





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0798
Address	20A and 20B Hopetoun Street PETERSHAM
Proposal	Construction of a mezzanine level within the rear outbuilding, use the outbuilding as a garage and studio in association with 20B Hopetoun Street and carry out a subdivision boundary realignment of 20A and 20B Hopetoun Street to contain the outbuilding completely on 20B Hopetoun Street
Date of Lodgement	3 October 2023
Applicant	Mr Darren Laybutt
Owner	Ms Theony Antoun
Number of Submissions	Initial: 1
Value of works	\$20,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	<ul style="list-style-type: none"> • Subdivision • Floor Space Ratio variance • Neighbouring amenity impacts
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards
Attachment D	Recommended conditions of consent if approved



Figure 1: Locality map

Subject Site		Objectors		N ↑
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for construction of a mezzanine level within the rear outbuilding, to use the outbuilding as a garage and studio in association with 20B Hopetoun Street and carry out a boundary realignment of 20A and 20B Hopetoun Street to contain the outbuilding completely on 20B Hopetoun Street.

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

The main issues that have arisen from the application include:

- The proposed boundary readjustment results in a subdivision that is inconsistent with the predominant cadastral pattern of the streetscape;
- The proposal results in a 33.93% variation to the Floor Space Ratio development standard as a result of the readjustment;
- The proposal results in adverse amenity impacts to the occupants of no. 20A, given the proposed loss of development potential, and consequent visual bulk, acoustic privacy and overshadowing impacts created; and
- The proposal results in insufficient internal amenity for the occupants of no. 20B Hopetoun Street, given the proposed mezzanine level.

The non-compliances are considered unsupportable given the proposed subdivision is inconsistent with the prevailing and predominant cadastral pattern of the immediate surrounds, and the amenity impacts proposed to both no. 20A and 20B Hopetoun Street.

Therefore, the application is recommended for refusal.

2. Proposal

The proposal seeks development consent to readjust the boundary subdivision, as previously approved under DA201500748, to include the entire garage and outbuilding at the rear of the site to no. 20B Hopetoun Street. The outbuilding is proposed to be used as a garage and studio with a mezzanine level. Specifically, the proposal comprises of the following works:

- Proposed boundary readjustment, resulting in a 'L' shaped lot (no. 20B Hopetoun Street), and a rectangular lot (no. 20A Hopetoun Street);
- Demolition of the existing unauthorised staircase and mezzanine level within the outbuilding;
- Demolition of existing rear fence of no. 20A Hopetoun Street, and partial demolition of the existing fence separating the two properties;
- Construction of new staircase at the rear within the outbuilding, and construction of new mezzanine level with new stud walls;
- Construction of three new skylights to the outbuilding; and
- Construction of new boundary fencing to reflect the proposed boundary adjustment

3. Site Description

The subject site is located on the western side of Hopetoun Street, between Frederick Street and Trafalgar Street. The sites the subject of this application include no's. 20A and 20B

Hopetoun Street which are generally rectangular shaped, with an area of 328.8sqm and 320.8sqm, respectively. The sites are legally described as Lots 101 & 102 in DP 1255001.

The sites have a frontage to Hopetoun Street of 9.655 metres (20A) and 6.71 metres (20B). No. 20B has a secondary frontage to Frederick Street of 36.015 metres. The site is affected by a 1.2 metre wide water drainage easement within no. 20A.

Each lot supports a two-storey brick semi-attached dwelling with attic. A single storey outbuilding is located across both lots (attached) at the rear. The surrounding streetscape consists mainly of single and two storey dwelling houses to the north and west, with public recreation and worship facilities located south and east of the site. The site is adjoined by 18 Hopetoun Street to the north which contains a two-storey dwelling house. West of the sites is an Ausgrid Electricity Station. East of the site is Maundrell Park and to the south is the All-Saints Anglican Church.

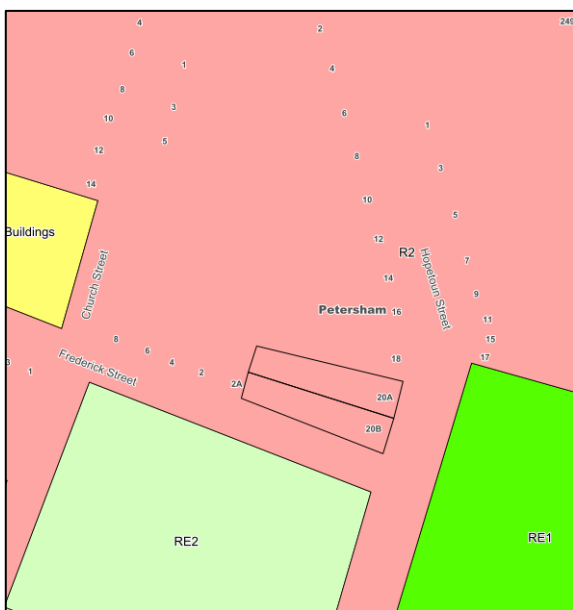


Figure 2: Land zoning map Figure 3: Image of the dwellings

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

DA201500748, approved on 20/06/2016, 'To demolish existing improvements, subdivide the land into 2 lots and construct a 2 storey dwelling with attic on each lot with a detached garage at the rear of Lot A and a storage shed at the rear of Lot B'.

DA201500748.01, approved on 24/11/2016, 'Under Section 96 of the Environmental Planning and Assessment Act to modify Determination No.201500748 dated 20 June 2016 to delete condition 6 requiring retention of the *Ficus carica* (common fig) in the south-eastern corner of the property'.

CC201800119, issued on 01/05/2018, construction certificate submitted by private building surveyor

DA201500748.02, refused on 30/07/2018, 'under Section 4.55 of the Environmental Planning and Assessment Act to modify Modified Determination No. 201500748.01 dated 24 November 2016 to increase the height of the garage by 1 metre and install a window on the southern elevation'. Appeal upheld by the Land and Environment Court on 18/06/2019.

DA201500748.03, withdrawn on 31/10/2019, 'Application under section 4.55 of the Environmental Planning and Assessment Act to modify Determination No. DA201900748, modification involves deletion of condition 59 relating to a splay corner'.

SC/2020/0003, issued on 18/05/2020, subdivision certificate.

MOD/2020/0210, withdrawn on 27/07/2020, 'Modification to delete the parking space for the northernmost dwelling'.

OCP/2021/0306, issued on 28/04/2021, Occupation Certificate issued by Private Certifier.

EPA/2023/0022 & EPA/2023/0023, Notice of Intent issued 22/03/2023, for the following works:

- Habitable use of the attic within both no. 20A and 20B Hopetoun Street, including the construction of a door installed in the masonry common wall within the adjoining attics, solely used and accessed by occupants of no. 20B;
- Construction of an unauthorised mezzanine floor within the 'Shed and Storage' located at the rear of no. 20A, which extended into the adjoining 'Garage' of no. 20B, solely used and accessed by occupants of no. 20B as one single outbuilding;
- Construction of an unauthorised boundary fence within the approved rear private open space of no. 20A, restricting access for no. 20A to the outbuilding; and
- Construction of an unauthorised additional kitchen and associated cooking facilities within 'Bed 3' on the first floor.

DA201500748 approved the Torrens title subdivision, construction of two two-storey dwellings with attic, and a single storey outbuilding at the rear of the sites, to be used as a garage for no. 20B Hopetoun Street, and a storage area for no. 20A Hopetoun Street. A wall was proposed to separate the two areas within the outbuilding, following the approved boundary line.

The subject application is the result of a Notice of Intent order issued to the property owner on 22 March 2023.

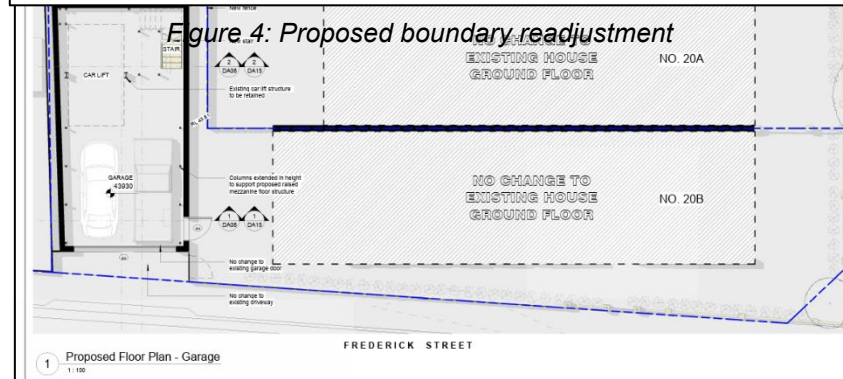
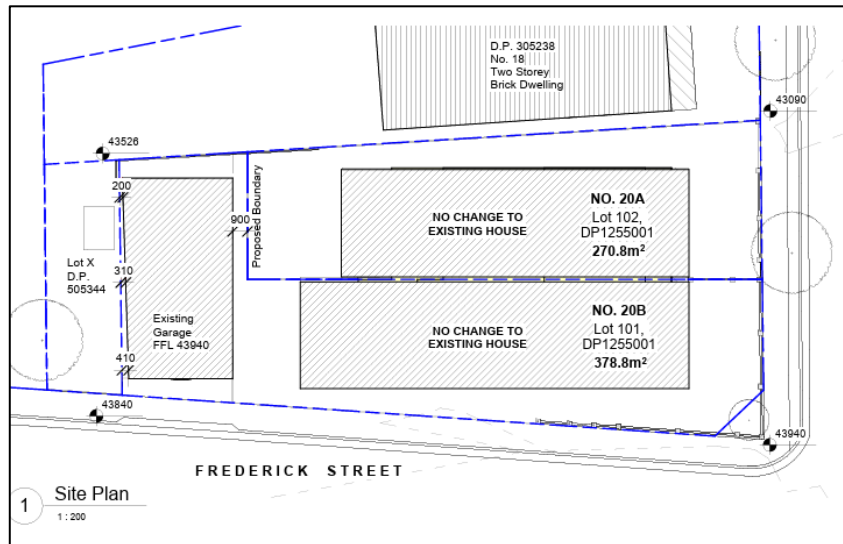


Figure 4: Proposed boundary readjustment

Figure 5: Proposed garage ground floor

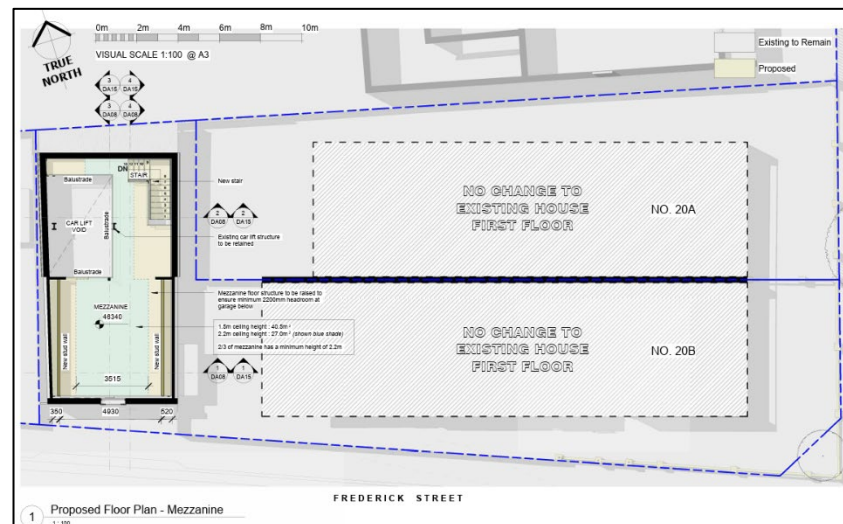
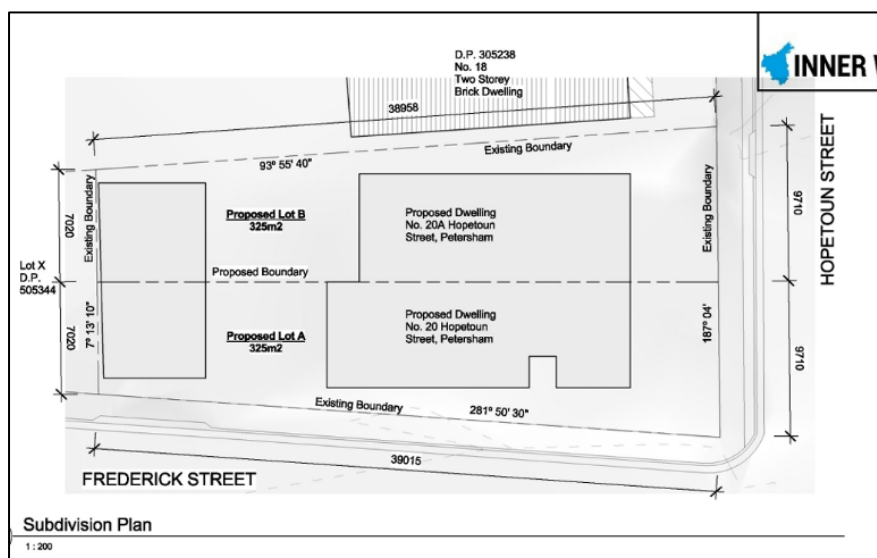


Figure 6: Proposed garage first floor



4(b) Application *Figure 7: Approved subdivision under DA201500748* history

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

Date	Discussion / Letter / Additional Information
03/10/2023	Application lodged.
04/12/2023	Site inspection undertaken.
22/01/2024	Council issued a request for withdrawal letter, raising the following issues: <ul style="list-style-type: none"> Adverse impacts and inconsistency with cadastral pattern given the proposed boundary alignment.
12/02/2024	The applicant provided a letter in response to the above. The letter has been attached to Attachment E of this document.

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
- 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.

Notwithstanding, the application is recommended for refusal.

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

A BASIX Certificate was not required to be submitted with the application as the cost of works is under \$50,000.

5(a)(iii) 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 2.6 – Subdivision
- Section 4.1 – Minimum subdivision lot size
- Section 4.3 – Height of buildings
- 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 6.3 – Stormwater management
- Section 6.8 – Development in areas subject to aircraft noise

Section 1.2 Aims of Plan

The proposal is inconsistent with the aims of the Plan in that the development proposes a subdivision that is inconsistent with the prevailing cadastral pattern of the street, and does not

prevent adverse social, economic and environmental planning impacts to no. 20A Hopetoun Street, given the significant benefit loss and amenity impacts proposed. Moreover, the proposal results in adverse internal amenity impacts to no. 20B Hopetoun Street, given the lack of ventilation and close proximity to vehicles proposed at the mezzanine level. The application indicates that the mezzanine area will be used as a secondary living space in conjunction with the main residence, however the structure affords no windows to afford any amenity to this space.

Section 2.3 Land Use Table and Zone Objectives

The subject site is zoned R2 – Low Density Residential. The objectives of the R2 zone are reproduced below:

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

The proposed development is inconsistent with the third objective because the proposal results in a subdivision pattern that is inconsistent with the streetscape.

Section 2.6 – Subdivision – consent requirements

The proposal satisfies this section as subdivision is proposed which is permissible with consent but is not supported for the reasons identified elsewhere within this report.

Section 4.1 – Minimum subdivision lot size

A minimum lot size is not prescribed under Clause 4.1(3) of the IWLEP 2022. However, the proposed development is inconsistent with the objectives within Clause 4.1(1) of the *IWLEP 2022* as the development results in adverse amenity impacts to the subject site and the proposed subdivision is not consistent with the desired future character of the area.

Section 4.3 – Height of buildings

The maximum allowable height on the land is 9.5m. The proposed development does not seek to alter the existing height of the outbuilding or dwellings on the site.

Section 4.4 – Floor space ratio

The proposed subdivision adjustment results in the following FSR:

	Maximum permitted	Proposed	Compliance	Variation
No. 20A	0.8:1 or 216.64sqm	0.7:1 or 189.6sqm	Yes	N/A
No. 20B	0.6:1 or 227.28sqm	0.8:1 or 304.4sqm	No	33.93% or 77.12sqm

The applicant has submitted a Clause 4.6 exception with regard to the FSR breach on no. 20B. An assessment against the requirements of Section 4.6 is undertaken below.

Overall, the proposed variation to the FSR development standard is not considered supportable.

Section 4.5 – Calculation of floor space ratio and site area

The site area and floor space ratio for the proposal has been calculated in accordance with the section.

Section 4.6 – Exceptions to development standards

As outlined above, the applicant seeks a variation to the FSR development standard under section 4.4 of the *IWLEP 2022* by 33.93% or 77.12sqm for no. 20B. Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

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

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The boundary realignment creates a change in the prescribed FSR due to the sliding scale by site area in subclause (2C). All additional floor area tangibly created by the mezzanine and extra car space is contained entirely within existing structures.*
- *The proposed boundary realignment and construction of a mezzanine will not have a negative impact on the low density residential environment. The realignment allows for the incorporation of the garage within 20B Hopetoun Street and the mezzanine creates additional floor area to meet the needs of the landowners without any consequence on bulk and scale or amenity impacts to the dwelling itself or the neighbours.*
- *The proposal involves no external physical works beyond the construction of a new boundary fence to correspond to the boundary realignment.*
- *All additional floor area is contained within existing structures. Consequently, there are no visual privacy, acoustic privacy, overshadowing or visual bulk impacts on local amenity.*
- *While a portion of 20A Hopetoun Street is absorbed into 20B Hopetoun Street, the property will continue to comply with the private open space, site coverage, pervious area and setback controls.*
- *The contravention of the development standard is a matter of numerical arrangement between the properties but is within an existing building.*
- *The approvals granted for the original development and the outbuildings as built and the needs of residents mean that the circumstances of this proposed variation are unique. Accordingly, no precedent would be set by the contravention of the development standard.*

It is considered that the applicant's written rationale does not adequately demonstrate compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, nor are there sufficient environmental planning grounds to justify contravening the development standard. DA201500748 approved an outbuilding that spanned over the two sites for the benefit of both proposed dwellings.

While it is acknowledged that no additional bulk is proposed as part of this application, as discussed elsewhere in this report, the proposed boundary adjustment results in no. 20A losing a significant benefit, including the loss of storage, potential reduction in property value due to the smaller lot size, and a reduction of development potential. Additionally as part of this proposal, No 20A will contain a large 2 storey wall at the rear of the site that bears no benefit to it other than a bulky mass. Moreover, the proposed mezzanine level, which contributes to the additional FSR, is not considered to provide sufficient internal amenity to the proposed users with regard to the close proximity to vehicles, and the lack of ventilation and light proposed. The application indicates that the mezzanine area will be used as a secondary living space in conjunction with the main residence, however the structure affords no windows to afford any amenity to this space.

It is worth noting that DA201500748 initially proposed an FSR variance on both sites, which was not supported, and the applicant reduced the scale of the dwellings accordingly. The approved development under the aforementioned DA did comply with the maximum requirements. Council's approach to a FSR variance has been consistent on this site throughout all applications.

Given the above, it is considered the development is not in the public interest because it is inconsistent with the objectives of the R2 Low Density Residential zone and the Floor Space Ratio development standard in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

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

Comment:

Two dwellings are retained and the site and the proposal continues to provide housing for the community, however albeit the development potential of 20A is compromised as a result of the proposal.

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

Comment:

No other land uses are proposed as part of this application.

- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

Comment:

As raised earlier, the application does not propose additional bulk to the site; however, the proposed boundary adjustment is inconsistent with the predominant cadastral pattern within the surrounding area. Furthermore, it is considered that the siting of the outbuilding would, in principle, no longer be consistent with the character of the surrounding area, as there are no other similar developments on residential lots in the streetscape.

The objectives of the FSR development standard are as follows:

- a) *to establish a maximum floor space ratio to enable appropriate development density*

Comment:

The floor space ratio is proposed to be significantly varied by 33.93%. It is worth noting that the proposed FSR, and subdivision pattern, would unlikely be supported if this was a 'new' development application, and the entirety of the site was under assessment. It is considered that the proposal, in its current form, undermines the established maximum FSR control, given the proposal is the result of a Notice of Intention order issued by Council due to unauthorised building works.

It is noted that the Applicant has stated that the mezzanine level is to be used as a studio, secondary living area, and storage area. Given this, it is further considered that the proposed mezzanine level within the garage intensifies the use on the site, as the area was previously approved for vehicle storage (as approved by the Land and Environment Court under DA201500748.02), and not as a habitable area.

b) *to ensure development density reflects its locality*

Comment:

The FSR development standard seeks to allow an acceptable level of bulk and scale for new developments, and to reduce overdevelopment, particularly within residential zones.

Within the immediate locality, there are no similar lots to the one proposed, with regard to dwelling and outbuilding/garage size, and extent of FSR variance. A 33.93% variance to the FSR development standard is significant, and while it is acknowledged that the proposal does not seek to construct any external bulk, the proposed subdivision realignment and subsequent use of a habitable mezzanine level, would not result in a density that reflects its locality.

c) *to provide an appropriate transition between development of different densities*

Comment:

The site sits within the R2 Low Density Residential zone, and is not within a transition area between different zones and densities.

d) *to minimise adverse impacts on local amenity*

Comment:

The proposal will result in adverse visual bulk and amenity to no. 20A, as the benefit of the large outbuilding at the rear of the site will be lost due to the boundary readjustment, and subsequent FSR variation. While there is no change to the built form, no. 20A should, in principle, have access to a functional structure at the rear, however, the proposed boundary adjustment will burden future occupants and owners of the site with a large wall presenting to the rear boundary.

In addition to the above, it must be noted that removing the benefit of the outbuilding for no. 20A will result in a loss of development potential for future owners/occupiers of the site. The proposed boundary adjustment would restrict no. 20A from being able to delete their half (as existing) of the outbuilding to complete additions to the dwelling house or creating a larger open space if they desired. The outbuilding also partially overshadows the private open space of no. 20A, and the proposed readjustment will remove any future property owner's potential from removing their half to increase solar access, or to reduce the visual bulk if desired. Moreover, as the proposal seeks to add

an internal mezzanine level and extends the location of the previously approved carparking spaces, this may create adverse acoustic impacts to no. 20A.

It is further noted that the applicant seeks to use the internal mezzanine level as a habitable area; however, it is considered that the area does not provide suitable amenity to the occupants of no. 20B, given the close proximity to parked cars, and lack of windows to provide light and ventilation to the area. It is unclear from the information provided whether the skylights proposed are operable.

Given the above, the proposed boundary adjustment and construction of internal mezzanine will result in adverse impacts on the local amenity of no. 20A and 20B Hopetoun Street.

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

Comment:

The proposal does not seek to remove any trees from the subject sites.

Overall the proposal fails to comply with the objective of section 4.6(1)(b) and requirements of section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are insufficient planning grounds to justify the departure from the FSR development standard and it is recommended the section 4.6 exception be rejected.

Section 6.3 – Stormwater management

The proposed boundary readjustment and internal works are unlikely to impact the existing stormwater management onsite. However, a condition of consent has been recommended by Council’s Development Engineer, which could be readily imposed, requiring the Certifying Authority to be provided with details demonstrating that both lots are still separately drained.

Section 6.8 – Development in areas subject to aircraft noise

The subject site is located within the 25-30 ANEF contour. While the application proposes a habitable mezzanine level within the garage, no updated acoustic report was submitted as part of the application. As such, the application fails to provide any detail in this regard and is therefore unsatisfactory, in accordance with s6.8(2).

5(b) Development Control Plans

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

MDCP 2011 Part of MDCP 2011	Compliance
Part 2.11 – Fencing	Yes
Part 2.18 – Landscaping and Open Space	No – see discussion
Part 2.20 – Tree Management	No – see discussion
Part 3 – Subdivision	No – see discussion
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

Part 2.18 – Landscaping and Open Space

Control C12 of this part requires developments to provide 45sqm or 20% of the total site area to be retained as private open space. A minimum of 50% of this space must be pervious.

The following objectives are relevant to this proposal:

O1 To promote site landscaping that conforms and complements the character of the individual building and the character of the area.

O3 To provide dwellings with outdoor recreation space

O4 To minimise the extent of hard paved areas and facilitate rainwater infiltration

	Required	Provided	Complies
Private Space	<u>20A</u> 54.16sqm	<u>20A</u> 69sqm	Yes
	<u>20B</u> 75.76sqm	<u>20B</u> 59.1sqm	No
Pervious Open Space / Landscape Area	<u>20A</u> 27.08sqm	<u>20A</u> 47.8sqm (69%)	Yes
	<u>20B</u> 37.88sqm	<u>20B</u> 35.2sqm (59%)	Yes

As a result of the proposed change to the boundary, while no. 20B's site area increases it fails to comply with the minimum requirement for private open space. While more than 50% of the proposed private open space consists of pervious area, the pervious area is less than that technically required. While it is acknowledged that DA201500748 had approved a non-compliance to the requirements for private open space for 20B (6.6sqm variance), the proposed boundary adjustment results in a much larger variance to the requirements of 16.66sqm.

It is considered that the proposed private open space does not provide sufficient space for recreation, given the proposed increase of the lot and potential intensification of the site. Further, if this were to be considered as a 'new build', as the outbuilding occupies the entirety of the rear of the site, the proposal does not minimise hard paved areas on the larger lot proposed, which is contrary to O4.

Given the above the proposal is considered to be inconsistent with objectives O1, O3 and O4, the application is recommended for refusal.

Part 2.20 – Tree management

It is noted that DA201500748 required a total of four (4) new trees to be planted prior to the issuing of an Occupation Certificate; however, these do not appear to have been planted.

In accordance with C12 of this Part, three (3) trees are required to be planted on the site. As such, if the Panel seek to approve the proposed development, the following condition of consent is recommended to be imposed:

“Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence in the form of an image of the planted tree/s and a copy of a purchase invoice to confirm that:

A minimum of 3 x 75 litre size tree/s, which will attain a minimum mature height of 6 metres, have been planted in a suitable location within the property (at least 1 metre from any boundary and 1.5 metres from any structure) and allowing for future tree growth. The purchased tree must meet the requirements of AS2303—Tree stock for landscape use. Trees listed as exempt species from Council’s Tree Management Development Control Plan, -and species recognised to have a short life span, will not be accepted.

Trees required by this condition must be maintained and protected until they are protected by Council’s Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.”

Part 3 – Subdivision, Amalgamation and Movement Networks

Part 3.1.1.2 of the MDCP 2011 does not contain minimum lot width or area requirements for subdivisions, but rather relies on performance-based controls that aim to ensure that new lots facilitate development that is compatible with the immediate area.

The application proposes a boundary readjustment, to allow for the entire outbuilding at the rear of the sites to be wholly within no. 20B. A Notice of Intention was issued by Council on 22/03/2023 for the unauthorised use of the entire outbuilding by no. 20B.

The streetscape and immediate locality is generally characterised by a mix of single to two storey dwellings and public recreation/worship facilities on a mix of narrow and wide lots. The following table illustrates the proposed lot dimensions and the approximate dimensions of lots within the street:

Number	Site area (in m ²)	Frontage (in m)	Number	Site area (in m ²)	Frontage (in m)
325 Stanmore Road	4882.08	61.3	20A Hopetoun Street	270.8	9.655 (no change)
18 Hopetoun Street	418.11	12.7	20B Hopetoun Street	378.8	6.71 (no change)
16 Hopetoun Street	387.2	10.4	17 Hopetoun Street	283.48	4.3
14 Hopetoun Street	372.67	10.1	15 Hopetoun Street	252.84	3.0
12 Hopetoun Street	304.14	10.4	11 Hopetoun Street	212.34	6.1
10 Hopetoun Street	273.46	9.3	9 Hopetoun Street	209.45	6.0
8 Hopetoun Street	321.25	12.2	7 Hopetoun Street	388.67	12.3
6 Hopetoun Street	291.42	12.2	5 Hopetoun Street	362.77	11.8
4 Hopetoun Street	229.37	11.9	3 Hopetoun Street	368.85	12.2
2 Hopetoun Street	317.33	9.7	1 Hopetoun Street	375.06	12.4
2A Hopetoun Street	78.51	5.3			

The proposed subdivision will result in no. 20B having an area of 378.8sqm and no. 20A having an area of 270.8sqm. DA201500748 approved 320.8sqm and 328.8sqm, respectively. No

change is proposed to the existing frontage. The average lot size (excluding 325 Stanmore Road) is 324.11sqm.

The proposed boundary realignment is not considered to meet the following relevant provisions of Part 3.2.2:

O3 *To retain the prevailing cadastral character of the street.*

O4 *To ensure that the size of new allotments caters for a variety of dwelling and household types and permits adequate solar access, areas for open space, landscaping and car parking.*

O5 *To ensure that the subdivision or amalgamation of sites reflects and reinforces the predominant subdivision pattern of the street*

C5 *The proposed subdivision or amalgamation must have characteristics similar to the prevailing cadastral pattern of the lots fronting the same street, in terms of area, dimensions, shape and orientation. For the purpose of this control, Council generally considers the 'prevailing cadastral pattern' to be the typical characteristics of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site, if applicable.*

C7 *Subdivision or site amalgamation must not compromise the setting of any existing building on the site or the setting of adjoining sites.*

The applicant has put forward that the proposed boundary adjustment is acceptable as there will be no visible changes to the existing dwellings, or changes to the built form and street presentation of the dwellings. Furthermore, the applicant has stated that there are a number of similar shaped lots within the general vicinity of the subject site, as they have detailed in Figure 9 below.

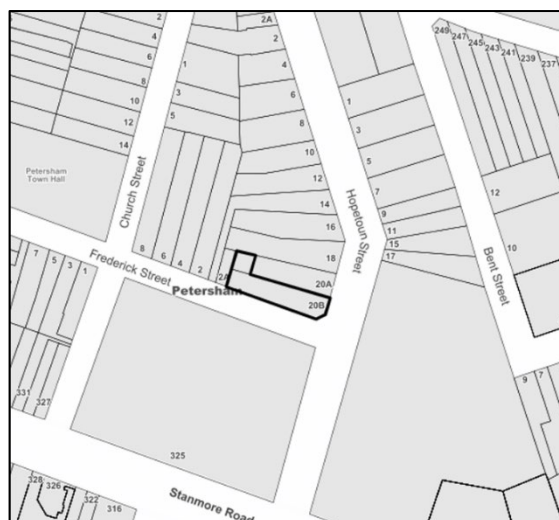


Figure 8: Approximate shape and size of proposed boundary readjustment for 20B Hopetoun



Figure 9: Image provided by the applicant highlighting similar shaped lots within the general vicinity

While it is noted that there are some varying lot sizes, and shapes, within the general vicinity, the proposed subdivision results in a large 'L' shaped allotment (20B) that does not retain, nor is it consistent with, the prevailing cadastral pattern of the streetscape, given the proposed dimensions and shape. As shown in Figure 8, the proposed allotment would not be consistent with the predominant cadastral pattern, noting that the MDCP 2011 requires Council to review up to ten lots on either side of the subject site, and across the street. With an average site area of 311sqm, both lots as proposed would be inconsistent with the prevailing subdivision pattern with regard to lot size. While no. 14 Hopetoun Street is also 'L' shaped, this is to allow for car parking at the rear site and is a 'historic' boundary (approved long before the current LEP and DCP) and is an anomaly which does not form part of the predominant pattern of subdivision. No. 20B Hopetoun Street, currently, has access to car parking spaces via the approved DA (DA201500748) and subdivision. Other 'L' shaped lots, as highlighted in the image provided by the applicant above (Figure 8), are irrelevant to the immediate context of the subject site having regard to the subdivision provisions of Part 3 of the DCP.

Given the above, while it is acknowledged that there may be minimal change to the appearance of the dwellings, or the built form, it is considered that the proposed adjustment would compromise the setting and the existing building on the site (the outbuilding at the rear), will result in a significant increase (and non-compliance) in FSR, and will result in a further non-compliance with the private open space requirements for no. 20B Hopetoun Street and intensification of use to a space that provide little to no amenity for future users of the mezzanine area. Furthermore proposal is also considered to compromise the setting of the building for No 20A, as the site will contain a 2 storey high wall on the rear boundary which is no longer associated with the site and only serves and an encumbrance.

Part 9 – Strategic context

The sites are located within the Stanmore South (Precinct 9) Precinct within the MDCP 2011. The proposal is considered to be inconsistent with the desired future character of the area, as the proposed boundary adjustment does not protect the prevailing subdivision pattern, as discussed elsewhere within this report.

5(e) 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:

Inconsistent subdivision pattern and FSR variation

The proposal does not protect the prevailing cadastral pattern as demonstrated elsewhere in this proposal. As detailed in this report, the proposed boundary adjustment will result in adverse amenity impacts to no. 20A, further exacerbates the private open space non-compliance for no. 20B and proposes a 33.93% variation to the FSR development standard.

While it is acknowledged that the proposal does not seek to construct any additional external bulk, except the new boundary fence, the application is the result of a Notice of Intent issued by Council due to unauthorised building works, and in principle, this subdivision is unlikely to have been supported if it were proposed during the initial development within DA201500748.

The proposed subdivision will result in the loss in benefit for no. 20A, as any occupants will no longer have access to use the large outbuilding at the rear, as was previously approved.

Given the above, the proposal is recommended for refusal.

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

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

5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

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

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

- The proposal seeks approval for a series of unauthorised building works constructed

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

Issue:

No. 20A never had access to the outbuilding/storage structure at the rear, and the yard was fenced off from using the approved private open space.

Comment:

The current proposal seeks demolition of the boundary fencing for no. 20A currently on the site and seeks to readjust the boundary so that no. 20B has sole access and use of the garage and outbuilding.

Nonetheless, the proposal is recommended for refusal given the reasons outlined within this report.

5(h) The Public Interest

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

The proposal is contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineering

Comment:

Council's Development Engineer in principle raised no issue to the use of the outbuilding for no. 20B only.

- Regulatory

Comment:

Council's Regulatory officer noted that this DA had been lodged in response to the Notice issued on 22/03/2023.

- Building Certification

Comment:

Council's Building Certification officer questioned the use of the mezzanine level, and raised no objections to the subdivision readjustment. The recommendations of the submitted acoustic report are to be conditioned should the application be approved.

It is acknowledged that the area is not to be used as residential accommodation or long-term accommodation, and is intended to be used for additional storage purposes.

8. Conclusion

The proposal generally does not comply with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and *Marrickville Development Control Plan 2011*.

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.

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 – Exceptions to development standards of the *Inner West Local Environmental Plan 2022* to vary Section 4.4 – Floor Space Ratio. After considering the request, the Panel is not satisfied that compliance with the floor space ratio development standard is unnecessary in the circumstances of the case and that there are insufficient environmental grounds identified to support the variation. The proposed development will not be in the public interest because the exceedance is inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2023/0798 for the construction of a mezzanine level within the rear outbuilding, to use the outbuilding as a garage and studio in association with 20B Hopetoun Street and carry out a subdivision boundary realignment of 20A and 20B Hopetoun Street to contain the outbuilding completely on 20B Hopetoun Street at 20A & 20B Hopetoun Street, PETERSHAM for the following reasons outlined in Attachment A below.

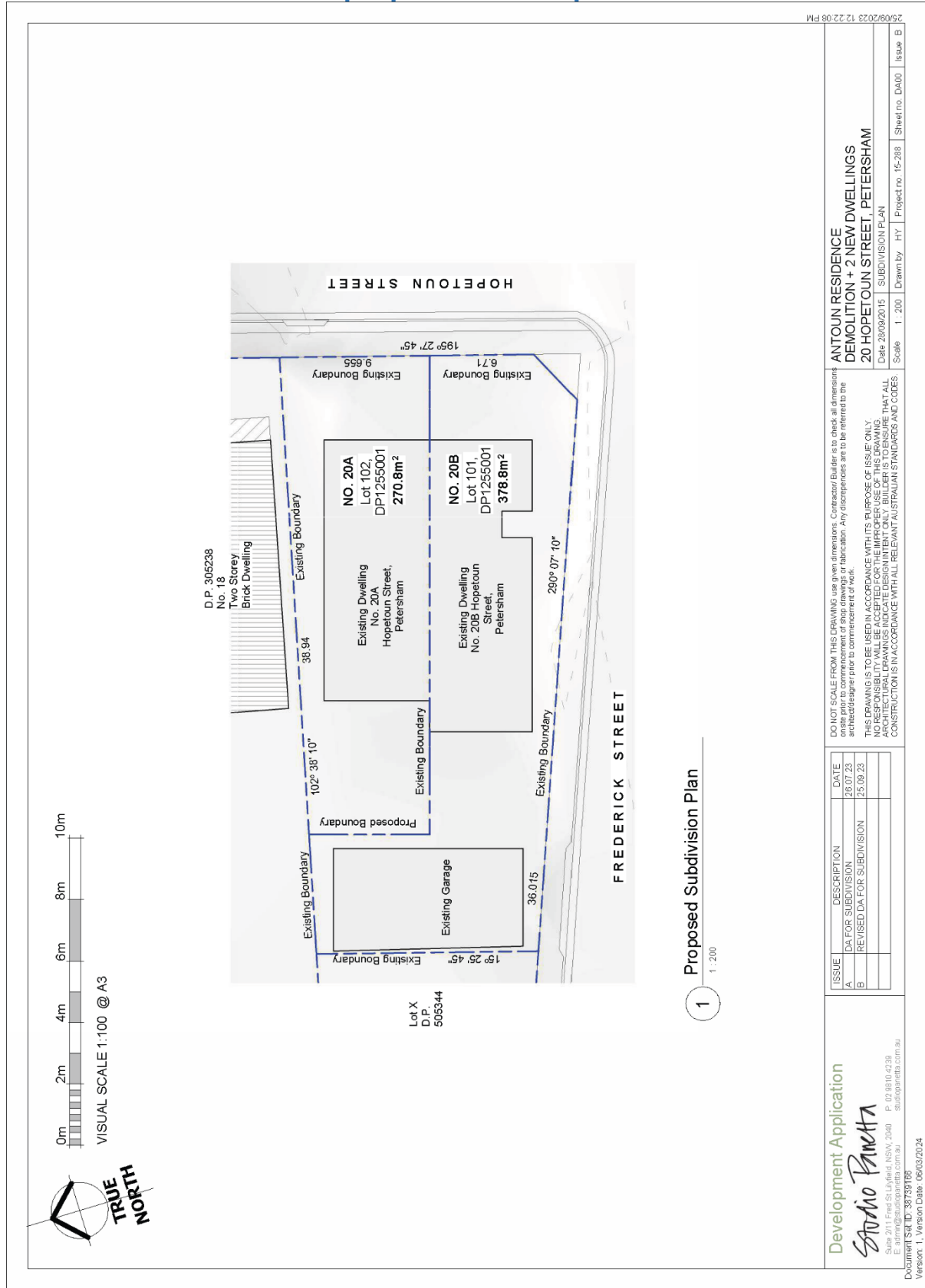
Attachment A – Reasons for refusal

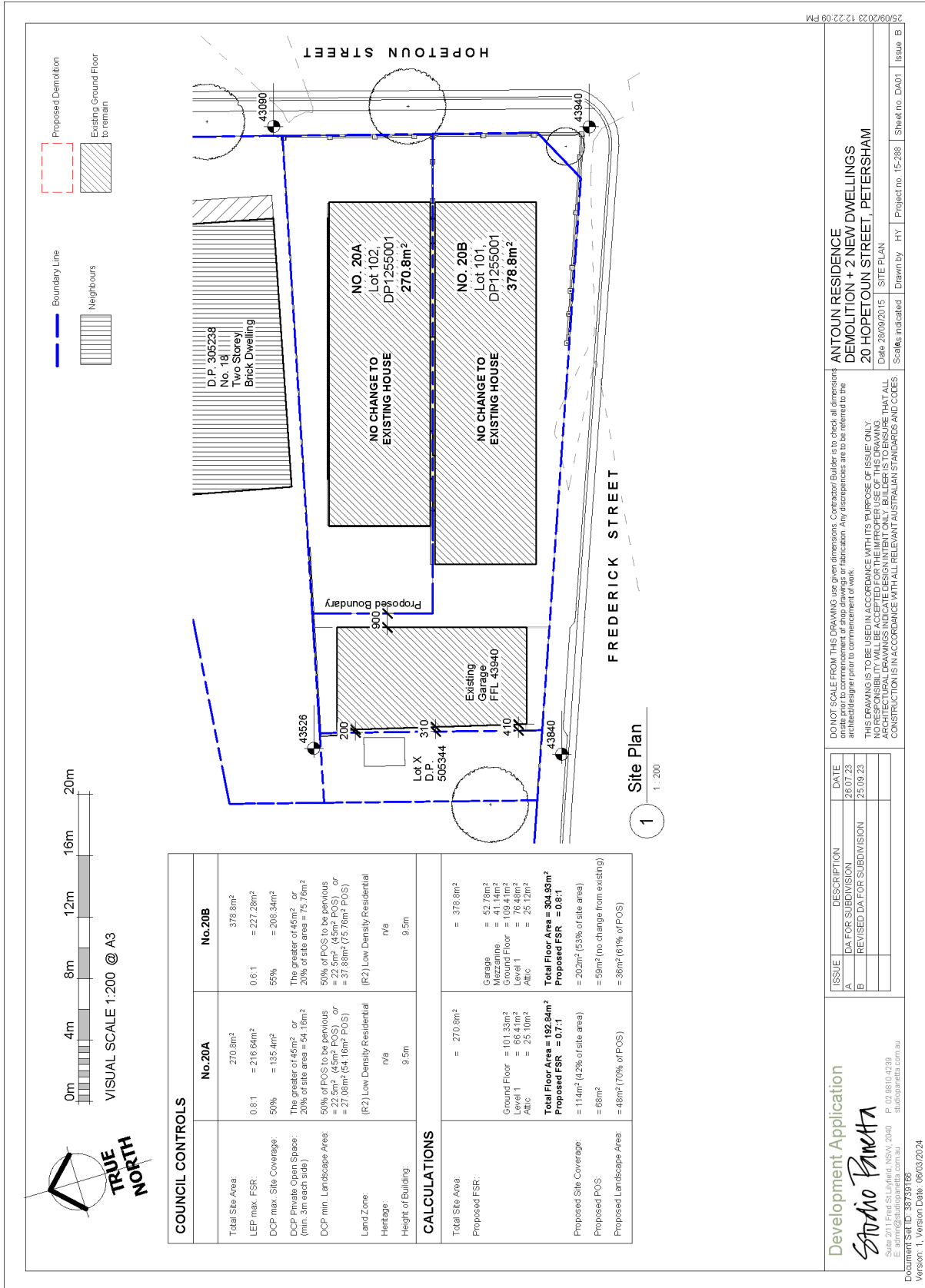
1. The proposed development is inconsistent with, and has not demonstrated compliance with the *Inner West Local Environmental Plan 2022*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Section 1.2(2)(h) and 1.2(2)(i) - Aims of Plan in that the proposal is not considered prevent adverse social, economic and environmental planning impacts, including cumulative impacts, as the proposed boundary readjustment is not consistent with, and does not protect, the prevailing cadastral pattern of the streetscape, and will create adverse amenity impacts to no. 20A including a loss of development potential, visual bulk and overshadowing impacts. The proposed development will also result in internal amenity impacts to no. 20B given the lack of ventilation and light proposed at the mezzanine level, which is intended to be used as a habitable area.
 - b. Section 2.3 - Zone objectives and Land Use Table in that the proposal does not maintain the character of natural and built features in the surrounding area, as the proposed mezzanine level intensifies the use on the site and results in a significant breach to the Floor Space Ratio development standard. Furthermore, the proposed boundary readjustment fails to reinforce or protect the prevailing subdivision pattern of the streetscape.
 - c. Section 4.1 - Minimum subdivision lot size as the proposal will result in adverse amenity impacts to no. 20A Hopetoun Street, given the proposed benefit loss and subsequent visual bulk, overshadowing, and acoustic privacy impacts created, and the proposed subdivision is inconsistent with the desired future character of the area.
 - d. Section 4.4 - Floor space ratio as the proposal does not minimise adverse impacts on neighbouring amenity, given the proposed benefit loss and subsequent visual bulk, overshadowing, and acoustic privacy impacts to no. 20A Hopetoun Street. Further, while there is no change to the built form, the proposal does not enable an appropriate density, given the proposed intensification of the site as a result of the proposed mezzanine level, which is intended to be used as a habitable space.

2. The proposed development is inconsistent with, and has not demonstrated compliance with Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Part 2.18 - Landscaping and Open Space, as the proposal does comply with C12(ii) and is inconsistent with the applicable objectives O1, O3, O4, and O5, as less than 20% of area was reserved for private open space, and hard paved area within the private open space have not been minimised. In addition, the proposal does not provide sufficient space for recreation given the intensification of the site.

- b. Part 3.1.1.2 - Subdivision, Amalgamation and Movement Networks, as the application proposal does not comply with C5 and C7, and is inconsistent with the applicable objectives O3, O4 and O5, as the proposed subdivision pattern is inconsistent with the cadastral pattern of surrounding sites and will compromise the setting of the existing buildings on the site. In addition, the proposed boundary adjustment results in a significant variance to the Floor Space Ratio development standard (33.93%), and a shortfall in private open space and landscaped area.
 - c. Part 9.9 - Strategic context, the application is inconsistent with the desired future character of the Stanmore South Precinct (Precinct 9), as the proposed boundary adjustment fails to reinforce or protect the prevailing subdivision pattern.
3. The proposed development will result in adverse built environment impacts in the locality pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
4. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
5. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B – Plans of proposed development





COUNCIL CONTROLS	
No.20A	No.20B
Total Site Area = 270.8m ²	378.8m ²
LEP max. FSR = 0.8:1 = 216.64m ²	0.6:1 = 227.28m ²
DCP max. Site Coverage = 50% = 135.4m ²	55% = 208.34m ²
DCP Private Open Space (min. 3m each side) = The greater of 145m ² or 20% of site area = 54.16m ²	The greater of 45m ² or 20% of site area = 75.76m ²
DCP min. Landscape Area = 50% of POS to be pervious = 22.5m ² (45m ² POS) or = 27.08m ² (54.16m ² POS)	50% of POS to be pervious = 22.5m ² (45m ² POS) or = 37.68m ² (75.36m ² POS)
Land Zone (R2) Low Density Residential	(R2) Low Density Residential
Heritage n/a	n/a
Height of Building 9.5m	9.5m
CALCULATIONS	
Total Site Area = 270.8m ²	= 378.8m ²
Proposed FSR Ground Floor = 101.33m ² Level 1 = 96.40m ² Attic = 25.10m ² Total Floor Area = 192.84m ² Proposed FSR = 0.7:1	Garage = 62.78m ² Mezzanine = 41.14m ² Ground Floor = 109.41m ² Level 1 = 70.58m ² Attic = 25.12m ² Total Floor Area = 304.53m ² Proposed FSR = 0.8:1
Proposed Site Coverage = 114m ² (42% of site area) = 68m ²	= 202m ² (53% of site area) = 69m ² (no change from existing) = 38m ² (61% of POS)
Proposed POS = 45m ² (70% of POS)	
Proposed Landscape Area	

1 Site Plan
1:200

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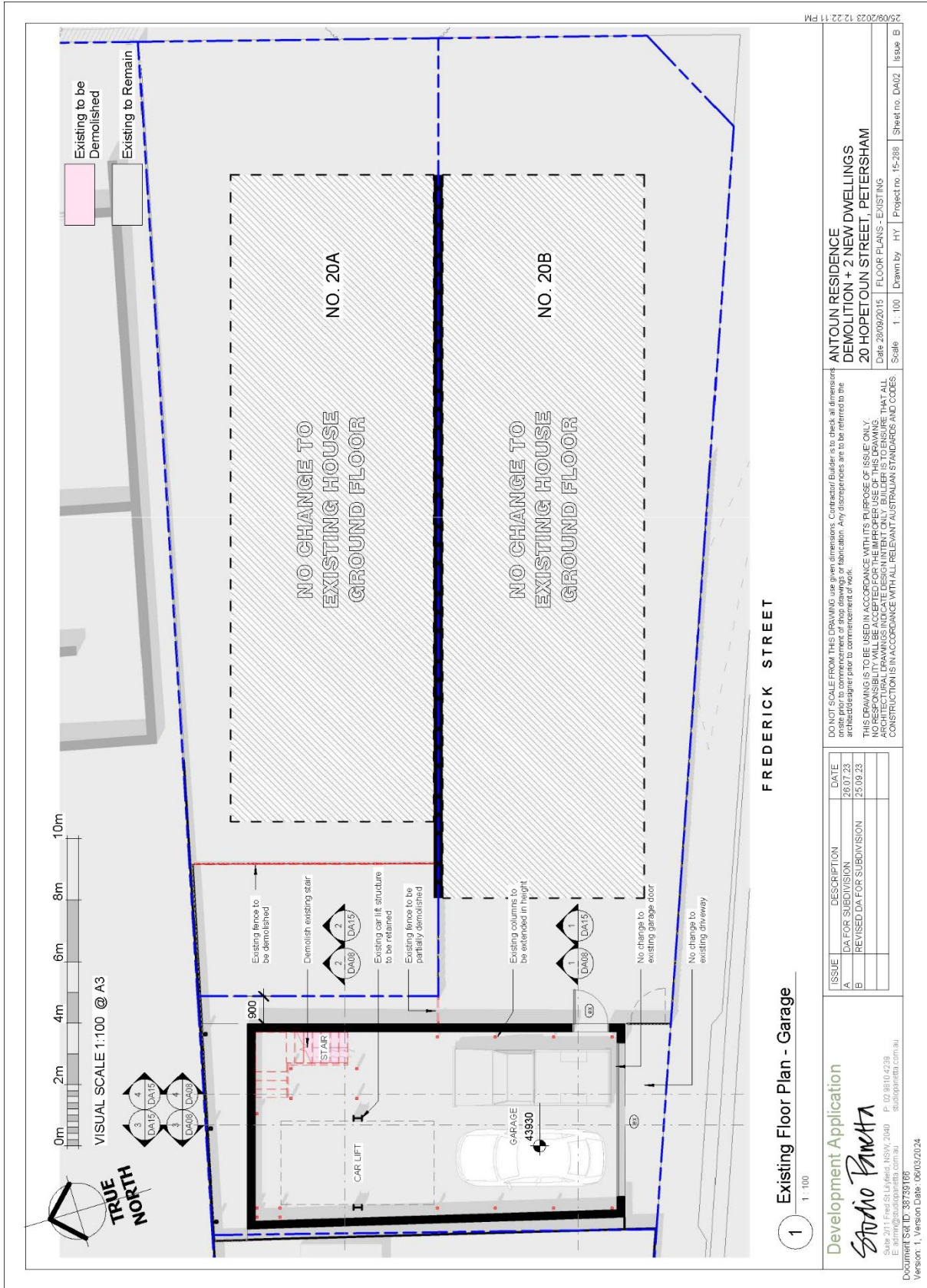
Development Application
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 Site 2/11 Fred. St, Lakeland, NSW, 2040
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 studiopanetta.com.au

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 DEMOLITION + 2 NEW DWELLINGS
 20 HOPETOUN STREET, PETERSHAM
 Date: 26/09/2015
 SITE PLAN
 Drawn by: HY
 Project no.: 15-288
 Sheet no.: DA01
 Issue: B

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FREDERICK STREET

1 Existing Floor Plan - Garage
1:100

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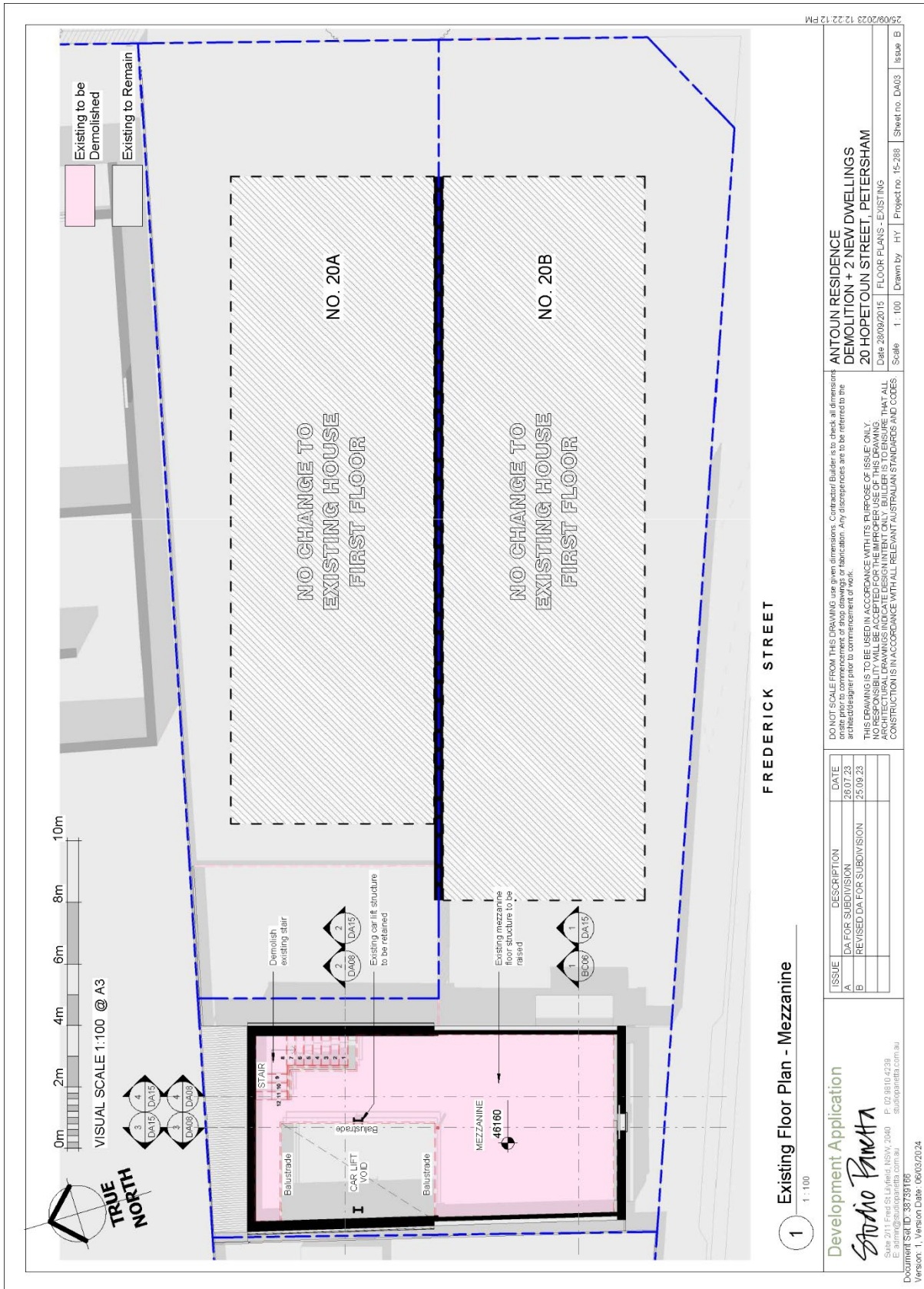
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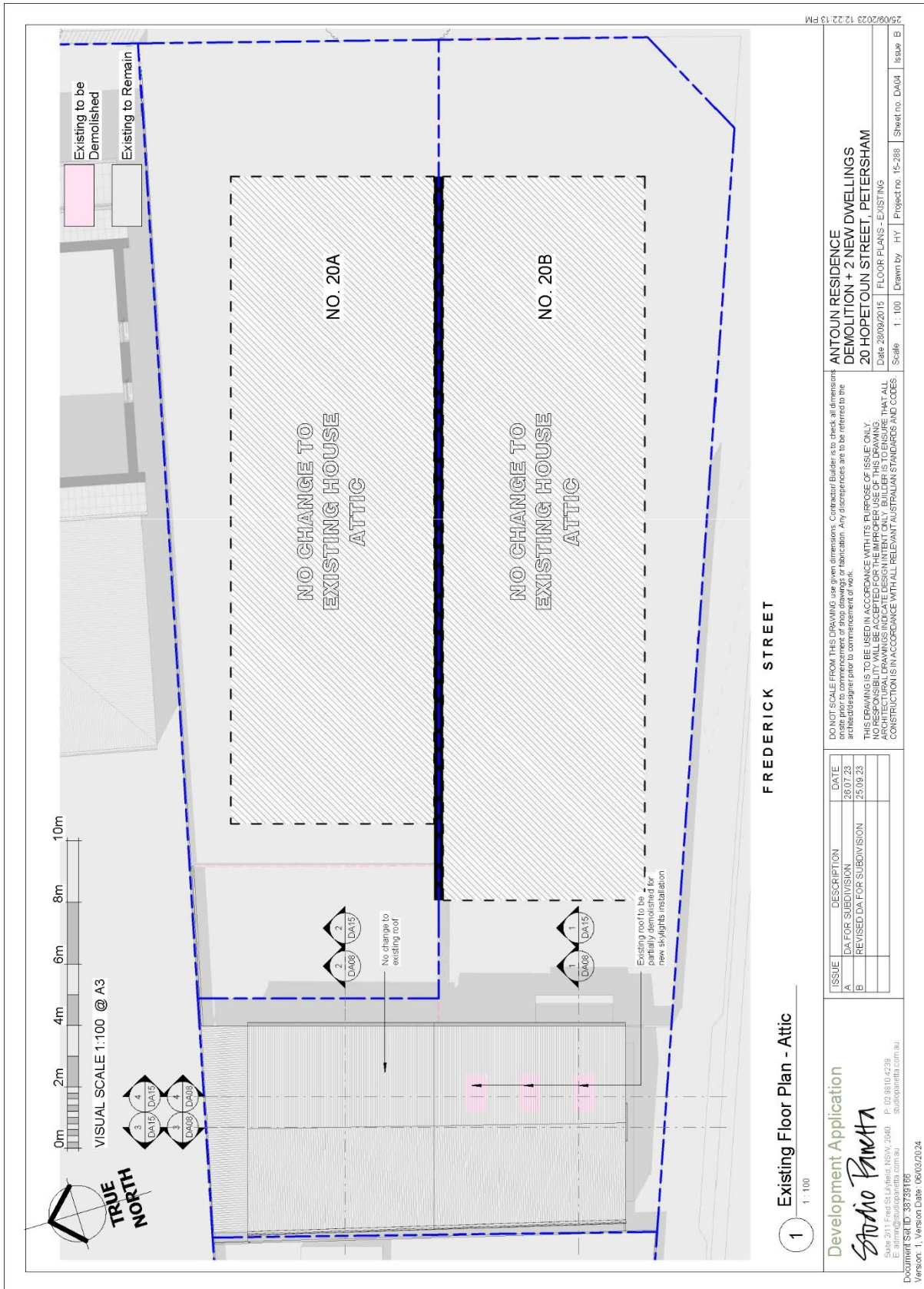
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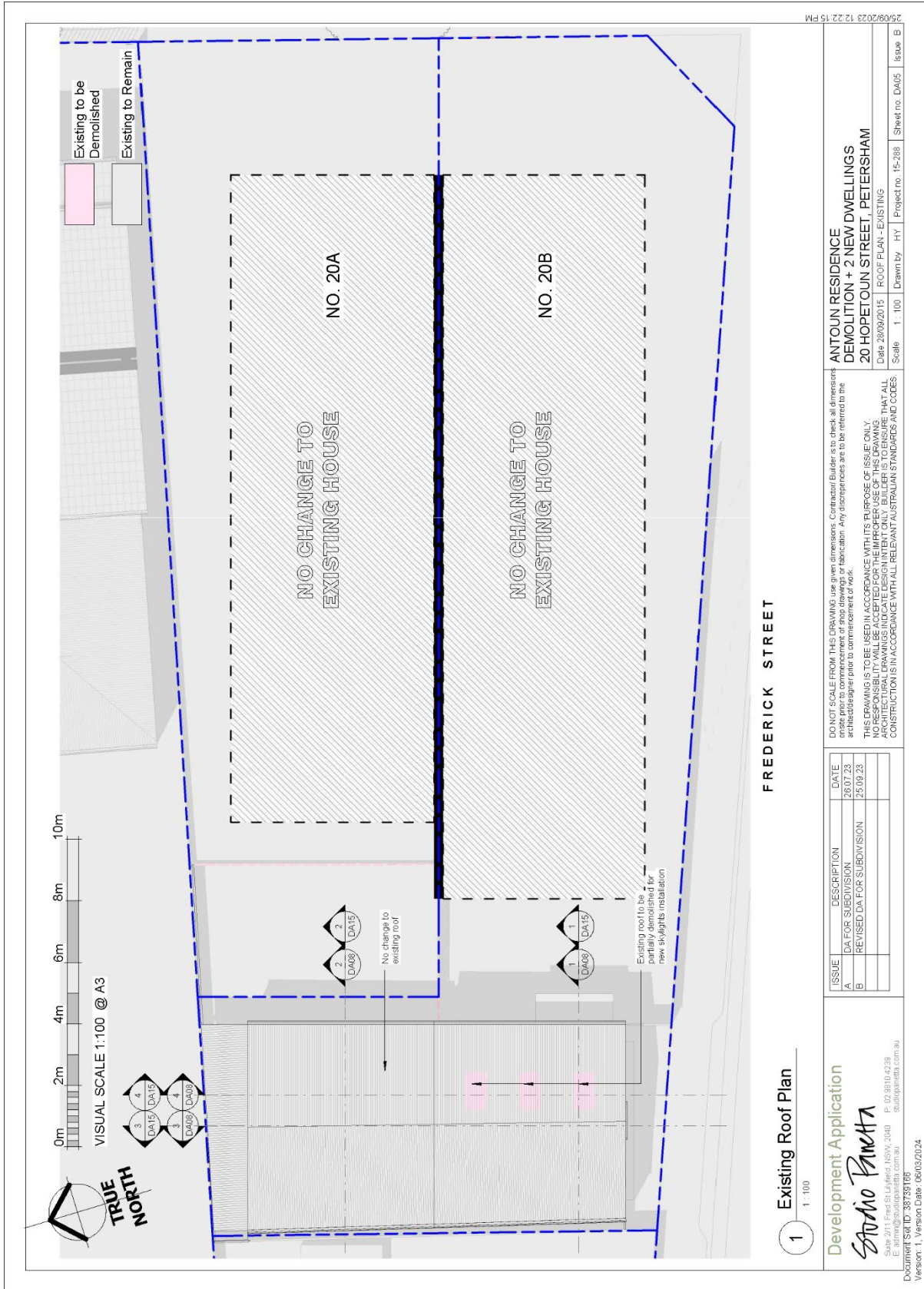
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FREDERICK STREET

1 Existing Roof Plan
1:100

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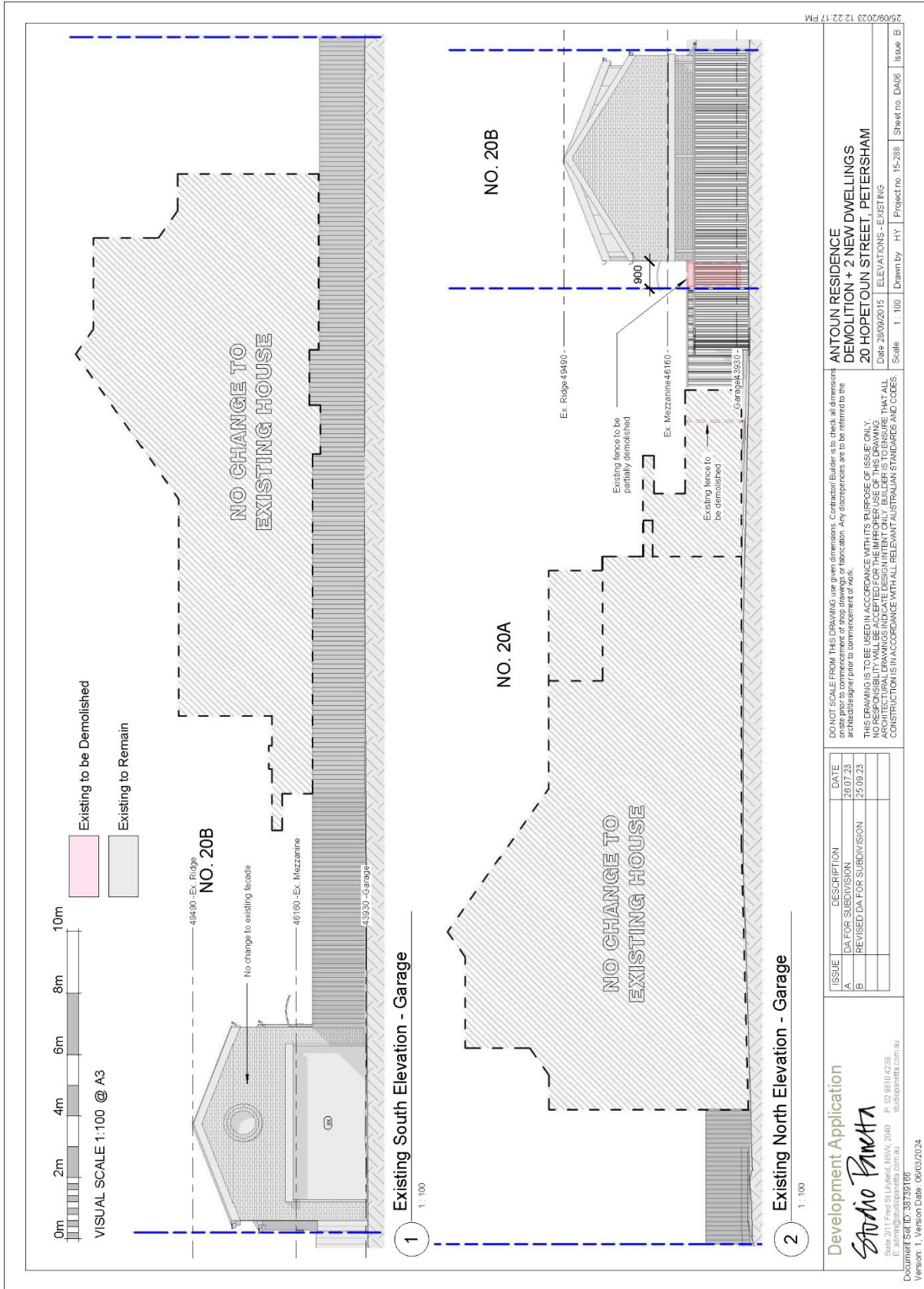
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20 HOPETOUN STREET, PETERSHAM

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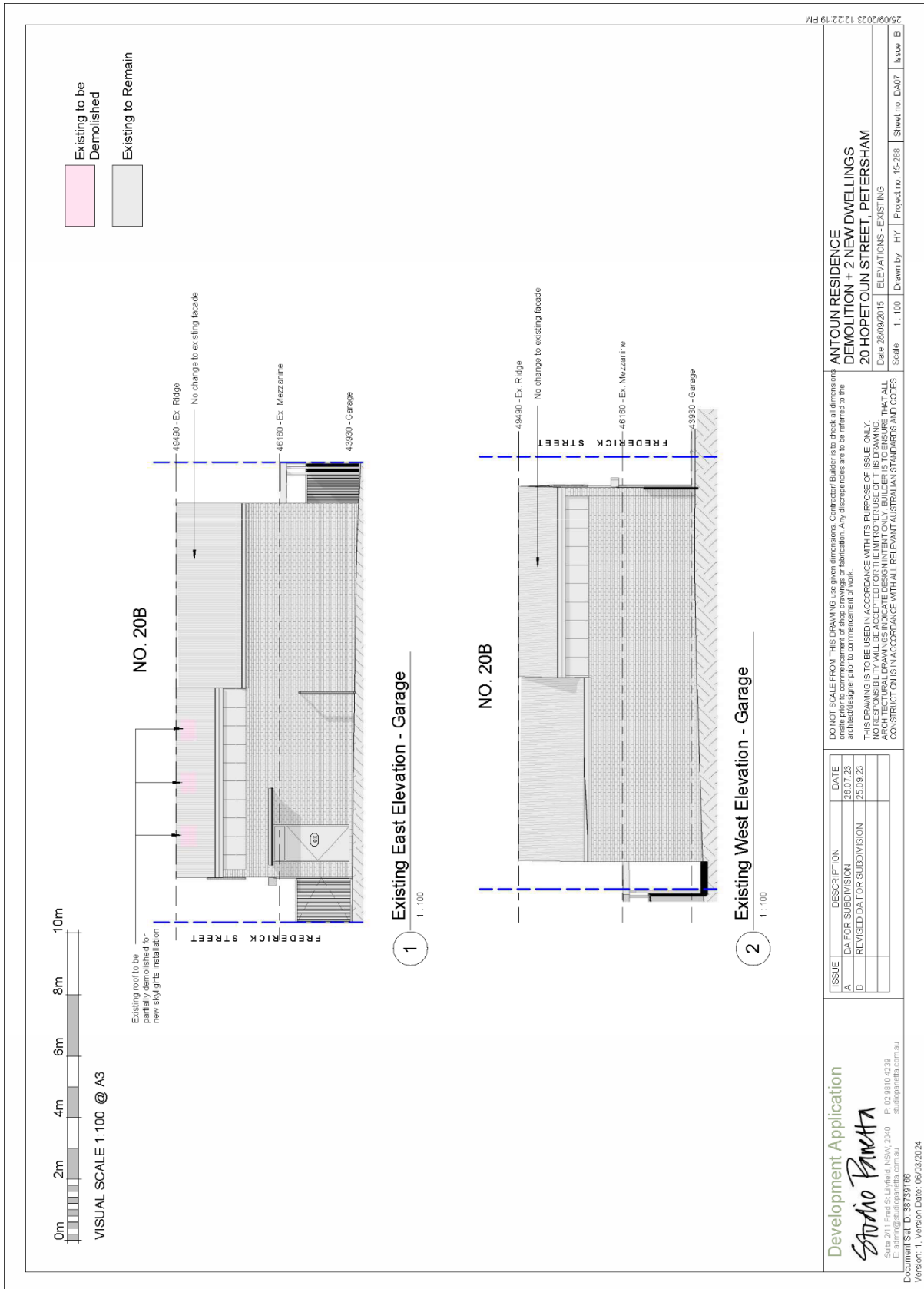
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1 Existing East Elevation - Garage
1 : 100

2 Existing West Elevation - Garage
1 : 100

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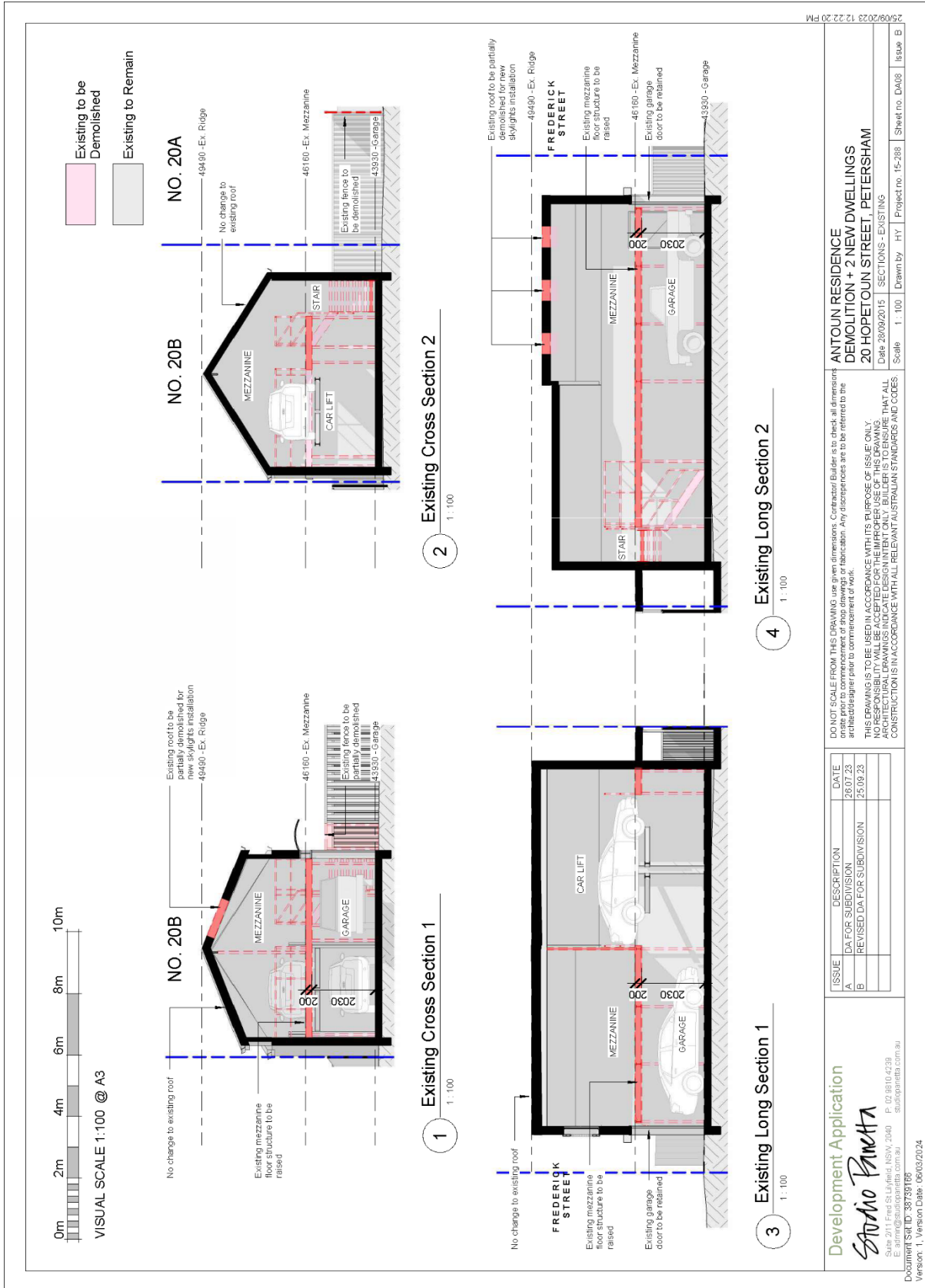
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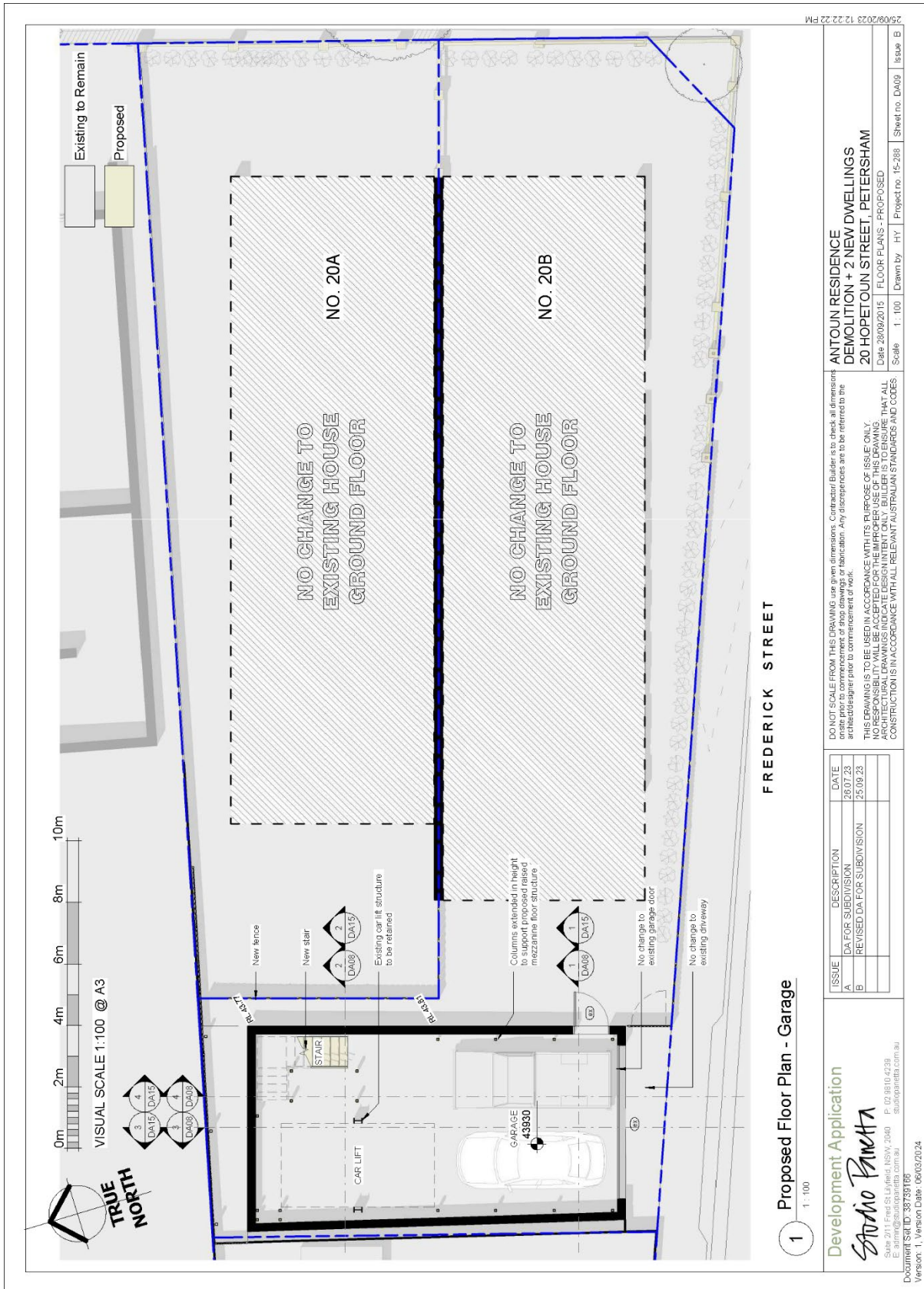
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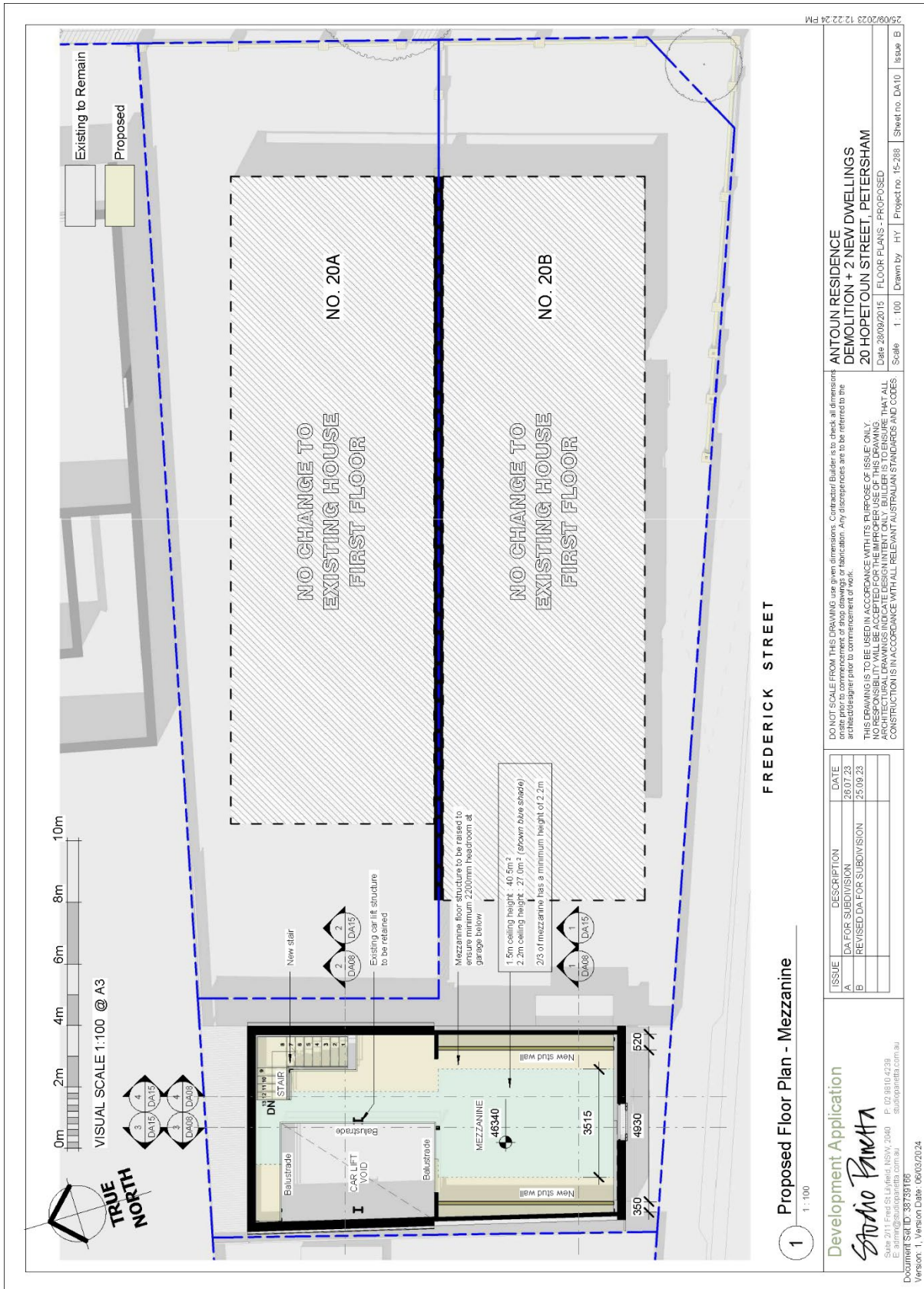
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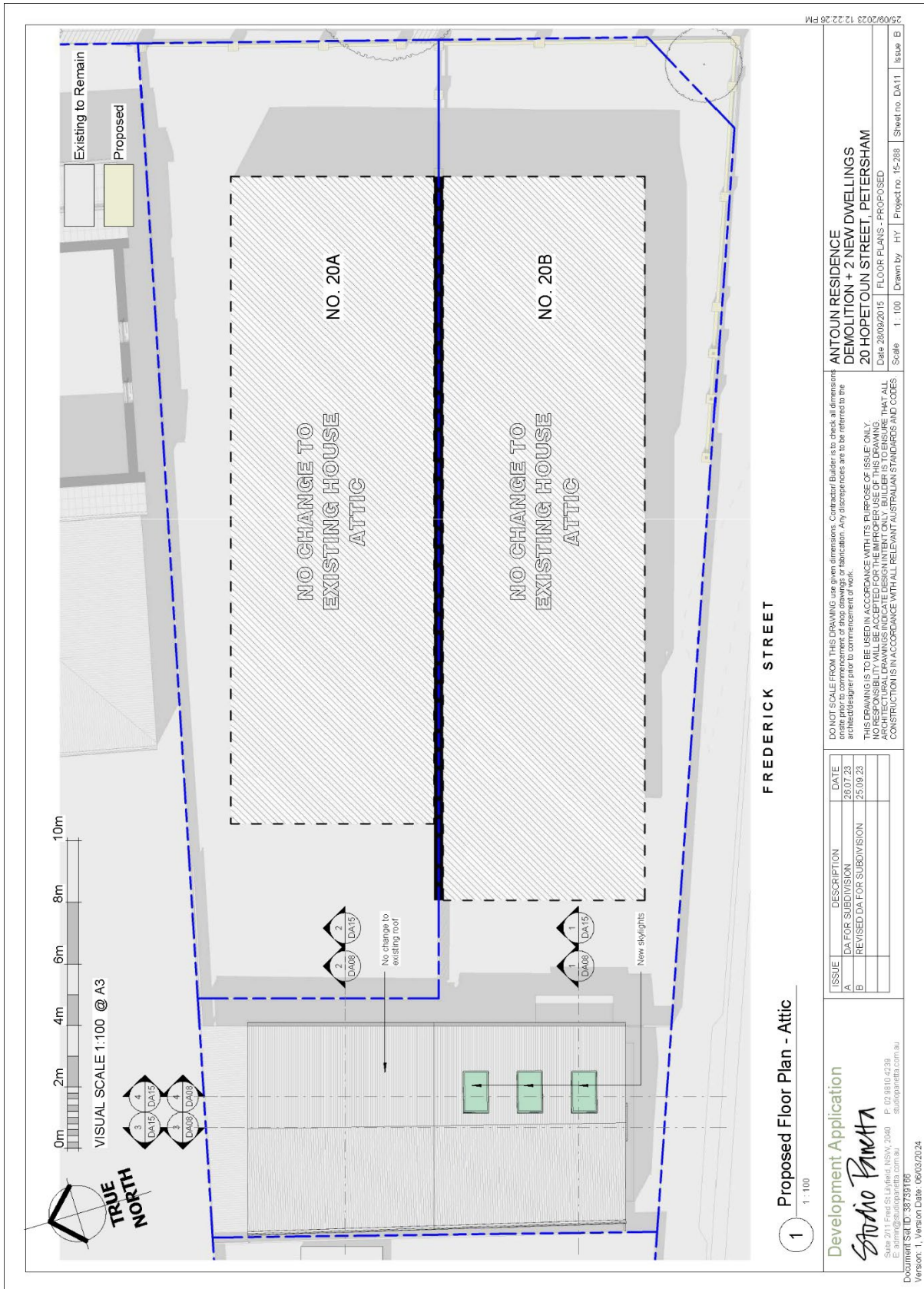
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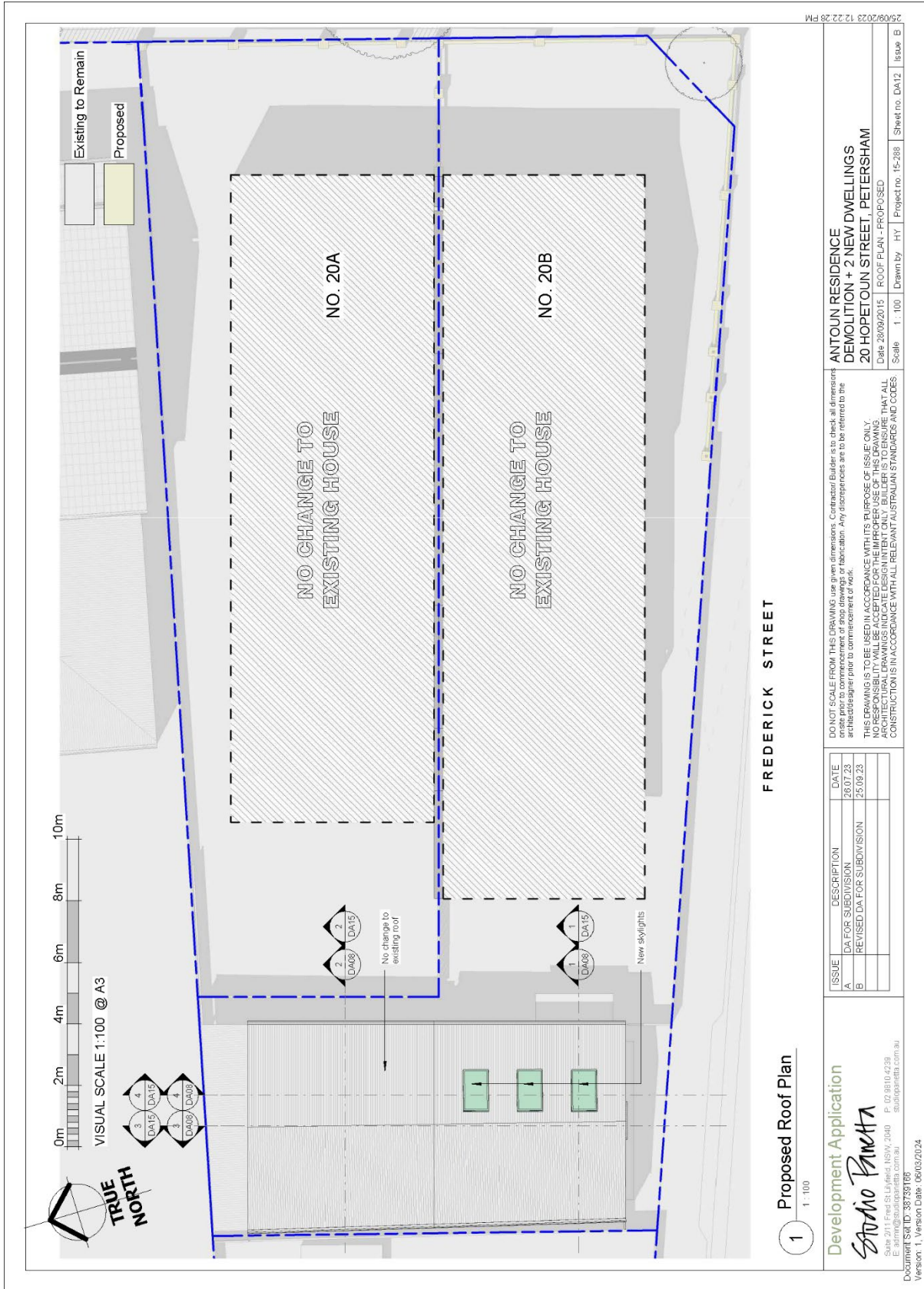
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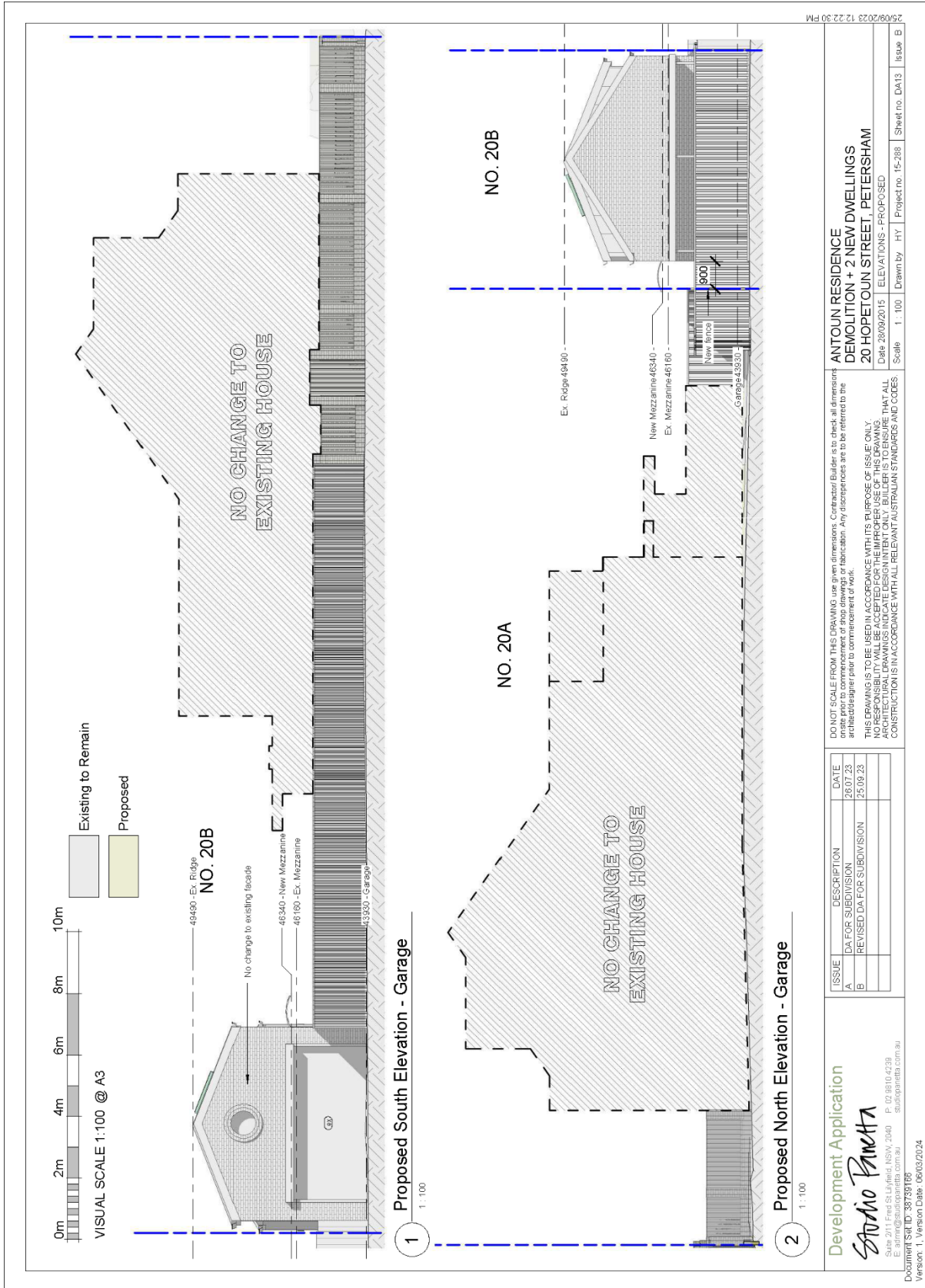
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1 Proposed Floor Plan - Attic
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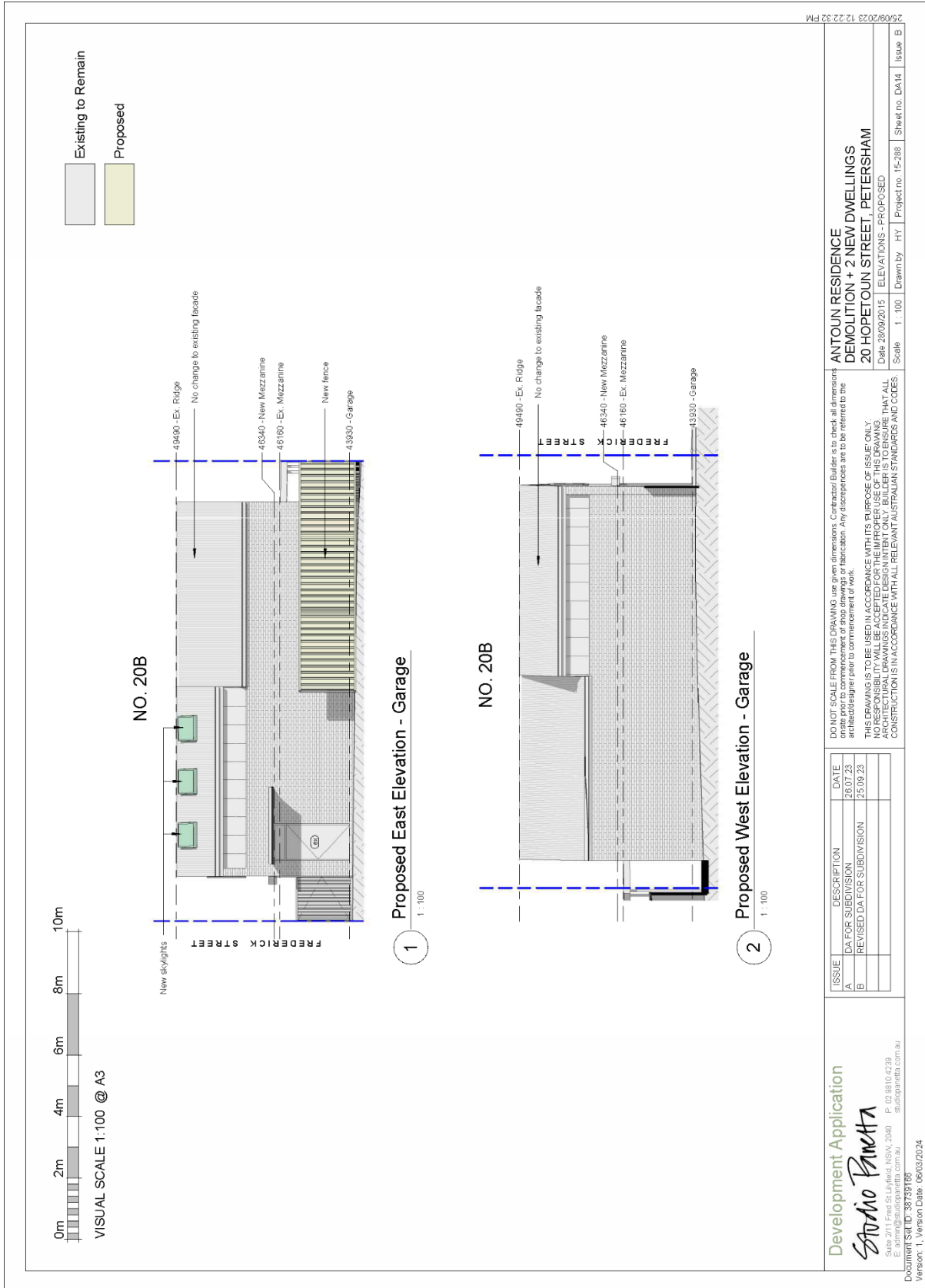
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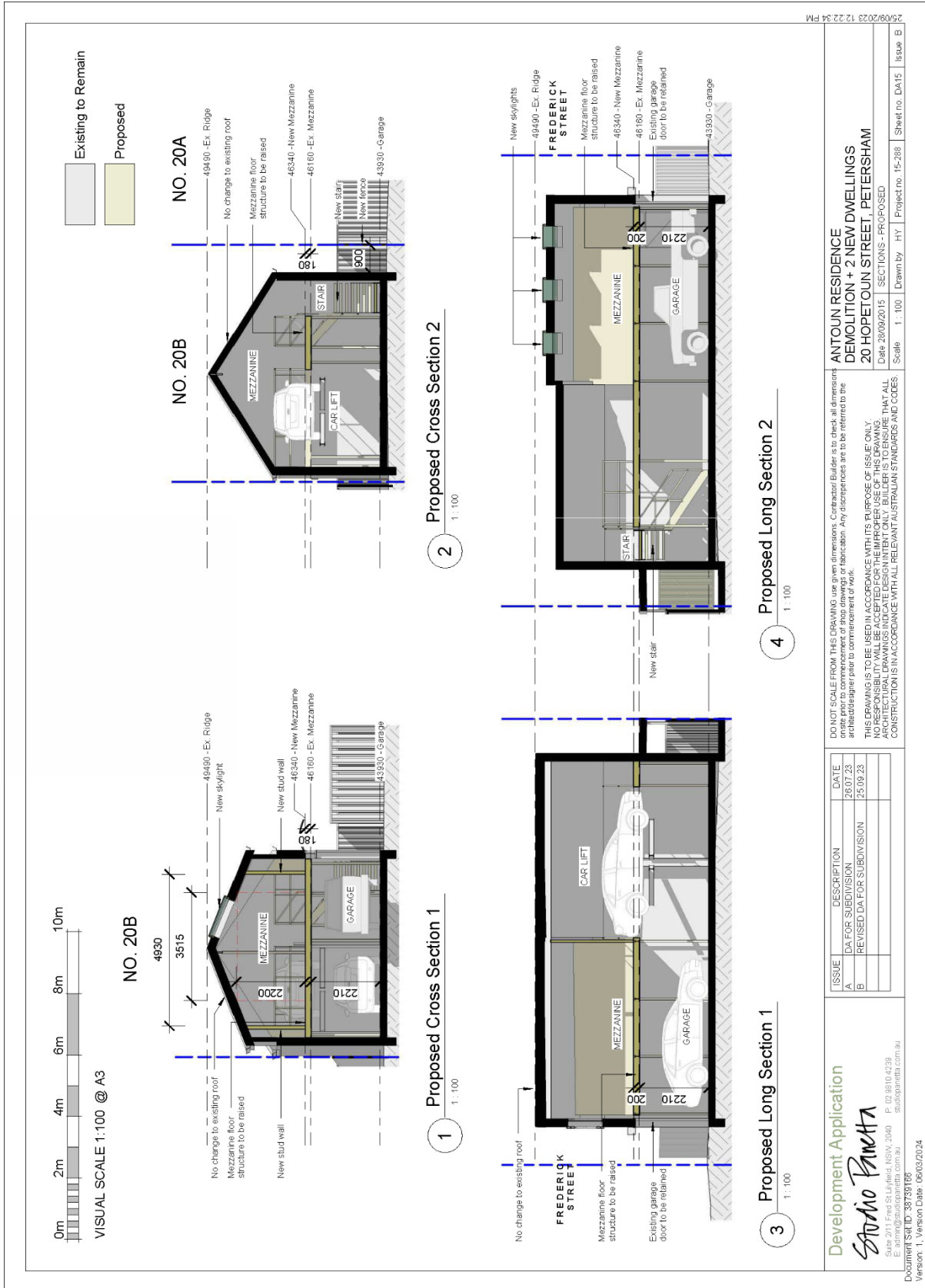
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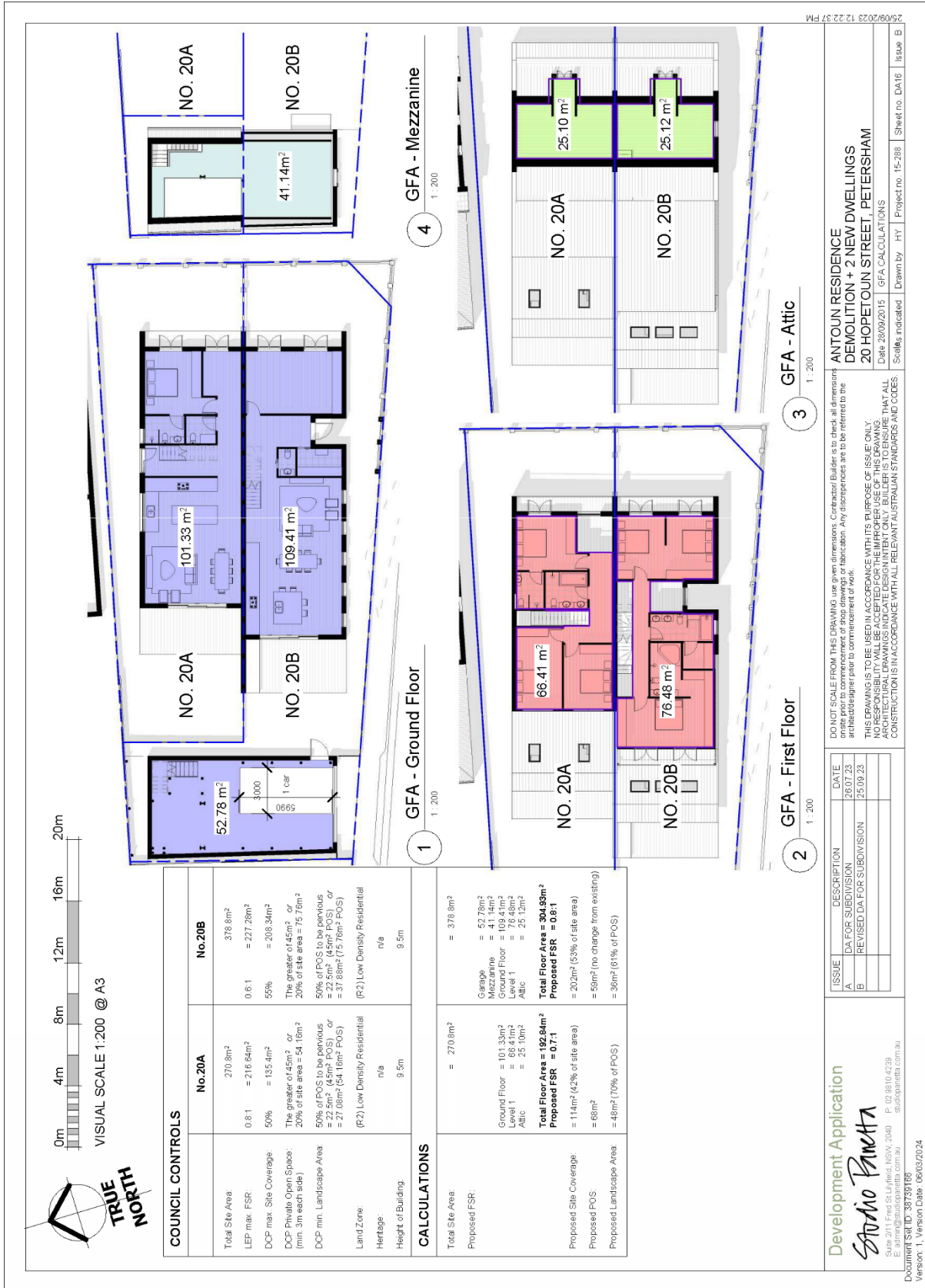
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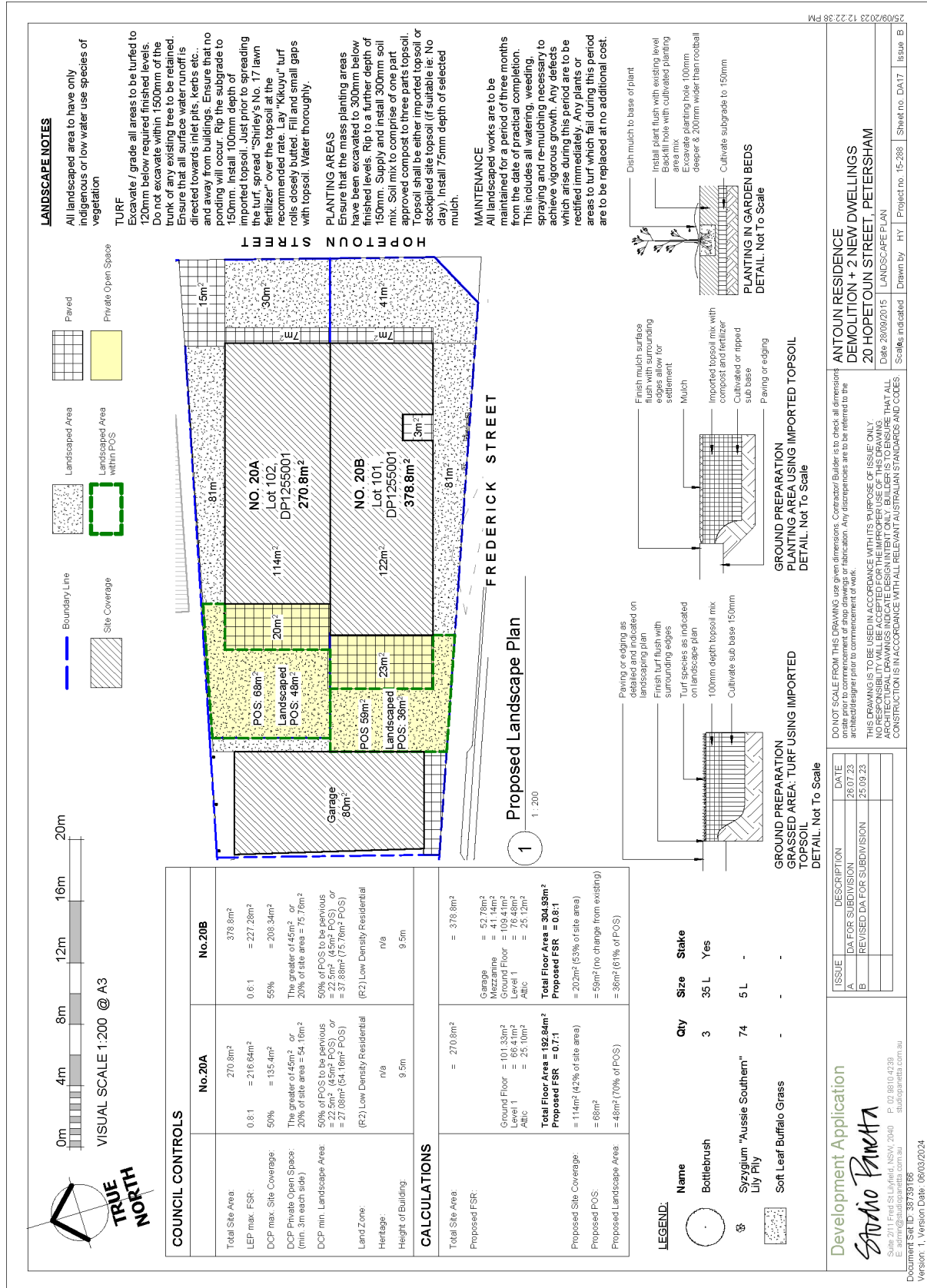
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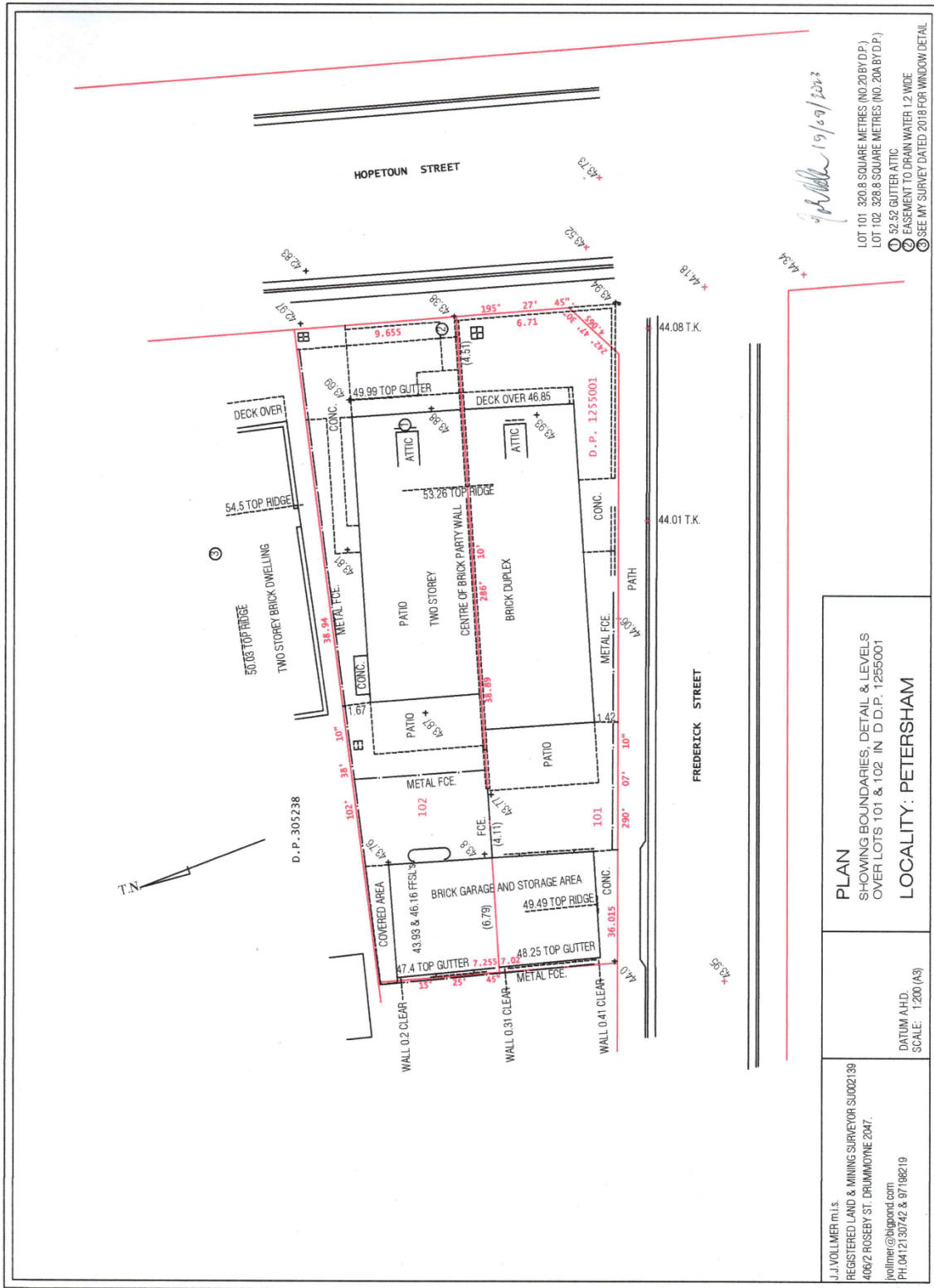
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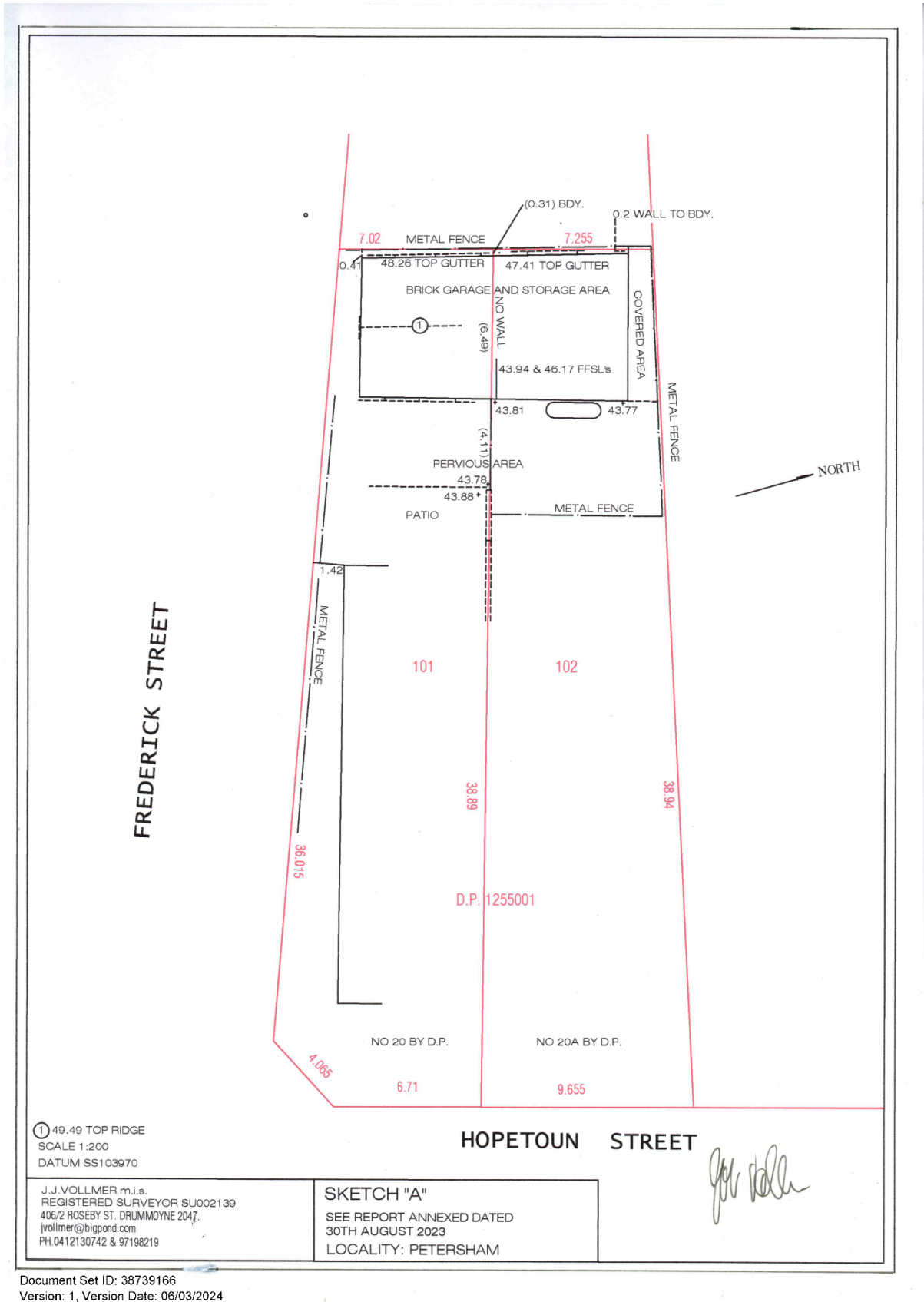








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Attachment C- Section 4.6 Exception to Development Standards

CLAUSE 4.6 VARIATION
CLAUSE 4.4 (FLOOR SPACE RATIO)
INNER WEST LOCAL ENVIRONMENTAL PLAN 2022
Date: September 2023

1. EXECUTIVE SUMMARY

This submission under Clause 4.6 seeks a variation to Clause 4.4 of the Inner West Local Environmental Plan 2022 (IWLEP22) pertaining to the maximum floor space ratio (FSR) development standard.

This submission has been prepared in relation to an application for a boundary realignment, alterations and additions to the mezzanine, the use of a mezzanine as a studio and the rear part of the garage for car parking at 20A and 20B Hopetoun Street, Petersham.

As detailed in this written request for a variation to the floor space ratio development standard under the IWLEP22, the proposed development meets the requirements prescribed under Clause 4.6 of the IWLEP22.

2. SITE DESCRIPTION

The subject site comprises two allotments which are commonly referred to as 20A and 20B Hopetoun Street, Petersham and legally defined as Lots 101 and 102 in Deposited Plan 1255001.

The site is located on the northwestern corner of Hopetoun Street and Frederick Street and is on the block otherwise bounded by Trafalgar Street in the north and Church Street in the west.

Both allotments have a frontage to Hopetoun Street with a 9.655m frontage for 20A Hopetoun Street and 6.71m plus the 4.065m splay for 20B Hopetoun Street. No. 20A is 328.8m² and No. 20B is 320.8m² in site area. The lots contain recently constructed two storey dwellings with attics, constructed of brick and metal cladding and a metal roof, with a brick and metal roof garage/outbuilding accessed from Frederick Street. Reference should be made to the site location map in Figure 1 and the recent aerial in Figure 2.

The existing structures were approved under DA201500748 on 20 June 2016 and modified by way of consent through a conciliation conference in the Land and Environment Court under DA2015000748.02 on 18 June 2019. The original approval sought the demolition of existing structures and the construction of two storey with attic semi-detached dwellings with a rear garage and storage outbuilding. The modification sought to increase the height of the garage/storage room and install a window on the southern elevation.

The site is zoned R2 Low Density Residential as demonstrated in Figure 3.

The locality is predominantly residential with a mixture of other land uses. Specifically, the adjoining properties include:

- North: A two storey brick with tile roof dwelling at 18 Hopetoun Street.
- West: The immediate western allotment is a substation. Further west is a right of way to 14 Hopetoun Street, followed by two storey terrace dwellings at 2 and 4 Frederick Street.
- South: The entire southern block is occupied by All Saints Anglican Church.

- East: Public open space (Maudrell Park) and semi-detached dwellings at 15 and 17 Hopetoun Street.



Figure 1: Site Location Map (Source: Mecone Mosaic)



Figure 2: Current Site Aerial (Inner West Property Search)



Figure 3: Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

3. VARIATION SOUGHT: CLAUSE 4.4 FLOOR SPACE RATIO

The Environmental Planning Instrument to which this variation relates is the IWLEP22. The development standard to which this variation relates is *Clause 4.4 Floor Space Ratio*, which reads as follows:

4.4 Floor space ratio

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

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) The maximum floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential identified as “Area 1” on the Key Sites Map is 1:1.

(2B) The maximum floor space ratio for development for the purposes of residential accommodation is as follows—

(a) on land shown edged black or pink on the Floor Space Ratio Map—

Site area	Maximum floor space ratio
< 150m ²	0.9:1
≥ 150 < 300m ²	0.8:1
≥ 300m ² < 450m ²	0.7:1
≥ 450m ²	0.6:1

(b) on land shown edged orange or green on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m ²	1.0:1
≥ 150 < 300m ²	0.9:1
≥ 300m ² < 450m ²	0.8:1
≥ 450m ²	0.7:1

(c) on land shown edged brown on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m ²	0.8:1
≥ 150 < 300m ²	0.7:1
≥ 300m ² < 450m ²	0.6:1
≥ 450m ²	0.5:1

(d) on land shown edged yellow on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m ²	0.9:1
≥ 150 < 300m ²	0.8:1
≥ 300m ²	0.7:1

(2C) The maximum floor space ratio for development for a purpose of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land identified as “F” on the Floor Space Ratio Map is specified in the Table to this subclause.

Site area	Maximum floor space ratio
≤ 150m ²	1.1:1
> 150 < 200m ²	1.1
> 200 ≤ 250m ²	0.9:1
> 250 ≤ 300m ²	0.8:1
> 300 < 350m ²	0.7:1
> 350m ²	0.6:1

(2D) The maximum floor space ratio for development for the purposes of residential flat buildings on land shown edged red on the Floor Space Ratio Map may be greater than the maximum floor space ratio shown for the land on the Floor Space Ratio Map by up to 0.25:1.

(2C) In calculating the floor space ratio in relation to land dedicated to the Council for the purposes of a proposed road on the Land Reservation Acquisition Map, land marked “Local Road (SP2)” must be included in the site area.”

The site is mapped “F” and is land shown edged red per Figure 4 below.

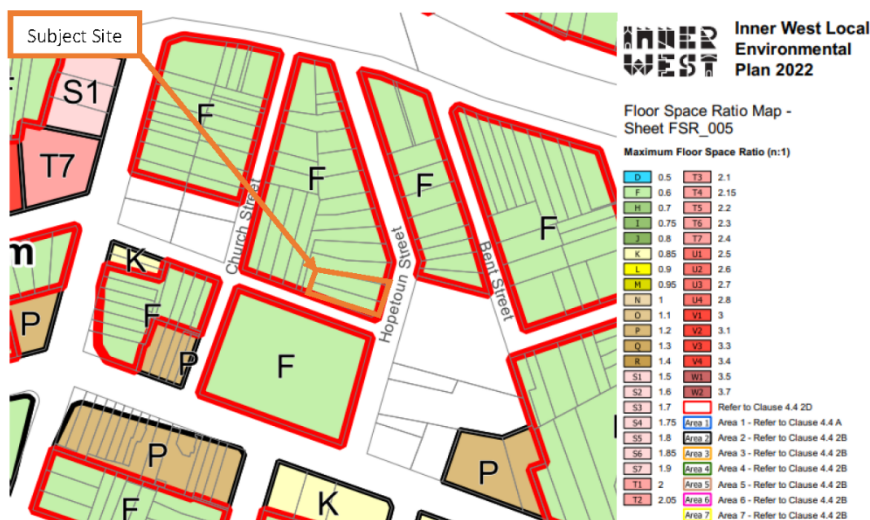


Figure 4: Floor Space Ratio Map (Source: NSW Legislation)

Clause 4.4(2C) prescribes the maximum permissible FSR for the purposes of semi-detached dwellings on land identified as “F” on the Map. The proposal involves semi-detached dwellings and thus the subclause applies.

As a consequence of the boundary realignment, the site areas of both lots will be altered, including the prescribed FSR. The table below identifies the applicable FSR.

Address	Site Area	Maximum FSR
20A Hopetoun Street	270.8m ²	0.8:1
20B Hopetoun Street	378.8m ²	0.6:1

4. EXTENT OF NON-COMPLIANCE

As above, Clause 4.4 (2C) of the IWLEP22 provides for a maximum FSR of 0.8:1 on 20A Hopetoun Street and 0.6:1 on 20B Hopetoun Street based on the site areas following the boundary realignment.

The table below identifies the proposed gross floor area (GFA) for each lot.

Address	Site Area	GFA	Proposed FSR	Complies	Extent of Variation
20A Hopetoun Street	270.8m ²	192.84m ²	0.71:1	Yes	Nil
20B Hopetoun Street	378.8m ²	304.93m ²	0.8:1	No	77.65m ² / 34.2%

The two properties are discussed below.

20A Hopetoun Street

The site area of 20A Hopetoun Street is sought to be reduced from 328.8m² to 270.8m². This will result in the technical increase in FSR applicable to the land from 0.7:1 to 0.8:1.

Under the new site area, a maximum GFA of 216.64m² is permitted and a GFA of 192.84m² is proposed. The proposed FSR is 0.71:1 and is compliant.

20B Hopetoun Street

The site area of 20B Hopetoun Street is sought to be increased from 320.8m² to 378.8m². This will result in a decrease in FSR applicable to the land from 0.7:1 to 0.6:1.

Under the new site area, a maximum GFA of 227.28m² is permitted and a GFA of 304.93m² is proposed. The proposed FSR is 0.8:1 and is non-compliant.

The application will result in additional floor area on No. 20B due to the construction of the mezzanine level, an extra car space and the incorporation of the outbuilding formerly on No. 20A into No. 20B through the boundary realignment. No new structures are sought and the physical appearance of the development will be unmodified.

Given the above, a variation to Clause 4.4 is proposed in the order of 77.65m² (34.2%).

Refer to Drawing No. DA16 GFA Calculations for the method of calculation.

It is our submission that the breach of the maximum FSR standard will not impact the amenity of the development or adjoining properties, nor will the variation compromise the bulk and scale of the development. A degree of flexibility is considered reasonable in this instance as is detailed within this statement below.

5. CLAUSE 4.6

This submission is made under Clause 4.6 of the IWLEP22 *Exceptions to development standards*. Clause 4.6 states the following:

4.6 *Exceptions to development standards*

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (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.*
- (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.*

- (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 Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5,
 - (ca) clause 6.27(4),
 - (cb) clause 6.28,
 - (cc) clause 6.29,
 - (cd) clause 6.31.

Application of Clause 4.6

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development.

Clause 4.6 *Exceptions to development standards* establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that

contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

Subclauses 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

(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

Additionally, this submission has been prepared with regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3)*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

6. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five tests are as set out below:

TEST	METHOD	APPLICABLE
First	<p><i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i></p> <p><i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development offers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i></p>	✓
Second	<p><i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary</i></p>	N/A
Third	<p><i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i></p>	N/A
Fourth	<p><i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.</i></p>	N/A
Fifth	<p><i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.</i></p>	N/A

A discussion against the 'tests' in determining whether the standard is unreasonable or unnecessary in the circumstance of the case is provided below under the applicable test/methods:

First Method: Objectives of the Development Standard

The objectives supporting the FSR identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The objectives of Clause 4.4, with a discussion below, are as follows:

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

The approval of the original application for semi-detached dwellings and the garage/outbuilding structure under DA201500748, and modified under DA2015000748.02, was compliant with the maximum FSR at the time of approval. The boundary realignment creates a change in the prescribed FSR due to the sliding scale by site area in subclause (2C). All additional floor area tangibly created by the mezzanine and extra car space is contained entirely within existing structures. No additional density will be perceived from the public domain.

Consequently, the proposal is deemed to still achieve an appropriate development density notwithstanding the contravention of the development standard.

(b) to ensure development density reflects its locality,

The approval of the two storey with attics semi-detached dwellings and the detached garage and outbuilding structure at the rear of both properties was considered to be an acceptable level of density under DA201500748, and modified under DA2015000748.02. While there is an increase in GFA and reduced FSR applicable to 20B Hopetoun Street, the additional floor area is all contained within existing structures the structures on the site still read as a density reflective of the locality.

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

The site sits within a precinct of R2 Low Density Residential and is not located at the transition point to a different land zone or density.

As all new GFA is within existing structures, there is no impact on the visibility of the density of the development on the land. There is no impact on the application of FSR to transition between development of different densities.

(d) to minimise adverse impacts on local amenity,

All additional floor area is contained within existing structures. Consequently, there are no visual privacy, acoustic privacy, overshadowing or visual bulk impacts on local amenity.

While a portion of 20A Hopetoun Street is absorbed into 20B Hopetoun Street, the property will continue to comply with the private open space, site coverage, pervious area and setback controls. No amenity impact will occur.

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

The proposal involves internal works only (barring a boundary fence) and as such has no implications on tree canopy or any effect on the public domain. The boundary realignment does not diminish the private open space or solar access available to 20A Hopetoun Street which is reduced in site area. The proposal is consistent with this objective.

The commentary above outlined that compliance with the FSR development standard is unreasonable and unnecessary for the circumstance, given that the proposal is consistent with the objectives of the development standards.

7. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory for the circumstances of the case.

The proposal seeks to alter this mezzanine to comply with the relevant ceiling heights for the car parking on the ground floor of the structure and to incorporate the entirety of the garage and outbuilding on 20B Hopetoun Street, which currently utilises the space. The proposal utilises the existing built form to address an existing arrangement that is unfunctional and not fit for purpose.

The large outbuilding for No. 20A has proved undesirable and unusable. The mezzanine provides additional storage and studio space for No. 20B. The studio is not sought as a secondary dwelling.

The proposal before Council achieves this outcome without any additional environmental impacts. There are no introduced external bulk and scale elements and no visual or acoustic privacy or additional overshadowing. The amenity of 20A Hopetoun Street is not diminished in any way by the proposal. The structure was approved as a storage building on 20A Hopetoun Street and the dwelling continues to provide adequate storage for the land without the use of this space.

The contravention of the development standard is a matter of numerical arrangement between the properties but is within an existing building. There are no impacts on the streetscape or the amenity of adjoining properties. The proposal provides for the needs of the residents of No. 20B without compromising those of No. 20A.

The approvals granted for the original development and the outbuildings as built and the needs of residents mean that the circumstances of this proposed variation are unique. Accordingly, no precedent would be set by the contravention of the development standard.

In this case, strict compliance with the development standard for maximum FSR development standard of the IWLEP22 is unnecessary and unreasonable and there are sufficient environmental planning grounds to allow the contravention of the development standard.

8. IS THE VARIATION IN THE PUBLIC INTEREST?

Clause 4.6 states that development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard. The development as proposed will be in the public interest as it has applied reasonable and contextual consistency with the objectives of Clause 4.4.

Objectives of the Zone

Furthermore, it is important to also consider the objectives of the ***R2 Low Density Residential*** zone in relation to the development. These are as follows:

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

In response to the above the following is provided:

- The proposed boundary realignment and construction of a mezzanine will not have a negative impact on the low density residential environment. The realignment allows for the incorporation of the garage within 20B Hopetoun Street and the mezzanine creates additional floor area to meet the needs of the landowners without any consequence on

bulk and scale or amenity impacts to the dwelling itself or the neighbours. The proposal allows for the land to efficiently be used to meet the housing needs of the community within a low density residential environment. The additional FSR all occurs within the existing building envelopes and does not compromise any of the above outcomes. Rather, it will enhance the existing dwelling on No. 20B to meet the needs of the owners.

- No other land uses are proposed. The proposal does not preclude any other site from proposing other land uses to meet the day to day needs of residents.
- The proposal involves no external physical works beyond the construction of a new boundary fence to correspond to the boundary realignment. Consequently, there is no change to the character of the built or natural features on the site, or the surrounding area.

In view of the above, the zone objectives have been satisfied. The variation in the FSR development standard does not interfere with or inhibit the development's consistency with the zone objectives.

9. PUBLIC BENEFIT OF MAINTAINING THE STANDARD

It is considered that there is no benefit to the public or the community in maintaining the development standard.

Despite a technical contravention of the FSR development standard, there is no change to the external built form, bulk and scale, which have already been determined as suitable for the land and locality to align with the desired future character of the area under DA201500748, as modified. The contravention will not be read from the public domain. The status quo will be maintained from any external perception.

The proposal will allow for taking another car off the street in a constrained area, without impacting on-street parking availability.

The breach of the standard does not result in additional adverse environmental impacts.

The development is generally consistent with the current planning controls and is fully consistent with the objectives of the standard and zoning, as detailed within this submission and the accompanying documents to the development application.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The unique circumstances of this development dictates that this will not create a precedent for future developments.

The departure from the maximum FSR standard within the IWLEP22 allows for the orderly and economic use of the site in a manner that achieves the underlying outcomes and objectives of the relevant planning controls.

10. IS THE VARIATION WELL FOUNDED?

It is considered that this has been adequately addressed within this written submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the IWLEP22 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the underlying objectives of the standard to be varied (FSR) and objectives of the R2 Low Density Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance.

Based on the above, the variation is considered to be well founded.

11. GENERAL

Clause 4.6 also states that:

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (caa) *clause 5.5,*
 - (ca) *clause 5.5,*
 - (ca) *clause 6.27(4),*
 - (cb) *clause 6.28,*
 - (cc) *clause 6.29,*
 - (cd) *clause 6.31.*

This variation does not relate to the subdivision of land in the stated land use zones. The variation is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been submitted with the application.

The development does not rely on or conflict with any of the clauses referenced in (c) through to (cd).

11. CONCLUSION

The proposal does not strictly comply with the maximum FSR development standard as prescribed by Clause 4.4 of the IWLEP22. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the IWLEP22 have been met as the breach of the development standard does not create any adverse environmental impacts and there are sufficient environmental planning grounds.

Consequently, strict compliance with this development standard is unreasonable and unnecessary and the use of Clause 4.6 of the IWLEP22 to vary this development standard is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the floor space ratio control is unnecessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Darren Laybutt
GAT & Associates
Plan 4763

Attachment D – Recommended conditions of consent if approved

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA00, Issue B	Proposed Subdivision Plan	25.09.2023	Studio Panetta
DA02, Issue B	Existing Floor Plan - Garage	25.09.2023	Studio Panetta
DA03, Issue B	Existing Floor Plan - Mezzanine	25.09.2023	Studio Panetta
DA04, Issue B	Existing Floor Plan - Attic	25.09.2023	Studio Panetta
DA06, Issue B	Elevations - Existing	25.09.2023	Studio Panetta
DA07, Issue B	Elevations - Existing	25.09.2023	Studio Panetta
DA08, Issue B	Sections - Existing	25.09.2023	Studio Panetta
DA09, Issue B	Proposed Floor Plan - Garage	25.09.2023	Studio Panetta
DA10, Issue B	Proposed Floor Plan - Mezzanine	25.09.2023	Studio Panetta
DA11, Issue B	Proposed Floor Plan - Attic	25.09.2023	Studio Panetta
DA13, Issue B	Elevations - Proposed	25.09.2023	Studio Panetta
DA14, Issue B	Elevations - Proposed	25.09.2023	Studio Panetta

DA15, Issue B	Sections - Proposed	25.09.2023	Studio Panetta
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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:	\$5,992.00
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.

GENERAL CONDITIONS

3. 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.

4. 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.

5. Works Outside the Property Boundary

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

6. Waste Management Plan

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

7. Use of Mezzanine level

The internal mezzanine level within the garage is to be used for storage purposes only and must not be adapted for habitable use. No kitchen or bathroom facilities to be installed.

PRIOR TO ANY DEMOLITION

8. Construction Fencing

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

9. 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.

DURING DEMOLITION AND CONSTRUCTION

10. Construction Hours – Class 1 and 10

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

PRIOR TO OCCUPATION CERTIFICATE

11. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence in the form of an image of the planted tree/s and a copy of a purchase invoice to confirm that:

A minimum of 3 x 75 litre size tree/s, which will attain a minimum mature height of 6 metres, have been planted in a suitable location within the property (at least 1 metre from any boundary and 1.5

metres from any structure) and allowing for future tree growth. The purchased tree must meet the requirements of AS2303—*Tree stock for landscape use*. Trees listed as exempt species from Council's Tree Management Development Control Plan, -and species recognised to have a short life span, will not be accepted.

Trees required by this condition must be maintained and protected until they are protected by Council's Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.

12. 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.

13. No Encroachments

Prior to the issue of a Subdivision 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.

14. Public Domain Works

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Repair of damaged vehicle crossings and/or footpaths adjacent to the site;
- b. Augmentation works at the corner to provide a splayed fence; and
- c. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

PRIOR TO SUBDIVISION CERTIFICATE

15. Release of Subdivision Certificate

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

16. Section 73 Certificate

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

17. Separate Drainage Systems

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing that separate drainage systems must be provided to drain each proposed lot.

ADVISORY NOTES**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*.

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.

Construction of Vehicular Crossing

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660

			To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments	131441	www.lspc.nsw.gov.au
NSW Food Authority		1300 552 406	www.foodnotify.nsw.gov.au
NSW Government			www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au
			Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	www.environment.nsw.gov.au
Sydney Water		13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (VELS)			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.

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.

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.

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.