Plans	26.07.2023	George Livissianis
Dwg 01.11, Rev E	Proposed SDCP Plan	26.07.2023	George Livissianis
Dwg 02.01, Rev D	Proposed North/South Elevation	26.07.2023	George Livissianis
Dwg 02.02, Rev D	Proposed East & West Section/Elevation	26.07.2023	George Livissianis
Dwg 03.01, Rev D	Proposed Section	26.07.2023	George Livissianis
A473786_02	BASIX Certificate (Level 2)	31.07.2023	Livistudio p/l
A473776_02	BASIX Certificate (Level 1)	31.07.2023	Livistudio p/l

Not stated	Arboricultural Impact Assessment and Management Plan	August 2023	George Palmer
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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. W4 (as depicted on the southern elevation [Dwg 02.01, Rev D]) is to be of similar proportions to the ground floor window on the front facade of no. 18 Fort Street, Petersham, and is to be timber framed.
- b. W1 and W3 (as depicted on the southern elevation [Dwg 02.01, Rev D]) are to be deleted from the proposal. The existing timber doors are to remain and made good.

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:	\$8000.00
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. 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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

5. Section 7.12 Development Contribution Payments

In accordance with section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), a monetary contribution of **\$7,940** shall be paid to Council for the purposes of the provision, extension or augmentation of local infrastructure identified in the Plan.

At the time of payment, the monetary contribution payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$

Where:

- C_{payment} = is the contribution at time of payment
- C_{consent} = is the contribution at the time of consent, as shown above
- CPI_{consent} = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being [insert CPI value] for the [insert latest quarter and year].

- CPI payment = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres on 9592 5000 or council@innerwest.nsw.gov.au to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment can be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

GENERAL CONDITIONS

6. 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
1	<i>Eucalyptus grandis</i> (Flooded Gum)	Rear Yard

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;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

7. Project Arborist

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

8. 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.

9. 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.

10. 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.

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**12. 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.

13. 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 adjoining properties (no. 18 Fort Street and no. 22 Fort Street) 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.

14. 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.

15. 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

16. 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.

17. 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(s), 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. The 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;
- e. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP;
- f. 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;

- g. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Section 3.1.2.3(b) of the Building Code of Australia for Class 1 buildings;
- h. No nuisance or concentration of flows to other properties;
- i. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- j. 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;
- k. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- 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. No impact to street tree(s).

18. Construction Methods to Minimise Impact on Trees

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details certified by a suitably qualified Arborist demonstrating that construction of the approved concrete slab for the new building utilise tree sensitive construction techniques (such as isolated pier or pier and beam construction) within the specified radius of the trunk/s of the following tree/s:

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Eucalyptus grandis</i> (Flooded Gum)	5 metres

Prior to the issue of a Construction Certificate, the Certifying Authority must verify that no proposed underground services are located beneath the canopy of any prescribed tree/s located on the subject site and adjoining sites (including trees located within the public domain).

19. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions

are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

20. 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.

21. 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

22. 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

23. Tree Protection Zone

To protect the following tree/s, no work must commence until its/their Protection Zone is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area in accordance with Council’s *Development Fact Sheet—Trees on Development Sites*. The fence/s (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name	Radius in metres
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1	Eucalyptus grandis (Flooded Gum)	2.5 metres
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24. Inspections by Project Arborist

The trees to be retained must be inspected, monitored and treated by the Project Arborist during and after completion of development works to ensure their long-term survival. Regular inspections and documentation from the Project Arborist to the Certifying Authority are required at the following times or phases of work:

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
Tree 1 - <i>Eucalyptus grandis</i> - rear yard	Prior to commencement of works	<ul style="list-style-type: none"> Inspection and sign off installation of tree protection measures.
	During Works	<ul style="list-style-type: none"> Supervise all site preparation and demolition works within the TPZ; Supervise all works inside or above the TPZ; Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ; Supervise all tree work.

Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

25. Canopy and Root Pruning

Canopy pruning of the following tree which is necessary to accommodate the approved building works must be undertaken by, or directly supervised by, the Project Arborist.

Tree No.	Botanical/Common Name	Location
1	<i>Eucalyptus grandis</i> (Flooded Gum)	Rear Yard

The person acting on this consent has approval under Council's Tree Management Controls to; prune the above tree. Pruning is limited pruning of the 2x branches specified in the Arboricultural Impact Assessment prepared by George Palmer dated August 2023 on page 12.

Additional pruning is not permitted unless written approval is obtained from Council's Urban Forest team.

26. Limited Root Pruning

No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s must be severed or injured in the process of any works during the construction period:

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Eucalyptus grandis</i> (Flooded Gum)	5 metres

All excavation within the specified radius of the trunk of the above tree must be hand dug under direct supervision of the Project Arborist. If tree roots less than 30mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by a practicing Arborist.

27. Excavation Methods to Limit Impacts to Trees

Excavation for the installation of any services within the specified radius of the trunk/s of the following tree/s must utilise the thrust boring method or non-destructive excavation method such as either pneumatic or hydraulic tools only (e.g. *Airspade®* or hydro excavation). Thrust boring being carried out at least 600mm beneath natural ground level to minimise damage to tree/s root system:

Tree No.	Botanical/Common Name	Radius in metres
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1	Eucalyptus grandis (Flooded Gum)	5 metres
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28. 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.

29. 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

30. 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.

31. Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.

32. 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.

ON-GOING**33. Bin Storage**

All bins are to be stored within the site.

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.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 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.

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*.

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service 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 - SITA 1300 651 116
Environmental Solutions www.wasteservice.nsw.gov.au

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

WorkCover Authority of NSW 13 10 50
www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Street Numbering

If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to [Street Numbering Application](#)

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Ausgrid Network Standards and SafeWork NSW Codes of Practice

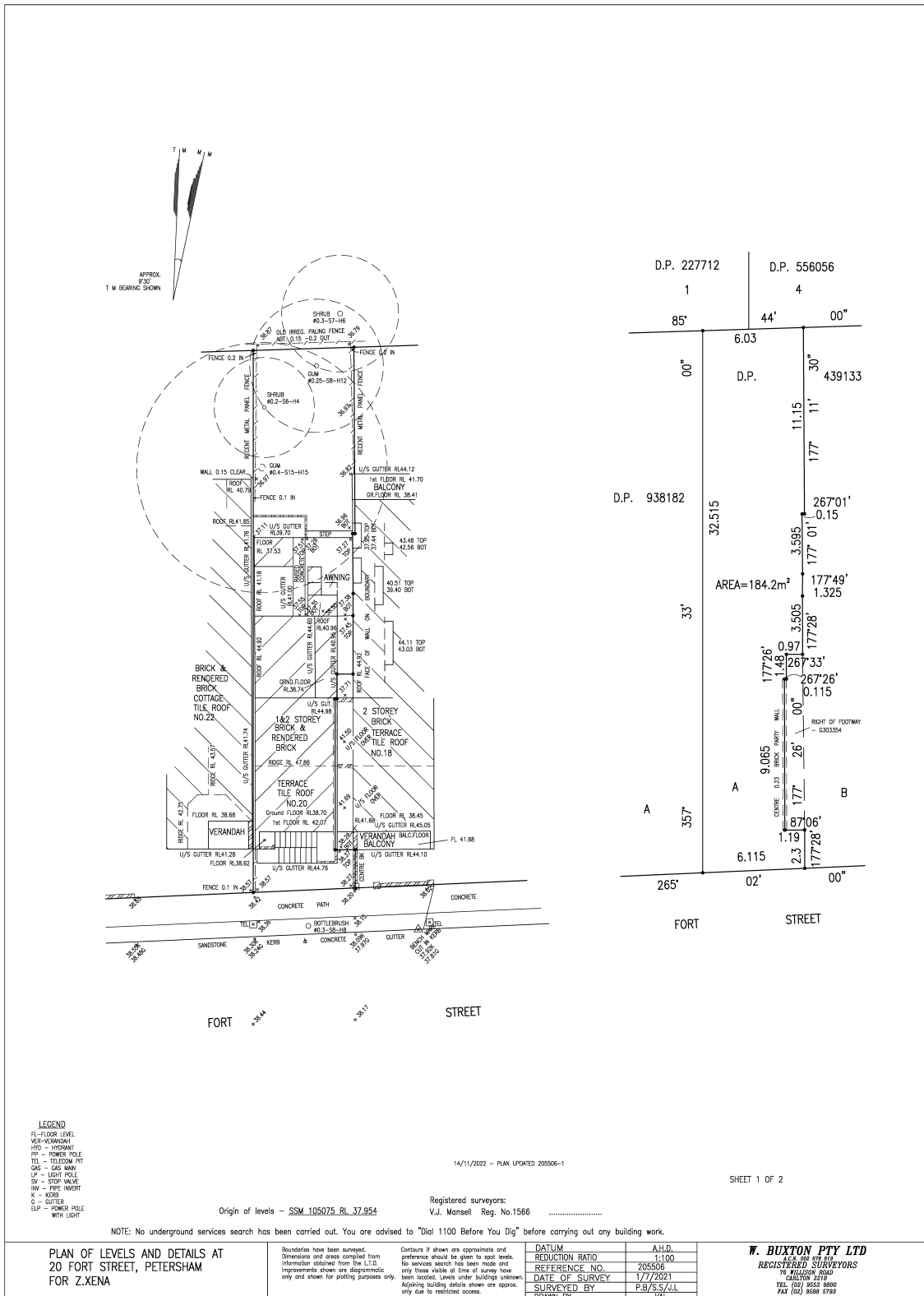
The design must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets. The "as constructed"

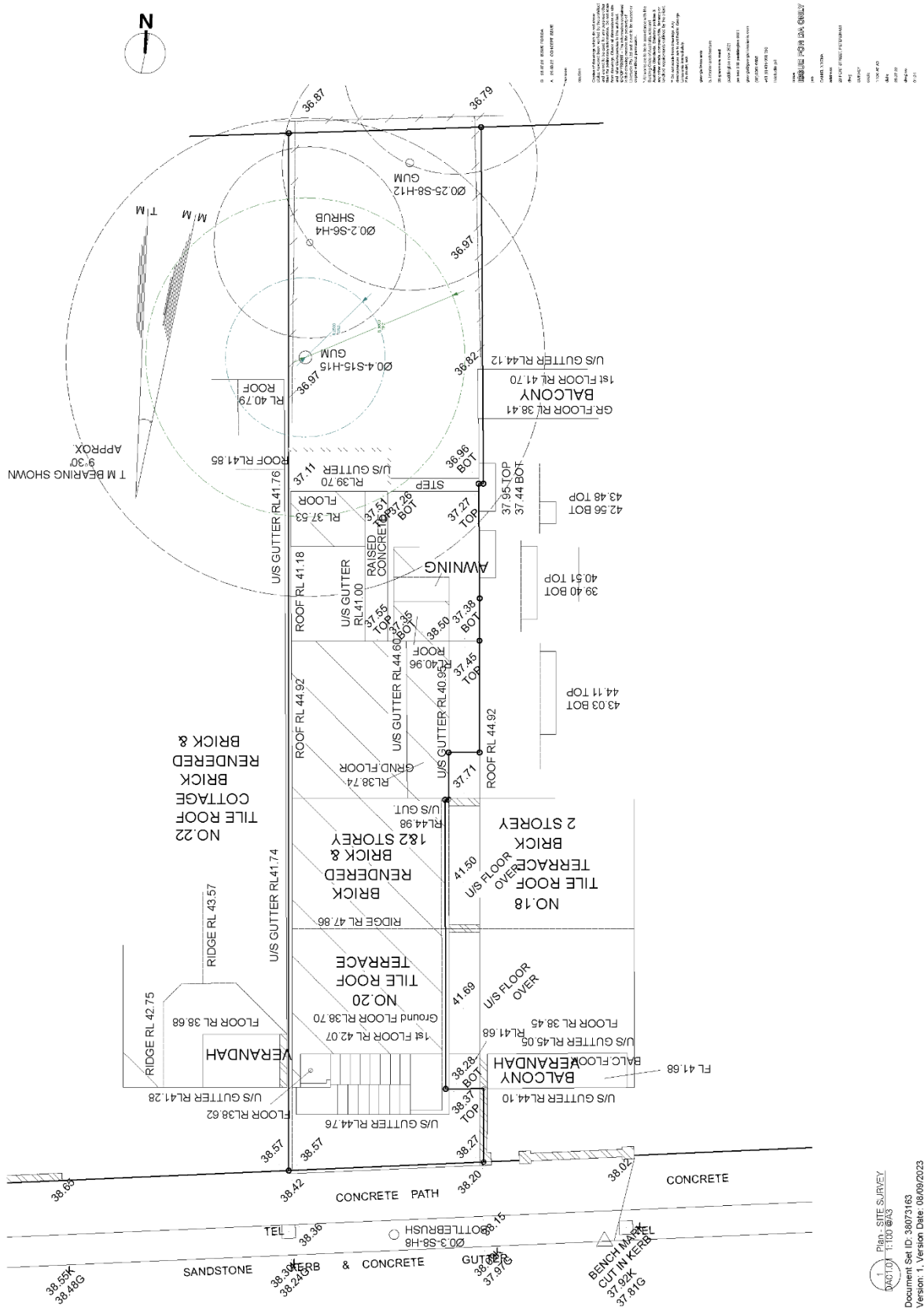
minimum clearances to Ausgrid's infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite. Ausgrid's Network Standards can be sourced from Ausgrid's website, www.ausgrid.com.au

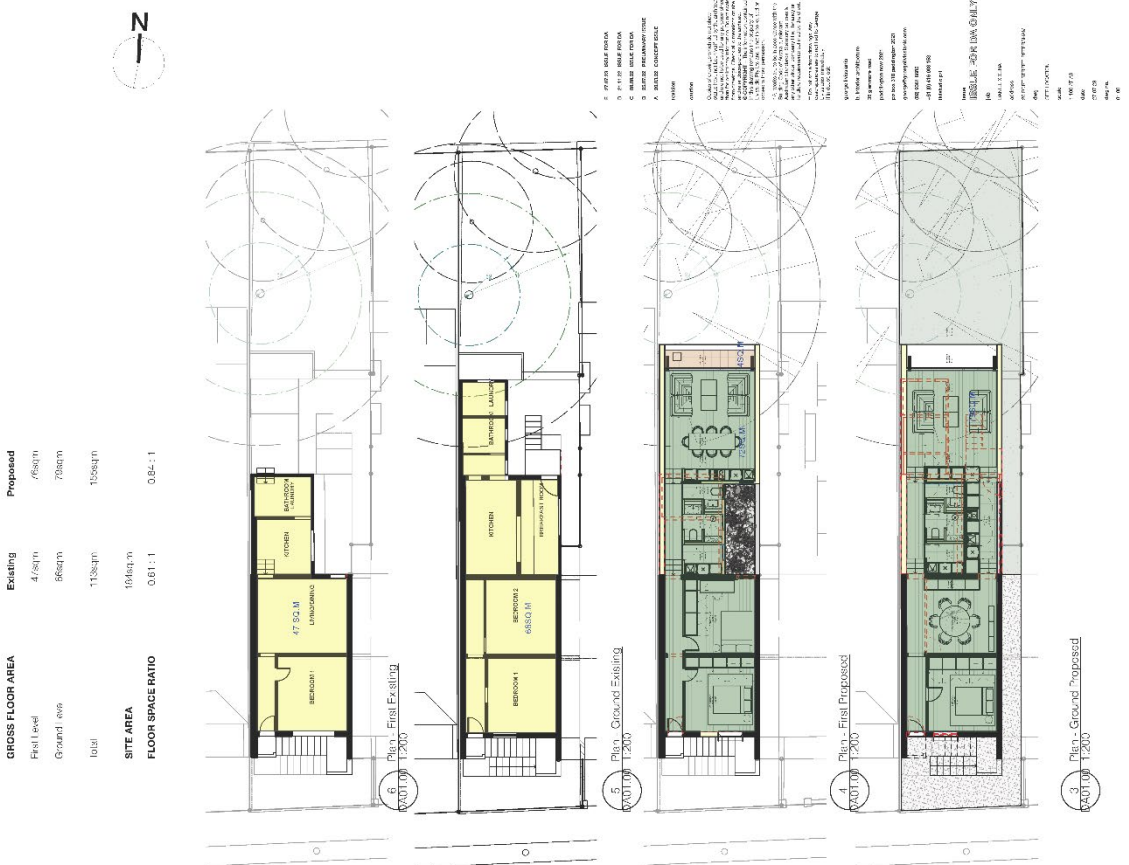
REASONS FOR REFUSAL

Attachment B – Plans of proposed development

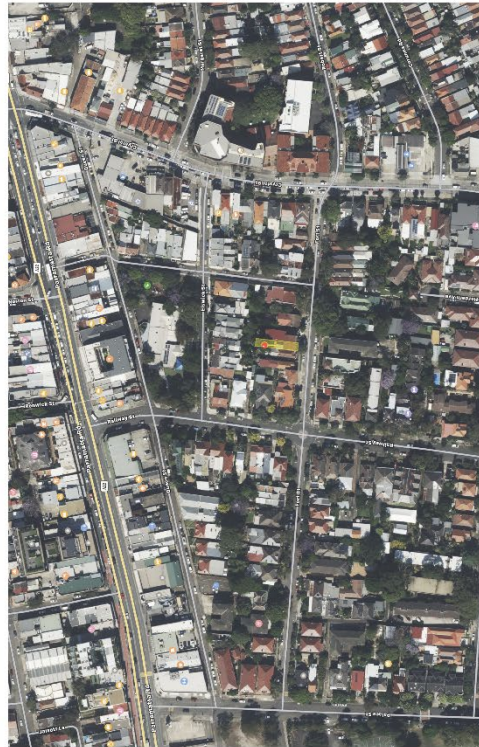
DRAWING NO.	DRAWING TITLE	DISTRIBUTION				FORMAT				BASIS REQUIREMENT SUMMARY
		D	M	Y	R	E	P	XX	XX	
00.01	DRAWING NOTES									Hot water fixtures and systems The applicant must install the following hot water system in the development: gas instantaneous. The applicant must ensure a minimum of 40% of new or renewed light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps. The applicant must ensure new or renewed showerheads have a flow rate no greater than 9 litres per minute or a 3-litre water rating. The applicant must ensure new or renewed toilets have a flow rate no greater than 6 litres per minute or a minimum 3-litre water rating. The applicant must ensure new or renewed urinals have a flow rate no greater than 3 litres per minute or a minimum 3-litre water rating. Insulation requirements The applicant must construct the new or altered construction (floor, wall, and ceiling) in accordance with the specifications listed in the table below, except that g) additional insulation is not required where the area of new construction is less than 2m ² . If insulation specified is not required for parts of altered construction where insulation already exists. Other specifications Additional insulation required (R-value) R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.00	SITE LOCATION									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.01	SITE PLAN									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.02	PLAN - PROPOSED ROOF									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.03	PLAN - EXISTING FLOOR PLAN									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.04	PLAN - PROPOSED FLOOR PLAN									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.05	PLAN - PROPOSED FLOOR PLAN									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.07	PLAN - SHADOW DIAGRAMS JULY 21 EXISTING/PROPOSED									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.08	ELEVATION SHADOW DIAGRAMS JULY 21 EXISTING/PROPOSED									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.09	ELEVATION SHADOW DIAGRAMS JULY 21 EXISTING/PROPOSED									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.10	ELEVATION SHADOW DIAGRAMS JULY 21 EXISTING/PROPOSED									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.11	STOP PLAN									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
01.12	SWAMP PLAN									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
02.01	ELEVATION NORTH/SOUTH									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
02.02	ELEVATION PROPOSED EAST									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
03.01	SECTION PROPOSED									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
04.01	3D SHADING									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
04.02	SECTION PROPOSED									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
04.03	3D PROPOSED EAST/NORTH/EAST									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
04.04	3D PROPOSED EAST/NORTH/EAST									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
04.05	SOL PROPOSED WEST SECTIONAL PERSPECTIVE									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling
04.06	SOL PROPOSED WEST SECTIONAL PERSPECTIVE									Construction concrete slab on ground floor with in-slab heating system. R1.00 (side edge) In-slab heating system New above ceiling (ceiling to building metal clad) H1.30 (or H1.70 including construction) H1.50 (air), not to be used for ceiling Light fixture, also placed < 0.75m Light beam absorbance < 0.75 R0.10 (air), not to be used for ceiling





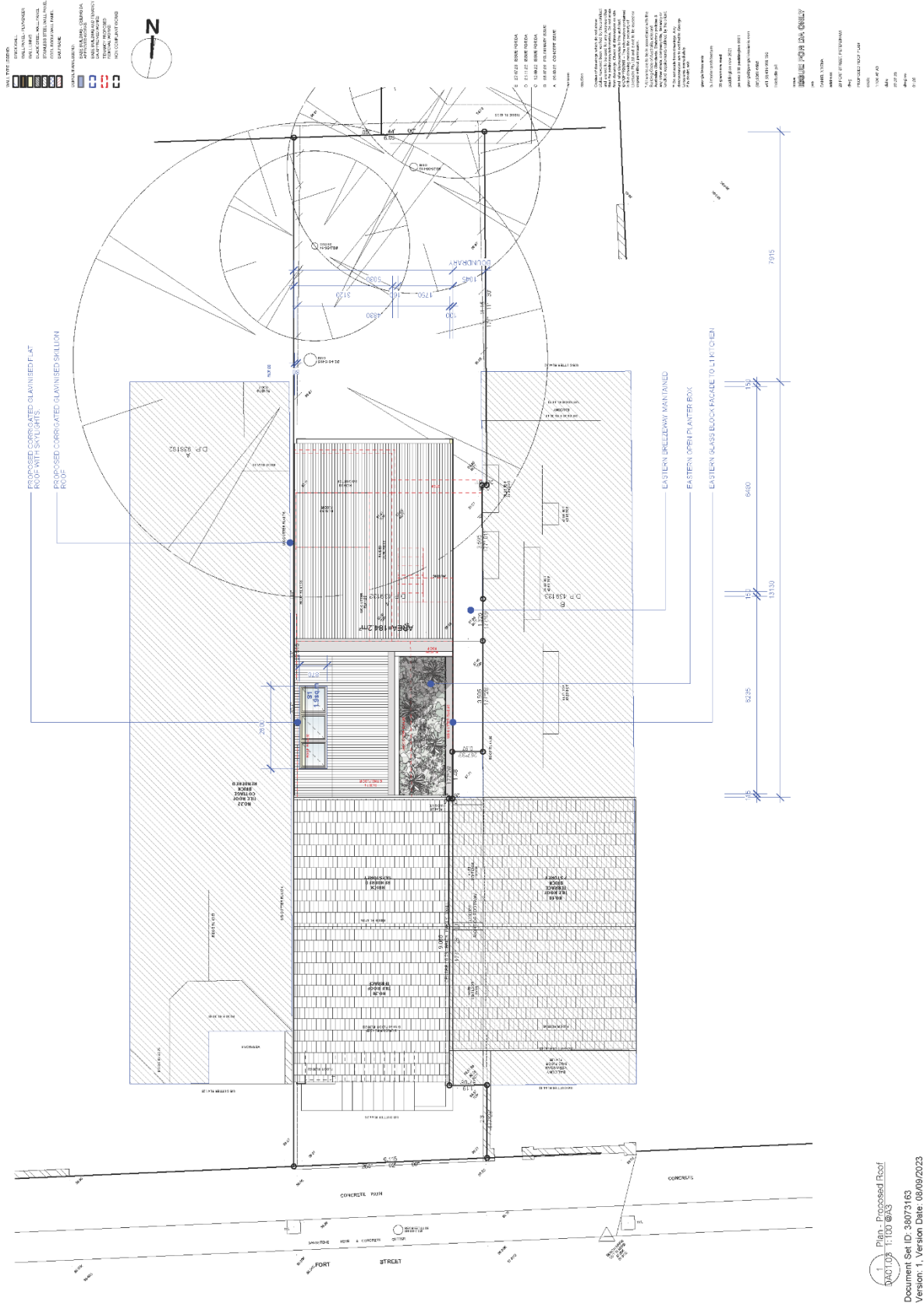


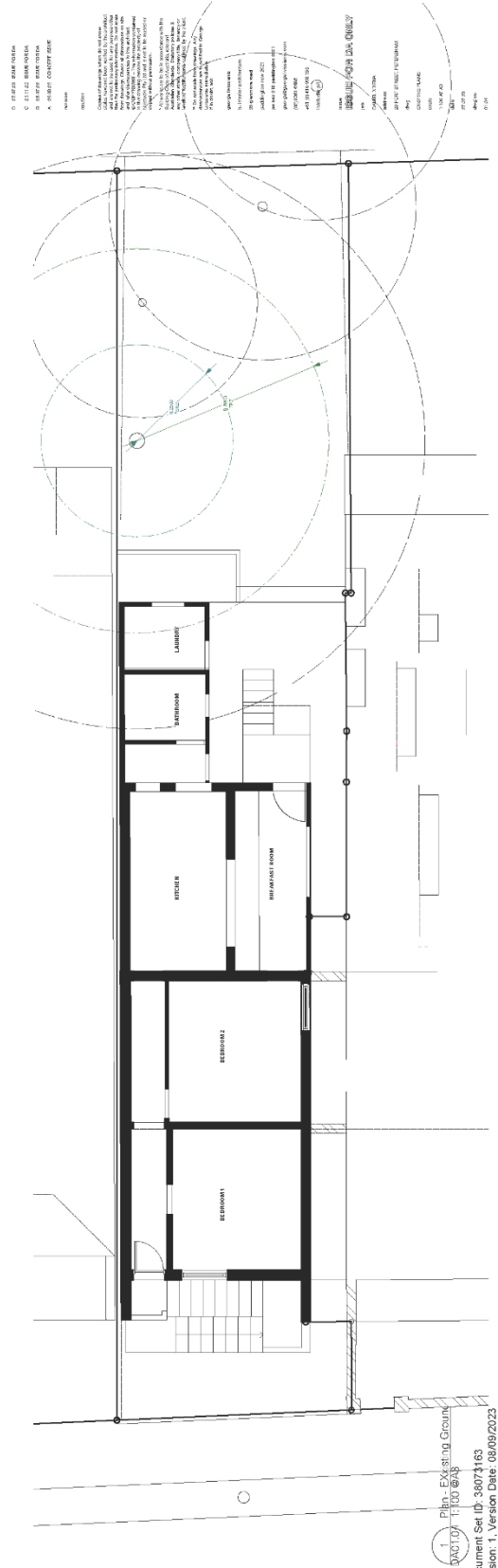
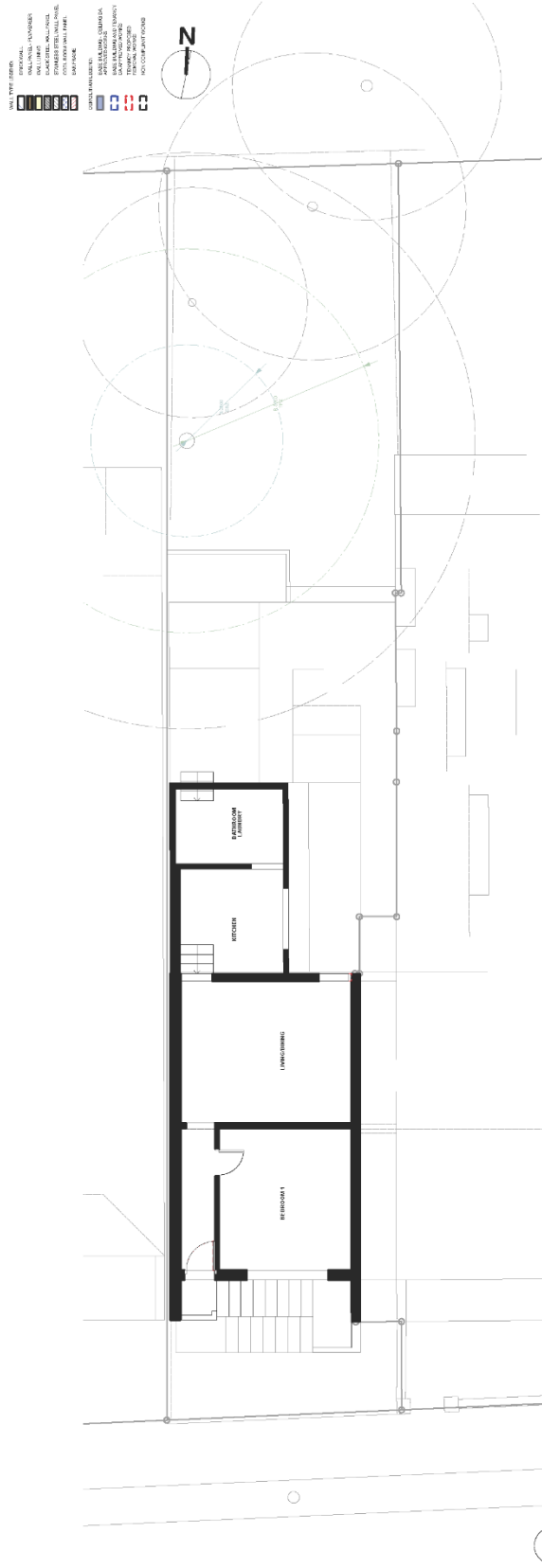
2 SITE PHOTOS
SOURCED BY GOOGLE EARTHS

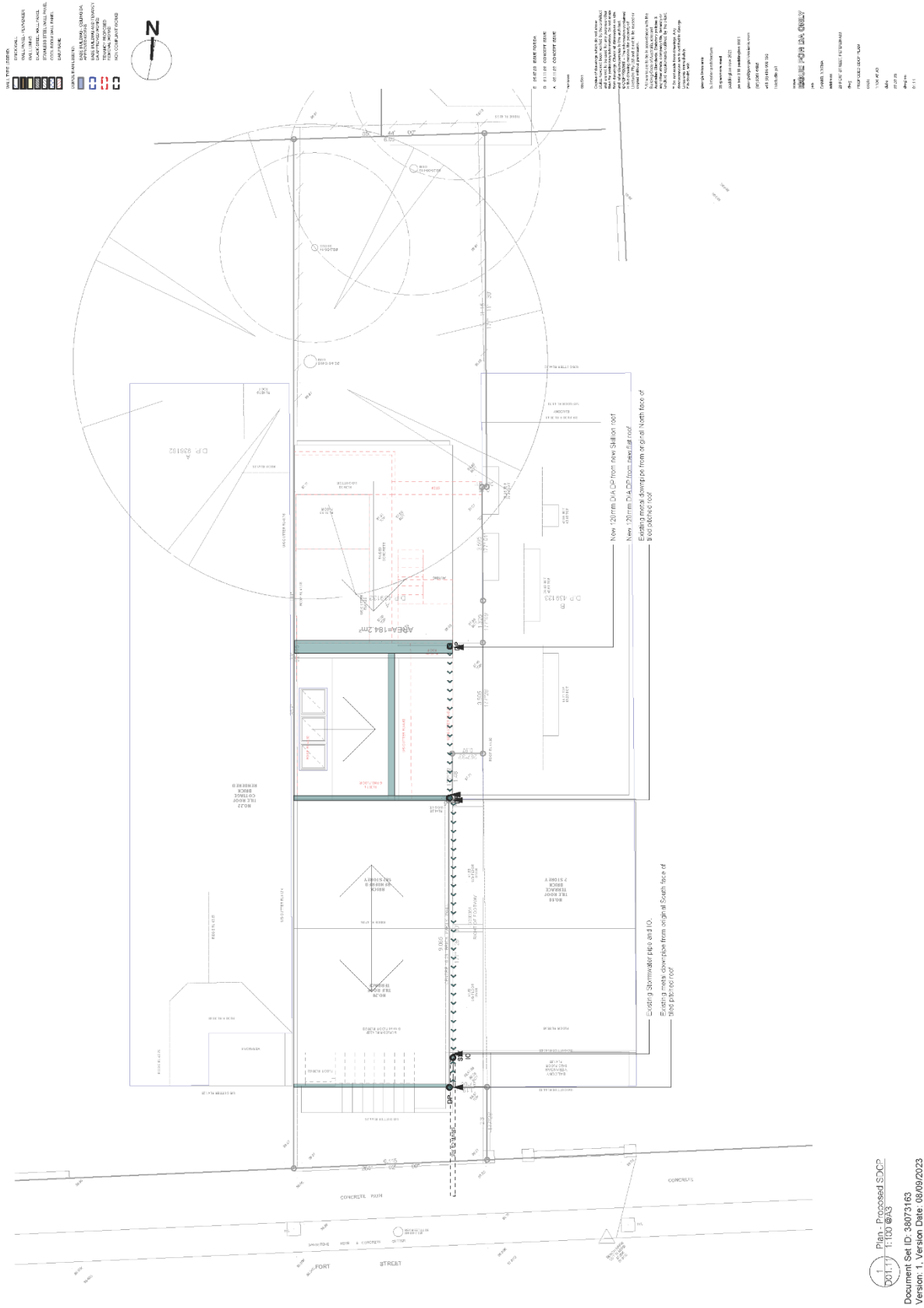


1 PLAN SITE LOCATION
SOURCED BY GOOGLE EARTHS

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Version: 1. Version Date: 08/09/2023







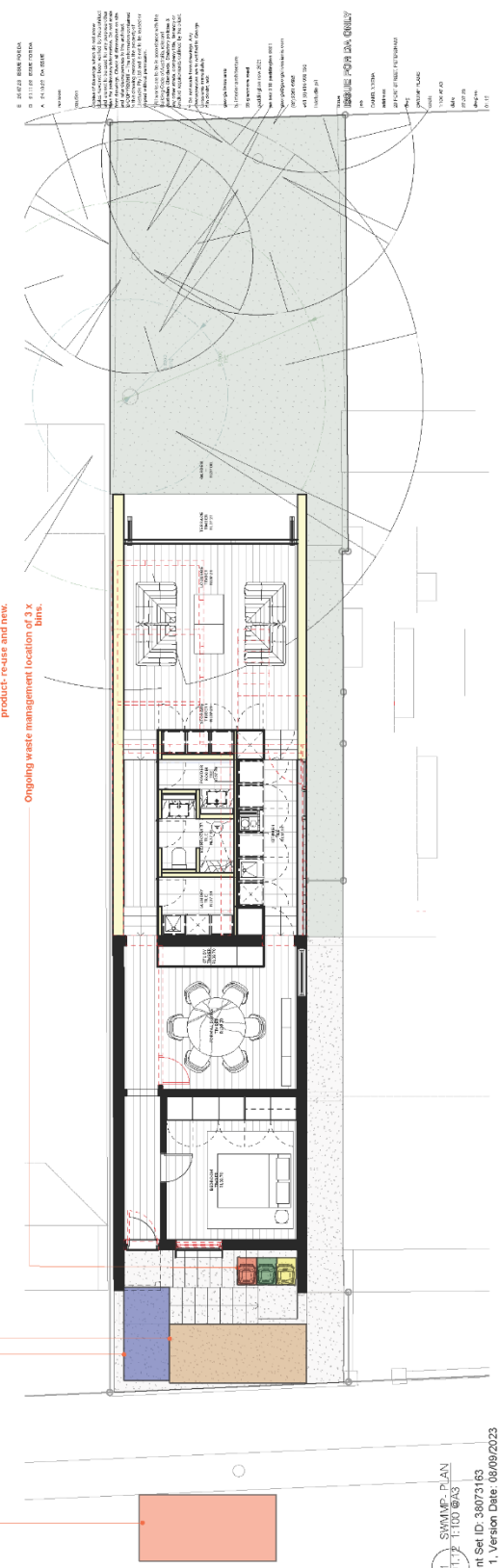


Bingo Industries 8 Merced Slip Bin
4 Tonne Capacity
3.5 x 1.7 x 1.6m

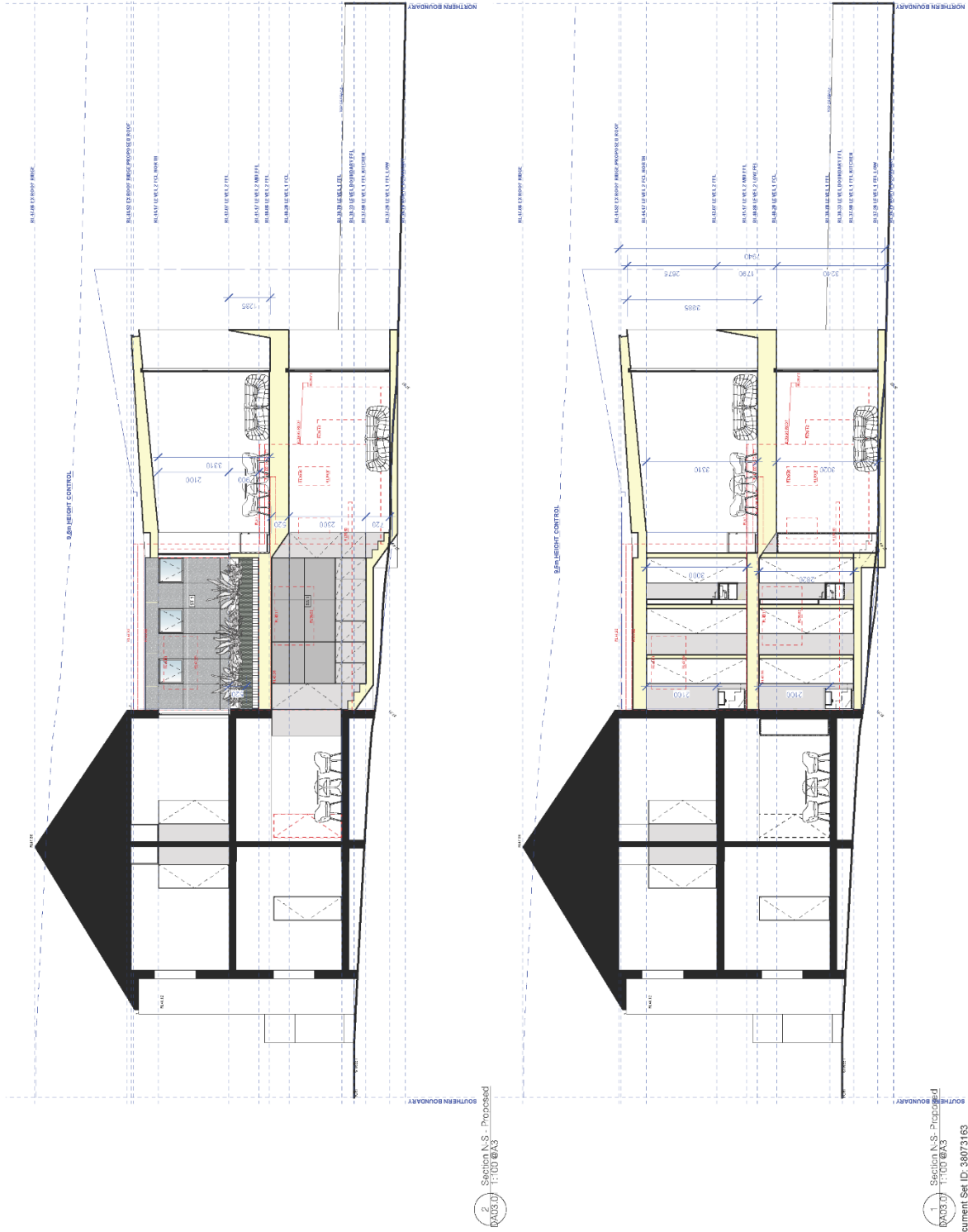
Stockpile area for brick re-use and long
lumber(steel)

Material store for timber lumber and board
product re-use and new.

Ongoing waste management location of 3 x
bins.

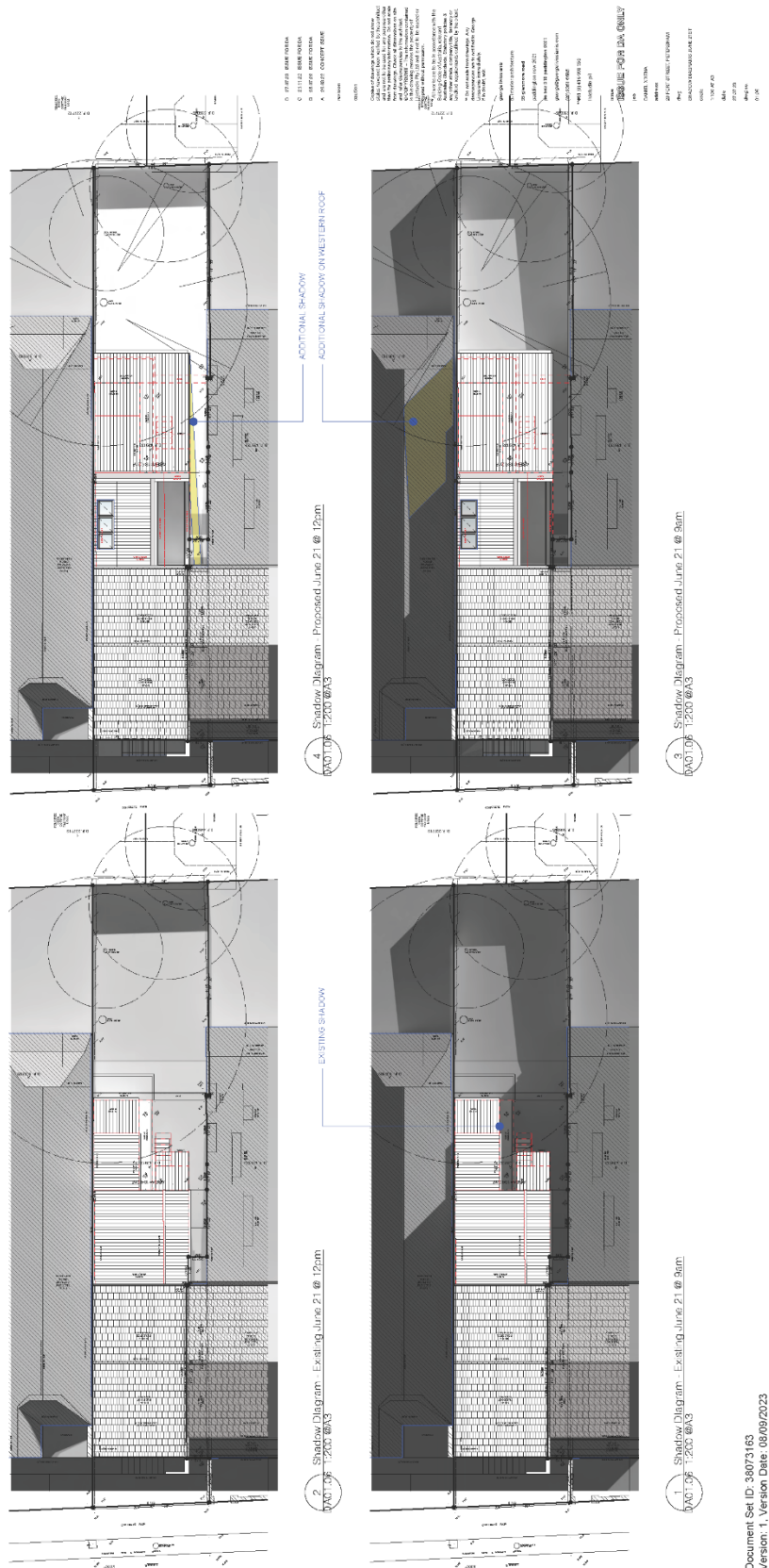
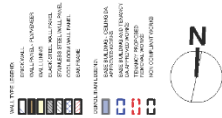


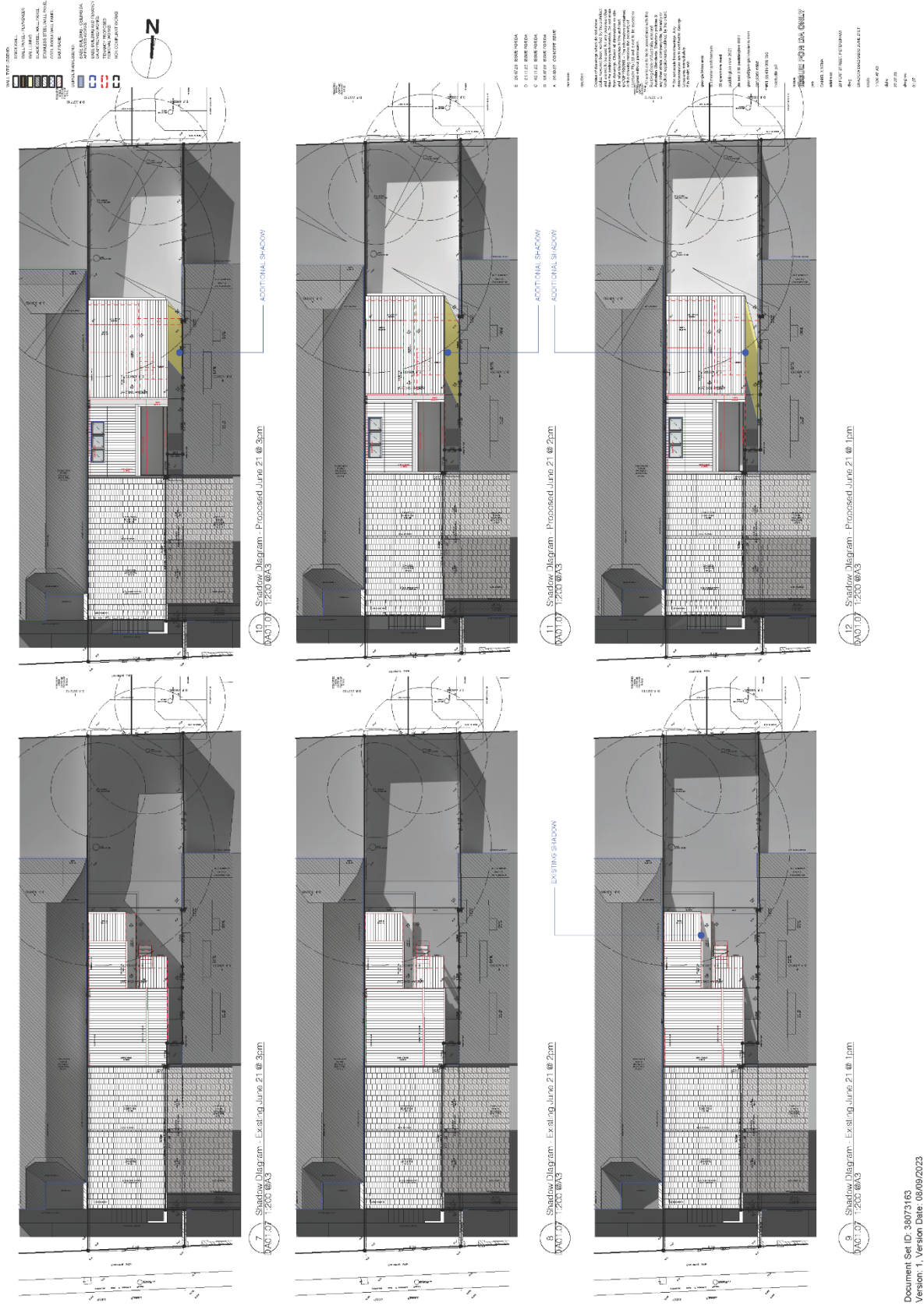
SWAMP PLAN
DATE: 11/10/2023
Document Set ID: 38073163
Version: 1, Version Date: 08/09/2023



2 Section N-S - Proposed
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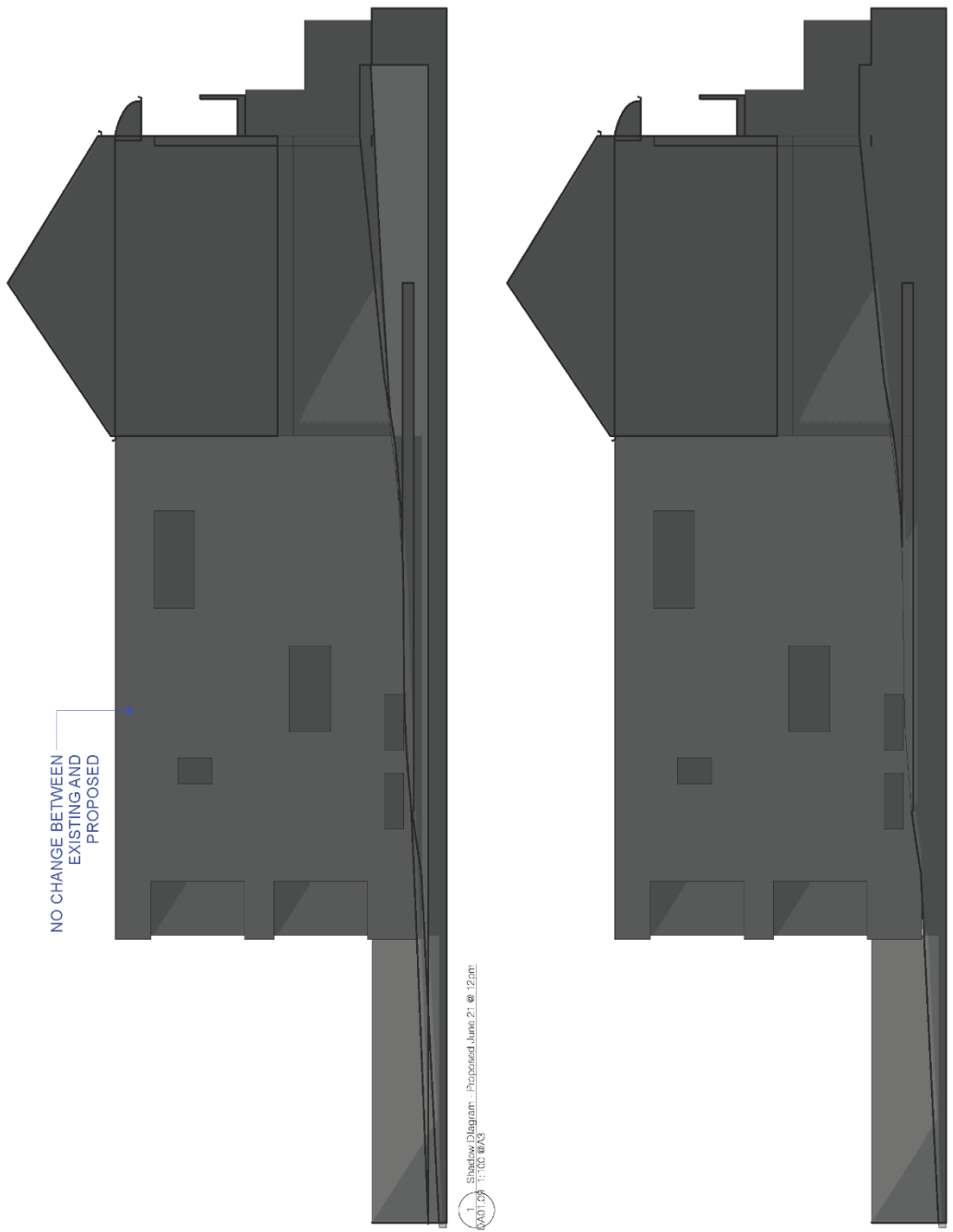
1 Section N-S - Proposed
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Document Set ID: 38073163
Version: 1, Version Date: 08/09/2023





- WALL TYPE DESIGN:
 - 1. BRICK WALL
 - 2. CONCRETE WALL
 - 3. METAL CLADDING
 - 4. CORRUGATED METAL ROOF
 - 5. CORRUGATED METAL WALL
 - 6. CORRUGATED METAL ROOF AND WALL
 - 7. CORRUGATED METAL ROOF AND WALL WITH CLADDING
 - 8. CORRUGATED METAL ROOF AND WALL WITH CLADDING AND CORRUGATED METAL ROOF
- ROOF TYPE DESIGN:
 - 1. CORRUGATED METAL ROOF
 - 2. CORRUGATED METAL ROOF WITH CLADDING
 - 3. CORRUGATED METAL ROOF WITH CLADDING AND CORRUGATED METAL ROOF
- CLADDING TYPE DESIGN:
 - 1. CORRUGATED METAL CLADDING
 - 2. CORRUGATED METAL CLADDING WITH CLADDING
 - 3. CORRUGATED METAL CLADDING WITH CLADDING AND CORRUGATED METAL CLADDING
- ROOF COLOR DESIGN:
 - 1. CORRUGATED METAL ROOF COLOR
 - 2. CORRUGATED METAL ROOF COLOR WITH CLADDING
 - 3. CORRUGATED METAL ROOF COLOR WITH CLADDING AND CORRUGATED METAL ROOF COLOR
- CLADDING COLOR DESIGN:
 - 1. CORRUGATED METAL CLADDING COLOR
 - 2. CORRUGATED METAL CLADDING COLOR WITH CLADDING
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- 1. BRICK WALL DESIGN
- 2. CONCRETE WALL DESIGN
- 3. METAL CLADDING DESIGN
- 4. CORRUGATED METAL ROOF DESIGN
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- 6. CORRUGATED METAL ROOF AND WALL DESIGN
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- 16. CORRUGATED METAL ROOF AND WALL WITH CLADDING AND CORRUGATED METAL ROOF AND WALL WITH CLADDING AND CORRUGATED METAL ROOF AND WALL WITH CLADDING AND CORRUGATED METAL ROOF AND WALL WITH CLADDING AND CORRUGATED METAL ROOF AND WALL DESIGN
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NO CHANGE BETWEEN
EXISTING AND
PROPOSED

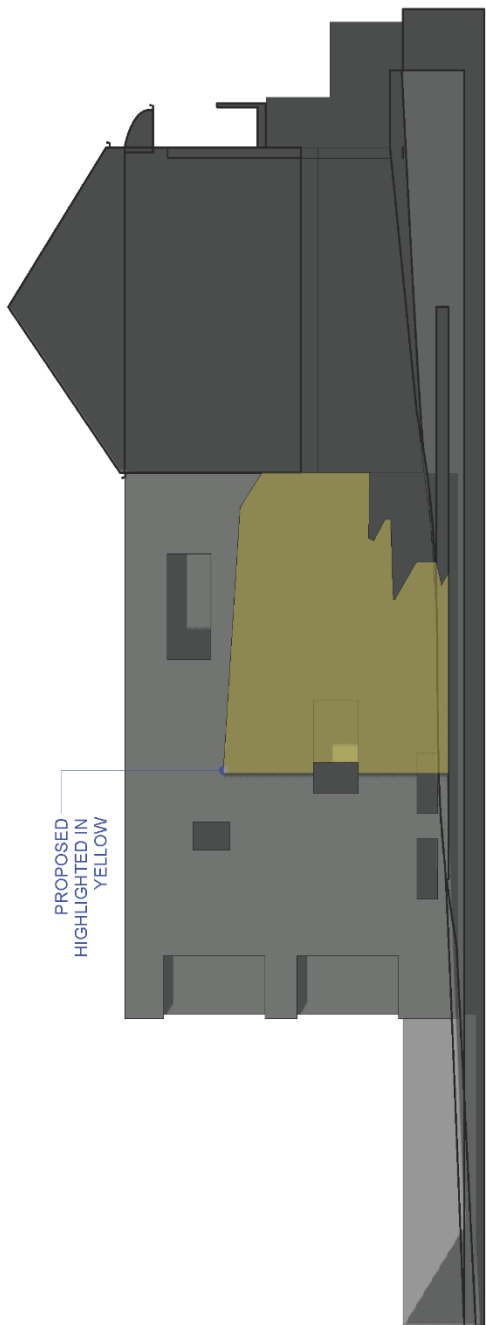
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RAO 1:59 1:00 #A3

4 Shadow Diagram - Existing June 21 @ 12pm
RAO 1:59 1:00 #A3

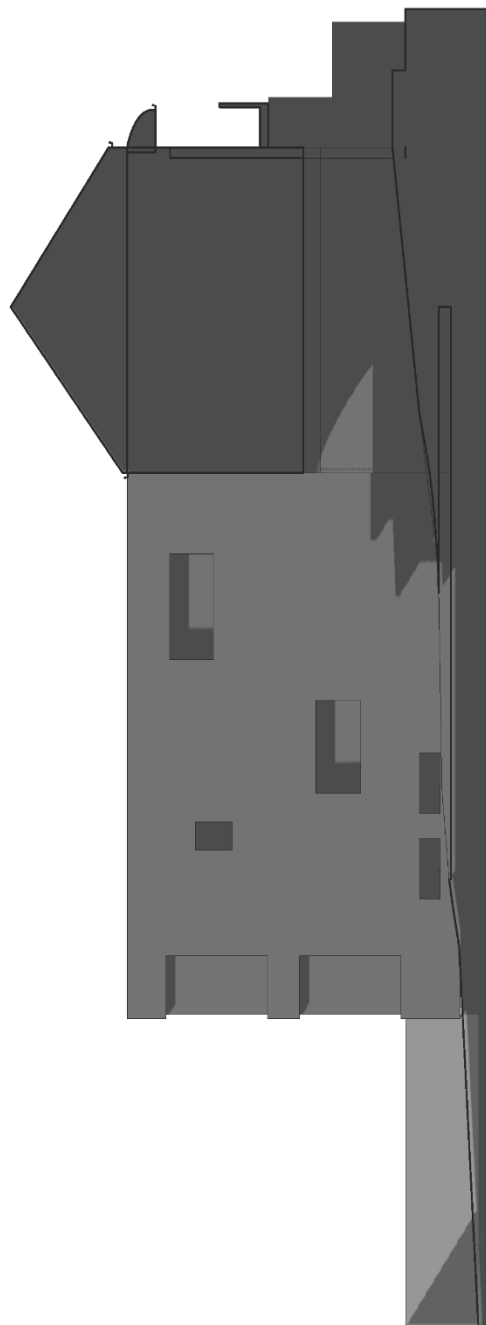
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Version: 1, Version Date: 08/09/2023

- WALL TYPE LEGEND:**
- 1. BRICK
 - 2. BRICK WITH STONE COURSE
 - 3. BRICK WITH STONE COURSE (HORIZONTAL)
 - 4. BRICK WITH STONE COURSE (VERTICAL)
 - 5. BRICK WITH STONE COURSE (DIAGONAL)
 - 6. BRICK WITH STONE COURSE (RANDOM)
 - 7. BRICK WITH STONE COURSE (RANDOM - HORIZONTAL)
 - 8. BRICK WITH STONE COURSE (RANDOM - VERTICAL)
 - 9. BRICK WITH STONE COURSE (RANDOM - DIAGONAL)
 - 10. BRICK WITH STONE COURSE (RANDOM - RANDOM)
 - 11. BRICK WITH STONE COURSE (RANDOM - RANDOM - HORIZONTAL)
 - 12. BRICK WITH STONE COURSE (RANDOM - RANDOM - VERTICAL)
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 - 14. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM)
 - 15. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - HORIZONTAL)
 - 16. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - VERTICAL)
 - 17. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - DIAGONAL)
 - 18. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM)
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 - 20. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - VERTICAL)
 - 21. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - DIAGONAL)
 - 22. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM)
 - 23. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - HORIZONTAL)
 - 24. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - VERTICAL)
 - 25. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - DIAGONAL)
 - 26. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - RANDOM)
 - 27. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - HORIZONTAL)
 - 28. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - VERTICAL)
 - 29. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - DIAGONAL)
 - 30. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - RANDOM - RANDOM)

- WALL TYPE LEGEND:**
- 1. BRICK
 - 2. BRICK WITH STONE COURSE
 - 3. BRICK WITH STONE COURSE (HORIZONTAL)
 - 4. BRICK WITH STONE COURSE (VERTICAL)
 - 5. BRICK WITH STONE COURSE (DIAGONAL)
 - 6. BRICK WITH STONE COURSE (RANDOM)
 - 7. BRICK WITH STONE COURSE (RANDOM - HORIZONTAL)
 - 8. BRICK WITH STONE COURSE (RANDOM - VERTICAL)
 - 9. BRICK WITH STONE COURSE (RANDOM - DIAGONAL)
 - 10. BRICK WITH STONE COURSE (RANDOM - RANDOM)
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 - 16. BRICK WITH STONE COURSE (RANDOM - RANDOM - RANDOM - VERTICAL)
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1 Shadow Diagram - Proposed June 21 @ 1pm
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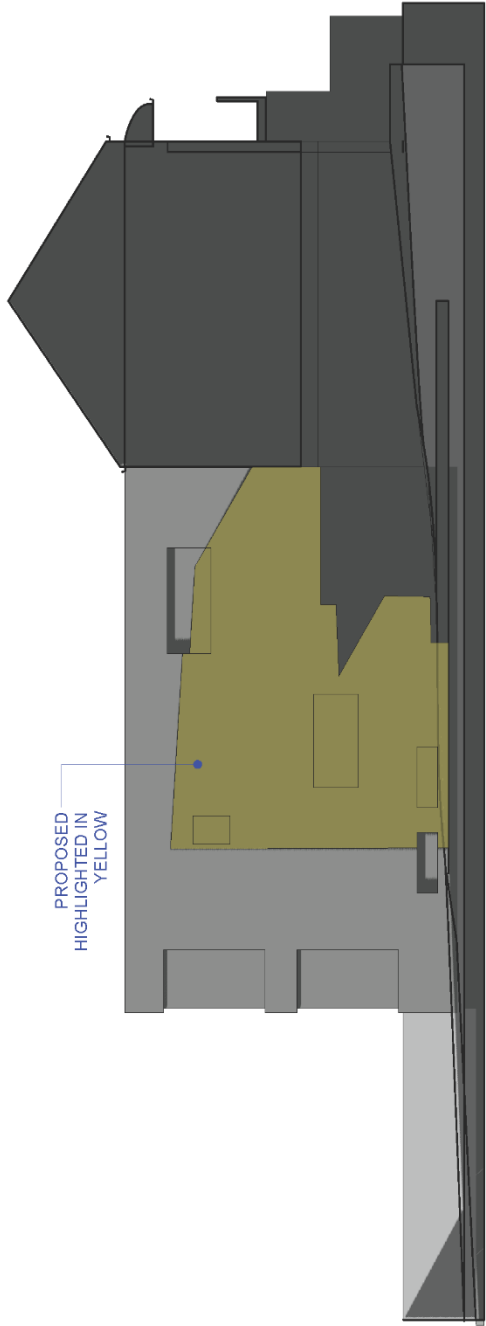


4 Shadow Diagram - Existing June 21 @ 1pm
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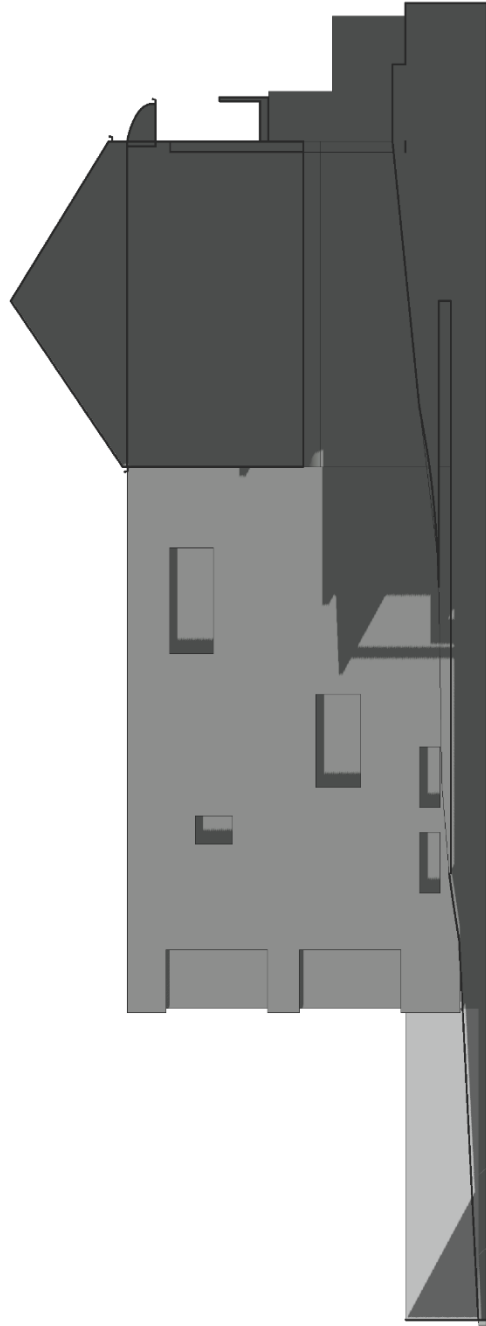
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- WALL TYPE LEGEND:**
- 1. BRICK
 - 2. CONCRETE
 - 3. METAL CLADDING
 - 4. STONE
 - 5. TIMBER
 - 6. GLASS
 - 7. CORRUGATED METAL SHEET
 - 8. POLYCARBONATE
 - 9. OTHER
- ROOF TYPE LEGEND:**
- 1. GABLE
 - 2. HIPPED
 - 3. FLAT
 - 4. SHED
 - 5. OTHER
- GLASS TYPE LEGEND:**
- 1. CLEAR
 - 2. TINTED
 - 3. REFLECTIVE
 - 4. OTHER

- OBJECT LEGEND:**
- 1. WALL
 - 2. ROOF
 - 3. WINDOW
 - 4. DOOR
 - 5. PORCH
 - 6. BALCONY
 - 7. TERRACE
 - 8. DRIVEWAY
 - 9. FENCE
 - 10. GROUND
 - 11. SKY
 - 12. SUN
 - 13. SHADOW
 - 14. OTHER

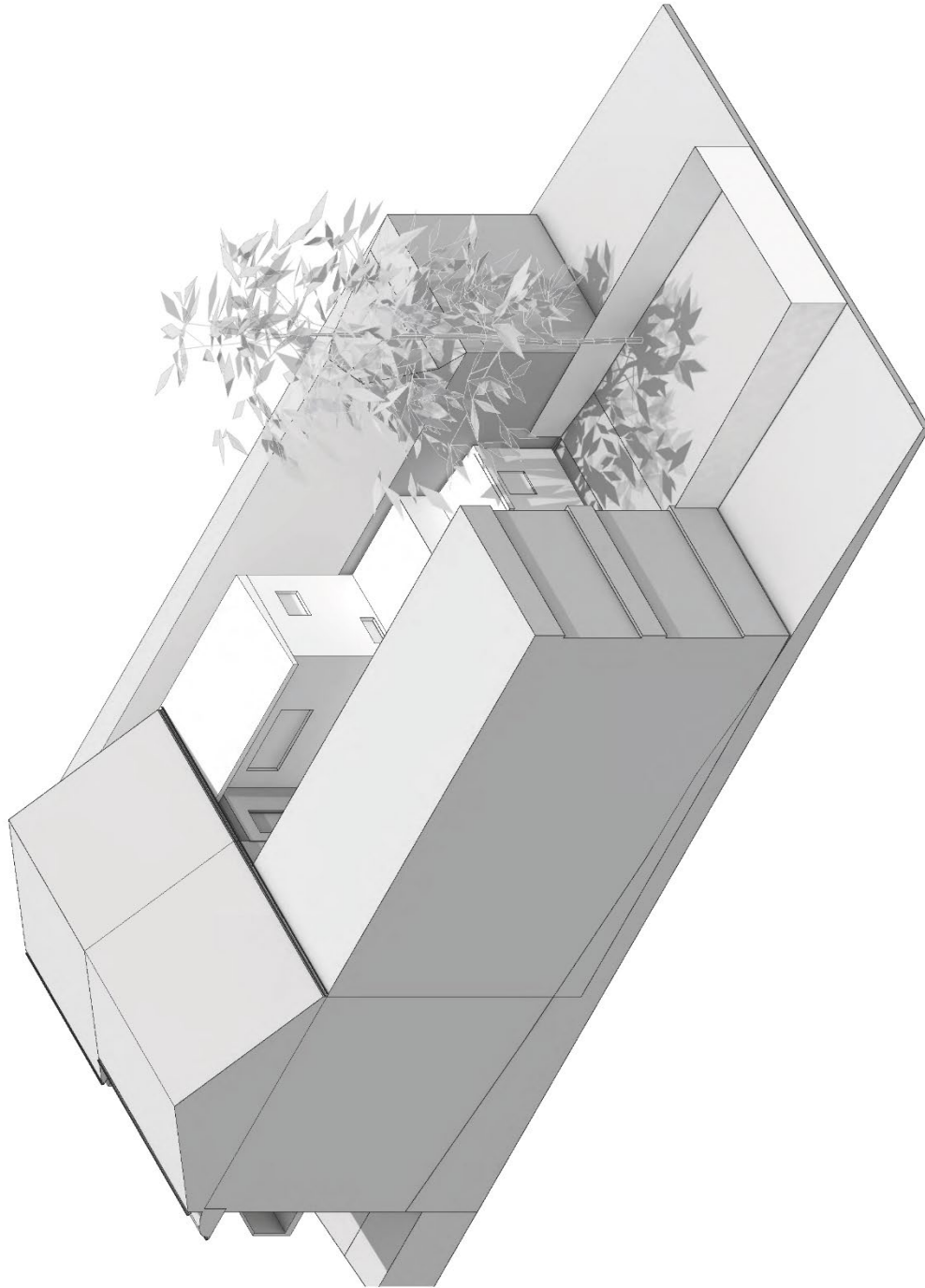


1 Shadow Diagram - Proposed June 21 @ 2pm
 RAO 1.1 1:00 #A3



4 Shadow Diagram - Existing June 21 @ 2pm
 RAO 1.1 1:00 #A3

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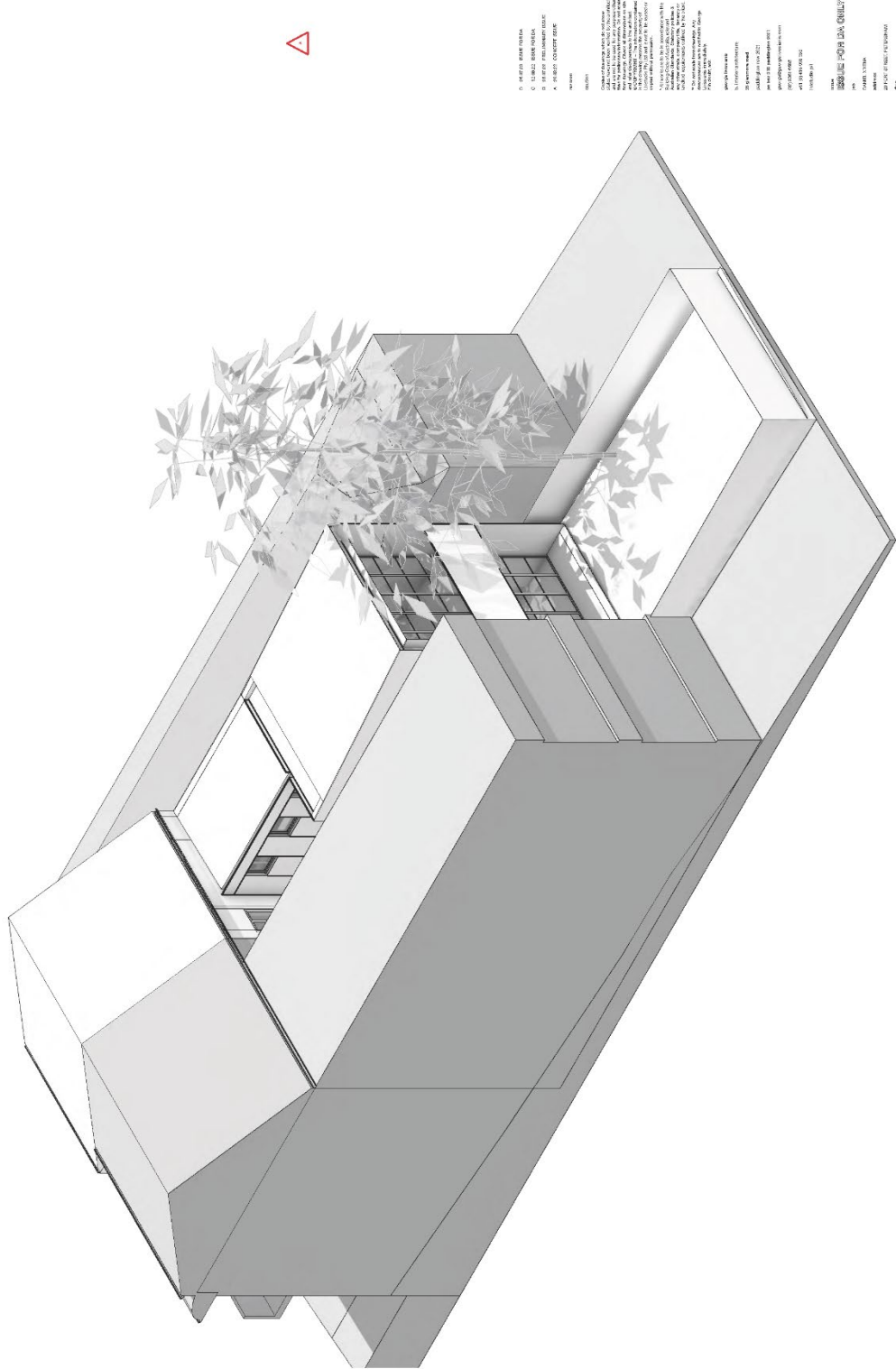
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0. PROJECT NAME: [REDACTED]
 1. CLIENT: [REDACTED]
 2. PROJECT LOCATION: [REDACTED]
 3. PROJECT TYPE: [REDACTED]
 4. PROJECT STATUS: [REDACTED]

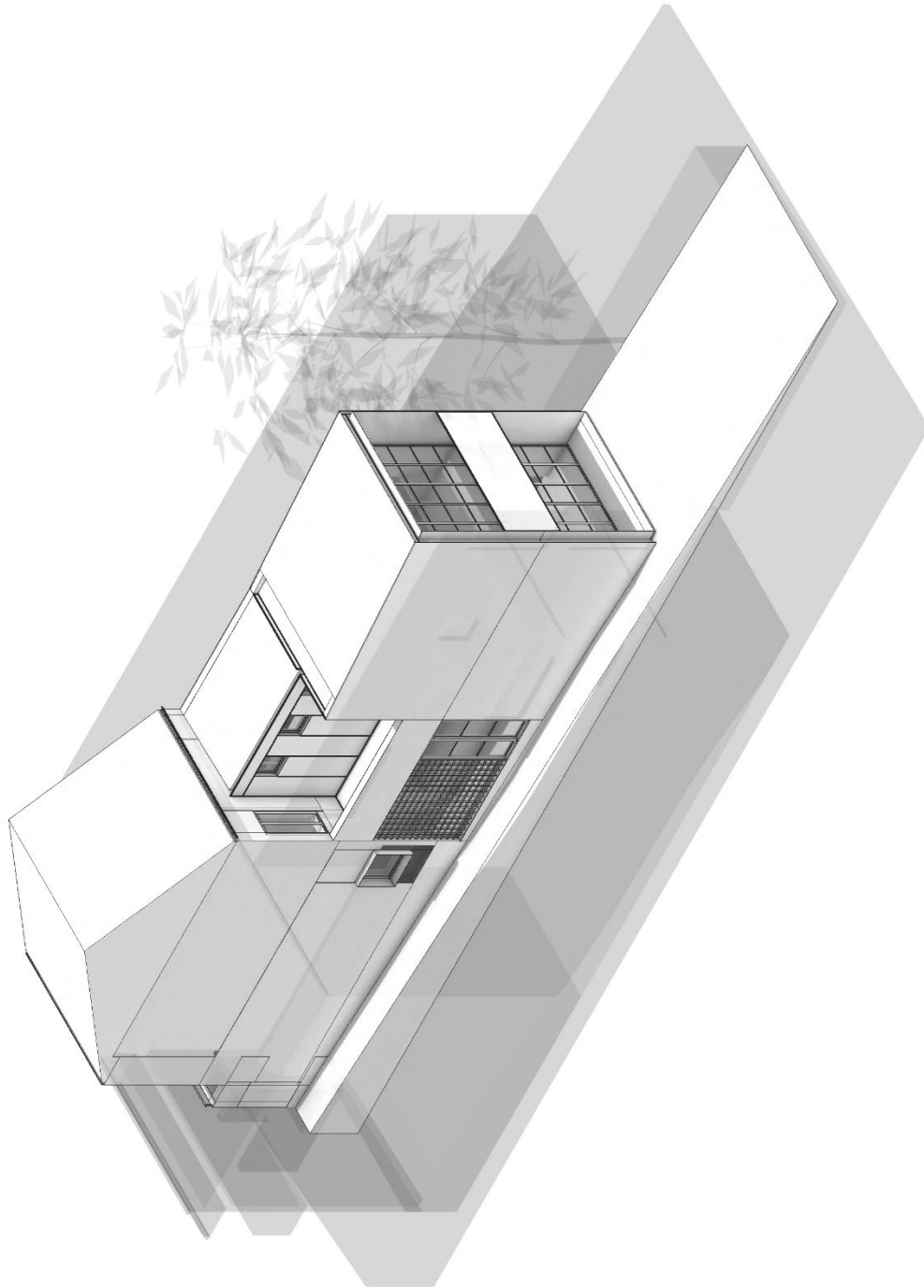
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 8. PROJECT BENEFITS: [REDACTED]
 9. PROJECT RISKS: [REDACTED]
 10. PROJECT DELIVERABLES: [REDACTED]

11. PROJECT TEAM: [REDACTED]
 12. PROJECT CONTACTS: [REDACTED]
 13. PROJECT HISTORY: [REDACTED]
 14. PROJECT DOCUMENTS: [REDACTED]

15. PROJECT APPROVALS: [REDACTED]
 16. PROJECT REVIEW: [REDACTED]
 17. PROJECT CLOSURE: [REDACTED]

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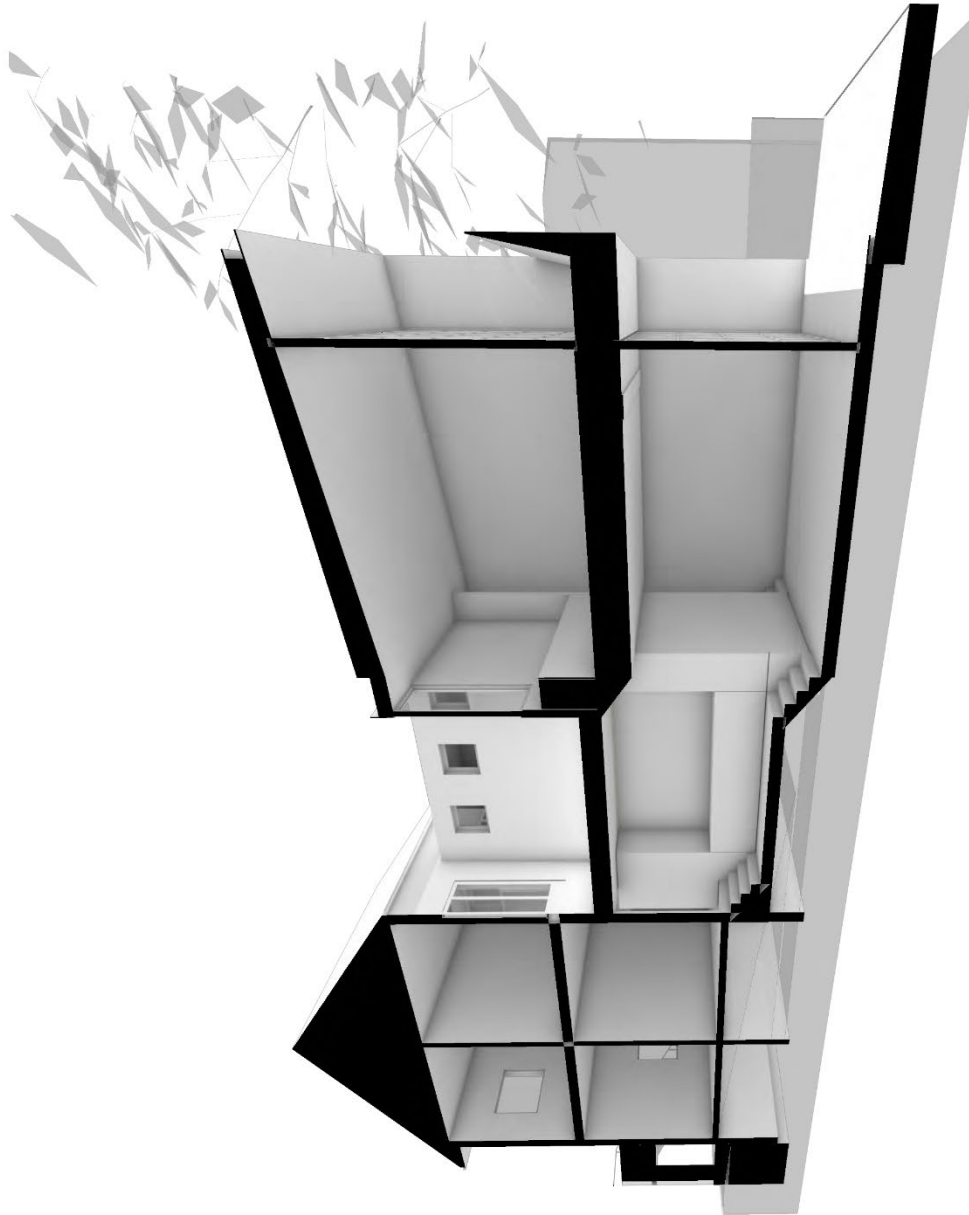
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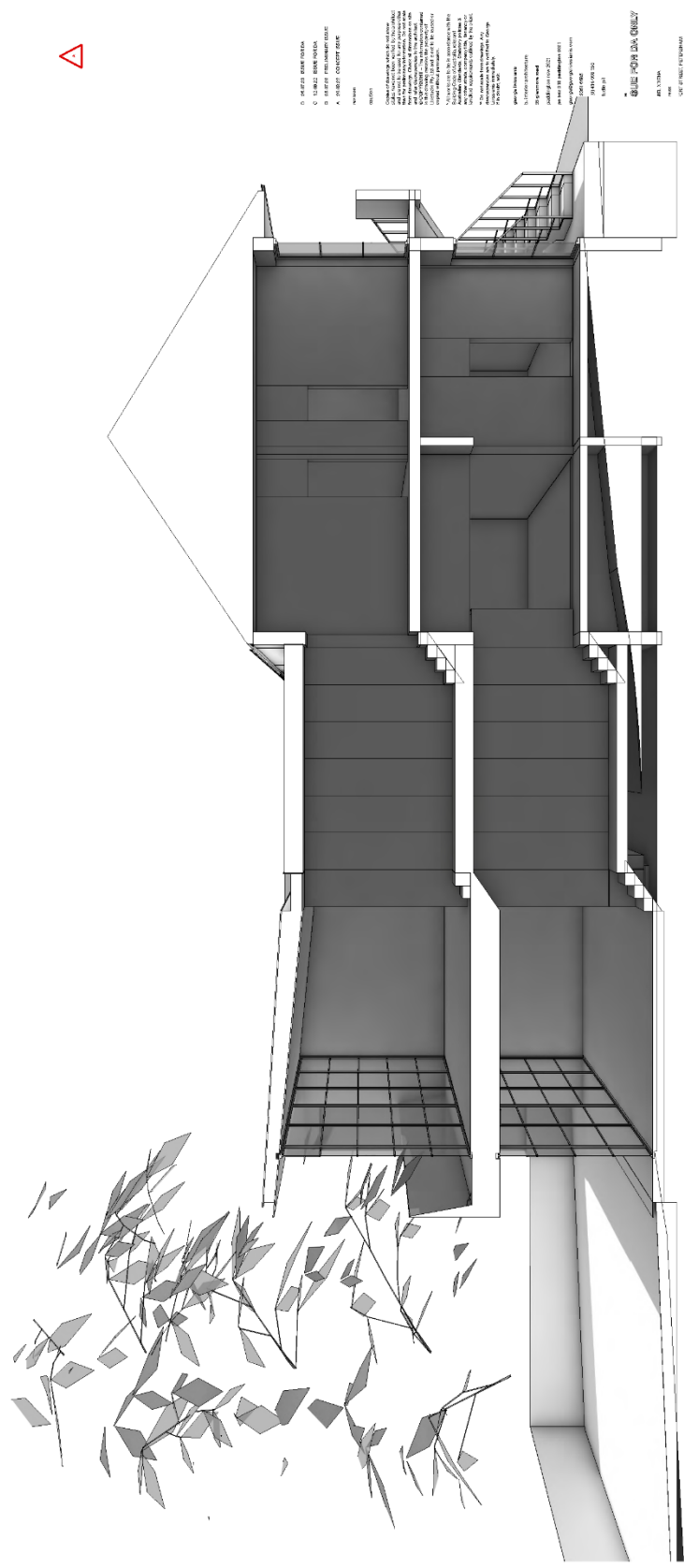
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Attachment C- Section 4.6 Exception to Development Standards



**INNER WEST LEP 2022
Clause 4.6 Exceptions
to Development
Standards – Floor
Space Ratio (FSR)**

Proposed Alterations and Additions to the Existing Dual
Occupancy at

**No. 20 Fort Street,
Petersham**

Prepared for:

George Livissianis

No.35 Glenmore Road,
Paddington NSW 2021

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners
(A.B.N 89 643 660 628)

95 Paddington Street, Paddington NSW 2021

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JOB NO. 22198

September 2023

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**INNER WEST LOCAL ENVIRONMENTAL PLAN (LEP) 2022
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: George Livissianis

SITE ADDRESS: No. 20 Fort Street, Petersham

PROPOSAL: Proposed alterations and additions to the existing dual occupancy

1. (i) Name of the applicable planning instrument which specifies the development standard:

Inner West Local Environmental Plan (LEP) 2022

(ii) The land is zoned:

The objectives of the R2 Low Density Residential zone are as stated:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area*

(iii) The number of the relevant clause therein:

Clause 4.4 – Floor Space Ratio which is stated as follows:

(1) The objectives of this clause are as follows—

- (a) to establish a maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity,*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain*

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

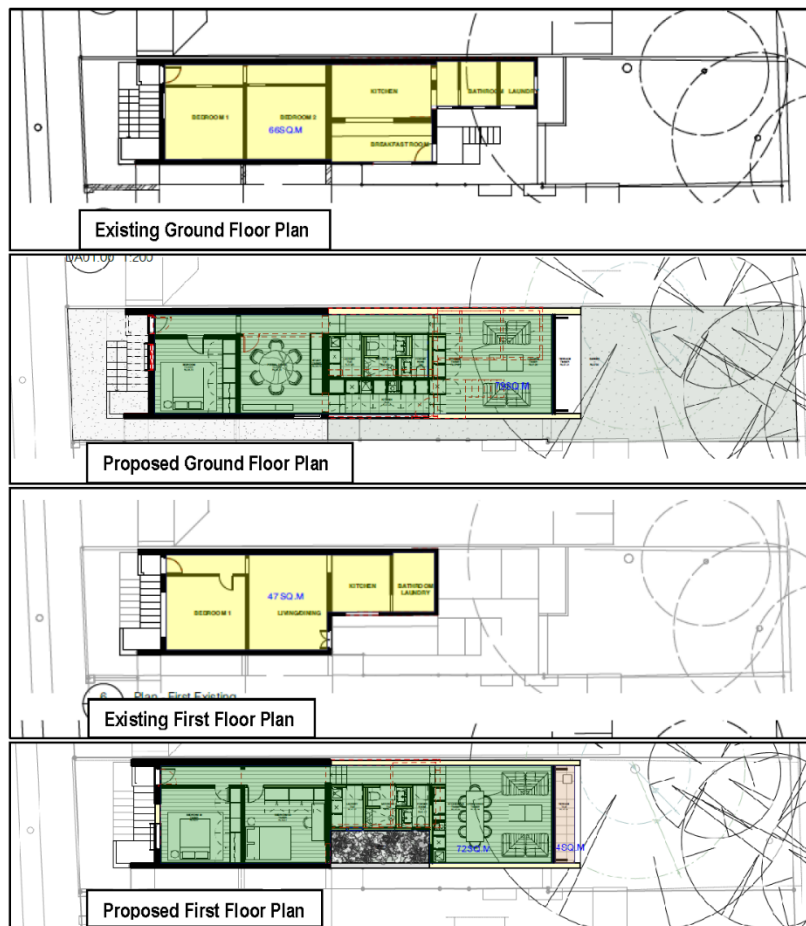
2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates in Clause 4.4 of the LEP – FSR. This Clause operates in conjunction with the FSR Map which indicates a maximum of 0.6:1 applies to the subject site. Clause 4.4 is consistent with the development standard under Section 1.4 of the *Environmental Planning and Assessment Act 1979* (EPA Act).

The existing dual occupancy on the site has a Gross Floor Area (GFA) of 113m² with an FSR of 0.61:1 which exceeds the applicable development standard. The proposed alterations and additions involve various internal and external works to the existing building which will increase the existing GFA by 42m² to a GFA of 155m² and an FSR of 0.84:1, which is a departure of 44.6m² or 40.3% (see **Figure 1** below).



Source: George Livissianis

Figure 1: Existing vs Proposed GFA Diagrams

While the proposal will increase the existing building envelope, the bulk and scale of the development will not be readily visible from Fort Street due to its location entirely behind the principal façade of the existing

building. The front setback and façade of the dual occupancy will be retained, new works will maintain existing side setbacks and the rear setback will be in line with neighbouring dwellings. Overall, the proposal will be of a similar scale to neighbouring buildings and will be consistent with the streetscape character. The proposal will facilitate various residential amenity enhancements for the occupants by undertaking substantial improvements to the existing aged building and providing liveable dwellings with appropriate amenity to the subject site and adjoining sites.

It is important to note that an FSR bonus is applicable to attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on the subject site, which would result in a maximum allowable FSR of 1:1. The proposal would have a compliant FSR if it were any of the above uses, although, as the existing and proposed use is a dual occupancy, this bonus is not applicable.

4. Applicability of Clause 4.6

The subject site enjoys the benefits of existing use rights and the provisions of Council's LEP cannot derogate from the existing use rights. The planning principles established by the NSW Land and Environment Court in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 at [17] and *Stromness v Woollahra Municipal Council* [2006] NSWLEC 587 at [83-84] have been assessed and satisfied in the DA. Notwithstanding this, under the recent case in *Saffioti v Kiama Municipal Council* [2018] NSWLEC 1426, it was recognised that the LEP and DCP should still be considered. Accordingly, this Clause 4.6 Variation has been prepared for the FSR exceedance.

5. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

- | | |
|---------------|-----------------------------------------------------------------------------------------------------------------------------|
| Objective (a) | <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> |
| Objective (b) | <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i> |

Flexibility is sought in the application of the FSR development standard to the proposed development in the circumstance of this case. In our opinion, the proposed FSR is appropriate in the locality irrespective of the extent of variation.

The proposal has been designed to ensure neighbour amenity is maintained. The alterations and additions to the dual occupancy will positively relate to the public domain when viewed from the street, with a sympathetic building form and compatible height to the rear addition. This is also achieved through maintaining landscaping with what is currently existing at site.

The FSR variation allows for an architecturally designed dual occupancy that presents as a two storey single dwelling from the street. This is contextually compatible with surrounding development within the vicinity. This will also maintain resident amenity and contribute to the high-quality redevelopment encouraged in Petersham, including many recently approved and constructed dwellings and dual occupancies of a similar or even larger scale.

The extent of additional FSR will not unreasonably impact adjoining developments, as demonstrated in the SEE. To enhance the streetscape and maximise neighbour amenity, floor space is generally accommodated well within the maximum building height and is predominantly located towards the rear of the property. This provides an appropriate presentation to the public domain and is compatible with nearby dwellings and RFB's bulk and scale.

We consider the FSR variation is a better planning outcome considering the additional floor space is not easily discernible from surrounding areas. This is because it is generally contained within a complaint envelope. It also remains visually compatible with adjacent dwellings. Thus, the variation relates well to the public domain and visual amenity. In our opinion, as the proposal is consistent with the objectives of Clause 4.6 the variation is acceptable in this instance.

6. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development 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 written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

6.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable FSR development standard, the proposal is consistent with the desired low-density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the FSR standard are explained below.

(a) to establish a maximum floor space ratio to enable appropriate development density,

Council provides for a maximum FSR of 0.6:1 to the subject site and neighbouring developments. However, it is important to note that a 9.5m LEP height standard also applies to the site which envisages a three storey building.

The subject proposal currently presents as two storeys from Fort Street and will continue to present as two storeys with limited alterations at the sites front. The rear addition will also present as two storeys and will sit within the 9.5m height limit. Whilst the proposal exceeds the permitted FSR, the dual occupancy will present as a two storey dwelling from Fort Street which is consistent with the development density in the area and is appropriate given the existing circumstances.

(b) to ensure development density reflects its locality,

The subject site as existing includes an attached dual occupancy. The proposal seeks to retain the dual occupancy and provide an addition to the sites rear. The rear addition will align with Nos. 22 and 18 Fort Steet, reflecting and keeping with the density of the locality. The subject site will continue to have the same intensity (two dwellings) as is existing at the site.

Further to this, the subject site is surrounded by a range of low to high density developments, some of these include:

- No. 15 Fort Street, a three storey Residential Flat Building, south of the site.
- No. 17 Fort Street, a two storey Residential Flat Building, south of the site.
- No. 18 Fort Street, a two-storey terrace, east of the site.
- Nos. 8,4 and 2 Fort Street, a row of two storey terrace houses.

Whilst the subject site is within the vicinity of some single storey dwelling houses, it is clear within **Figure 2** on the following page, that nearby lots are highly developed and that the subject proposal would align with these buildings, correctly reflecting the locality of the area.



Source: Apple Maps

Figure 2: 3D Image of subject site and surrounding developments

Further to the above, as illustrated in **Figure 3** below, it is clear that building footprints within immediate proximity to the site occupy a large portion of the land. The proposed development is quite sympathetic when compared to surrounding built forms. Despite the proposed rear addition, the density of the site would remain consistent with the immediate area and in some cases appear on the less dense side than surrounding developments.



Source: Six Maps

Figure 3: Building Footprints of Surrounding Dwellings

Additionally, the FSR breach is considered to be technical for the following reason. The proposed alterations and additions will maintain the developments appearance as a two-storey dwelling house despite its use as a dual occupancy. If the building was a dwelling house, the proposal would have a maximum permissible FSR of 1:1. As such, the proposal would be fully compliant with this development standard with an identical building envelope and impacts.

(c) to provide an appropriate transition between development of different densities,
N/A

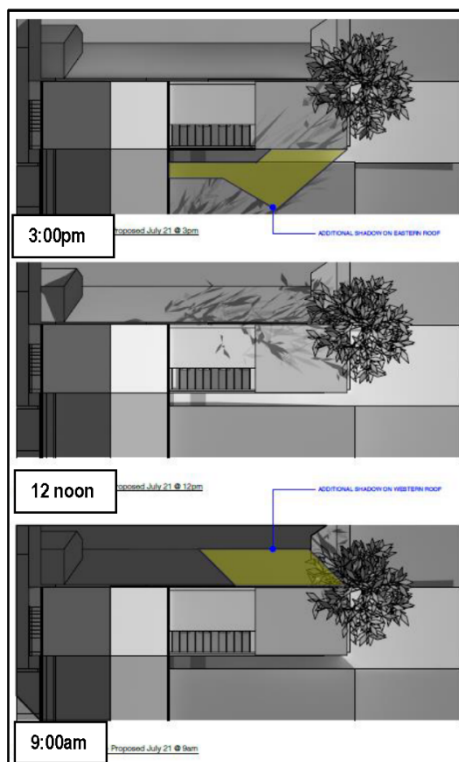
(d) to minimise adverse impacts on local amenity,
Amenity comprises a number of elements including streetscape, solar access, acoustic and visual privacy and views. These have been discussed in the subheadings below.

Streetscape

The proposal will not alter the existing front setback, which directly aligns with neighbouring dwellings at Nos. 18 and 22 Fort Street. Additionally, the proposal will continue to appear as two storeys from Fort Street, and will not alter the existing maximum building height. The proposed rear addition will be subordinate to the existing principal built form in terms of height, and will be contained at the site's rear as to not be readily visible from the streetscape. The building will continue to appear as a dwelling house from Fort Street and will maintain its existing bulk and scale when viewed from the streetscape.

Solar Access

The proposal will be largely compliant with DCP solar access and overshadowing controls. At 9am, proposed shadowing will only impact the roof form of the neighbouring rear extension at No. 22 Fort Street. At 12pm, there is no additional shadow to neighbouring properties. At 3pm additional shadowing will impact the western elevation and roof form of No. 18 Fort Street, which will result in <2 hours of solar access to their primary living area window on the Ground Floor level. This is considered acceptable as this room has multiple north and west facing windows and bifold doors which continue to provide solar access to this room. Although the proposal varies from the FSR development standard, if the proposal was for a single dwelling, it would have a compliant FSR and result in the same level of solar impact.



Source: George Livissianis

Figure 4: Shadow Diagrams

Acoustic and Visual Privacy

Dwelling One at the Ground Floor level will continue to have its primary private open space at the rear of the site. The proposed glass door at the eastern elevation will partially face the glass blocks of No. 18 Fort Street. This will result in no overlooking opportunities due to the high-level location of these blocks and their opaque materiality.

Dwelling Two at the First Floor level will comprise a planter and windows to a laundry, bathroom and powder room which are recessed behind the proposed planter. This will minimise any sightlines to the eastern neighbour at No.18 Fort Street and maintain acoustic privacy. This dwelling also has a rear terrace, which comprises walls to each side elevation and a 1.4m solid balustrade to ensure the privacy of residents and neighbouring dwellings is maintained.

Views

There is potential for views of the Harbour Bridge and Anzac Bridge from the first-floor level of the proposed rear extension, toward the south-east of the site. The neighbouring dwelling to the west at No. 22 Fort Street is a single storey dwelling that will not have any views to these areas. The dwelling to the east at No. 18 Fort Street is a two-storey dwelling (above a basement) and obtains these views toward the south-east. The proposal will have no impact on these views, as the subject site is located to the west of No. 18 Fort Street.

Additionally, the proposed alterations and additions have a compliant building height and are respectively sited in terms of proposed side and rear setbacks.

(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.

The subject proposal will retain all existing trees at the site maintaining the existing canopy. This will ensure the residents of the dual occupancy will continue to enjoy the tree canopy.

Accordingly, although the proposal will exceed the FSR control, this is unlikely to have any significant adverse impacts as the design is generally contained within a compliant building envelope.

6.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

There are a number of environmental planning grounds that justify the additional FSR in this particular circumstance. In addition to consistency with the objectives of the zone and the development standard, the environmental planning grounds include contextual and character fit, improved residential amenity, and retention of amenity for surrounding properties.

Contextual Fit and Character

The proposal is permissible in the R2 Low Density Residential zone under existing use rights, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established in *Wehbe*.

The proposal will retain the existing principal built form and replace the existing two storey rear extension with a new extension. The existing streetscape presentation will largely be unaltered, except for minor refurbishments to the façade and a new handrail to the existing front external stairs. The proposed rear façade extends no further than neighbouring dwellings as to ensure compatibility with the surrounding built forms.

In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42], *inter alia*:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposed internal changes and rear addition will enhance the amenity of the site while also maintaining compatibility with existing built form in the area, such as No. 18 Fort Street to the east which comprises a similar rear extension (**DA No. 201500208**). Many developments in the area have a similar building footprint as the proposal (see **Figure 3** above). As previously mentioned, the proposal appears as a two-storey dwelling house from Fort Street. If a single dwelling use was proposed rather than a dual occupancy, an FSR of 1:1 would apply to the site and the proposal would be permissible with the same building footprint and impacts as proposed.

Additionally, a development application for similar alterations and additions to an existing two storey dual occupancy was recently approved at No. 96 Douglas Street, Stanmore (**DA No. 2021/0787**). This site is located ~600m away from the subject site and has the same 0.6:1 FSR standard applicable to the site. The proposed development has an approved FSR of 0.8:1 and gross floor area of 222.96m² (48.96m² or 28.1% greater GFA than the proposal).

Council deemed this exceedance in FSR reasonable due to the technical nature of the departure. As with the proposal, the FSR at No. 96 Douglas Street would have been permissible if the development was a single dwelling house rather than an attached dual occupancy. Furthermore, surrounding sites had a maximum permissible FSR of 0.6:1 and appeared to accommodate dwelling houses or semi-detached dwellings. The subject site is similarly located adjacent to sites with maximum permissible FSR's of 0.6:1 and that benefit from FSR bonuses under Clause 4.4(2C) as they accommodate dwelling houses.

The proposal will maintain the existing building height and new works will be located below the ridgeline with the setbacks consistent with the existing dual occupancy and neighbouring dwellings. This will minimise the perceived bulk and will ensure the dual occupancy remains compatible with the surrounding context.

This report demonstrates the proposed alterations and additions will be compatible with nearby developments. The additional GFA is primarily confined to the rear of the site and will not be visible from the public domain. Therefore, it will not impact the streetscape.

The FSR variation achieves a built form that meets the needs of the residents, while also maintaining compatibility with the existing and desired future character of the area.

Amenity

The proposed GFA will accommodate the same number of existing bedrooms, as well as open plan living, dining and kitchen area, a powder room and storage within both dwellings. This will greatly enhance the functionality and internal amenity of the dwelling for the residents.

Lack of Environmental Impacts

The proposed works have been skilfully designed to prevent adverse amenity impacts on neighbouring properties. The proposed rear setback is in line with neighbouring dwellings (Nos. 18 and 22 Fort Street), and the private open space of both dwellings are orientated toward the rear or suitably enclosed.

The proposal will maintain the environmental amenity of neighbouring properties in respect of solar access, privacy and views, as discussed in the response to Test 1 objective (d) in this report. Regarding solar access, the proposal has no impact on adjoining properties' private open space. Whilst the west facing windows of No. 18 Fort Street will be impacted at 3pm, only one principal living area window will be impacted. This room will maintain acceptable levels of solar access via north and east facing windows/doors. It is important to note that the exact same built form would have a compliant FSR if it were a single dwelling rather than an attached dual occupancy and would result in the same solar access impacts. In other words, strict compliance with the FSR development standard would serve no benefit for the amenity of neighbouring properties.

The development retains existing landscaping across the site, including all existing trees. This ensures that the landscaped character of the area is maintained.

Accordingly, in our opinion, the variation will be consistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

7. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the R2 Low Density Residential Zone, as discussed below:

- Objective:** *To provide for the housing needs of the community within a low density residential environment.*
- Response:** The proposal maintains two attached dwellings, which contributes to housing in the area. The well-designed upgrades to the existing dwellings will suit the housing needs of the residents.
- Objective:** *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- Response:** Not applicable.
- Objective:** *To provide residential development that maintains the character of built and natural features in the surrounding area.*
- Response:** The proposal maintains its existing two-storey built form, including the front portion of the dual occupancy. The existing maximum building height, front and side setbacks will also be maintained. The proposed rear setback appropriately aligns with that of neighbouring dwellings and the proposal will retain all existing trees.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the

table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The FSR non-compliance will enhance the amenity and functionality of the existing dwelling without significantly, unreasonably or unacceptably impacting neighbouring properties. The proposal will maintain similar bulk and scale when viewed from the streetscape and will maintain the amenity of neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. Given the location of the additional GFA will be contained toward the rear, it will not be visible as additional bulk when viewed in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated 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. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R2 Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.4: FSR	
12	What is the control	1 & 2	0.6:1	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Weilbe</i> .	5.1	The proposal satisfies Test 1 of <i>Weilbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. 	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed FSR facilitates a development consistent with the planning objectives of the area; The bulk, scale and character of the dwelling will be compatible with the existing and emerging character of the area; The proposal demonstrates contextual compatibility; The FSR exceedance is considered technical, due to the FSR bonus that would be applicable to a single dwelling house on the subject site. If the proposal was for a single dwelling, it would be compliant with the FSR standard with the same building footprint and impacts as proposed; The additional GFA improves the internal amenity and functionality of the dwelling; The amenity of neighbouring properties is maintained, particularly in respect of privacy and solar access. 	YES
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the	6	The proposed development is consistent with the objectives of the FSR standard as addressed under Test 1 of <i>Weilbe</i> . The proposal is also consistent with the objectives of the R2 Low Density Residential Zone.	YES

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28-29	<p>objectives for development for the zone in which the development is proposed to be carried out.</p> <p>Second Precondition to Entitling the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.</p>	7	<p>As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.</p>	YES
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Clause 4.6 Exceptions to Development Standards – FSR
No. 20 Fort Street, Petersham - Job No.22198

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