





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0555
Address	102 Norton Street LEICHHARDT
Proposal	Alterations and additions to an existing commercial premises and provision of a three storey mixed use development comprising a ground floor café, co-living dwellings and basement parking.
Date of Lodgement	19 July 2023
Applicant	Mr Joseph Panetta
Owner	102 Norton Pty Ltd
Number of Submissions	3
Value of works	\$3,472,705.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	<ul style="list-style-type: none"> • Non-compliances with development standards • Inadequate Clause 4.6 request • Site isolation • Visual bulk and scale
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards
Attachment D	Conditions in the event of an approval
Attachment E	Architectural Excellence and Design Review Panel Minutes



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council to demolish part of the premises, carry out alterations and additions to an existing commercial premises to provide a three storey mixed use development comprising ground floor cafe, 20 co-living dwellings and one level of basement parking at No. 102 Norton Street, Leichhardt.

The application was notified to surrounding properties and 3 submissions were received in response to the notification.

The main issues that have arisen from the application include:

- Variation to Floor Space Ratio development standard under the *Inner West Local Environmental Plan 2022*;
- Variation to several standards within the Housing SEPP (minimum lot size/solar access to communal living areas/building separation/insufficient communal living areas);
- Site isolation of neighbouring lot as a result of proposal;
- Tree removal works on neighbouring property without neighbouring consent;
- Several non-compliances with the Leichhardt Development Control Plan 2013 (LDCP), namely:
 - Section 1.3 Alterations and Additions
 - Section C1.14 Tree Management
 - Section C2.2.3.5 Leichhardt Commercial Distinctive Neighbourhood
 - Section C3.1 Residential General Provisions
 - Section C3.2 Site Layout and Building Design
 - Section C3.3 Elevations and Materials
 - Section C3.8 Private Open Space
 - Section C3.9 Solar Access
 - Section C4.1 Objectives for Non-Residential Zone
 - Section C4.4 Elevations and Materials
 - Section C4.16 Mixed Use

The non-compliances are not acceptable and therefore the application is recommended for approval.

Despite Council's requests for further information, the applicant has not responded to the following matters:

- No detail has been provided to consider the potential isolation of No. 96 Norton Street as a result of the proposal.
- No further design detail has been provided to demonstrate the proposed active street frontage, therefore the site is not suitable to receive the potential FSR bonus. The proposed development breaches the FSR standard and no Clause 4.6 request has been provided.
- No Clause 4.6 request has been provided to address variations to *Housing SEPP* standards, including minimum communal living areas, building separation and solar access to communal areas.
- The submitted Clause 4.6 request to vary the minimum lot size requirement under the *Housing SEPP* has not met the requirements of Clause 4.6, addressing the incorrect zone objectives.
- Owner's consent from No. 96 Norton Street has not been provided, despite the proposal seeking to remove five trees on that property.

- No amendments have been made to address the parking layout and ramp design.
- No amended stormwater plans have been provided.
- An acoustic report has not been submitted.
- Further detail for the café has not been submitted.
- Detail regarding compliance with waste requirements has not been provided.

Having regard to the numerous non-compliances with the applicable planning controls and associated amenity impacts, the application is recommended for refusal.

2. Proposal

The proposed development application seeks development consent for significant demolition of the existing building and alternations and additions to provide a three storey mixed use development comprising a ground floor café, 20 co-living dwellings and one level of basement parking.

Demolition Works:

- Significant demolition of existing building, including rear sheds, roof form, internal layout.

Basement Level:

- Excavation;
- Vehicle access from Norton Street by ramp;
- Basement to include five car spaces, one of which is accessible parking, three motorcycle spaces, 12 bicycle spaces, waste room, bulky waste room, stair and lift access to upper levels.

Ground Floor:

- Extension to existing building;
- Removal of internal walls, proposed café with kitchen extension above driveway;
- Four rooms (two accessible rooms), each with a bathroom, kitchen facilities and deck area;
- Common room with WC and kitchen/laundry;
- Common outdoor area and landscaping at rear;
- Stairs and lift.

First Floor:

- Eight rooms, each with bathroom and kitchen facilities;
- Stairs and lift.

Second Floor:

- Eight rooms, each with bathroom and kitchen facilities;
- Skylights above rooms 17-20;
- Stairs and lift.

3. Site Description

The subject site is located on the western side of Norton Street, between Marion Street and Parramatta Road. The site is generally rectangular shaped with a total area of 442.6sqm and is legally described as Lot 1 in DP 227768.

The site has a frontage to Norton Street of 14.81 metres and a lot depth of 30.48 metres.

The site supports a single storey detached building. Although the building has been altered, various original elements remain (gable roof form, bullnose roof, chimney etc). The site has a large shed at the rear, with a covered at-grade parking area at the northern side. The adjoining properties support one and two storey commercial buildings (Norton Street), with one and two storey dwellings to the rear (Renwick Street).

The subject site is not listed as a heritage item, nor is the property located within a conservation area. The property is partially identified as a flood prone land.

There are a number of mature trees along the southern side boundary of the site (between the site and No. 96 Norton Street) and at the western rear boundary.

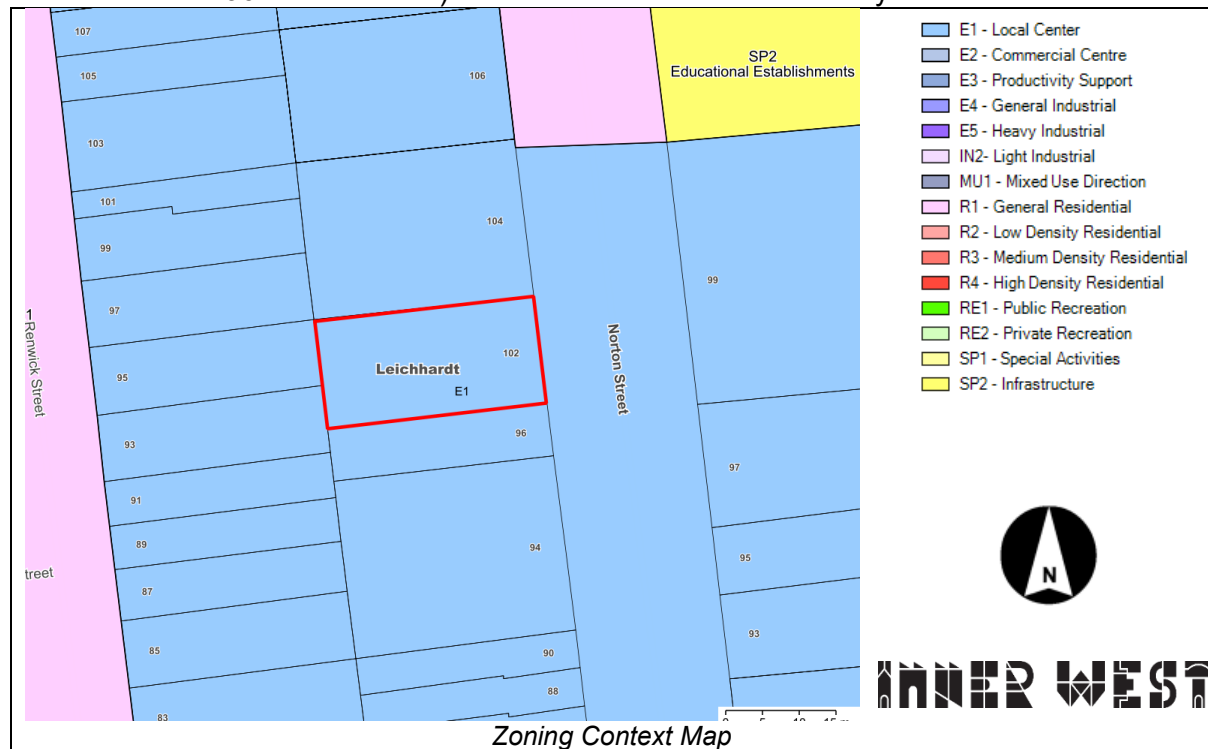




Photo 1: The site, as viewed from Norton Street

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
PDA/2022/0276	Alterations and additions to an existing commercial premises and provision a 3-storey mixed use development comprising of a ground floor café and 22 boarding rooms over 1 level of basement parking.	02/03/2023

The applicant received Pre-DA advice prior to DA submission, for a similar proposal to this application. Several issues were raised as requiring attention prior to DA submission, including, but not limited to, demonstrating an active street frontage; compliance with the *Housing SEPP* and the ADG. The application has been slightly amended (namely reduction of total rooms by 2 and re-characterisation of the development as ‘co-living housing’ instead of boarding house), although the DA has not addressed all the issues raised in PDA/2022/0276.

Surrounding properties

No. 95 Renwick Street

Application	Proposal	Decision & Date
DA/2022/0122	Alterations and additions to existing rear studio and new front fence.	Approved 27/09/2022

No. 96 Norton Street

Application	Proposal	Decision & Date
D/2005/411	Use of the premises as a Pathology collection and processing and associated fitout and signage.	Approved 28/04/2005

No. 106 Norton Street

Application	Proposal	Decision & Date
D/2013/260	Alterations and additions to existing 2 storey building, site remediation, and change of use to a centre based child care facility for 90 child places.	Approved 08/10/2013

4(b) Application history

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

Date	Discussion / Letter / Additional Information
22/08/2023	Application was discussed at the Inner West Council Architectural Excellence Design Review Panel (AEDRP).
12/12/2023	<p>An RFI letter was issued to the applicant, seeking significant design amendments likely requiring withdrawal and resubmission once addressed. The matters within the letter included:</p> <ul style="list-style-type: none"> • Site isolation. • Permissibility of variations to standards under the Housing SEPP. • Owner’s consent from No. 96 Norton Street required, as proposal seeks removal of several trees on that property • No response to AEDRP matters. • Traffic report to be amended to address parking requirements and ramp design. • Amended stormwater plans to address various requirements. • Acoustic report required to be submitted. • Inadequate detail for café. • Inadequate information regarding commercial and residential waste. • Unacceptable tree impacts, particularly as a result of the extent of the basement excavation. Inadequate deep soil areas/tree planting to meet canopy coverage targets. <p>A response to this letter was due on 02/01/2024.</p>

At the time of writing this report, no response has been received to the RFI letter. The application has been assessed on the basis of available information.

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 (Housing) 2021*

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Inner West Local Environmental Plan (IWLEP) 2022*

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.

A preliminary site investigation was submitted with the application which demonstrates no known sources for contamination and that the site is suitable for the proposed use.

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

The applicant has included a BASIX Certificate as part of the lodgment of the application (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EPA Regulation 2021*.

5(a)(iii) State Environmental Planning Policy (Housing) 2021

Chapter 3 Diverse housing, Part 3 Co-living housing

The proposal is for a mixed-use development comprising co-living housing and a café. As such, the proposed co-living housing components of the development are permissible subject to the consent authority being satisfied that the both the site and design are suitable in accordance with the SEPP and that the development meets the relevant development standards under Chapter 3 Part 3 of the SEPP.

The following provides an assessment of the relevant sections and considerations:

State Environmental Planning Policy (Housing) 2021		
Chapter 3 Diverse Housing – Part 3 Co-Living Housing		
Section	Planning Assessment	Compliance Yes/No
67 Co-living housing may be carried out on certain land with consent		
Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings or shop top housing is permitted under another environmental planning instrument.	Pursuant to <i>Inner West Local Environmental Plan 2022 (IWLEP 2022)</i> the site is in Zone E1 Local Centre. Co-living housing is permissible with consent.	Yes
68 Non-discretionary development standards – the Act, s4.15		
(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of co-living housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.	Noted	NA
(2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing— (a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,	Residential flat buildings are not permitted in the E1 Local Centre zone pursuant to the <i>IWLEP</i> . Therefore, this clause does not apply.	N/A
(c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	The proposal requires 58sqm of communal living area. The proposed design includes 55.5sqm of communal living area, which <u>does not</u> comply.	No – see below
(d) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	Requires 88.52sqm. Provides 89.4sqm.	Yes
(e) unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	(e)(i) applies and requires 4 car parking spaces. Proposal includes 4 spaces, plus 1 accessible space.	Yes
(f) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling	The subject site is zoned E1 Local Centre, therefore (f) and (g) do not apply.	N/A

<p>housing under a relevant planning instrument, (g) for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.</p>		
69 Standards for co-living housing		
<p>(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that— (a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m² and not less than— (i) for a private room intended to be used by a single occupant—12m², or (ii) otherwise—16m², and</p>	<p>Each room has a floor area (excluding areas for bathroom facilities or private kitchen) of between 12sqm and 13.3sqm.</p>	<p>Yes</p>
<p>(b) the minimum lot size for the co-living housing is not less than— (i) for development on land in Zone R2 Low Density Residential—600m², or (ii) for development on other land—800m², and</p>	<p>The minimum lot size of 800sqm applies given the E1 zoning. The proposed development has a lot area of 442.6sqm which does not comply with the 800sqm development standard. The applicant has submitted a Clause 4.6 request to vary this standard.</p>	<p>No - see below</p>
<p>(c) for development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing— (i) will not contain more than 12 private rooms, and (ii) will be in an accessible area, and</p>	<p>The site is zoned E1 Local Centre, therefore (c) does not apply.</p>	<p>N/A</p>
<p>(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and</p>	<p>Managers space provided within Disabled Room 01.</p>	<p>Yes</p>
<p>(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and</p>	<p>Proposed ground floor elements fronting Norton Street comprise a café, which is not a residential use.</p>	<p>Yes</p>
<p>(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether— (a) the front, side and rear setbacks for the co-living housing are not less than— (i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or</p>	<p>The site is zoned E1 Local Centre, therefore (a) and (b) does not apply.</p>	<p>N/A</p>

(ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument, and		
(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	Minimum separation distances of 6m (habitable rooms and balconies) and 3m (non-habitable rooms) apply. The proposal does not comply with these requirements.	No – see below
(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	Insufficient information submitted, therefore unable to consider if the proposal complies. From submitted shadow diagrams, compliant solar access is not demonstrated.	No – see below
(f) the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	The proposed design is generally compatible with desirable elements of the character of the local area.	Yes
70 No subdivision		
Development consent must not be granted for the subdivision of co-living housing into separate lots.	No subdivision is proposed	Yes

As indicated above, the proposed development results in variations to the following standards:

- Minimum communal living areas;
- Insufficient building separation;
- Insufficient solar access to communal living area.

The applicant has not submitted a Clause 4.6 request to address the abovementioned variations.

Therefore, in accordance with Section 4.6(3) of the *IWLEP*, the applicant has not demonstrated compliance with the abovementioned development standards is unreasonable / unnecessary in the circumstances of the case, nor has the applicant demonstrated that there are sufficient environmental planning grounds to justify contravening the development standards.

Council is without power to endorse any variation in this instance and this forms a recommended reason for refusal.

Minimum lot size – co-living housing

The proposal also seeks to vary Section 69(b)(ii), in relation to the minimum lot size for co-living housing. The site is subject to a minimum lot size standard of 800sqm for the proposed use, while the site is 442.6sqm in area. Therefore, the applicant seeks a variation of 357.4sqm or 44.68%.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below. A written request has been submitted to Council to justify the proposed contravention of the development standard.

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the minimum lot size standard are achieved notwithstanding the numeric non-compliance.

As there are no objectives within the relevant section of the *Housing SEPP*, the applicant has instead relied upon select principles of the *Housing SEPP*. To ensure comprehensive assessment of the variation, each principle will now be considered.

The **first principle** is “*enabling the development of diverse housing types, including purpose-built rental housing*”. The written request has not addressed this principle, which applies given the proposed development type. The proposal will contribute to the development of diverse housing types, namely smaller dwelling sizes as within the co-living housing component. Accordingly, the breach is consistent with the first principle.

The **second principle** is “*encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability*”. The written request has not addressed this objective, which applies to the proposal given the nature of the proposed building. The proposed use will meet the needs of more vulnerable members of the community, as a smaller dwelling option. The building does contain disabled rooms at the ground floor and has appropriate access arrangements, however the proposal has not stipulated rent capping that would enable the more vulnerable in the community to benefit from the site. Accordingly, the breach is inconsistent with the second principle.

The **third principle** is “*ensuring new housing development provides residents with a reasonable level of amenity*”. The written request states the proposal aligns with this principle, though provides no discussion to demonstrate this. Given the insufficient lot dimensions, the proposed communal living areas will not receive compliant solar access and therefore the development does not provide reasonable levels of amenity for residents. Accordingly, the breach is inconsistent with the third principle.

The **fourth principle** is “*promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services*”. The written request states that co-living housing is best suited to commercial centres where access to regular public transport and other essential services is readily available. In this case, the site is well located for the proposed use and the breach is consistent with the fourth principle.

The **fifth principle** is “*minimising adverse climate and environmental impacts of new housing development*”. The written request has not addressed this principle, which applies to new housing development, such as the proposal. Though the application is accompanied by a BASIX Certificate, the proposal seeks removal of 25 trees, an adverse environmental impact linked to the insufficient lot size. Accordingly, the breach is not consistent with the fifth principle.

The **sixth principle** is “*reinforcing the importance of designing housing in a way that reflects and enhances its locality*”. The written request states the proposal aligns with this principle, though provides no discussion to demonstrate this. Having regard to the feedback provided by the AEDRP, Council is not satisfied that the submitted design will provide housing that reflects and enhances its locality. Accordingly, the breach is not consistent with the sixth principle.

The **seventh principle** is “*supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use*”. The written request has not addressed this principle, which may be considered to apply to the proposal given the nature of the proposed use. Although the proposal may meet the first component of the principle, the development will not manage the social and environmental impacts from the use on surrounding properties, as a result of the lot size variation. Accordingly, the breach is not consistent with the seventh principle.

The **eighth principle** is “*mitigating the loss of existing affordable rental housing*”. The written request does not address this principle, although the proposal will replace a non-residential use with a part residential use, therefore this principle does not apply.

As the proposal is not consistent with the principles of the *Housing SEPP*, compliance is *not* considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Clause 4.6(3)(b), the Applicant advances nine environmental planning grounds to justify contravening the minimum lot size standard. Each will be dealt with in turn:

Ground 1 – *Surrounding lot sizes are typically between 200sqm and 400sqm, which would limit the application of co-living housing in the area, while the subject lot is one of the larger remnants in the locality so it is therefore suitable to accommodate the use.* Although it is noted that the subject lot is larger than the adjoining lot at No. 96 Norton Street, when compared to the prevailing cadastral boundaries, the lot is not considered a ‘larger remnant lot’ on this part of Norton Street. In any event, should the proposed use be approved on this lot, this would create an isolated lot at No. 96 Norton Street while contributing to unacceptable amenity outcomes due to the insufficient lot size. This ground is not accepted.

Ground 2 – *The site is large enough to accommodate co-living housing, which is demonstrated in compliance with the development standards under the Housing SEPP, consistency with the E2 Commercial Centre objectives and controls and objectives under the LDCP.* As indicated elsewhere in this assessment, the proposed development involves

several variations to relevant standards under the *Housing SEPP*, *IWLEP* and *LDCP*. Several of these non-compliances are a function of the insufficient lot size, therefore this ground is not accepted.

Ground 3 – *The proposal represents the orderly and economic use of the land, serving the needs of the local community.* This ground is not accepted given the proposal affords poor amenity and isolates the adjoining site from reaching its development potential as a result of this proposal.

Ground 4 – *The proposed co-living housing is delivered as anticipated under the Housing SEPP, complying with required facility requirements.* This ground is not accepted because the submitted design results in several non-compliances to the *Housing SEPP* (insufficient communal living areas, insufficient solar access to communal areas), which are a function of the lot size variation.

Grounds 5 and 6 – *The development complies with Clause 69(1)(e) where the portions of the ground floor fronting a street are to comprise non-residential areas// The proposal complies with the requirements of Clause 69(f), in relation to the desired future character.* These constitute separate standards under the *Housing SEPP*. Compliance with these standards is a separate precondition which is not a relevant consideration as an environmental planning ground. In any event, the submitted design does not demonstrate an active street frontage for this component of the development. This ground is not accepted.

Ground 7 – *Mixed land use comprising co-living housing is consistent with the E2 zone objectives.* This ground is not accepted, given the site is not zoned E2 Commercial Centre, rather is zoned E1 Local Centre.

Ground 8 – *Retention of the existing lot size and the scale of the development is consistent with the prevailing built form and streetscape – a larger site would lead to a greater built form which could erode the narrow grain subdivision character.* The above statement is correct by inferring that a compliant lot would result in a scale which is wider than the prevailing subdivision pattern on Norton Street. However, amalgamation of the site and the adjoining property (No. 96 Norton Street) would remain compatible with the prevailing subdivision pattern on Norton Street. In addition, extension of the site to amalgamate with properties to Renwick Street may have enabled compliance and retained the 'narrow grain subdivision character'. This ground is not accepted as it has been inadequately detailed.

Ground 9 - *The proposal achieves Objects 1.3(a)-(h) of the EP&A Act, for reasons including the lack of adverse environmental impacts on neighbouring properties and providing an active street frontage.* Several of the reasons forwarded by the applicant are not accepted, particularly given the extent of amenity impacts arising from the proposed development. This ground is not accepted.

Cumulatively, ground 3 is inadequate to be considered sufficient environmental planning grounds to justify contravening the development standard. The requirements of Section 4.6(3)(b) are therefore not met.

Whether the proposed development meets the objectives of the development standard, and of the zone

The written submission addresses the E2 zone objectives, which do not apply to the proposed development. Council is not satisfied that the development is consistent with the objectives of the E1 zone, namely:

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To enhance the unique sense of place offered by Inner West local centres by ensuring buildings display architectural and urban design quality and contributes to the desired character and cultural heritage of the locality.*

Council does not accept the Applicant's submissions in the written request that the relevant zone objectives are met. The variation will result in an isolated lot at No. 96 Norton Street and create an over-scaled development without adequate communal areas given the insufficient lot size. As indicated above, Council is also not satisfied that the development meets the principles of the *Housing SEPP*. As the proposal is inconsistent with both the objectives of the zone and the standard, it is not considered in the public interest.

For the reasons outlined above, it is recommended the section 4.6 exception be rejected. This matter has been included as a recommended reason for refusal.

Chapter 4 Design of residential apartment development

Section 144(2) of Chapter 4 of the Housing SEPP states the chapter applies to:

- (c) *mixed use development with a residential accommodation component that does not include boarding houses or co-living housing, unless a local environmental plan provides that mixed use development including boarding houses or co-living housing is residential apartment development for this chapter.*

As the *IWLEP 2022* does not state otherwise, Chapter 4 of the Housing SEPP does not apply (formerly *SEPP 65 –Design Quality of Residential Flat Development*).

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

Chapter 2 Vegetation in non-rural areas

The protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site and on No. 96 Norton Street. Owner's consent has not been provided from No. 96 Norton Street. The application was referred to Council's Urban Forest Officer whose comments are summarised as follows:

The Arborist has failed to calculate the Tree Protection Zones (TPZ) and Structural Root Zones (SRZ) of all trees within the property. There are no species within the site declared as noxious weeds under the NSW Biosecurity Act 2015. Subsequently the Landscape Significance of several trees allocated a Nil Landscape Significance rating under Section B7 of the Arborist report is misleading.

There are discrepancies between the Architectural Plans, Statement of Environmental Effects and the Arboricultural Impact Assessment Report. The Architectural and Landscape Plans have failed to adequately plot the location of all the trees within the property.

The Arborist claimed Trees 6 – 10 are offset ~1.5m to the existing structure and are exempt. However, Control 6.5 of the Tree Management DCP 2023 allows the removal of a tree, including a prescribed tree, located within 1 metre of the wall of a residential dwelling located on the same lot. The 1 metre distance is measured from the centre of the tree at breast height (DBH 1.4m) to the wall of the residential dwelling. Given the ~1.5m offset Trees 6 – 10 are protected under the provisions of the Tree Management DCP 2023.

It is noted Tree 11 is dead and Trees 12 – 14 exhibit poor condition and vitality, these trees in addition to Tree 4 are of low retention value. The Urban Tree Management Team raises no objections to the removal of Trees 4, 11 – 14.

The trees on the western boundary are shown to be retained in the Architectural and Landscape Plans. The proposed excavation for the basement carparking is offset ~0.8m to the western boundary and is a major TPZ/SRZ encroachment to Trees 15 – 24, their stability is compromised under the design.

*Trees 1 and 2 are street trees identified as a *Pyrus ussuriensis* (Manchurian pear) and *Tristanopsis laurina* (Water Gum). They shall be retained and protected.*

A canopy target of 25% is required for areas zoned B2 Local Centres.

The application is not supported by the Urban Forest Team as the proposal fails to provide deep soil planting to retain or accommodate new trees or provide a 25% canopy cover across the site.

Overall, the proposal is considered unacceptable with regard to the SEPP and LDGP 2013 Section C1.14. This matter has been included as a recommended reason for refusal.

Chapter 6 Water Catchments

The subject site is located within the Sydney Harbour Catchment. Section 6.6 under Part 6.2 of the SEPP provides matters for consideration which apply to the subject development proposal. The proposal is acceptable in relation to these matters.

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 4.4 – Floor space ratio
- Section 4.4A – Exception to maximum floor space ratio for active street frontages
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 5.21 – Flood planning
- Section 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management
- Section 6.8 – Development in areas subject to aircraft noise
- Section 6.13 – Residential accommodation in business zones

Section 1.2 Aims of the Plan

The proposed development is inconsistent with the following aims of the *IWLEP*:

- (b) to conserve and maintain the natural, built and cultural heritage of Inner West,*
- (g) to create a high quality urban place through the application of design excellence in all elements of the built environment and public domain,*
- (h) to prevent adverse social, economic and environmental impacts on the local character of Inner West,*
- (i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.*

The proposed development will not create a high-quality urban place, particularly given the scale and design of the proposed additions compared to the retained building elements and the lack of a cohesive relationship with the existing façade and built form. Then relationship between the old and new components of the development are at odds with each other as the additions overwhelm the existing building by way of inadequate setback, proposed building proportions, materiality as well as articulation and fenestration. The proposal appears as 2 separate built forms combined together with no cohesive relationship. This in turn adversely impacts upon the overall streetscape character. This position was mirrored by Council's Architectural Excellence Design Review Panel (AEDRP), who noted the additions to be 'largely out-of-character', instead recommending a significant redesign of the proposal including demolition of the existing structures and the provision of an entirely new scheme.

The AEDRP also raised concerns over adverse impacts on neighbouring properties arising from the isolation of No. 96 Norton Street. No detail has been provided from the applicant in relation to this matter.

Having regard to the above, the proposal fails to comply with the aims of the plan with specific regard to 1.2(b), (g), and (h).

Section 2.3 Land Use Table and Zone Objectives

The site is zoned E1 Local Centre under the *IWLEP*. The *IWLEP* defines the development as 'mixed use development', comprising 'co-living housing' and a 'café', as defined below:

co-living housing means a building or place that—

- (a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (b) provides occupants with a principal place of residence for at least 3 months, and*

(c) *has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day, but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or*
- (b) farm gate premises.*

Co-living housing ('residential accommodation') is prohibited within the E1 zone. Notwithstanding this, Section 67 of Part 3 of the Housing SEPP permits co-living housing in the zone.

A café, which is a type of food and drink premises (commercial premises) is permissible with consent within the zone.

Notwithstanding the permissibility of the proposed uses, the development is not consistent with the objectives of the E1 zone, particularly the following:

- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- To enhance the unique sense of place offered by Inner West local centres by ensuring buildings display architectural and urban design quality and contributes to the desired character and cultural heritage of the locality.*

Overall, the proposal is of a poor design quality, would result in a compromised streetscape outcome and is contrary to the desired future character of the locality.

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: 1:1 or 442.6 sqm	1.22:1 or 543.4sqm	100.8sqm or 22.7%	No

*The applicant has sought to rely upon the FSR bonus under Section 4.4A of the *IWLEP*, which would enable a maximum FSR of 1.5:1 on the site subject to the consent authority being satisfied that the building:

- (a) will have an active street frontage, and*
- (b) is mixed use development that includes residential accommodation, and*
- (c) is compatible with the desired character of the area in relation to its bulk, form, uses and scale.*

Council is not satisfied that the submitted plans demonstrate an active street frontage, given the lack of detail relating to the café component of the site, including its operational plausibility. Furthermore it is considered that the architectural expression of the building is poor, and the proposal to retain the existing building and propose additions which are at odds in bulk, scale setbacks and design with the existing structure will result in a poor streetscape outcome. Having regard to the above the proposal is considered incompatible with the desired character of the area.

This was raised in the RFI letter issued to the applicant. As there has been no further information provided to demonstrate the application meets the requirements of Section 4.4A, the FSR bonus does not apply and the applicant seeks a variation to Section 4.4 of the *IWLEP*. This is detailed below.

Section 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the FSR development standard under Section 4.4 of the *IWLEP 2022* by 22.7% (100.8sqm). The applicant has sought to rely upon the bonus FSR for active street frontages under Section 4.4A of the *IWLEP*, though has not satisfactorily demonstrated an active street frontage. No Clause 4.6 Request has been submitted.

Therefore, the applicant has not demonstrated compliance with the FSR development standards is unreasonable / unnecessary in the circumstances of the case, nor has the applicant demonstrated that there are sufficient environmental planning grounds to justify contravening the development standards.

Council is without power to endorse any variation in this instance and this forms a recommended reason for refusal.

Section 5.21 Flooding

The subject site is identified as part flood prone in Council's flood mapping. In accordance with Section 5.21 of the *IWLEP*, the consent authority must be satisfied on several matters, including:

- (2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*
 - (a) *is compatible with the flood function and behaviour on the land, and*
 - (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
 - (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
 - (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The applicant has not provided any information relating to the potential flooding impacts of the proposed development. Council is not satisfied on the basis of available information that the proposed development will meet the requirements of Section 5.21(2) of the *IWLEP*. This matter forms a recommended reason for refusal.

Section 6.13 Residential accommodation in Zones E1, E2 and MU1

The subject site is zoned E1 Local Centre, therefore this Section applies. 6.13(3) specifies the following;

- (3) *Development consent must not be granted to development for the purposes of residential accommodation on land to which this clause applies unless the consent authority is satisfied the building—*
 - (a) *is mixed use development, and*
 - (b) *will have an active street frontage, and*

(c) is compatible with the desired character of the area in relation to its bulk, form, uses and scale.

Whilst the proposal satisfies the requirement of providing a mixed-use development, it acknowledged that the design does result in a conflict between the commercial use and residential use. The ramp along the southern boundary serves as an entry to the residential component of the building, however the garbage store (which appears undersized for a café) is located at the end of that same pedestrian ramp. As such the only route for garbage storage for the café is via the pedestrian ramp to the residential component of the building which is a poor amenity outcome.

Similarly, whilst the proposal seeks the provision of a café at the front of the site, the layout is awkwardly shaped, and it is unclear whether such a use is viable.

Whilst there is no objection to the use of the development as a cafe and co-living, the architectural design fails to meet the requirements of 6.13(3)(c) as the proposal is not compatible with the desired character of the area. The proposed additions overwhelm the existing building which is proposed to be partially retained with the scale of the additions at odds with the existing building resulting in a poor streetscape outcome.

Having regard to the above the proposal fails to adequately satisfy all of the requirements of Section 6.13(3) of IWLEP 2022.

5(b) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
Part C	
C1.0 General Provisions	No (proposal is contrary to Objectives 5 and 6)
C1.1 Site and Context Analysis	No (proposal is contrary to Objective 1b and d)
C1.2 Demolition	Yes
C1.3 Alterations and additions	No – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	No – see discussion
Part C: Place – Section 2 Urban Character	
C2.2.3.5 Leichhardt Commercial Distinctive Neighbourhood C2.2.3.5(a) Entrata Sub Area	No – see discussion

Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – see discussion
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	No – see discussion
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – see discussion
C3.9 Solar Access	No – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.14 Adaptable Housing	Yes
Part C: Place – Section 4 – Non-Residential Provisions	
C4.1 Objectives for Non-Residential Zones	No – see discussion
C4.2 Site Layout and Building Design	Yes
C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	No – see discussion
C4.6 Shopfronts	Yes
C4.15 Mixed Use	No – see discussion
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.5 Mixed Use Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	No (The submitted stormwater drainage plans do not meet the requirements of this section. Amendments were requested during assessment, though no response was received)
E1.1.4 Flood Risk Management Report	No (site is partially flood prone, though no flood report has been provided to address the requirements of this Part)
E1.2 Water Management	
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	No (The submitted OSD design did not satisfy the requirements of this

	section and no response was received to the request for amendments)
E1.2.5 Water Disposal	Yes
E1.3 Hazard Management	
E1.3.1 Flood Risk Management	No (site is partially flood prone, though no flood report has been provided to address the requirements of this Part)

The following provides discussion of the relevant issues:

C1.3 Alterations and Additions

The proposal does not comply with the following controls which apply to alterations and additions:

- C12 Additions at first floor and above shall be of a scale and are to be located in a manner which:*
- a. maintains visual separation between the existing building and adjoining residential development; and*
 - b. maintains setback patterns of surrounding development; and*
 - c. will ensure that the addition does not dominate, but is sub-ordinate to the existing dwelling when viewed from the street.*

The proposed additions will not be visually separated between the existing building, due to the proposed siting of the upper floor levels and will result in a dominant visual appearance in relation to the existing building. The height, bulk scale, and siting of the additions overwhelm the existing built form, and the proposal fails to provide setbacks that reflect the patterns of surrounding development. Overall, the scale of the new additions fail to appear subordinate to the existing building.

C1.14 Tree Management

The proposed removal of 25 trees to accommodate the proposed development, many of which are mature and 5 are on the neighbouring property (No. 96 Norton Street – owner’s consent has not been submitted), is contrary to the following controls under Section C1.14:

- C13 All development proposals must be designed to maintain or improve the urban forest values of the site by minimising the impact on tree/s and planting replacement tree/s for tree/s that are proposed for removal. This requirement applies to Council owned trees as well as trees on private or other property and adjoining land.*
- C14 The design of buildings or alterations and additions to buildings must provide sufficient distance from existing trees (whether on the site or on adjoining land), in accordance with AS4970-Protection of trees on development sites (AS4970), to ensure the tree/s’ practical retention.*

C2.2.3.5 Leichhardt Commercial Distinctive Neighbourhood/C2.2.3.5(a) Entrata Sub Area

The proposed development does not comply with the following desired future character controls:

- C12 Enhance and promote the viability and potential for neighbourhood and local provision shops.*

- C13 *Building wall height is to be a maximum of 3.6m, unless an alternate building wall height is prescribed under sub area controls.*
- C1 *Encourage a mix of retail, commercial, community, cultural and entertainment uses in order to sustain a lively public environment, particularly along the street frontage.*
- C3 *Improve the environmental amenity and interest for pedestrians accessing the area.*

As indicated previously, insufficient detail has been submitted to demonstrate the proposed development will have an active street frontage. Considering the location of the site as within the Norton Street local centre, the proposal has not demonstrated that there will be an appropriate mix of uses provided.

C3.1 Residential General Provisions

The proposed development does not comply with the following control under this section:

- C1 *Residential development is not to have an adverse effect on:*
- a. *the amenity, setting or cultural significance of the place, including the portion of the existing building to be retained; and*
- C2 *Additions to an existing building are generally:*
- b. *subservient to the form of the existing building; and*
 - d. *of a design which is compatible with but does not compete with the architectural character of the existing building or the Building Typologies; and*
 - e. *of a scale, proportion (including proportion of doors and openings) and material which is compatible with the existing building.*

Having regard to Control C1a, the given the extent of demolition proposed and the scale of the additions, the proposed development will have an adverse impact on the amenity, setting and place, including the retained building. Furthermore the additions are not sympathetic and overwhelm the existing building failing to meet the requirement of appearing subservient to the existing form, are not compatible with the architectural character of the existing building and are not of a scale or proportion which is compatible with the existing building.

The architectural style of the 'additions' are at odds with the existing building and the proportions of doors and openings are incompatible with the design of the existing building. Overall the architectural expression of the building is poor and fails to exhibit design excellence.

C3.2 Site Layout and Building Design

The proposed development does not comply with the following controls, particularly as a result of the insufficient site area:

- C1 *The site shall have sufficient capacity to accommodate development, including buildings and structures, setbacks and separation distances, access, manoeuvring and parking (where required by this Development Control Plan) and landscaped open space, having regard to site characteristics such as:*
- c. *site area, road frontage, width and depth;*
- C7 *Building setbacks shall comply with the numerical requirements set out in the side boundary setback graph.*
- C17 *The overall maximum height in storeys shall generally not exceed the height in storeys of the main building on adjoining sites, except where those buildings are uncharacteristic of the general pattern of development in the same street or as set out in the Suburb Profile, in which case, consideration will be given to that general pattern.*

The proposed building does not comply with the side setback requirements, particularly at the First and Second Floor levels. Given the 8.55m side wall heights, a minimum side setback of

3.31m applies, while the proposal the proposal seeks a setback of 1.15m (southern side) and 1.55m (northern side).

The proposed side setback variation contributes to the extent of amenity impacts on the adjoining property at No. 96 Norton Street and can be considered a function of the insufficient lot size.

C3.3 Elevations and Materials

The proposed development has not demonstrated a design that provides a high level of architectural and visual presentation to all elevations, particularly at the 'blank' front elevation of the additions. This results in an outcome contrary to the below control:

C7 New buildings shall be designed to provide a high level of architectural and visual presentation to all elevations, avoiding blank, unarticulated side and rear elevations.

C3.8 Private Open Space

The proposed development does not comply with the following controls, due to the lack of private open space for each dwelling:

C3 Private open space comprises a minimum 8sqm deck or balcony with a minimum dimension of 2m directly accessible from the principal living areas.

It is noted that additional communal open space has been provided in lieu of private open space for each dwelling.

C3.9 Solar Access

The proposed development will result in additional overshadowing to surrounding properties, particularly No. 96 Norton Street. Given the non-residential use of that property, which operates as a medical practice, Control C20 applies and states:

C20 Where adjoining sites include non-residential uses where solar access contributes to the functionality of that use (e.g. restaurants and public/community buildings), Council will consider the reasonableness of the development, having regard to the use of the adjoining non-residential buildings that are impacted by any additional overshadowing.

Due to the scale of the proposed development, the proposal will completely overshadow all northern side windows and open space of No. 96 Norton Street. This is considered to unreasonably impact upon the functionality of that use, contrary to Control C20.

C4.1 Objectives for Non-Residential Zones

The proposed development does not comply with the below objective, given the extent of adverse impacts on surrounding residential amenity:

O8 To achieve an appropriate balance between promoting economic prosperity and protecting established residential amenity.

C4.4 Elevation and Materials

The proposed development does not comply with the following control:

C5 Buildings are designed to provide a high level of architectural and visual presentation to all elevations, avoiding blank, unarticulated side and rear elevations.

As discussed throughout this report, the proposal is of a poor design quality, in particular the front elevation which proposes to retain a part of the original building and locate the new works above and around the original building fail to provide an adequate transition between old and new, with the additions overwhelming the existing building. The proportions and architectural expression results in a development that appears disjointed.

C4.16 Mixed Use

The proposed development does not comply with the following applicable controls, which apply to the proposal given the mixed-use nature of the development:

- C2 Residential uses are provided above the ground floor of the building.*
- C8 Dwellings are provided with an acceptable level of residential amenity in terms of:
 - a. access to sunlight to main living areas and adjoining main areas of private outdoor recreation space such as courtyards and balconies;*
 - e. Compliance with Part C3.8 – Private open space, C3.9 – Solar access, C3.10 – Views, C3.11 – Visual privacy and C3.12 – Acoustic privacy of this Development Control Plan.**

5(c) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

Site isolation: The proposed development would result in the isolation of No. 96 Norton Street, by effectively enclosing that allotment between two three-storey developments. This would unreasonably limit the potential development opportunities of that lot. The applicant has not demonstrated that the proposed development would not result in the isolation of this lot, nor has detail been provided to demonstrate reasonable attempts to amalgamate the lots.

Solar impacts: The extent of overshadowing to the non-residential property to the north at No. 96 Norton Street is such that it will limit the viability of that business. It is noted that the extent of shadowing may be reduced through providing a design compliant with development standards and relevant DCP provisions. Ideally sufficient lot amalgamation with that site would alleviate this issue.

Character impacts: The proposed design does not demonstrate a built form which will be compatible within the streetscape, nor with the Leichhardt Commercial Distinctive Neighbourhood. The proposed additions to the existing building are such that the additions would visually dominate the existing building form, resulting in a poor streetscape outcome.

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

It is considered that the proposal will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development. It is noted that the subject site has an area of 442.6sqm, which is insufficient to accommodate the proposed development (as evidenced by the further variations to standards under the *Housing SEPP*).

5(e) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 21 days to surrounding properties. 3 submissions were received in response to the notification.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: The proposed development will result in the isolation of No. 96 Norton Street, limiting future development

Comment: As discussed at Section 5(c) of this report, the potential site isolation of No. 96 Norton Street has not been addressed by the applicant. This matter is a reason for refusal.

Issue: Unreasonable shadowing impacts which will limit upon the viability of the neighbouring doctors practice.

Comment: The proposed development will result in considerable overshadowing of the neighbouring property and is not supported.

Issue: The proposed height, bulk and scale is out of character with the context.

Comment: As indicated in this report, the proposed development will result in several non-compliances with development standards and provisions relating to building bulk and scale. Variations to the *Housing SEPP* and *IWLEP* have not been justified with Section 4.6 requests and are not supported.

Issue: The proposed development will result in visual privacy impacts.

Comment: The proposed development has been designed to mitigate potential visual privacy impacts on adjoining properties through minimising side and rear facing openings and providing high level windows.

Issue: The proposed development will result in acoustic privacy and construction impacts.

Comment: Although the application is recommended for refusal, in the event of an approval, requirements would be imposed to ensure that construction impacts on adjoining lots are minimised. Furthermore, dilapidation reports would be required for neighbouring lots.

5(f) The Public Interest

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

The proposal is contrary to the public interest.

6 Referrals

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

- Building Certification
- Health
- Waste Management Commercial
- Waste Management Residential
- Urban Forest
- Community Services/Social Planning
- Development Engineering

In addition, the application was referred to Council's Architectural Excellence Panel, who provided verbal and written advice to the application regarding the submitted design.

7. Section 7.11 Contributions/7.12 Levy

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. Section 7.11 Contributions would apply to the proposal, although the application is recommended for refusal and these are therefore not applicable.

8. Conclusion

The proposal results in several non-compliances with the aims, objectives and standards contained in *Inner West Local Environmental Plan 2022*, the *Housing SEPP* and *Leichhardt Development Control Plan 2013*. As indicated, the applicant has not provided sufficient Clause 4.6 requests to address the non compliance with the prescribed development standards.

The development would result in significant impacts on the amenity of the adjoining premises/properties and the streetscape and is not considered to be in the public interest. As demonstrated in this report, the site isolation of No. 96 Norton Street is an unacceptable outcome arising from the proposed development.

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

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West LEP and Housing SEPP*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the standards is unnecessary in the circumstance of the case and that there are insufficient environmental grounds to support the variations. The proposed development will not be in the public interest because the exceedances are inconsistent with the objectives of the standards 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*, refuse Development Application No. DA/2023/0555 for alterations and additions to an existing commercial premises and provision of a 3 storey mixed use development comprising of ground floor café, co-living dwellings and 1 basement level of parking at 102 Norton Street, LEICHHARDT, for the reasons outlined in Attachment A.

Attachment A – Reasons for refusal

1. The proposal is inconsistent with the Inner West Local Environmental Plan 2022 as follows:
 - i. Section 1.2 Aims of the Plan; Aims (b), (g) and (h), as it does not adequately conserve the built and cultural heritage of the Inner West, and (g) and (i), where it does not preserve the amenity of surrounding properties and the public domain and is of a poor design quality.
 - ii. Section 2.3 Zone Objectives for zone E1 Local Centre, as it does not ensure the new development provides diverse and active street frontages and does not enhance the unique sense of place of the local centre by displaying architectural and urban design quality.
 - iii. Section 4.4 Floor Space Ratio, as it does not comply with the maximum FSR and no Clause 4.6 request has been submitted to vary this standard.
 - iv. Section 5.21 Flooding, as the applicant has not demonstrated that the proposed development will not adversely affect flood behaviour.

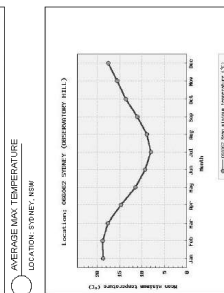
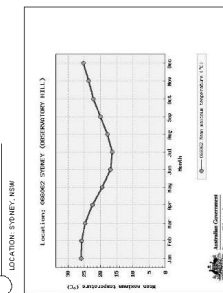
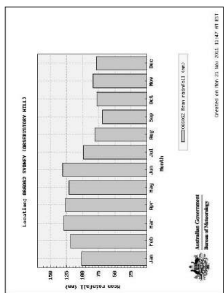
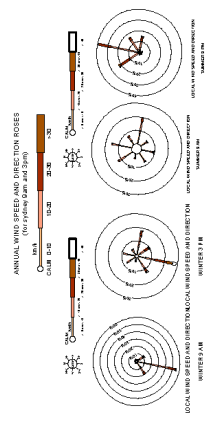
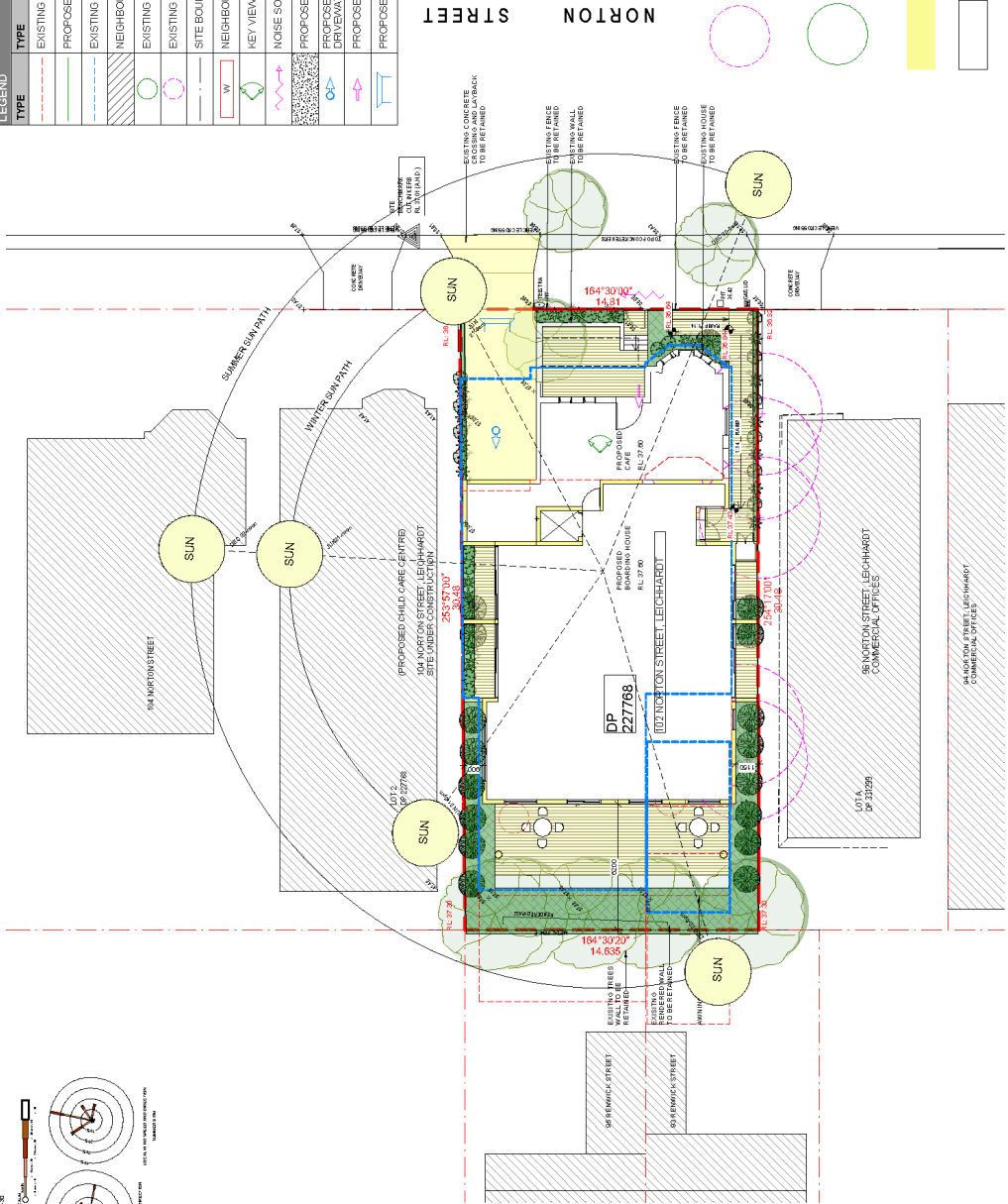
2. The proposal is inconsistent with the *Housing SEPP* as follows:
 - i. Section 68(c), as there is insufficient communal living areas with no Clause 4.6 request provided.
 - ii. Section 69(1)(b)(ii), as there is insufficient lot size and the submitted Clause 4.6 request does not satisfy the legislative requirements.
 - iii. Section 69(2)(b), as there are insufficient minimum separation distances and no Clause 4.6 request has been provided.
 - iv. Section 69(2)(c), as there is insufficient information to demonstrate compliant solar access is provided to the communal living areas and no Clause 4.6 request has been provided.

3. The proposal is inconsistent with *SEPP Biodiversity* as follows:
 - i. Chapter 2 of the *SEPP*, as the proposed development does not protect vegetation on the subject site or neighbouring properties, rather seeks removal of considerable canopy coverage to accommodate the building.

4. The proposal is inconsistent with the Leichhardt Development Control Plan 2013 as follows:
 - i. Section C1.0 General Provisions, as the proposed development is contrary to objectives 5 (compatible) and 6 (connected).
 - ii. Section C1.1 Site and Context Analysis, as the proposed development is contrary to objectives 1b and 1d given the extent of impacts on neighbouring properties.
 - iii. Section 1.3 Alterations and Additions, as the proposal does not comply with Control C12, given the additions will dominate the retained existing built form.
 - iv. Section C1.14 Tree Management, as the proposal does not comply with Controls C13 and C14, given the extent of tree impacts proposed.
 - v. Section C2.2.3.5 Leichhardt Distinctive Neighbourhood, as the proposal does not comply with the desired future character controls, namely C12 and C13.
 - vi. Section C2.2.3.5(a) Entrata Sub Area, as the proposal does not comply with desired future character controls C1 and C3.
 - vii. Section C3.1 Residential General Provisions, as the proposal does not comply with Controls C1 and C2, given the extent of visual and amenity impacts on neighbouring properties and the streetscape.

- viii. Section C3.2 Site Layout and Building Design, as the proposal does not comply with Controls C1, C7 and C17, relating to sufficient site capacity, building setbacks and maximum building heights.
 - ix. Section C3.3 Elevations and Materials, as the proposal does not comply with Control C7, relating to visual presentation.
 - x. Section C3.8 Private Open Space, as the proposal does not comply with Control C3.
 - xi. Section C3.9 Solar Access, as the proposal does not comply with Control C20 given the extent of solar impacts on the neighbouring property.
 - xii. Section C4.1 Objectives for Non-Residential Zones, as the proposal is contrary to objective 8, given the extent of amenity impacts.
 - xiii. Section C4.4 Elevation and Materials, as the proposal does not comply with Control C5 relating to visual presentation.
 - xiv. Section C4.16 Mixed Use, as the proposal does not comply with Controls C2 and C8 relating to residential amenity.
5. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the *EPA Act 1979*.
 6. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the *EPA Act 1979*.
 7. The proposal is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the *EPA Act 1979*.

LEGEND	TYPE	DESCRIPTION
	EXISTING BUILDINGS TO BE DEMOLISHED	
	PROPOSED BUILDING FOOTPRINT	
	EXISTING BUILDING FOOTPRINT ON SITE	
	NEIGHBOURING BUILDINGS	
	EXISTING TREES TO BE RETAINED	
	EXISTING TREES TO BE REMOVED	
	SITE BOUNDARIES	
	NEIGHBOURING WINDOW	
	KEY VIEWS	
	NOISE SOURCE FEATURE	
	PROPOSED PRIVATE OPEN SPACE	
	PROPOSED PRIVATE ACCESS POINT	
	PROPOSED PEDESTRIAN ACCESS POINT	
	PROPOSED DRIVEWAY CROSSING	

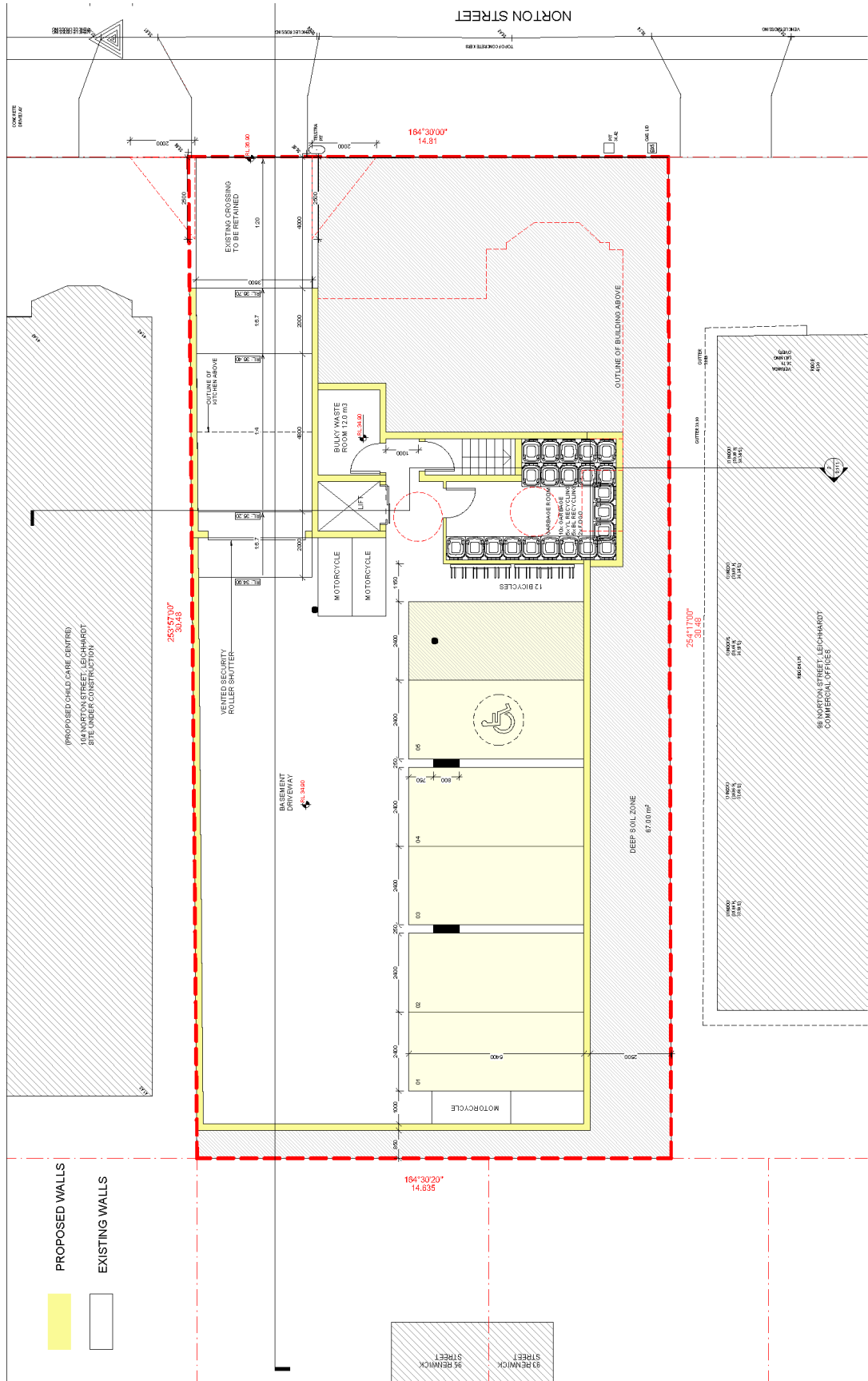


SCALE @ A1:	1:100
SCALE @ A2:	1:200
DRAWN BY:	F.H
DATE:	01/06/2023
CHECKED BY:	J.P
PROJECT NUMBER:	22310 - 102
SHEET NUMBER:	D102

PROPOSED CO-LIVING DEVELOPMENT
 DEVELOPMENT APPLICATION
 CURBY: MR G JIA
 ADDRESS: 102 NORTON STREET LEICHHARDT

REVISION	DATE	DESCRIPTION
A	01/06/2023	ISSUED FOR PERMIT
B	01/06/2023	AMENDED PER DA BLUE
C	01/06/2023	UPDATED PER DA BLUE
D	01/06/2023	UPDATED PER DA BLUE

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 102 Norton Street Leichhardt NSW 1555



PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION

CLIENT: MR. G JIA
ADDRESS: 102 NORTON STREET LEICHDART

SCALE @ A1: 1:150
SCALE @ A2: 1:100

DATE: F.H 01/06/2023
DRAWN BY: J.P.
CHECKED BY: J.P.
PROJECT NUMBER: 22310-102
SHEET NUMBER: D104

BASEMENT PLAN
PRELIMINARY
NOT FOR CONSTRUCTION

REVISION

REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	20/02/22	AMENDED PER DA REVIEW	JH	JP
B	20/02/22	AMENDED PER DA REVIEW	JH	JP
C	20/02/22	REVISIONS FOR APPROVAL	JH	JP
D				

NOTES:

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

2. ALL WALLS TO BE CONCRETE UNLESS OTHERWISE SPECIFIED.

3. ALL FLOORS TO BE CONCRETE UNLESS OTHERWISE SPECIFIED.

4. ALL ROOFS TO BE CONCRETE UNLESS OTHERWISE SPECIFIED.

5. ALL CEILING TO BE CONCRETE UNLESS OTHERWISE SPECIFIED.

6. ALL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards.

7. ALL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards.

8. ALL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards.

9. ALL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards.

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13. ALL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards.

14. ALL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards.

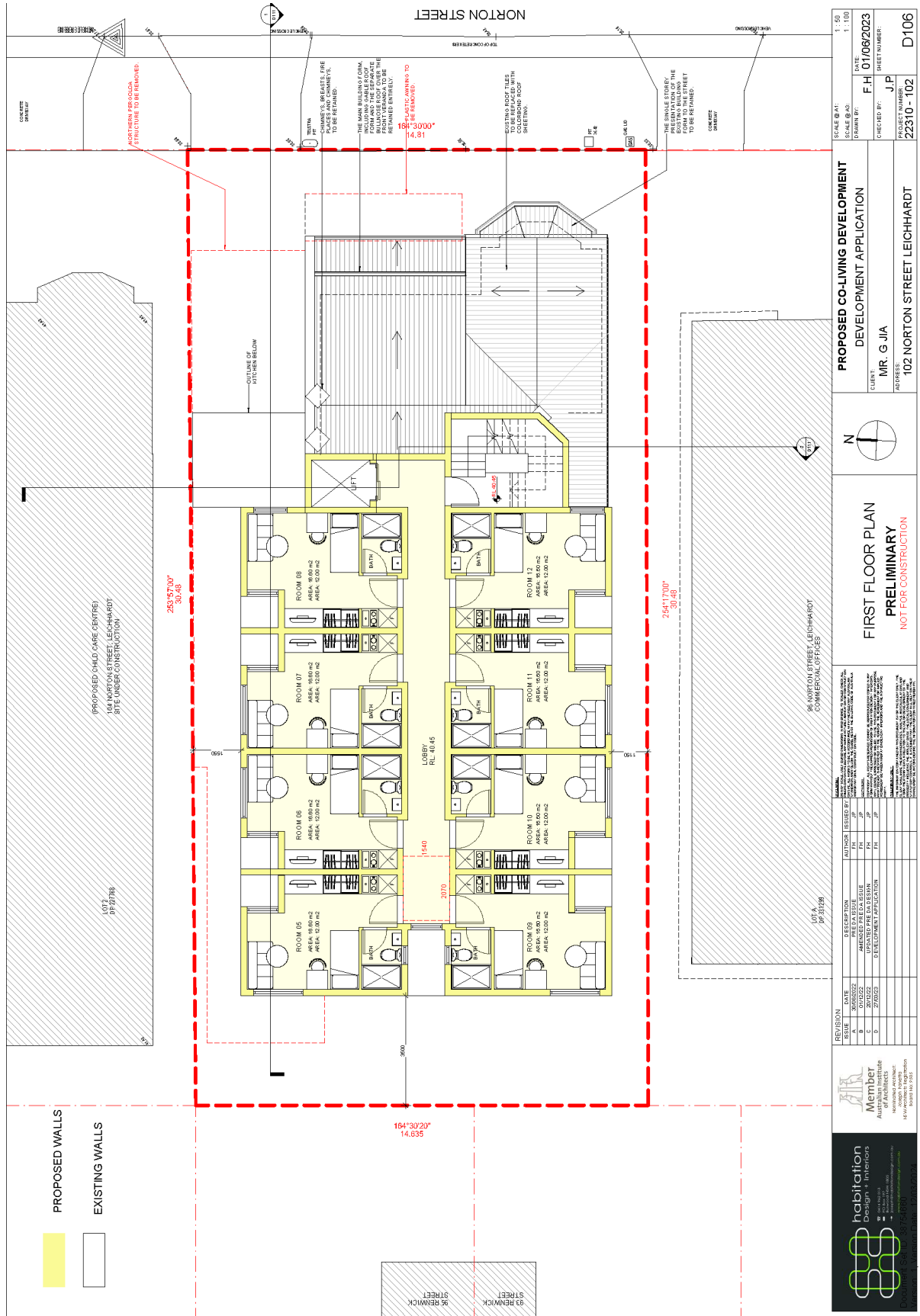
15. ALL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards.

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ASSOCIATION
OF AUSTRALIA

102 NORTON STREET
LEICHDART NSW 1555

PH: 02 9550 8888
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PROPOSED WALLS
EXISTING WALLS

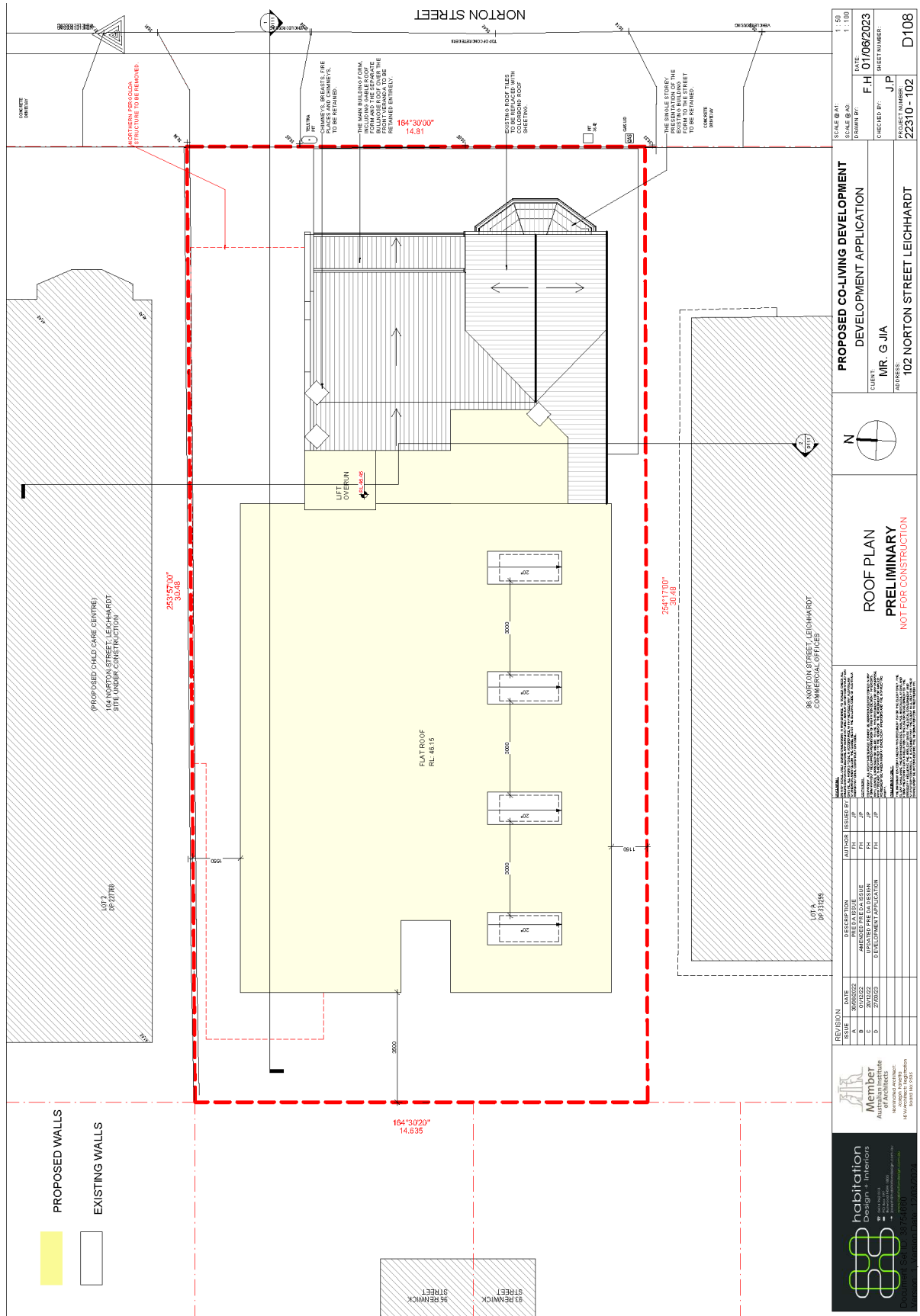
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DATE: F.H. 01/06/2023
DRAWN BY: J.P.
CHECKED BY: J.P.
PROJECT NUMBER: 22310-102
SHEET NUMBER: D106

PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION
CLIENT: MR. G JIA
ADDRESS: 102 NORTON STREET LEICHHARDT

FIRST FLOOR PLAN
PRELIMINARY
NOT FOR CONSTRUCTION

REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	01/06/2023	AMENDED PER DA ISSUE	FN	JP
B	20/02/23	UPDATED PER DA ISSUE	FN	JP
C	20/02/23	REDESIGNED DEVELOPMENT	FN	JP

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of Australia
102 NORTON STREET LEICHHARDT
NSW 1555



SCALE @A1: 1:50
 SCALE @A2: 1:100
 DATE: F.H. 01/06/2023
 DRAWN BY: J.P.
 CHECKED BY: J.P.
 PROJECT NUMBER: 22310-102
 SHEET NUMBER: D108

PROPOSED CO-LIVING DEVELOPMENT
 DEVELOPMENT APPLICATION
 CLIENT: MR. G JIA
 ADDRESS: 102 NORTON STREET LEICHHARDT

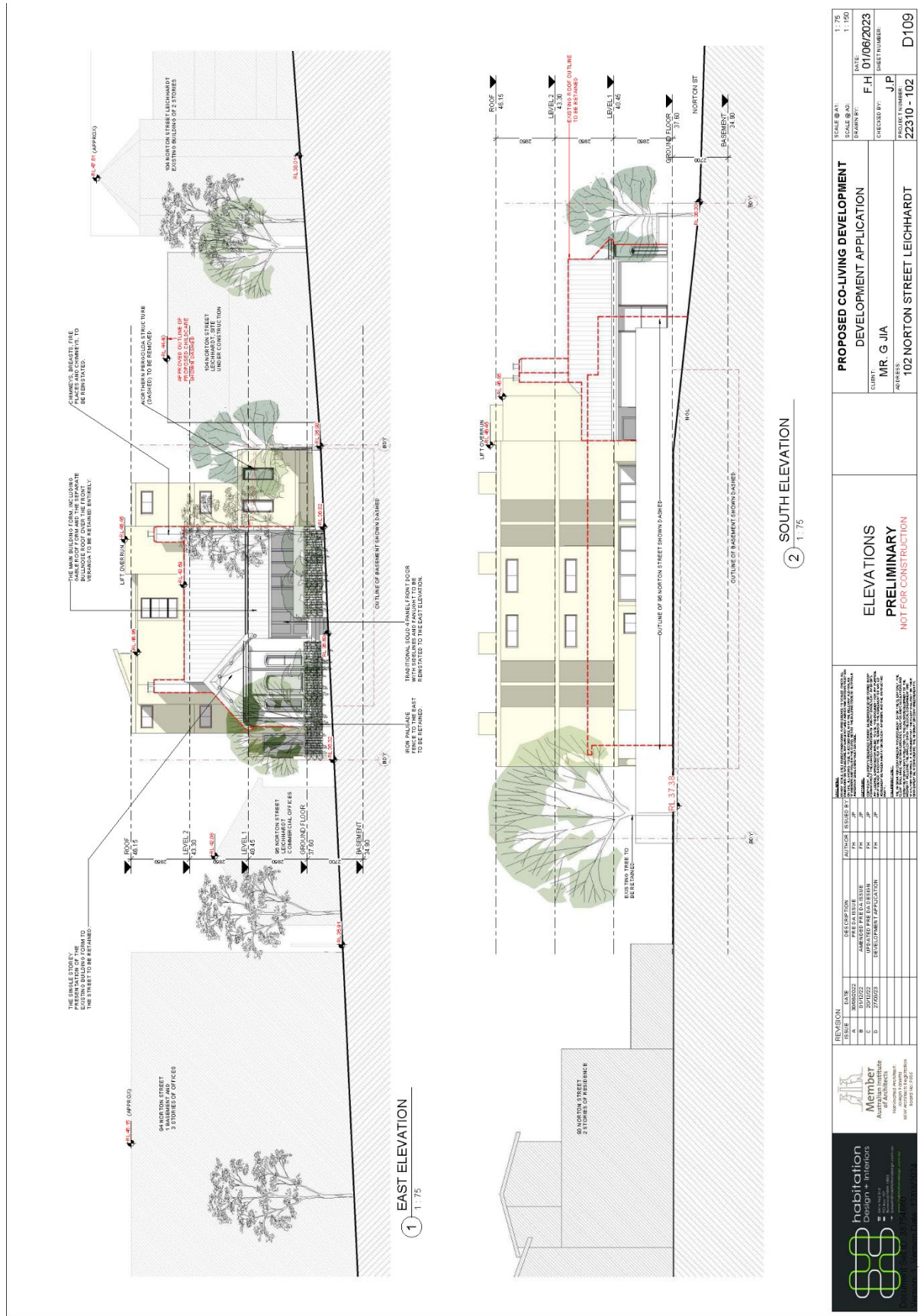
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PRELIMINARY
 NOT FOR CONSTRUCTION

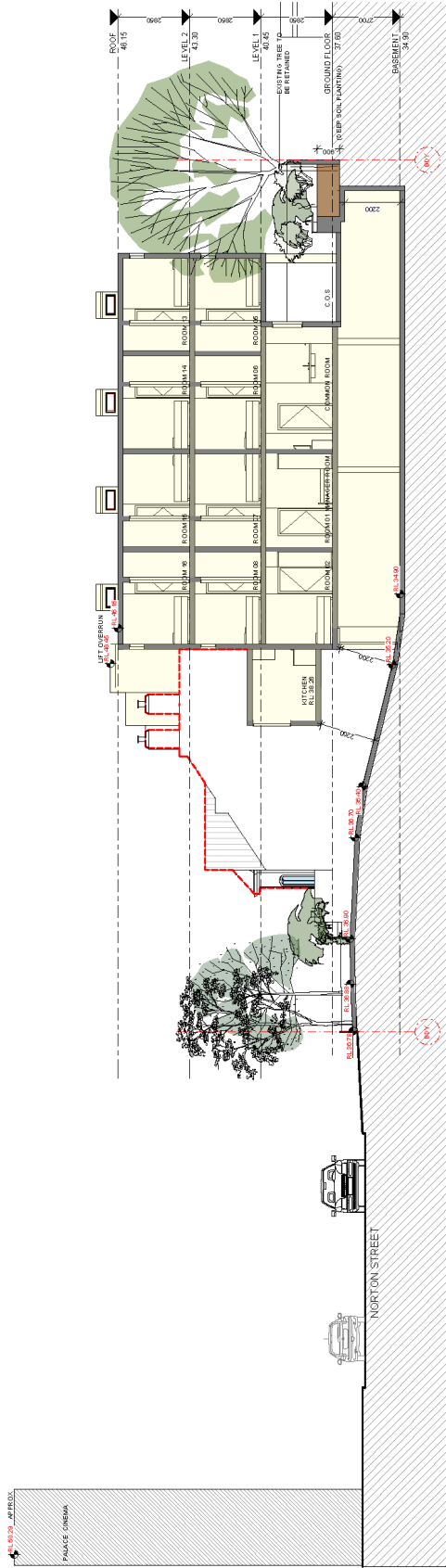
REVISION

REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	01/06/2023	AMENDED PER DA ISSUE	J.P.	J.P.
B	01/06/2023	UPDATED PER DA ISSUE	J.P.	J.P.
C	01/06/2023	REVISIONS FOR DEVELOPMENT APPLICATION	J.P.	J.P.

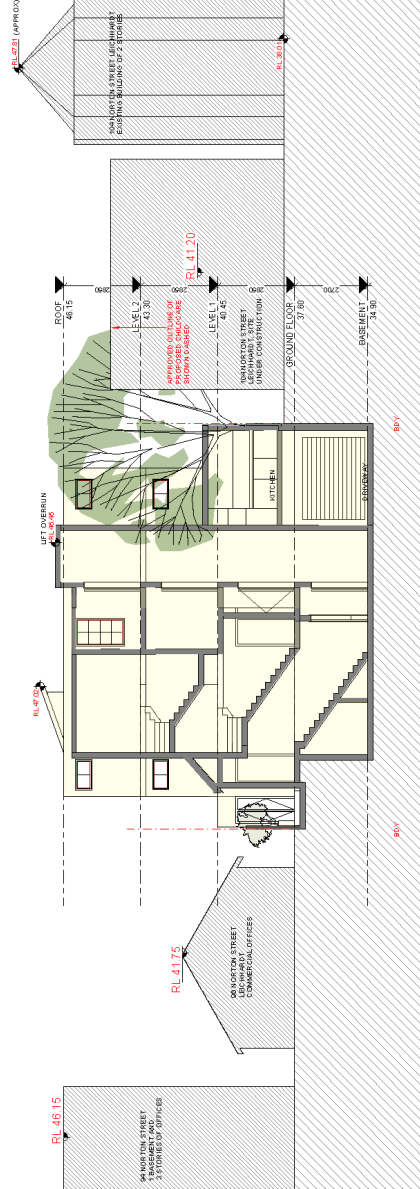
habitation
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 10/100-10/101 WILSON AVENUE
 SYDNEY NSW 1585
 PH: 02 9550 1000
 WWW.HABITATIONDESIGN.COM.AU

Member
 ARCHITECTS
 PROFESSIONAL BOARD
 OF ARCHITECTS






Section 1
1:1.75



Section 2
1:1.75



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10/100-110/112
100-110/112
100-110/112
100-110/112

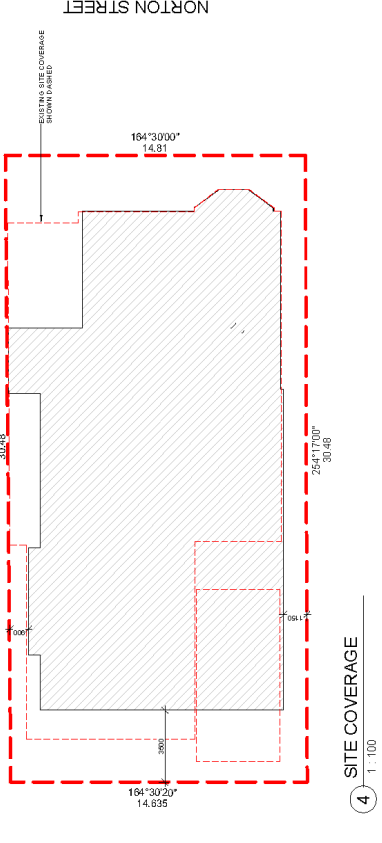
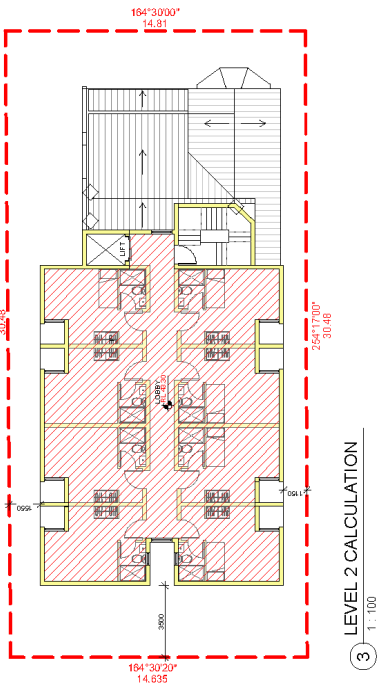
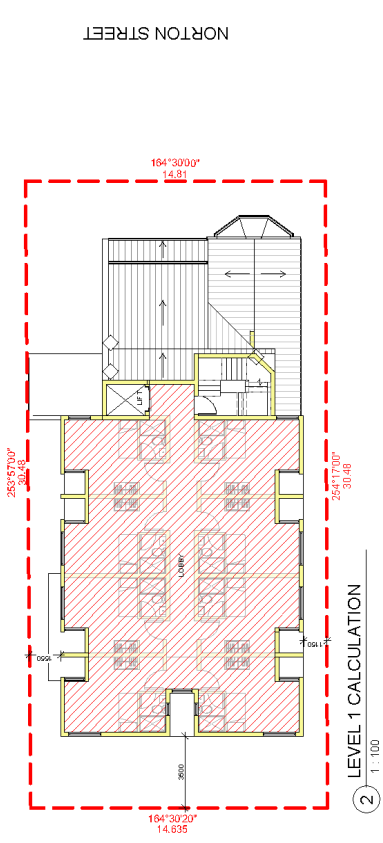
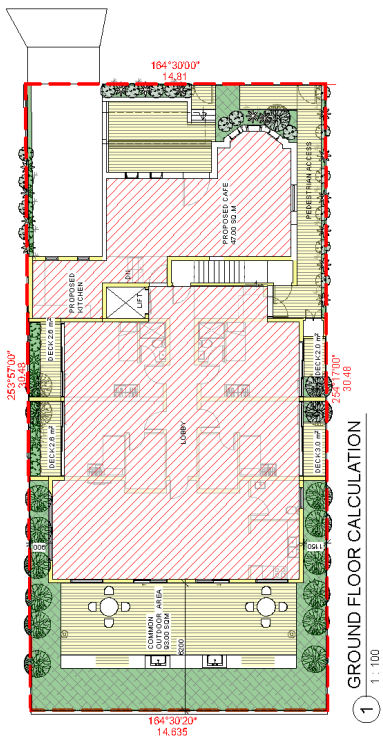
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A	01/06/2023	AMENDED PER DA REVIEW	J.P.	J.P.
B	01/06/2023	AMENDED PER DA REVIEW	J.P.	J.P.
C	01/06/2023	AMENDED PER DA REVIEW	J.P.	J.P.
D	01/06/2023	AMENDED PER DA REVIEW	J.P.	J.P.

PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION

CURT: **MR. G JIA**
ADDRESS: **102 NORTON STREET LEICHHARDT**

SCALE @A1: 1:1.75
SCALE @A2: 1:1.150
DATE: **F.H 01/06/2023**
DRAWN BY: **J.P.**
CHECKED BY: **J.P.**
PROJECT NUMBER: **22310-102**
SHEET NUMBER: **D111**

SECTIONS
PRELIMINARY
NOT FOR CONSTRUCTION



ROOM CALCULATION:

NO. OF BOARDING ROOMS:	20
NO. OF SINGLE ROOMS:	20
NO. OF DOUBLE ROOMS:	0
NO. OF BICYCLES:	12
NO. OF MOTORCYCLES:	3
NO. OF VEHICLES:	5

GFA CALCULATION:

GROUND FLOOR:	212.50 SQM
FIRST FLOOR:	164.00 SQM
SECOND FLOOR:	164.00 SQM
TOTAL GFA:	540.50 SQM
TOTAL FSR (1:1):	1.20 : 1

Site area: 448.6 SQM

EXISTING LANDSCAPE AREA:	43.50 SQM (10.0%)
PROPOSED LANDSCAPE AREA:	76.00 SQM (17.0%)
EXISTING DEEP SOIL ZONE:	35.00 SQM (8.0%)
PROPOSED DEEP SOIL ZONE:	65.00 SQM (14.5%)
EXISTING HARD LANDSCAPE:	8.00 SQM (2%)
PROPOSED HARD LANDSCAPE:	11.00 SQM (2.5%)
EXISTING SITE COVERAGE:	73%
PROPOSED SITE COVERAGE:	64%



REVISION

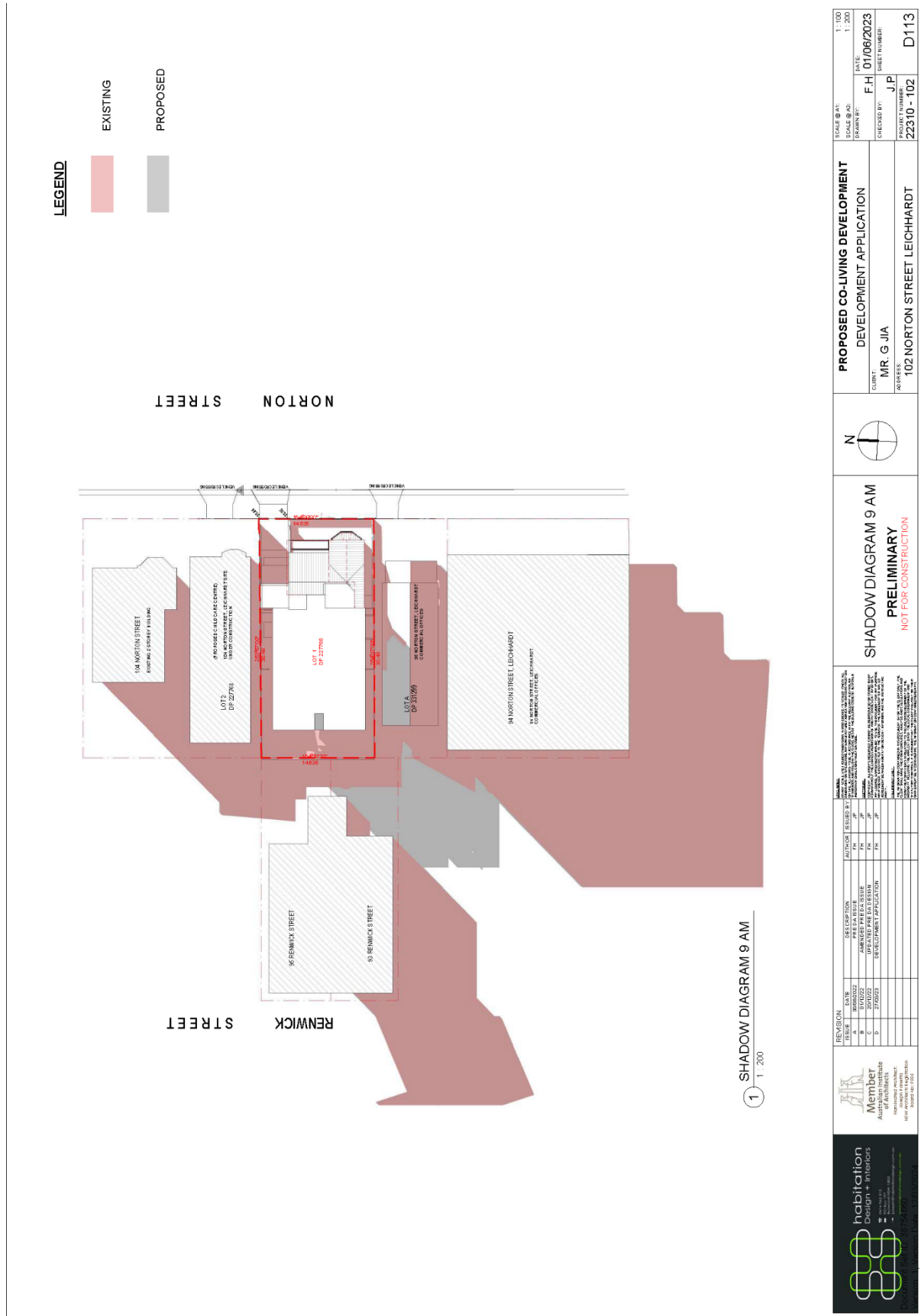
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C	20/02/22	REVISED PER DA REVIEW	FN	JP
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F	20/02/22	REVISED PER DA REVIEW	FN	JP
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S	20/02/22	REVISED PER DA REVIEW	FN	JP
T	20/02/22	REVISED PER DA REVIEW	FN	JP
U	20/02/22	REVISED PER DA REVIEW	FN	JP
V	20/02/22	REVISED PER DA REVIEW	FN	JP
W	20/02/22	REVISED PER DA REVIEW	FN	JP
X	20/02/22	REVISED PER DA REVIEW	FN	JP
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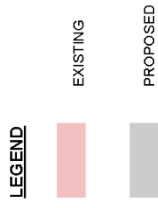
CALCULATION SHEET
PRELIMINARY
NOT FOR CONSTRUCTION

PROPOSED CO-LIVING DEVELOPMENT DEVELOPMENT APPLICATION

CLIENT: MR. G JIA
ADDRESS: 102 NORTON STREET LEICHHARDT

SCALE @ A1: 1:100
SCALE @ A2: 1:200
DRAWN BY: F.H
DATE: 01/06/2023
CHECKED BY: J.P
PROJECT NUMBER: 22310-102
SHEET NUMBER: D112





1 SHADOW DIAGRAM 10 AM
1:200

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11/11-11/13
11/11-11/13
11/11-11/13

PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION

CLIENT: MR. G. JIA
ADDRESS: 102 NORTON STREET LEICHDARDT

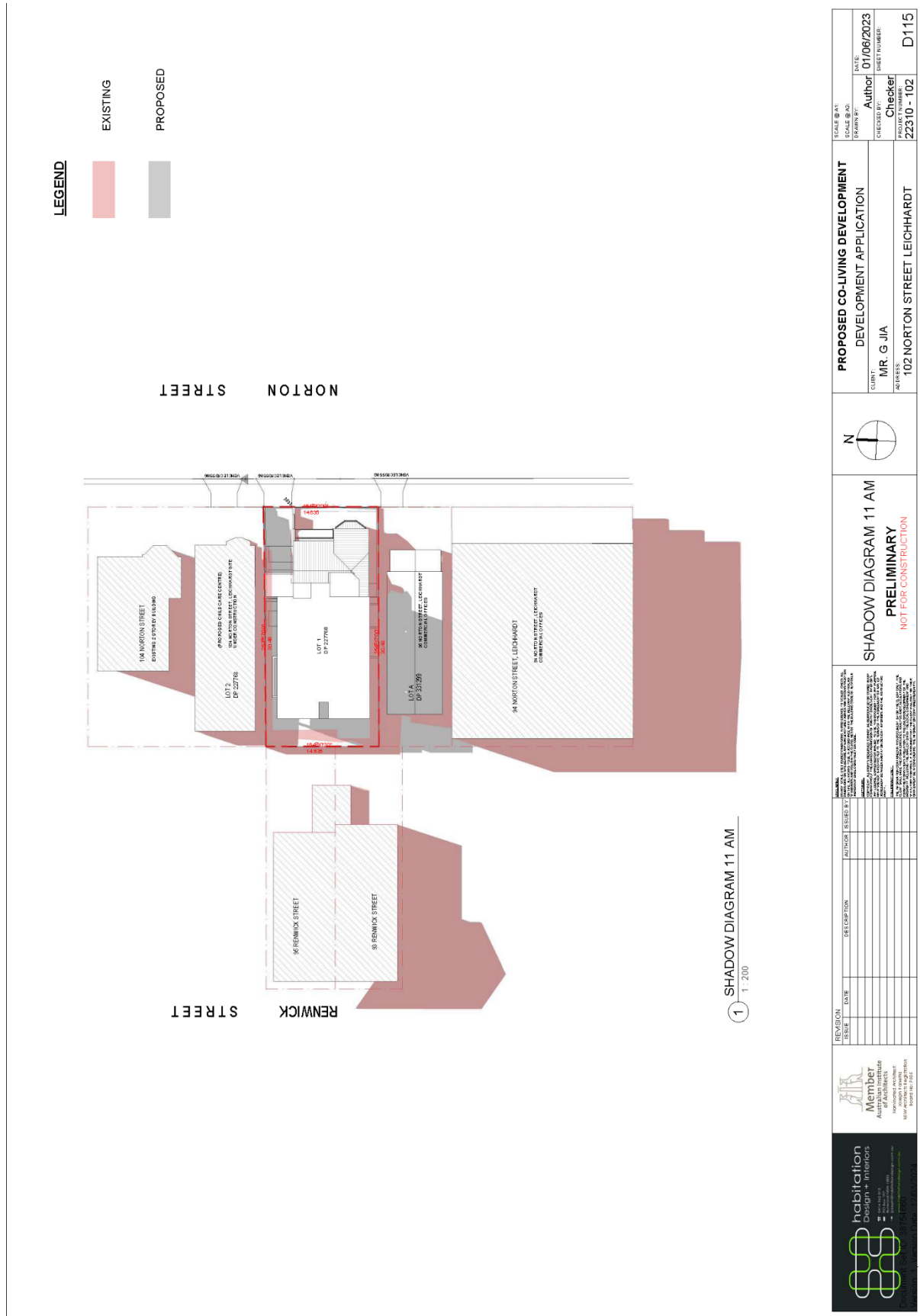
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DRAWN BY: Author
DATE: 01/06/2023

CHECKED BY: Checker
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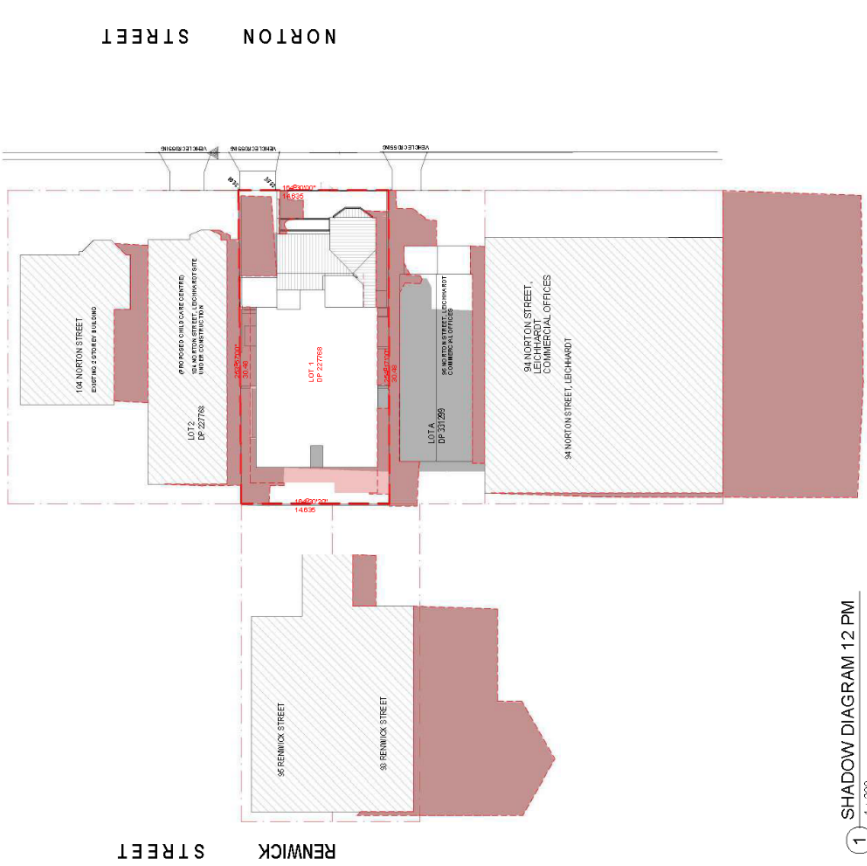
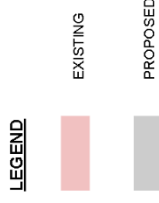
SHADOW DIAGRAM 10 AM
PRELIMINARY
NOT FOR CONSTRUCTION

REVISION	DATE	DESCRIPTION	AUTHOR	SCALE BY

DISCLAIMER: THIS SHADOW DIAGRAM IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT A CONTRACT DOCUMENT. THE SHADOWS ARE BASED ON A SUN ALTITUDE OF 10 DEGREES AT 10 AM. THE SHADOWS DO NOT TAKE INTO ACCOUNT OBSTRUCTIONS FROM NEIGHBOURING PROPERTIES. THE SHADOWS ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE SHADOWS ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE SHADOWS ARE NOT TO BE USED FOR ANY OTHER PURPOSES.



<p>habitation Design + Interiors</p> <p>10/100 WILSON STREET, SYDNEY NSW 1588 TEL: 02 9550 0888 WWW.HABITATIONDESIGN.COM</p>		<p>REVISION</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>AUTHOR</th> <th>SCALE BY</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION	AUTHOR	SCALE BY						<p>PROPOSED CO-LIVING DEVELOPMENT DEVELOPMENT APPLICATION</p> <p>CLIENT: MR. G JIA</p> <p>ADDRESS: 102 NORTON STREET LEIGHARDT</p>		<p>SCALE @ A1</p> <p>SCALE @ A2</p> <p>DATE: 01/06/2023</p> <p>DRAWN BY: Author</p> <p>CHECKED BY: Checker</p> <p>PROJECT NUMBER: 22310 - 102</p> <p>SHEET NUMBER: D115</p>	
NO.	DATE	DESCRIPTION	AUTHOR	SCALE BY													
<p>SHADOW DIAGRAM 11 AM</p> <p>PRELIMINARY</p> <p>NOT FOR CONSTRUCTION</p>				<p>102 NORTON STREET LEIGHARDT</p>		<p>102 NORTON STREET LEIGHARDT</p>											



1 SHADOW DIAGRAM 12 PM
1:200

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10/110000
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10/110000

REVISION

NO.	DATE	DESCRIPTION	AUTHOR	SCALE

PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION

CURRY: MR. G. JIA
ADDRESS: 102 NORTON STREET LEICHHARDT

SCALE @ A1: 1:100
SCALE @ A2: 1:200
DRAWN BY: F.H.
DATE: 01/06/2023
CHECKED BY: J.P.
PROJECT NUMBER: 22310 - 102
SHEET NUMBER: D116

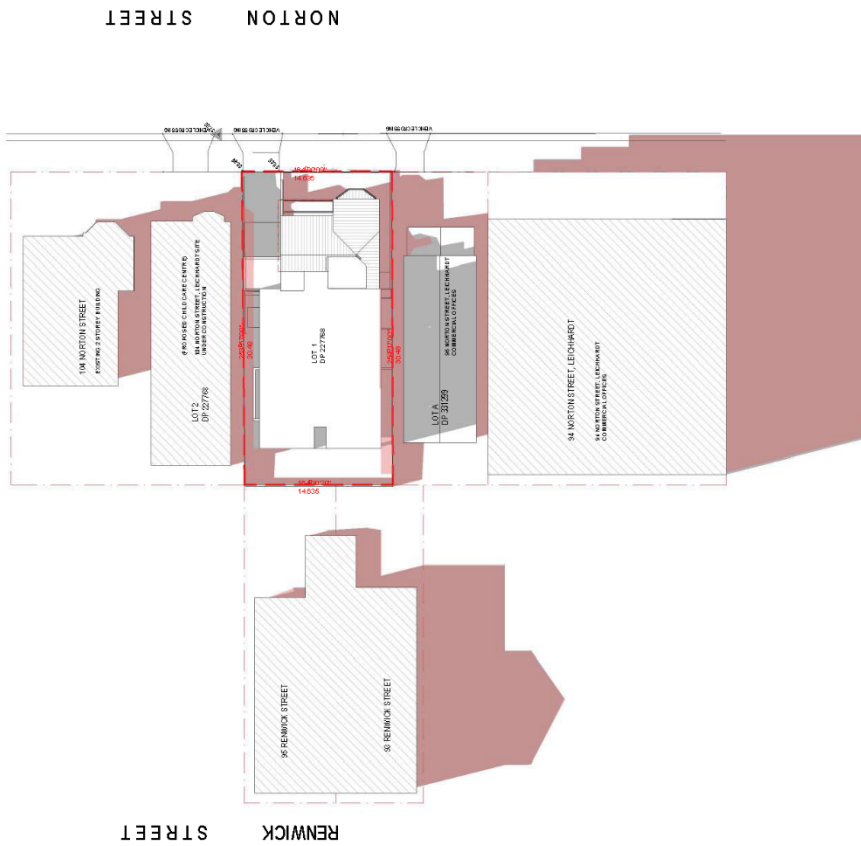
SHADOW DIAGRAM 12 PM
PRELIMINARY
NOT FOR CONSTRUCTION

DISCLAIMER: THIS SHADOW DIAGRAM IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT A CONTRACT DOCUMENT. THE SHADOWS ARE BASED ON A SUN ALTITUDE OF 12 DEGREES AT THE TIME OF THE SHADOW DIAGRAM. THE SHADOWS DO NOT TAKE INTO ACCOUNT OBSTRUCTIONS FROM NEIGHBOURING PROPERTIES. THE SHADOWS ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE SHADOWS ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE SHADOWS ARE NOT TO BE USED FOR ANY OTHER PURPOSES.

LEGEND

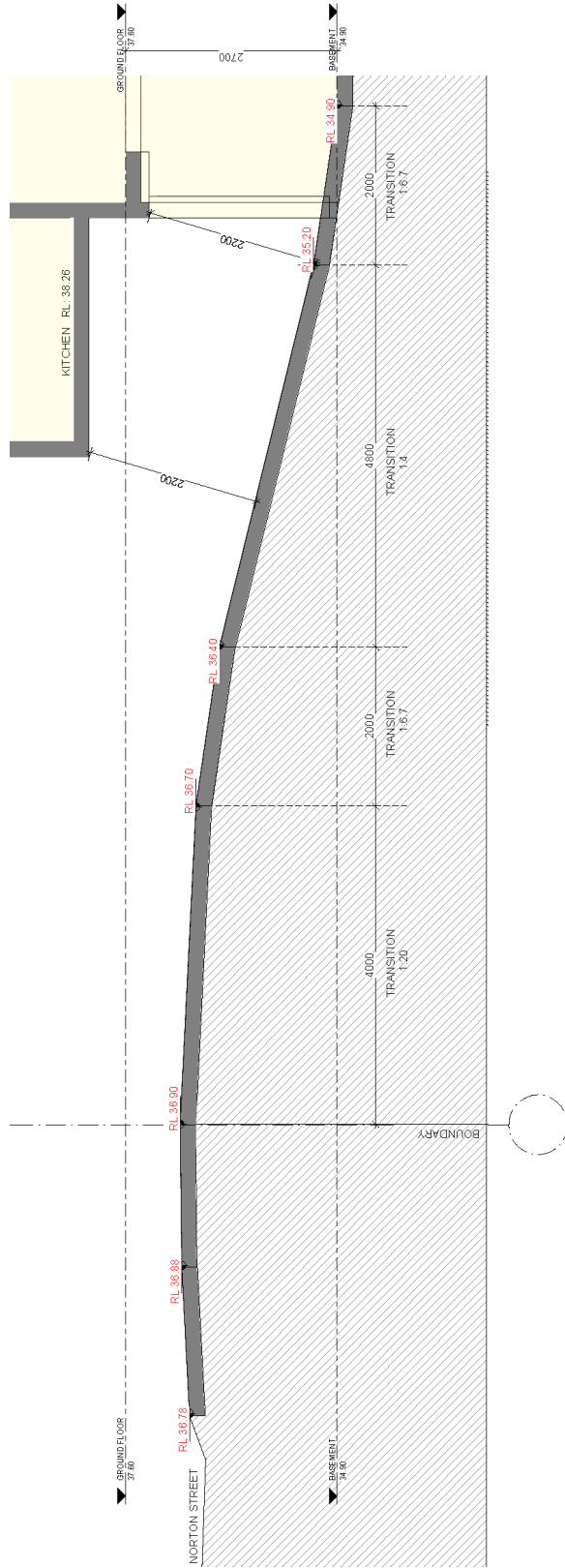
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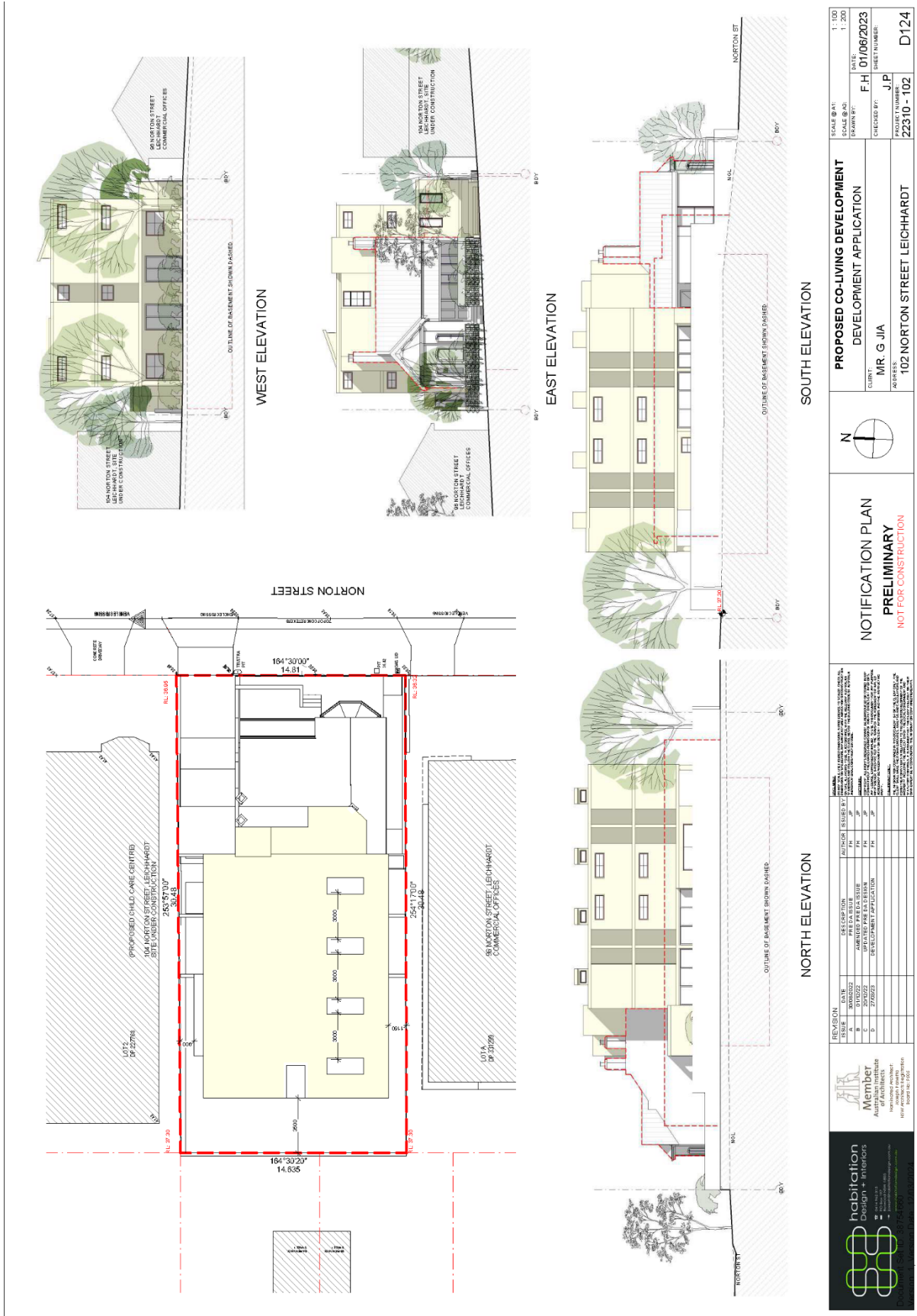
1 SHADOW DIAGRAM 1 PM
1:200

<p>habitation Design + Interiors 10/1100 WILSON AVENUE SYDNEY NSW 1585 TEL: 02 9550 1234 WWW.HABITATIONDESIGN.COM</p>		<p>REVISION</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>AUTHOR</th> <th>SCALE BY</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION	AUTHOR	SCALE BY						<p>PROPOSED CO-LIVING DEVELOPMENT DEVELOPMENT APPLICATION</p> <p>CURT: MR. G JIA</p> <p>ADDRESS: 102 NORTON STREET LEICHHARDT</p>		<p>SCALE @ A1</p> <p>SCALE @ A2</p> <p>DRAWN BY: Author</p> <p>DATE: 01/06/2023</p> <p>CHECKED BY: Checker</p> <p>SHEET NUMBER: 22310 - 102</p> <p>D117</p>	
NO.	DATE	DESCRIPTION	AUTHOR	SCALE BY													
<p>SHADOW DIAGRAM 1 PM</p> <p>PRELIMINARY</p> <p>NOT FOR CONSTRUCTION</p>				<p><small>NOTES: 1. THIS SHADOW DIAGRAM IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION. 2. SHADOWS ARE CAST FROM 1 PM ON THE EQUINOX. 3. THE SHADOWS ARE CAST FROM THE PROPOSED DEVELOPMENT. 4. THE SHADOWS ARE CAST ON THE ADJACENT STREETS AND ROADS. 5. THE SHADOWS ARE CAST ON THE ADJACENT BUILDINGS. 6. THE SHADOWS ARE CAST ON THE ADJACENT LANDSCAPE. 7. THE SHADOWS ARE CAST ON THE ADJACENT PUBLIC OPEN SPACES. 8. THE SHADOWS ARE CAST ON THE ADJACENT HERITAGE LISTED BUILDINGS. 9. THE SHADOWS ARE CAST ON THE ADJACENT ENVIRONMENTAL SENSITIVE AREAS. 10. THE SHADOWS ARE CAST ON THE ADJACENT CULTURAL HERITAGE AREAS. 11. THE SHADOWS ARE CAST ON THE ADJACENT NATURAL HERITAGE AREAS. 12. THE SHADOWS ARE CAST ON THE ADJACENT WILDLIFE HABITATS. 13. THE SHADOWS ARE CAST ON THE ADJACENT BIODIVERSITY HOTSPOTS. 14. THE SHADOWS ARE CAST ON THE ADJACENT ECOSYSTEM SERVICES. 15. 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1 DRIVEWAY SECTION
1:25

				PROPOSED CO-LIVING DEVELOPMENT DEVELOPMENT APPLICATION		SCALE @ A1: 1:25 SCALE @ A2: 1:50 DATE: 01/06/2023 DRAWN BY: FH CHECKED BY: JP PROJECT NUMBER: 22310-102 SHEET NUMBER: D120	
REVISION A: 01/06/2023: AMENDED PER DA ISSUE B: 02/06/2023: DEVELOPMENT APPLICATION C: 03/06/2023:		DESCRIPTION AMENDED PER DA ISSUE DEVELOPMENT APPLICATION		AUTHOR FH FH FH FH		CLIENT: MR. G JIA ADDRESS: 102 NORTON STREET LEICHHARDT	
NOTES: 1. THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. 2. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS. 3. THE DESIGNER ACCEPTS NO LIABILITY FOR ANY DAMAGE OR LOSS ARISING FROM THE USE OF THIS PLAN. 4. THE CLIENT IS ADVISED THAT THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION. 5. THE CLIENT IS ADVISED THAT THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION.				DRIVEWAY DETAIL PRELIMINARY NOT FOR CONSTRUCTION			



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10/100 WILSON STREET
LEICHTARD NSW 1585

PH: 02 9550 2222
WWW.HABITATIONDESIGN.COM

SCALE @ A1: 1:100
SCALE @ A2: 1:200
DRAWN BY: F.H.
DATE: 01/06/2023
CHECKED BY: J.P.
PROJECT NUMBER: 22310 - 102
SHEET NUMBER: D124

NOTIFICATION PLAN
PRELIMINARY
NOT FOR CONSTRUCTION

PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION

CLIENT: MR G G JIA
ADDRESS: 102 NORTON STREET LEICHTARD

REVISION	ISSUE	DATE	DESCRIPTION	AUTHOR	CHECKED BY
A	1	01/06/23	ADMITTED FOR SALE	F.H.	J.P.
B	2	20/02/23	UPDATED PER E.P.101010	F.H.	J.P.
C	3	20/02/23	REDESIGNED PER E.P.101010	F.H.	J.P.
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 9. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE LOCAL GOVERNMENT AND ANY OTHER RELEVANT AUTHORITIES.
 10. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE LOCAL GOVERNMENT AND ANY OTHER RELEVANT AUTHORITIES.





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REVISION	DATE	DESCRIPTION	ISSUED BY	DATE
A	20/12/22	APPROVED FOR DA ISSUE	FN	20
B	20/12/22	UPDATED FOR DA REVISION	FN	20
C	20/12/22		FN	20

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3D PHOTO MONTAGES
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NOT FOR CONSTRUCTION

PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION

CLIENT: MR. G JIA
ADDRESS: 102 NORTON STREET LEICHHARDT

SCALE @ A1: 1 : 200
SCALE @ A2
DATE: 01/08/2023
F.H
SHEET NUMBER:
CHECKED BY: J.P
PROJECT NUMBER: 22310 - 102
D125



AREA: WINDOWS + DOORS
FINISH: POWDERCOATED
DETAIL: DULUX "WHISPER
WHITE"



AREA: SLAB EDGES
FINISH: CONCRETE
DETAIL: DULUX "BLEACHES
NATURAL CONCRETE FINISH"



AREA: MAIN WALLS
FINISH: PAINT
DETAIL: DULUX "BLEACHES
NATURAL CONCRETE FINISH"



AREA: ROOF
FINISH: COLORBOND
DETAIL: "IRONSTONE"



AREA: DECKING
FINISH: TIMBER
DETAIL: BLACKBUTT TIMBER

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11/11-11/11
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Member
Member of Architecture
Member of Interiors
Member of Design

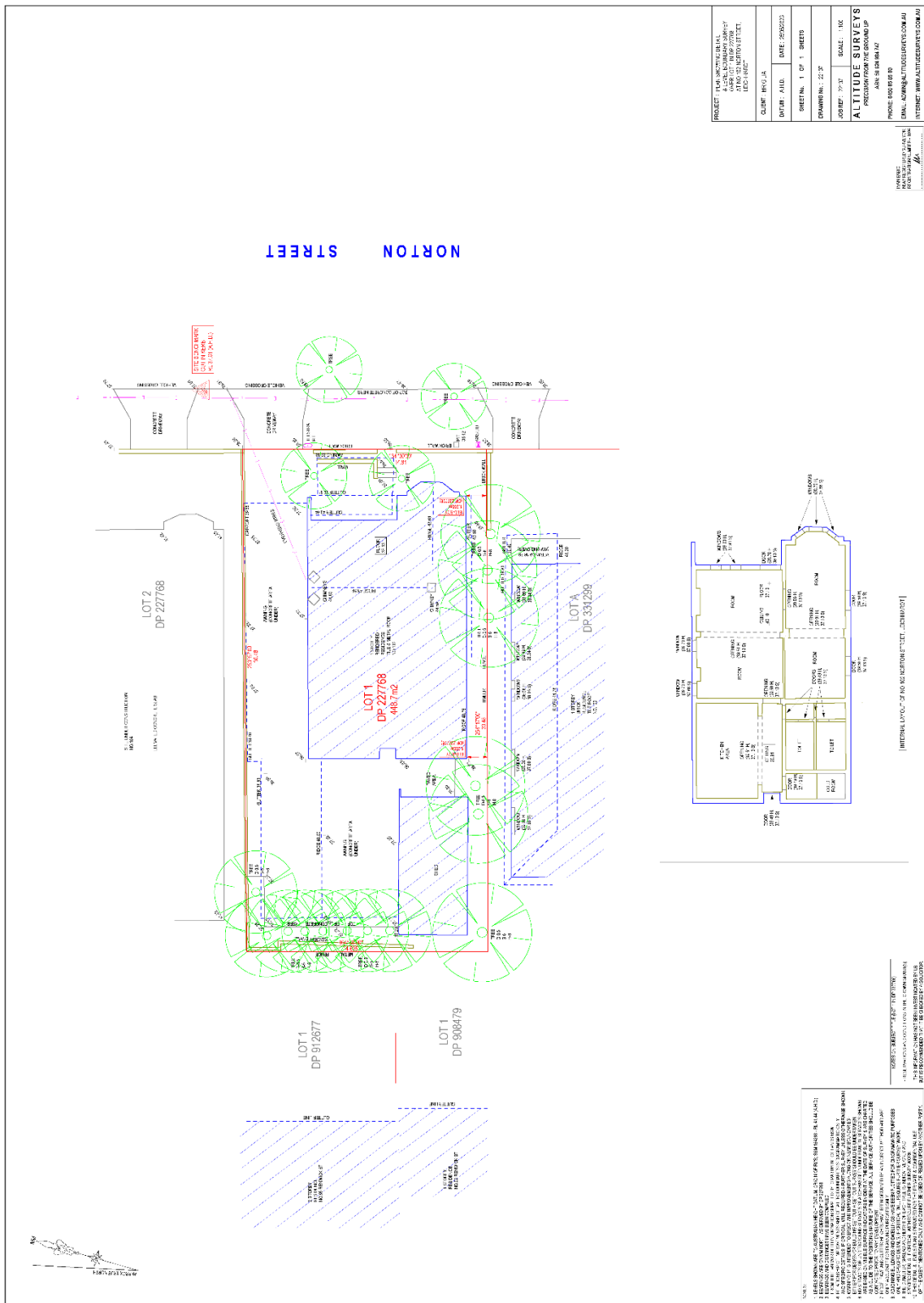
REVISION	ISSUE	DATE	DESCRIPTION	AUTHOR	DESIGNED BY
0	0	01/11/2023	APPROVED FOR CONSTRUCTION	RI	RI
0	0	20/11/2023	UPDATED PER SUCCESSFUL EXPLANATION FOR PLANNING	RI	RI
0	0	20/11/2023	UPDATED PER SUCCESSFUL EXPLANATION FOR PLANNING	RI	RI

Materials + Finishes
PRELIMINARY
NOT FOR CONSTRUCTION

PROPOSED CO-LIVING DEVELOPMENT
DEVELOPMENT APPLICATION

CLIENT: MR. G JIA
ADDRESS: 102 NORTON STREET LEICHHARDT

SCALE @ A1	1:200
SCALE @ A3	
DRAWN BY:	
CHECKED BY:	F.H
DATE:	01/06/2023
PROJECT NUMBER:	22310 - 102
SHEET NUMBER:	J.P
DRAWING NUMBER:	D126





CLIENT

MR. G JIA

ADDRESS
**102 NORTON STREET,
 LEICHHARDT**

STATUS PROJECT # SHEET #
DA 230412 L/00

A3 1:200



DRAWING LIST

L/00 COVER SHEET
 L/01 LANDSCAPE PLAN
 L/02 DETAILS SHEET

Aspect Designs
 Studio 103
 64 Alexander St
 Crows Nest NSW 2065
 Ph: 606 771 311
 info@aspectdesigns.com.au



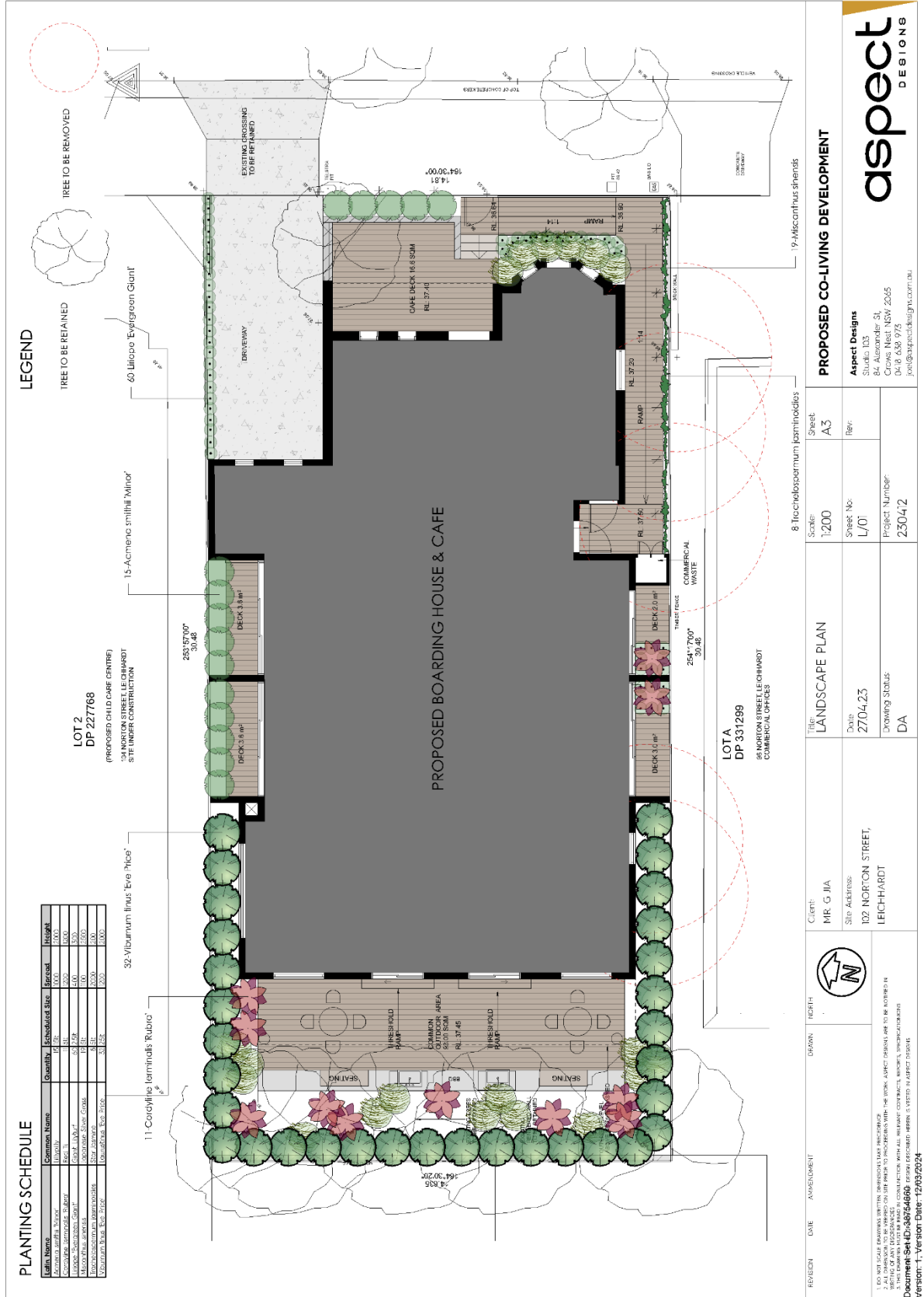
**102 NORTON STREET,
 LEICHHARDT**

**LANDSCAPE
 DOCUMENTATION**

ASPECT DESIGNS PTY LTD

LANDSCAPE DOCUMENTATION - DA

Document Set ID: 38754680
 Version: 1 - Version Date: 12/03/2024



OUTLINE LANDSCAPE SPECIFICATION (AS APPLICABLE)

Preparation by Builder: Builder shall remove all existing concrete pathways, fences, footings, walls etc, not to be retained and complete all necessary excavation work prior to commencement on site by Landscape Contractor (Contractor). Builder shall also install new retaining walls, kerbs, layback kerb, crossover, pathway etc, and make good all existing kerbs, gutters etc, as necessary and to approval of Council. Builder shall ensure that a minimum 450mm of topsoil in garden areas and a minimum 150mm of topsoil in lawn areas exists. Should required depths not exist Builder shall contact Landscape Architect and ask for instructions prior to completion of excavation works. Excavate as necessary, then fill with approved site topsoil to allow for minimum 300mm soil depth in garden areas and 150mm soil depth in lawn areas to gain required shapes & levels. Ensure all garden and lawn areas drain satisfactorily. All levels & quantities of topsoil, site topsoil and imported topsoil may be utilised if there is insufficient site topsoil available. State in tender a mix rate for additional imported topsoil and the quantities of topsoil, site topsoil and imported topsoil allowed for in tender.

Initial Preparation: Verify all dimensions & levels on site prior to commencement. Do not scale from drawings. Locate all underground & above ground services & ensure no damage occurs to them throughout contract. Spray approved weedicide to all proposed lawn & garden areas to manufacturer's directions. Remove existing concrete pathways, footings, walls etc, not to be retained & weeds from site. Levels indicated on Plan are nominal only and are derived from Architectural Plans & Drawings by others. Final structural integrity of all items shall be the sole responsibility of Landscape Contractor.

Preparation by Landscape Contractor: Prepare site to receive plants to be installed by the Landscape Contractor. Prepare site to receive plants to be installed by the Landscape Contractor. Prepare site to receive plants to be installed by the Landscape Contractor. Prepare site to receive plants to be installed by the Landscape Contractor.

Soil Preparation: Cultivate to depth of 300mm all proposed lawn & garden areas incorporating minimum 100mm depth of organic clay breaker into existing site soil. Do not cultivate beneath existing trees to be retained. In areas where fills required gain grade topsoil mix to lawn areas. Under take all required action to ensure that no rock/bale of proposed plants sit in clay wells and that all garden areas and lawn areas drain satisfactorily. Note it is intended that wherever possible existing levels shall not be altered through excavation, fill and grading works. The objective is to ensure that the proposed plants are installed in a healthy and sustainable environment. Bulk material to be used shall be approved site topsoil.

Lawn Edging and Stepping Stones: 125 x 25mm approved galvanized steel nails. Top of edging shall finish flush with surrounding surfaces. Top of stepping stones shall be installed, to lines indicated on plan and staked with approved stakes at ends and changes of direction; stakes shall be nailed to edging with approved galvanised steel nails. Top of edging shall finish 25mm below top of edging. (i) Contractor shall install approved brick on edge on a minimum 100mm deep x 90mm wide concrete footing with brick to sit in, to lines nominated on plan as brick edging. Brick shall be laid with a nominal 10mm wide approved cobused mortar joint. Brick edging to be cut shall be done so with clean sharp cuts. Top of edging shall finish flush with surrounding surfaces. Approved sandstone stepping stones shall be positioned as indicated on plan on a 25mm river sand bed. (ii) Contractor shall install approved brick on edge on a minimum 100mm deep x 90mm wide concrete footing with brick to sit in, to lines nominated on plan as brick edging. Brick shall be laid with a nominal 10mm wide approved cobused mortar joint. Brick edging to be cut shall be done so with clean sharp cuts. Top of edging shall finish flush with surrounding surfaces.

Planting: Purchase plants from an approved nursery. Plants to be healthy & true to type & species. Set out plants to positions indicated on plan. Following approval, plant holes shall be dug approximately twice width and to 100mm deeper than plant rootballs that they are to receive. Base and sides of hole shall be further loosened. Fertiliser, followed by 100mm depth of topsoil mix shall then be placed into base of hole and lightly consolidated. Base of hole shall then be watered. Remove plant container and install plant into hole. Rootball shall be backfilled with surrounding topsoil and topsoil firmed into place. An approved shallow dish shall be formed to contain water around base of stem. Base of stem of plant shall finish flush with finished soil level. Once installed plant shall be thoroughly watered and maintained for the duration of the contract.

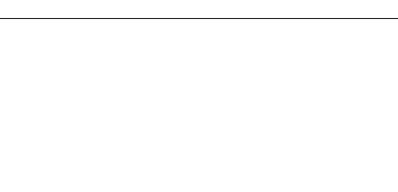
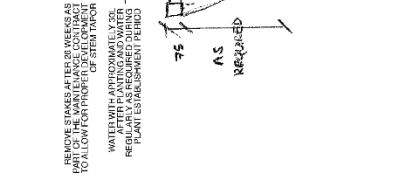
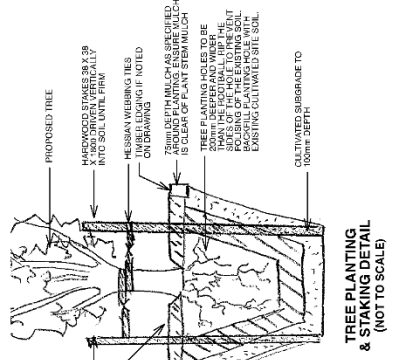
Staking: Install 75mm diameter hard wood stakes perpendicular and with bases webbing fastened to landscape. Architect's on site instructions shall be followed.

Mulching: Install 75mm depth of 25mm diameter hard wood mulch to all garden areas covering mulch down around all plant stems & to finish flush with adjacent surfaces.

Turfing: Prepare for, level & lay cultivated Palmetto Buffalo Turves to all areas nominated on plan as being lawn. Roll, water, fertilise, mow & maintain lawns as necessary until completion of maintenance period. At same time make good all existing lawn areas using same lawn type. Lawns shall be oversewn with an approved seed mix. Allow to return and return to maintenance period as required.

Paving: Obtain all existing (orcessun) as advised otherwise by builder. Install timber paving (concrete) to heights indicated on plan.

Completion: Prior to practical completion remove from site all unwanted debris occurring from work. Satisfy Council that all landscaping work has been undertaken in strict accordance with Councils landscape codes & guidelines.



REVISION	DATE	APPROVED BY	DRAWN	NO. OF SHEETS	CHECKED	MR. G. IIA	SCALE	N/A	SHEET	A3	
Client: MR. G. IIA							Site Address:	102, NORTON STREET, LICC HART	Sheet No:	L/02	Rev:
DRAWN							Project Number:	230412	Project Status: DA		

<p>1. SITE SCALE DRAWING (REVISED) - 23/04/2024</p> <p>2. ALL DIMENSIONS TO BE APPROVED BY COUNCIL PRIOR TO COMMENCEMENT OF WORK</p> <p>3. THE DRAWING IS TO BE USED AS A GUIDE ONLY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.</p> <p>4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.</p>	
<p>Document Set ID: 32754850</p> <p>Version 1 - Version Date: 23/04/2024</p>	<p>PROPOSED CO-LIVING DEVELOPMENT</p> <p>aspect DESIGNS</p> <p>Aspect Design Studio 05 86 Alcorners St, Crows Nest NSW 2065 0218 658 973 info@aspectdesign.com.au</p>

Attachment C- Section 4.6 Exception to Development Standards



CLAUSE 4.6 REQUEST FOR VARIATION TO

CLAUSE 69(B)(II) (MINIMUM LOT SIZE) OF

**STATE ENVIRONMENTAL PLANNING POLICY
(HOUSING) 2021**

**102 NORTON STREET,
LEICHHARDT**

MAY 2023

Andrew Martin Planning Pty Ltd - Town | Urban | Environmental

ABN 71 101 798 001

t. 02 9518 4120 m. 0405 449 150 e. amartin@amplanning.com.au p. PO Box 601 Pyrmont NSW 2009
www.amplanning.com.au



Document Set ID: 38754659
Version: 1, Version Date: 12/03/2024

Clause 4.6 Variation to Minimum subdivision lot size
102 Norton Street, Leichhardt
Alterations and additions to an existing commercial premises and provision of a 3 storey mixed use
Development comprising ground floor café with co-living units



1.0 Introduction

This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of State Environmental Planning Policy (Housing) 2021, the relevant clause being Clause 69(b)(ii) minimum lot size for co-living housing.

This written variation request has been provided to support the proposed three storey mixed use development comprising ground floor café and co-living units with basement parking at 102 Norton Street, Leichhardt (the site). The relevant plans relied upon are those prepared by Habitation Design and Interiors, Project No. 22310-102, dated 13/04/2023.

The relevant minimum lot size standard for co-living housing under Clause 69(b)(ii) is 800m². The proposal includes 20 new co-living dwelling rooms positioned on an existing site having an area of 448.6m² which is less than the minimum standard.

The minimum lot size control is a *development standard* for the purposes of the *EP&A Act 1979*.

This request to vary the minimum subdivision lot size development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action"), *Wehbe v Pittwater Council*, *Big Property Pty Ltd v Randwick City Council [2021]* and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2)*.

This written variation request addresses those relevant provisions of Clause 4.6 under IWLEP 2022 and sets out the reasons for why strict application of the minimum lot size standard for co-living housing in this instance is unreasonable and unnecessary.

Further, it demonstrates:

- That the development remains consistent with the objectives of the development standard under Clause 69(b)(ii) of the Housing SEPP;
- That the proposal is consistent with the objectives of the E2 Commercial Centre zone; and
- That there are sufficient environmental planning grounds to justify the variation.

Clause 4.6 Variation to Minimum subdivision lot size
102 Norton Street, Leichhardt

Alterations and additions to an existing commercial premises and provision of a 3 storey mixed use
Development comprising ground floor café with co-living units



2.0 Development Standard to be Varied – Minimum Lot Size for Co-Living Housing

The relevant *development standard* to be varied is the minimum 800m² lot size standard for co-living housing under Clause 69(b)(ii) of the Housing SEPP. Clause 69(b)(ii) relevantly provides:

69 Standards for co-living housing

(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—

(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m² and not less than—

(i) for a private room intended to be used by a single occupant—12m², or
(ii) otherwise—16m², and

~~(b) the minimum lot size for the co-living housing is not less than—~~

~~(i) for development on land in Zone R2 Low Density Residential—600m², or~~

~~(ii) for development on other land—800m², and~~

~~(iii) (Repealed)~~

3.0 Nature of Variation Sought

The requested variation is as follows:

The subject site has a minimum allotment size for co-living housing of 800m².

The site has an existing site area of 448.6m² which is 351.4m² short of the required minimum lot size control. This is equivalent to a shortfall of 43.9%.

Clause 4.6 Variation to Minimum subdivision lot size
102 Norton Street, Leichhardt

Alterations and additions to an existing commercial premises and provision of a 3 storey mixed use
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4.0 Minimum Lot Size – Development Standard

A development standard is defined in S1.4 of the *Environmental Planning and Assessment Act 1979* (“EPA Act”) to mean:

“provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation,*
and
- (o) such other matters as may be prescribed.”*

The **800m²** minimum lot size standard for co-living housing is a *development standard* as defined under the *EP&A Act 1979*.

Clause 4.6 Variation to Minimum subdivision lot size
102 Norton Street, Leichhardt
Alterations and additions to an existing commercial premises and provision of a 3 storey mixed use
Development comprising ground floor café with co-living units



5.0 Clause 4.6 of Inner West Local Environmental Plan 2022

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The minimum lot size development standard for co-living housing is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (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.*

The proposed development does not comply with the minimum lot size development standard pursuant to cl69(b)(ii) of the Housing SEPP. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (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, and*
 - (b) *the concurrence of the Secretary has been obtained.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the IWLEP 2022 and cl4.6(4)(b).

Clause 4.6 Variation to Minimum subdivision lot size
102 Norton Street, Leichhardt
Alterations and additions to an existing commercial premises and provision of a 3 storey mixed use
Development comprising ground floor café with co-living units



Clause 4.6(5) provides that:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (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.*

Sections below of this written request addresses the matters required under cl4.6(5) of the IWLEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

6.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. There is no provision in IWLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (**the DA**). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately **44%** (or 6.51m) – and a floor space ratio (**FSR**) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately **41%**.

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The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

Big Property Pty Ltd v Randwick (Big Property)

The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council* [2021] (herein '*Big Property*'). This decision was also followed by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] (herein '*HPG*').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by Big Property against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced *SJD*, and went on to hold that:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realization of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPs that realisation of particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at44]

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Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments, such as that for Affordable Rental Housing, 'incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site'. This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

7.0 **Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Based on the above the following identifies the first method identified in *Wehbe*:

"Ways of establishing that compliance is unreasonable or unnecessary

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**: (our emphasis)*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *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.*

Having considered the above the Applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation to the standard.

In dealing with the control it is necessary to identify the purpose of the minimum lot size control and then progress to dealing with the consistency or otherwise with the objectives.

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The following is relevant in addressing this consideration:

- Notwithstanding the minimum lot size requirement for co-living housing, it is considered that the existing site is large enough to accommodate the proposed mixed use development comprising 20 co-living dwelling units, given that:
 - The development is otherwise largely compliant with the applicable development standards under the Housing SEPP and Council's DCP in relation to FSR, setbacks, site coverage, landscaping, open space and car parking.
 - The development has been sited wholly within the site behind compliant setbacks and does not result in any detrimental environmental impacts to neighbouring properties by way of built form, overshadowing, solar access or visual privacy.
- The subject site is located in a precinct where numerous allotments are less than the 800m² lot size requirement under Clause 69(b)(ii) of the Housing SEPP. The subject site is one of the larger remnant allotments in the area which is well serviced by existing and planned transport infrastructure and a range of retail, essential and community services, close to the City. Notwithstanding the site area shortfall, the proposal aligns with the following principles of the Housing SEPP:

(c) ensuring new housing development provides residents with a reasonable level of amenity.

(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.

(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality.

- The development has been designed and scaled to the size of the site and in doing so complements the surrounding fine-grain scale of sites and built form observed along Norton Street. The proposal does not utilise the additional FSR granted by the SEPP and is therefore reflective of the FSR granted under the IWLEP for the site. A consolidation of the site with an equally large allotment to produce a strictly compliant co-living housing development would conflict with the streetscape character and fine-grain subdivision pattern of the locality. That is a large site means a larger built form which is less likely to emulate the narrow grain character of the locality and historical subdivision pattern.
- The proposed development provides housing diversity, choice and a form of housing which is consistent with the prevailing scale and character of built form in the area.
- The provision of housing options and options that are more affordable is consistent with the Councils Residential Housing Strategy (RHS).
- Co-living housing is best suited to mixed use and commercial centres where access to regular public transport and other essential services are readily available. The subject site aligns with principle (d) of the Housing SEPP given its inner city location in close proximity to public bus services along Parramatta Road and Norton Street. The CBD can also be reached by bike, by foot (although not suited for some) or light rail.
- The site is also well positioned within walking distance to numerous food and drink premises, hotels, restaurants, cafes and a range of retail services in and around Leichardt, Petersham and Rozelle.

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8.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to the minimum lot size standard for co-living housing and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned **E2 Commercial Centre**.

The environmental planning grounds justification for the minimum subdivision lot size variation is provided as follows:

- Surrounding lot sizes in the locality are typically between 200m² and 400m² which would strictly limit the application of co-living housing as a viable form of affordable housing in inner city locations such as Leichhardt. The subject site is one of the larger remnant allotments in the area, highlighting the limitations placed on locating co-living housing under Clause 69(b)(ii). Because the site is one of the larger remnants in the locality, it is considered one of the most suitable to accommodate some component of co-living housing as part of a mixed use development.
- The site is deemed to be large enough to accommodate co-living housing as part of the proposal is mixed use development. This is demonstrated in the compliance with development standards under the Housing SEPP; consistency with the E2 Commercial Centre zone objectives under the IWLEP 2022; and general compliance with controls and objectives under the LDCP.
- The proposal represents the orderly and economic use of the land for the provision of a new café space and affordable housing serving the needs of the local community consistent with the Council's RHS.
- The development delivers co-living housing in the manner, scale and design anticipated under the Housing SEPP notwithstanding the minimum site size requirement. As an example, the development provides for more than the minimum communal open space area required and each room includes its own bathroom, kitchen and laundry facilities. Parking for cars, bicycles and motorcycles are suitably accommodated in accordance with the requirements under Clause 69 within the new basement level.
- The proposal complies with Clause 69(1)(e) of the Housing SEPP where the portions of the ground floor fronting a street in a business zone must comprise non-residential areas. In this instance, the café space occupies the whole frontage of the building to Norton Street.
- The proposal complies with the requirement under Clause 69(f) as follows:
 - (f) the design of the building will be compatible with—*
 - (i) the desirable elements of the character of the local area, or*
 - (ii) for precincts undergoing transition—the desired future character of the precinct.*



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- The retention of the existing lot size, being short of the 800sqm requirement under Clause 69(b)(ii) produces a built form outcome which is consistent with the desired elements of the character of the local area, including:
- 3 storey mixed use / commercial forms with activated street frontages and reduced street setbacks;
 - Upper level setbacks and retention of existing built form elements which contribute towards local heritage significance or otherwise the underlying character of buildings; and
 - Fine-grain streetscape elements and a higher degree of built form variation with a mix of building materials and finishes.
- Mixed land use comprising co-living housing is consistent with the objectives of the E2 Commercial Centre zoning and delivers affordable housing in close proximity to regular public transport services, employment opportunities and a range of retail and essential services.
 - Retention of the existing lot size and the scale of the development is consistent with the prevailing built form and land use character of the streetscape. The proposal maintains the fine-grain character of properties along Norton Street and has been sited to complement the surrounding built form context. A larger site would lead to a greater built form that could potentially erode the narrow grain subdivision character.
 - There are no adverse environmental impacts directly attributable to the reduced lot size and reduced scale / design of the proposal. This is evidenced in the following:
 - No material impact from overshadowing and solar access to neighbouring commercial properties to the south or residential properties to the north and west;
 - No adverse impacts from visual or acoustic privacy to those closest residential neighbours to the west.
 - Incorporation of a three-storey built form designed around the retention of the ground floor shop façade with upper level setbacks that are consistent with other similarly scaled mixed use and commercial developments along Norton Street.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to the minimum subdivision lot size. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

“1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,***
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,***
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,***



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- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,***
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)

A development that complies with the land use zoning of the site (**E2 Commercial Centre**) satisfies the objectives of under S1.3 EP&A Act 1979.

The minimum lot size variation satisfies the objectives in bold given that:

- The development provides a three-storey mixed use development comprising an active ground floor use and frontage to Norton Street with co-living housing above in line with Council's strategic planning intent under the RHS and the IWLEP 2022.
- The development assists in achieving a co-ordinated and timely outcome for the site based on the neighbourhood provisions that are relevant to the subject site.
- The development offers better and proper management of the State's land resources by providing a more efficient use of private land, in the form of new retail and affordable short term housing, that is well positioned to take advantage of its proximity to public transport, jobs, services and local and regional leisure, recreation, retail and cultural activities.
- The proposal will not cause adverse environmental impacts to neighbouring properties as outlined in the Statement of Environmental Effects.
- The development enables increased rental opportunities in a tightly held market which exhibits rental stress and very high competition for housing.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation.

Clause 4.6(4)(a)(ii) The proposed development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the minimum lot size standard for **co-living housing**, to reasonably satisfy the stated objectives of the zone.

Zone E2 Commercial Centre

1 Objectives of zone

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*

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- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To accommodate residential development that complements and promotes the role of the Ashfield town centre as the primary location for investment, employment, cultural and civic activity.*
- *To ensure that new development displays high architectural and urban design qualities and contributes to the desired future character of the Ashfield town centre.*

The following provides a review of the zone objectives:

- ***To strengthen the role of commercial centre as the centre of business, retail, community and cultural activity***

The proposed development is situated at the northern end of the E2 Commercial Centre zone along Norton Street. The properties to the north of the site transition predominantly to residential land uses whilst the commercial core is located to the south. The development offers a suitable mix of ground floor retail in the form of a new café and co-living housing above. The form of housing proposed being short-term rental stock will contribute to a vibrant and dynamic commercial centre and strengthened economy. Over the last two decades the Norton Street retail/commercial strip has been compromised and the additional residential densities will provide increased demand for goods and services which is needed to revitalise the area.

- ***To encourage investment in commercial development that generates employment opportunities and economic growth***

The new café will deliver opportunities for local employment and will support the broader economic vitality of the centre. The co-living will also require cleaners and other maintenance roles that promotes jobs.

- ***To encourage development that has a high level of accessibility and amenity, particularly for pedestrians***

The proposal delivers an appropriate standard of liveability and residential amenity envisaged by the SEPP Hosing for future residents. The communal living area and outdoor communal spaces are sizeable, well-designed and will be sunlit throughout the year. The development provides for the minimum on-site parking and promotes walking and cycling.

- ***To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area***

The proposed co-living housing is consistent with Council's strategic planning for residential development in the area. Council's RHS calls out the important of providing more affordable rental housing in locations close to public transport, accessible services and community amenity.

- ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces***



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The development includes an activated street frontage in the form of a new café with an external dining space which will contribute to the vibrant and functionality of the streetscape. The use will encourage increased pedestrian activity along the Norton Street frontage.

- ***To accommodate residential development that complements and promotes the role of the Ashfield town centre as the primary location for investment, employment, cultural and civic activity***

Not relevant.

- ***To ensure that new development displays high architectural and urban design qualities and contributes to the desired future character of the Ashfield town centre***

Not relevant.

8.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the IWLEP.

The Court has power to grant development consent to the proposed development even though it contravenes the minimum subdivision lot size development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

The proposed contravention of the minimum lot size development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;

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- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the principles of the Housing SEPP.

The proposed development contravenes the **minimum lot size** development standard for co-living housing under **Clause 69** of the Housing SEPP 2021 which is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the IWLEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the higher-order principles of the Housing SEPP and is consistent with the relevant objectives of the **E2 Commercial Centre** zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed development will maintain the character and built form of the locality whilst also maintain a high standard of neighbourhood amenity.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the minimum lot size development standard, including:

- The site is one of the larger remnant holdings in the locality and is considered one of the most suitable to accommodate some component of co-living housing as part of a mixed use development.
- The site is large enough to accommodate co-living housing as part of the proposed mixed use development. This is demonstrated in the compliance with development standards under the Housing SEPP, consistency with the E2 Commercial Centre zone objectives under the IWLEP 2022 and LDCP.
- The proposal represents the orderly and economic use of the land for the provision of a new café space and affordable housing serving the needs of the local community.
- The development delivers co-living housing in the manner, scale and design anticipated under the Housing SEPP notwithstanding the minimum site size requirement.
- Mixed land use comprising co-living housing is consistent with the objectives of the E2 Commercial Centre zoning and delivers affordable housing in close proximity to regular public transport services, employment opportunities and a range of retail and essential services.
- Provides local jobs for cleaners and other maintenance contractors which is consistent with the zoning hierarchy. The additional residential demand generated by the development for local goods and services will revitalise Norton Street which has been in decline for the last decade.

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- Retention of the existing lot size and the scale of the development is consistent with the prevailing built form and land use character of the streetscape. The proposal maintains the fine-grain character of properties along Norton Street and has been sited to complement the surrounding built form context.
- There are no adverse environmental impacts directly attributable to the reduced lot size and reduced scale / design of the proposal. This is evidenced in the following:
 - No material impact from overshadowing and solar access to neighbouring commercial properties to the south or residential properties to the north and west;
 - No adverse impacts from visual or acoustic privacy to those closest residential neighbours to the west.
 - Incorporation of a three-storey built form designed around the retention of the ground floor shop façade with upper level setbacks that are consistent with other similarly scaled mixed use and commercial developments along Norton Street.

A handwritten signature in black ink, appearing to read 'A Martin'.

Andrew Martin *MPIA*
Planning Consultant

Attachment D – Conditions in the event of an approval

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
D102 Rev D	Site Analysis Plan	27/03/2023	Habitation Design + Interiors
D104 Rev D	Basement Plan	27/03/2023	Habitation Design + Interiors
D105 Rev D	Ground Floor Plan	27/03/2023	Habitation Design + Interiors
D106 Rev D	First Floor Plan	27/03/2023	Habitation Design + Interiors
D107 Rev D	Second Floor Plan	27/03/2023	Habitation Design + Interiors
D108 Rev D	Roof Plan	27/03/2023	Habitation Design + Interiors
D109 Rev D	Elevations	27/03/2023	Habitation Design + Interiors
D110 Rev D	Elevations	27/03/2023	Habitation Design + Interiors
D111 Rev D	Sections	27/03/2023	Habitation Design + Interiors
D120 Rev D	Driveway Section	27/03/2023	Habitation Design + Interiors
D126 Rev D	Materials + Finishes	27/03/2023	Habitation Design + Interiors
L/01	Landscape Plan	27/04/2023	Habitation Design + Interiors
Cert No. 1389932M	BASIX Certificate	10/05/2023	EPS

As amended by the conditions of consent.

FEES

2. 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:	\$34,727.06
Inspection Fee:	\$374.50

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

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

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

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

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

3. 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.

4. Section 7.11 Contribution

In accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:

Contribution Category	Amount
Open Space & Recreation	\$279,452.00
Community Facilities	\$53,009.00
Transport	\$20,382.00
Plan Administration	\$2,827.00
Drainage	\$15,208.00
TOTAL	\$370,877.00

At the time of payment, the contributions 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 136.4 for the December 2023 quarter.

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 at council@innerwest.nsw.gov.au or 9392 5000 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 may 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

5. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

6. Separation of Commercial and Residential Waste and Recycling

The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.

7. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

8. Boarding House

The development must provide and maintain:

- a. A minimum of 2 Accessible boarding rooms; and
- b. All rooms within the boarding house must be connected to a centralised electricity, water and gas (if installed) service.

9. Residential Flat Buildings – Air Conditioning Systems

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

10. Waste Management Plan

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

11. Erosion and Sediment Control

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

12. Standard Street Tree Protection

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

13. Verification of Levels and Location

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

14. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**15. Resource Recovery and Waste Management Plan - Demolition and Construction**

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

16. 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.

17. Construction Traffic Management Plan

Prior to any demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP) to cater for construction prepared by a person with RMS accreditation to prepare a work zone traffic management plan. Details must include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities. A work zone approval must be obtained.

18. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

19. 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.

20. 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**21. Food Premises – Additional Sinks and Hand Wash Basins**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended scale plans confirming the position of all sinks and hand wash basins within the food premises in accordance with Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

22. Food Premises – Odour Emission Control

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that emission control equipment has been provided in the mechanical exhaust system that effectively minimises the emission of odours, vapours and oils.

23. Noise General – Acoustic Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

24. Aircraft Noise – Acoustic Report (ANEF20-25 or Greater)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report that meets the relevant provisions of Australian Standard AS 2021:2000

Acoustics – Aircraft noise intrusion – Building siting and construction. The recommendations of the report are to be indicated on the architectural plans and / or specifications.

25. Shared Accommodation / Boarding House – Plan Of Management

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Plan of Management demonstrating compliance with operation and maintenance standards set out in the *Local Government (General) Regulation 2005*.

26. Commercial - Additional Storage Space

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that space has been allocated on site for the storage of reusable items such as crates and pallets and/or compaction equipment.

27. Amended Waste Management Plan

Prior to the issue of a construction certificate the certifying authority is to be provided with an amended operational waste management plan that:

- Identifies the commercial bin presentation point (where commercial bins will wait prior to being emptied)
- Identifies the residential bin collection point (where residential bins will wait prior to being emptied)
- Nominates the role of the person or people responsible for maintaining and transferring residential bins

28. Bin Storage Area - Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area to be provided within the site will fully accommodate the number of bins required for all waste and recycling generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Leichhardt DCP 2013 and must include doorways/entrance points of 1200mm.

29. Bulky Waste Storage Area – Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area will meet the floor area requirements as per the Leichhardt DCP 2013 and have minimum doorways of 1200mm wide to accommodate large items.

30. Waste Transfer Route

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.

31. Each Residential Dwelling is to have Access to a Disposal Point for All Waste Streams

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

32. 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.

33. Stormwater Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

1. The stormwater drainage concept plan on Drawing No. SW03 version (1) prepared by PRIME ENGINEERING CONSULTANTS and dated 12 July 2023, must be amended to comply with the following:
 - 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/directly to Council's piped drainage system via the OSD/OSR tanks as necessary;
- 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. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
 - d. 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;
 - e. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);
 - f. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
 - g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
 - h. Only roof water is permitted to be connected to the OSD/OSR. The overflow from the storage tank must be connected by gravity to the kerb and gutter of a public road;
 - i. Drainage pipes must be designed at a minimum grade of 1 %. Pipe diameter and invert level, pits surface and invert level and finished surface ground level shall be shown on the drainage plan;
 - j. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
 - k. An overland flowpath must be provided within the setback to the southern side boundary between the rear of the dwelling and the Norton Street frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flowpath;
 - l. 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;
 - m. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
 - n. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage

system. Where necessary an inter-allotment drainage system must be incorporated into the design;

- o. No nuisance or concentration of flows to other properties;
- p. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- q. 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;
- r. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- s. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- t. 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;
- u. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- v. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- w. No impact to street tree(s).
- x. Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s);

34. Parking Facilities - Domestic

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- 1. The driveway at the front boundary must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- 2. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;

3. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements;
4. The off-street parking and bicycle parking must comply with the controls and numerical requirements of Section C1.11, PART C: PLACE of Leichhardt Council's DCP2013. The report must also justify any shortfall in the required parking spaces.
5. The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that:
 - a. Car spaces adjacent to walls are increased in width by an additional 300mm;
 - b. End spaces are provided with an additional 1m aisle extension; and
 - c. The location of columns within the carpark complies with figure 5.1 of AS/NZS 2890.1-2004.
6. Swept paths demonstrating manoeuvrability for entry and exit to the site in a forward direction and manoeuvrability within the site including to all parking facilities. The plan must include any existing on-street parking spaces;
7. The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles;
8. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and
9. The external form and height of the approved structures must not be altered from the approved plans.

35. Structural and Geotechnical Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The report and plans must be prepared/ amended to make provision for the following:

- a. The basement must be fully tanked to prevent the ingress of subsurface flows;
- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;

- c. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years;
- d. All components of the basement, including footings, must be located entirely within the property boundary;
- e. No adverse impact on surrounding properties including Council's footpath and road;
- f. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;
- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

36. 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.

37. 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

38. 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.

39. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.

40. Future Food Use - Mechanical Ventilation Provision

Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of Mechanical Ventilation and Air-Conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings.

DURING DEMOLITION AND CONSTRUCTION**41. Contamination – New Evidence**

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

42. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

43. Documentation of Demolition and Construction Waste

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

44. Construction Hours – Class 2-9

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

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

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

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

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

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

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

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

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

45. 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**46. Noise – Acoustic Report**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of *the Protection of the Environment Operations Act 1997* and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

47. Noise From Road, Rail & Aircraft – Compliance

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. *State Environmental Planning Policy (Infrastructure) 2007*;
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of acoustic report.

48. Contamination – Disposal of Soil

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and *the Protection of the Environmental Operations Act 1997*.

49. Food Premises Grease Trap – Trade Waste Agreement

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification confirming that the grease trap has been installed to the premises in accordance with Australian Standard AS 3500 and the National Plumbing and Drainage Code. A copy of the Sydney Water Trade Waste Agreement must also accompany the certification.

50. No Encroachments

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

51. 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.

52. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

53. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

54. Undergrounding Power – Major development

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the existing overhead power cables along 102 Norton Street frontage of the site have been relocated underground with appropriate street lighting and new steel standard poles. The street lighting must be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet the lighting category required by Council and RMS. In addition the design must also comply with AS4282 to ensure that no injury is caused to the amenity of the surrounding area by light overspill or obtrusive light.

55. Parking Signoff – Minor Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

56. 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

57. Noise General

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

58. Commercial Waste/Recycling Collection

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area,

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

59. Documentation of Businesses Waste Services

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

60. Operation and Management Plan

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

61. Boarding House

The use of the premises as a boarding house must comply at all times with the following:

- a. The use must comply at all times with the Plan of Management referred to in this consent, as modified by this notice of determination;
- b. A copy of the Plan of Management and House Rules must be annexed to each and every tenancy/occupation agreement for a room;
- c. A copy of the approved Plan of Management and House Rules must be clearly displayed within every common room in the building at all times;
- d. The Plan of Management must not be amended without the prior consent of Council and must be made available to Council officers and the Police upon request;
- e. All tenancy/occupation agreements for rooms within the premises must be for a minimum period of three (3) months;
- f. The premises must be used exclusively as a boarding house containing a maximum total of 20 lodger's rooms and 1 on-site manager's rooms with not more than 40 adult lodgers and 1 adult on-site managers residing in the premises at any one time;
- g. Not more than 2 lodgers must occupy each boarding room;
- h. The premises must not be adapted for use as backpacker's accommodation, serviced apartments or a residential flat building;
- i. All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and

- j. Each self-contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.

ADVISORY NOTES

Health Premises Registration – Generic

The premises are required to be registered with Council's Environment Health Team in accordance with the following relevant legislation:

- a. *Food Shop - Food Act 2003*; and
- b. *Boarding House / Shared Accommodation - Boarding Houses Act 2012* and the *Local Government (General) Regulation 2021*.

Food Premises Certification

The food premises design, construction and operation is in accordance with the following:

- a. *Food Act 2003*;
- b. *Food Regulation 2010*;
- c. *Australia and New Zealand Food Standards Code*;
- d. *Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises)*;
- e. *Australian Standard AS 1668 Part 1 – 1998*; and
- f. *Australian Standard AS 1668 Part 2 – 2012*.

Food Premises Waste Storage Area

To ensure adequate storage and collection of waste from the food premises, all garbage and recyclable materials must be stored in a designated waste storage area. The designated waste storage area must be designed and constructed in accordance with the Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

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.

Mechanical Ventilation System Certification

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:

- a. Australian Standard AS 1668 Part 1 – 1998;
- b. Australian Standard AS 1668 Part 2 – 2012;
- c. Australian Standard 3666.1 – 2011;
- d. Australian Standard 3666.2 – 2011; and
- e. Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

Notice to Council to deliver Residential Bins

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

Recycling / Garbage / Organics Service Information and Education

The building manager is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

Permits

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

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

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

Insurances

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

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within 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.

Disability Discrimination Access to Premises Code

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

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.

Boarding House – Registration with Fair Trading

Boarding houses with two or more residents who have additional needs or five or more residents who do not have additional needs are required to register with the Department of Fair Trading.

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.

Construction of Vehicular Crossing

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

Dial before you dig

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

Useful Contacts

BASIX Information 1300 650 908 weekdays 2:00pm - 5:00pm

www.basix.nsw.gov.au

Department of Fair Trading 13 32 20

www.fairtrading.nsw.gov.au

Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig	1100	
		www.dialprior toyoudig.com.au
Landcom	9841 8660	
		To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441	
		www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	
		www.foodnotify.nsw.gov.au
NSW Government		
		www.nsw.gov.au/fibro
		www.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 Environmental Solutions	1300 651 116	
		www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	
		www.workcover.nsw.gov.au
		Enquiries relating to work safety and asbestos removal and disposal.

Attachment E – Architectural Excellence and Design Review Panel Minutes



Architectural Excellence & Design Review Panel Meeting Minutes & Recommendations

Site Address:	102 Norton Street Leichhardt
Proposal:	Alterations and additions to an existing commercial building to create a 3 storey mixed use building with a café, co-living dwellings over a basement carpark
Application No.:	DA/2023/0555
Meeting Date:	19 September 2023
Previous Meeting Date:	-
Panel Members:	Vishal Lakhia (chair); Russell Olsson; Jon Johannsen; and Niall Macken
Apologies:	-
Council staff:	Anthony Roydhouse; Ferdinand Dickel; Sean Wilson; Tom Irons; Kaitlin Zieme; Adele Cowie; Martin Amy
Guests:	-
Declarations of Interest:	None
Applicant or applicant’s representatives to address the panel:	Joseph Panetta (Habitation Design) – Architect for the project; Andrew Martin (Andrew Martin Planning) – Urban Planner for the project

Background:

1. The Architectural Excellence & Design Review Panel reviewed the architectural drawings and discussed the proposal with the applicant’s team through an online conference.

Discussion & Recommendations:

1. The AEDRP typically provides independent advice on matters related to architecture, urban design, landscape design, and design excellence, however at this instance, the Panel highlighted an overall statutory planning concern regarding the permissibility of the proposal at the subject site. The Panel understands that the proposal does not

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comply with the minimum lot size requirement within the Housing SEPP 2021 legislation [Part 3, Clause 69(1)(b)(ii)]. The applicant should seek separate statutory planning advice from the Inner West Council's development assessment officers regarding the permissibility of the proposal at the subject site which has an area of 448.6m², significantly below the 800m² SEPP requirement.

2. Additionally, the issue regarding potential isolation of the adjoining property to the south – 98 Norton Street, should be addressed as a priority. The Panel notes that amalgamation with the adjoining property to the south will not achieve the minimum lot size requirement within the Housing SEPP 2021, however, additional site area would be beneficial in alleviating development pressure and improving the overall urban design outcome for the proposal. Site amalgamation would allow an efficient site layout benefitting from the blank side wall of the commercial building at 96 Norton Street and may allow for the retention, at least in part, of the existing building on the subject site.
3. The Panel discussed if there is any merit in retaining the existing building on the site. The applicant's strategy appears counter-productive as retention diminishes the overall quality of the architectural design. The built form to the rear appears largely out-of-character. The Panel recommends demolition of the existing structures, and a significant redesign of the proposal as part of any new strategy. Should that approach be taken, the new design would need to resolve the numerous constraints due to the site size in a sophisticated re-design that also considers the streetscape context.
4. However, should the Applicant decide to pursue a scheme with retention of the existing building that could have benefits in retention of some heritage fabric and minimising waste, there would need to be a more recessive design approach for built form to be less assertive behind the existing envelope.
5. The Panel considers the side and rear setbacks (within a range of 1.15m to 3.5m) to be inadequate in achieving the expected visual and acoustic privacy, and the desired outlook from the proposed boarding rooms. There was a discussion at the meeting that based on the Housing SEPP 2021 provisions, a large boarding house (with a built form equivalent to 3 storeys or more) should incorporate building separation requirements based on the NSW Apartment Design Guide - Part 3F – Visual Privacy. The Panel notes that this may not be realistically achievable for the proposal if developed in isolation from the adjoining property to the south.
6. In terms of the side and rear setbacks, the Panel does not expect strict numerical compliance with the ADG separation distances, however, consistency should be established with the guidance offered within Part 3F of the ADG. The applicant needs to develop thoughtful building configuration strategies to maximise privacy and outlook within the boarding rooms. The potential visual and acoustic privacy cross-viewing issues with the outdoor area of the child care centre located on the adjoining property to the north need to be resolved as part of the re-design.
7. The Panel supports the applicant's strategy of retaining trees within the rear setback, however, the proposed deep soil width (860mm) will be inadequate to support a healthy tree root zone. The applicant should work with a suitably qualified landscape architect and an arborist to develop further details of the landscape design and tree retention. The Panel recommends addition of small-medium tree canopy cover within the rear setback and the northern side setback from the child care centre, to improve privacy and to enhance the interface along the adjoining properties.
8. The Panel expects the proposal should demonstrate compliance with the minimum common room and common open area sizes, including 3 hour solar access in mid-winter as part of the Housing SEPP 2021 requirements. The applicant should provide views from the angle of sun for further review.

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9. As part of the revised proposal, the Panel encourages use of ceiling fans incorporated within all boarding rooms and common rooms as a low energy alternative/augmentation to mechanical A/C systems. Provision of a rainwater tank should be considered for collection and reuse within the site. A photovoltaic system should be incorporated for sustainability benefits. The applicant is strongly encouraged not to use gas and that any future development be all-electric.
10. The Panel does not support the proposal in its current form and configuration, and recommends that a revised proposal should return to the Panel with recommendations of this report incorporated and/or addressed.