






INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA201700072
Address	26 Gibbens Street, Camperdown
Proposal	To demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house
Date of Lodgement	24 February 2017
Applicant	Tom Gilpin
Owner	Tom Gilpin and Verity Gilpin
Number of Submissions	1 submission
Value of works	\$593,500
Reason for determination at Planning Panel	The extent of departure from the FSR development standard exceeds staff delegation.
Main Issues	Floor Space Ratio
Recommendation	Approval subject to conditions



Subject Site:		Objectors:	
Notified Area:			

1. Executive Summary

This report is an assessment of an application submitted to Council to demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house.

The main issue that has arisen from the assessment of the application is that the development exceeds the maximum permitted FSR on the site by approximately 65.4sqm or 29.4% under Clause 4.4 of Marrickville Local Environmental Plan 2011 (MLEP 2011).

The plans submitted with the application on 24 February 2017 were notified in accordance with Council's notification policy and 1 submission was received. During the assessment of the application, amended documentation was submitted on 19 May 2017 and 23 May 2017 to address concerns raised by Council officers. The amended plans did not require re-notification in accordance with Council's notification policy.

A written request in relation to the contravention to the floor space ratio development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application on 24 February 2017. An amended Clause 4.6 statement was accompanied with the amended documentation on 19 May 2017. The proposal is considered to be a good design outcome for the site and the Clause 4.6 submission demonstrates that there are sufficient environmental planning grounds in the particular circumstances of the case to justify the FSR departure. The Clause 4.6 submission demonstrates that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case.

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

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the amended development are considered to be acceptable given the context of the site and the desired future character of the precinct. The application is suitable for approval subject to the imposition of appropriate conditions.

2. Proposal

Approval is sought to demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house. The proposal includes the following works:

Ground Floor

- Demolition of internal walls and extension of the rear ground floor area; including the provision of an open plan family/kitchen/dining area and laundry/WC;

First Floor

- Demolition of internal walls and extension of the rear first floor area; including the provision of 2 bedrooms, enlarged master bedroom with ensuite and linen walk-in closet; and new stairs to the Attic.

Attic Level

- Provision of a Rumpus room.

External Elevation

- Painting upgrades to the external walls and front fencing

3. Site Description

The site is located on the eastern side of Gibbens Street, between Toth's Place and Fowler Lane. The site consists of a single allotment and is generally rectangular shaped with a total area of 278sqm and is legally described as Lot 35 in Deposited Plan 68168.

The site has a 6.29 metre frontage to Gibbens Street and a depth of 44.265 metres. The site contains a 2 storey dwelling house. The rear of the site contains a garage and first floor rumpus and storage area with direct access to Tooth Lane.

The wider local context comprises of a mix of single and 2 storey dwelling houses and 2 – 3 storey industrial conversion residential flat buildings. To the immediate north of the site on 24 Gibbens Street is a 2 storey dwelling house and to the immediate south of the site on 28 Gibbens Street is a 3 storey dwelling house.

4. Background

4(a) Application history

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

Date	Discussion / Letter/ Additional Information
05 May 2017	<p>Council requested the following additional information and amended plans to address the following:</p> <ul style="list-style-type: none"> • The third storey attic encroaches on the ridge capping of the dwelling house. Delete / alter the third storey attic area to preserve the ridge capping of the roof form and reduce the FSR breach; and • Treat the proposed first floor windows on the north elevation of the dwelling house (Windows W09 to W13) for privacy to reduce overlooking impacts to 24 Gibbens Street.

19 May 2017	The applicant submitted amended plans and an amended Clause 4.6 statement pursuant to MLEP 2011 to address the issues raised by Council's Development Planner. The plans delete the attic area which encroached on the ridge capping of the existing roof. Council requested the applicant to raise the floor level of the rear family/dining/kitchen by 300 millimetres above the 1 in 100 year flood level to ameliorate flooding impacts (as per the request of Council's Development Engineer).
23 May 2017	The applicant submitted amended plans raising the floor level of the rear family/dining/kitchen level by 300mm as per Council's request. This assessment report is based on the amended plans and additional information submitted to Council on 19 May and 23 May 2017.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

5(a) Environmental Planning Instruments

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

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

A BASIX Certificate was submitted with the application indicating that the proposal achieves full compliance with the BASIX requirements. Appropriate conditions are included in the recommendation to ensure the BASIX Certificate commitments are implemented into the development.

5(a)(vii) Marrickville Local Environment Plan 2011 (MLEP 2011)

The application was assessed against the following relevant clauses of the Marrickville Local Environment Plan 2011 (MLEP 2011):

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.3 – Height
- Clause 4.4 – Floor Space Ratio
- Clause 4.6 – Exceptions to Development Standards

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

Standard	Proposal	% of non - compliance	Compliance
Floor Space Ratio Permitted: 0.8:1 222.4sqm	1.04:1 287.8sqm	29.4% 65.4sqm	or No
Height of Building Permitted: 9.5 metres	9.2 metres	N/A	Yes

The following provides further discussion of the relevant issues:

(viii) Aims of the Plan (Clause 1.2)

The application is consistent with the aims of Clause 1.2 of MLEP 2011 in that the development promotes a high standard of design in the private and public domain. The application creates more generous and open internal living areas to improve internal usability, light and ventilation.

Contemporary materials, colours and finishes are used for the rear ground, first and second floor additions which will not be visible from Gibbens Street. The development preserves the predominant period features of the period dwelling house visible from Gibbens Street, including the external walls, hipped roof, windows and period front garden.

The development meets BASIX requirements and is oriented to maximise natural solar access and air ventilation for the private open spaces and living areas of the development and therefore meets the principles of ecologically sustainable development.

The application is satisfactory having regard to the aims of the Plan under Clause 1.2 of MLEP 2011.

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

The site is zoned R2 – Low Density Residential under the provisions of MLEP 2011. The development is permissible with Council's consent under the zoning provisions applying to the land. The development is acceptable having regard to the objectives for development in the zone under Marrickville Local Environmental Plan 2011.

(ii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

(iii) Height (Clause 4.3)

A maximum building height of 9.5 metres applies to the property as indicated on the Height of Buildings Map that accompanies MLEP 2011. The development has a

height of approximately 9.2 metres, which complies with the height development standard.

(iv) Floor Space Ratio (Clause 4.4)

Clause 4.4(2A) of MLEP 2011 specifies a maximum floor space ratio for a dwelling house on land labelled “F” on the Floor Space Ratio Map that is based on site area as follows:

Site area	Maximum floor space ratio
>200sqm but ≤300sqm	0.8:1

The property has a site area of 278sqm. The development has a Gross Floor Area (GFA) of 287.8sqm and an FSR of 1.04:1, which varies from the FSR development standard by 65.4sqm or 29.4%.

A written request, in relation to the development’s non-compliance with the FSR development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. The submission is discussed below under the heading “Exceptions to Development Standards (Clause 4.6)”.

(v) Clause 4.6 Exceptions to Development Standards

A written request in relation to the contravention to the floor space ratio development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application.

The applicant considers compliance with the development standard to be unreasonable and unnecessary for the following reasons:

- The overall height of the rear addition is reasonable, providing compliance with the 9.5m height provision of MLEP 2011 and a built form comparative to development that adjoins the site on 28 Gibbens Street;
- The FSR variation does not unduly add to the perceived bulk or scale given its containment behind the ridge line of the existing dwelling and this in turn promotes the desired future character;
- Noting setbacks that have been incorporated, reduced footprint of the attic level (as compared to the original plans submitted with the application on 24 February 2017) and treatment of each façade, an appropriate level of amenity in the form of solar access, primacy and views for the site is retained;
- The adjoining site (28 Gibbens Street) received development approval in August 2013 for a similar scheme, which required a clause 4.6 variation and endorsed an FSR of 1:1. The applicant does not consider the FSR development standard to have been virtually abandoned or destroyed, though the specific circumstance of the subject site and proposal is noted and on this basis the applicant considers it to be grounds for the departure; and
- There is no undue or unreasonable amenity impacts, such as loss of visual privacy, overshadowing impacts or view loss that will be introduced towards neighbouring properties.

The justification provided in the applicant's written submission is considered to be well founded and worthy of support. It is considered that there are sufficient environmental planning grounds as to why the FSR development standard should be varied in this particular circumstance based on the outcomes of planning law precedents such as those contained in *Wehbe v Pittwater Council [2007] NSWLEC827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90* and *Moskovich v Waverley Council [2016]*.

As demonstrated in the assessment of this report, the rear additions and alterations are below the ridge line of the dwelling house, which will not be visible from Gibbens Street, resulting in no excessive or additional visual bulk impacts to the streetscape or the period dwelling façade that presents to Gibbens Street.

The proposal will not result in any adverse overshadowing impacts to neighbouring properties. As demonstrated in the shadow diagrams accompanying the application, the rear private open space of 28 Gibbens Street (to the immediate south of the site) will maintain at least 2 hours of solar access between 9:00am and 3:00pm on 21 June, which satisfies the solar access and overshadowing objectives of Part 2.7 of MDCP 2011.

With regard to visual privacy impacts, the application is considered reasonable subject to a condition included in the recommendation to treat Windows W11 and W12 as discussed in more detail under Part 2.6 of MDCP 2011.

Determination No. 201300173 approved additions and alterations (including a third storey addition) on 28 Gibbens Street by a deferred commencement consent on 21 August 2013. That consent became active on 16 September 2013. That development was approved with an FSR of 1:1. In that planning report, it was assessed that several surrounding sites contain developments which are of a similar height, bulk, scale and FSR (or are in exceedance) to the development proposal, including the industrial buildings that have been converted into residential flat buildings, such as 32-40 Gibbens Street and 1-19 Gibbens Street. In consideration of the recently approved development on 28 Gibbens Street and the existing built form context of the wider streetscape, the breach to the FSR development standard is considered acceptable as it is not considered to add unreasonable bulk and/or visual/amenity impacts to the streetscape or adjoining properties.

Based on the above, it is assessed that the variation to the FSR development standard under MLEP 2011 is reasonable. Comparatively, the proposal will result in less visual and bulk/scale impacts as compared to the recently approved development on 28 Gibbens Street in that the rear ground floor, first floor and attic additions will not be visible from Gibbens Street.

It is considered that the contravention of the development standard does not raise any matter of significance of State and regional environmental planning, and that there is no public benefit in maintaining the development standard for the proposed development in that compliance with the FSR development standard is unreasonable and unnecessary.

(vi) Flood Planning (Clause 6.3)

The site is located adjacent to a low point in Fowler Lane and has been identified as subject to flooding by the Johnstons Creek North Drainage Study. The Flood Level in the vicinity of the property, as established by the Drainage Study for the 1 in 100 year ARI storm event, is RL 19.34m AHD. All new habitable floor areas in this area must be to a minimum 300mm above the 100 year ARI flood level to provide sufficient freeboard in accordance with Control C5 of Section 2.22.5 of Marrickville DCP2011. Therefore, the ground floor finished floor level must be at a minimum RL 19.64m AHD.

The amended plans accompanying the application on 23 May 2017 raise the ground floor level to a minimum RL of 19.64m AHD. Conditions in accordance with the requirements of Council's Development Engineer have been included in the recommendation.

The application is satisfactory under Clause 6.3 of MLEP 2011.

(vii) Development in areas subject to Aircraft Noise (Clause 6.5)

The property is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour. The development is likely to be affected by aircraft noise.

The development would need to be noise attenuated in accordance with AS2021:2000. An Acoustic Report did not accompany the application. The development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2000. Conditions are included in the recommendation to ensure that the development is appropriately noise attenuated.

5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

5(c) Development Control Plans

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

Marrickville Development Control Plan 2011	Compliance
Part 2.6 - Acoustic and Visual Privacy	No but conditioned for compliance.
Part 2.7 - Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes
Part 2.11 – Fencing	Yes
Part 2.18 – Landscaping and Open Spaces	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 4.1 – Low Density Residential Development	Yes
Part 9 – Strategic Context (Marrickville and Morton Park Planning Precinct)	Yes

The following provides discussion of the relevant issues:

(ii) Acoustic and Visual Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains objectives and controls relating to acoustic and visual privacy. The following section assesses the visual and acoustic privacy impacts of the proposed windows and overall development on the surrounding locality.

Visual Privacy

Ground floor windows

The application proposes 3 north facing windows (Windows W04, W05 and W06) within the ground floor rear extension of the dwelling house and 1 window/door (Window 07) facing the private open space of the site. These windows will not cause visual privacy impacts for neighbouring properties for the following reasons:

- The visual overlooking impacts from the 3 north facing windows are offset by the boundary fence separating 26 and 28 Gibbens Street;
- Window 05 is a highlight window and will therefore have negligible overlooking impacts to the private open space of 24 Gibbens Street; and
- Window W07 faces the private open space and will not have any overlooking impacts to neighbouring properties.

First floor windows

The application proposes first floor, north facing bathroom, stair and bedroom windows overlooking the private open space of 24 Gibbens Street (Windows 09-13). All of the windows consist of frosted glass or contain external privacy louvres with a block out density of 75% to ameliorate overlooking impacts, with the exception of Windows W11 and W12. A condition is included in the recommendation requiring amended plans to be submitted to the Certifying Authority's satisfaction demonstrating the following privacy treatments for Windows W11 and W12 as per one of the following options:

- A minimum sill height of 1.6 metres above the floor level;
- Fixed and translucent glazing to a minimum level of 1.6 metres above the floor level; or
- Suitable externally fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level.

The application proposes a hallway window (W14) and a bedroom window (W15) on the east (rear) elevation. Window W15 contains external privacy louvres and both windows are oriented toward the rear private open space of the site. Based on the above analysis, both windows are considered acceptable having regard to visual overlooking impacts to neighbouring properties.

Attic Level

The application proposes 2 east (rear) facing windows within the rumpus area (Windows W16 and W17). Window W17 contains externally fixed privacy louvers

and both windows are oriented toward the rear of the site. Any view lines to neighbouring properties are obscured by the third storey building line on 28 Gibbens Street and the first floor roof space. In view of the above, the windows are considered reasonable having regard to visual overlooking impacts to neighbouring properties.

Acoustic Privacy

As the development is for residential dwelling house, any noise emanating from the development is not generally expected to be unreasonably excessive. With regard to acoustic amenity, the application is conditioned to submit an acoustic report prior to the issue of a construction certificate to demonstrate that the development can be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2000.

In view of the above assessment, and subject to compliance with the above conditions, the application is acceptable regarding visual and acoustic privacy under Part 2.6 of MDCP 2011.

(iii) Solar Access and Overshadowing (Part 2.7)

Overshadowing

The shadow diagrams submitted with the application illustrate the extent of overshadowing on adjacent residential properties.

Control C2(i) specifies that direct solar access to windows of principal living areas and principal areas of open space of nearby residential accommodation must not be reduced to less than 2 hours between 9:00am and 3:00pm on 21 June.

The neighbouring property, 28 Gibbens Street, is situated south of the site. As demonstrated in the shadow diagrams accompanying the application, the rear private open space of 28 Gibbens Street will maintain at least 2 hours of solar access between 9:00am and 3:00pm on 21 June, which satisfies the solar access and overshadowing objectives of Part 2.7 of MDCP 2011.

28 Gibbens Street contains 1 ground floor kitchen window and 3 bathroom windows and 1 stairwell window on the first floor level facing north (toward the subject property). The shadow diagrams indicate that these windows will continue to receive at least 2 hours of solar access between approximately 9:00am and 11:00am on 21 June, which satisfies Part 2.7 of MDCP 2011.

The ground floor kitchen window will be overshadowed by the development from 12:00pm to 3:00pm. This shadowing is considered reasonable given the proposal complies with the controls under Part 2.7 of MDCP 2011 in that 2 hours of solar access will be maintained for this window prior to 12.00 Midday. Further to the above, partial overshadowing of these windows from 12.00 midday onwards is considered reasonable given the close proximity of the windows to the side boundary of the property (approximately 1.7 metres).

In view of the above, the development is considered reasonable having regard to overshadowing under MDCP 2011.

Solar Access

The alterations and additions to the dwelling house have been designed in an energy efficient manner for the following reasons:

- The site's east/west orientation limits the ability to orient principle living area windows within 30 degrees east and 20 degrees west of true north to allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9:00am and 3:00pm on 21 June. Notwithstanding the above, the development accommodates a high level, north facing window within the ground floor family area, a north facing kitchen window, and north facing bedroom and bathroom windows on the first floor to receive the minimum prescribed solar access for the living areas of the property in mid-winter; and
- The private open space will receive a minimum two hours of direct sunlight over 50% of its finished surface between 9.00am and 3.00pm on 21 June.

In view of the above, the development complies with the solar access objectives and controls under Part 2.7 of MDCP 2011.

(iv) Parking (Part 2.10)

Part 2.10 of MDCP 2011 requires one car parking space be provided for the development. An existing double space garage with a vehicular crossing from Tooth Lane is located at the rear of the site. The proposal therefore complies with this requirement.

(v) Landscaping and Open Spaces (Part 2.18)

Control C12, Part 2.18.11.1 of MDCP 2011 requires the following private open space provisions:

- i. The greater of 45sqm or 20% of the total site area with no dimension being less than 3 metres, must be private open space.
- ii. A minimum 50% of private open space must be pervious.

Based on a site area of 278sqm, 55.6sqm (being 20% of the total site area) of private open space is required for the development. Approximately 64.5sqm of private open space is proposed for the site, with 82% of the private open space to be of pervious landscaping, which complies with the private open space controls stipulated under Part 2.18.11.1 of MDCP 2011.

(viii) Site Facilities and Waste Management (Part 2.21)

A Recycling and Waste Management Plan (RWMP) in accordance with Council's requirements was submitted with the application.

(ix) Good Urban Design Practice (Part 4.1.4)

The development maintains the height, bulk and scale of the period dwelling house as perceived from the street and is in keeping with the character of the area. Given the above the development is reasonable having regard to the objectives and controls relating to good urban design contained in MDCP 2011.

(x) Streetscape and Design (Part 4.1.5)

The development satisfies the streetscape and design controls outlined in MDCP 2011 in that:

- The development complements the uniformity and visual cohesiveness of the bulk, scale and height of the existing streetscape;
- The proposal is a contemporary design at the rear that complements the generally mixed contemporary and industrial character of the building structures that are visible from the rear laneway; and
- The existing period dwelling house is maintained with subordinate additions located to the rear in accordance with Council requirements.

(xi) Floor Space Ratio and Height (Part 4.1.6.1)

The development satisfies the floor space ratio and height controls outlined in MDCP 2011 in that:

- The height complies with the height standard under MLEP 2011;
- While the proposal exceeds the maximum FSR development standard prescribed under MLEP 2011 the variation is supported for the reasons outlined under heading 5(a)(ii)(v) above.
- The bulk and relative mass of development is acceptable for the street and adjoining dwellings in terms of overshadowing and privacy, streetscape (bulk and scale), building setbacks, parking and landscape requirements, significant trees on site and lot size, shape and topography;
- The development does not unreasonably impact on the existing views of adjacent properties and maintains a reasonable level of view sharing;
- The alterations and additions to the period building do not detract from the individual character and appearance of the dwelling being added to and the wider streetscape character; and
- The development allows adequate provision to be made on site for infiltration of stormwater, landscaping and areas of private open space for outdoor recreation.

(xii) Building Setbacks (Part 4.1.6.2)**Side Setback**

The proposal provides the following ground, first floor and attic level side boundary setbacks:

- Ground Floor- Nil to the southern boundary and 900mm to 1330mm to the northern boundary;
- First Floor- Nil to 1300mm to the southern boundary and 900mm to the northern boundary; and
- Attic Level- Nil to 1300mm to the southern boundary and 900mm to 1300mm to the northern boundary.

The development satisfies the side setback control outlined in MDCP 2011 in that:

- The proposal ensures adequate separation between buildings for visual and acoustic privacy, solar access and air circulation;

- The proposal does not create an unreasonable impact upon adjoining properties in relation to overshadowing and visual bulk; and
- The proposal is satisfactory in relation to the street context.

Rear Setback

- The proposal will not create adverse impacts on the amenity of adjoining properties in relation to overshadowing and visual bulk;
- The proposal maintains adequate open space;
- The proposal ensures adequate separation between buildings for visual and acoustic privacy, solar access and air circulation; and
- The proposal integrates new development with the established setback character of the street and maintains established gardens, trees and vegetation networks.

(xiii) Site Coverage (Part 4.1.6.3)

The proposal:

- Results in a site coverage that is generally consistent with the existing character of neighbouring dwellings; and
- Allows adequate provision for uses such as outdoor recreation, footpaths, other landscaping, off-street parking, waste management, clothes drying and stormwater management.

The development is reasonable having regard to the objectives and controls relating to site coverage contained in MDCP 2011.

(xiv) Additional Controls for Period Dwellings (Part 4.1.11)

The proposal satisfies the period dwelling controls as outlined in MDCP 2011 in that:

- The proposal retains the front garden of the period dwelling house, including elements such as the front fence, gate, pathway, walls and plant beds;
- The proposal retains the facade and main external body of the period dwelling house visible from the street, including proportions, materials, details and elements (such as the front verandah), roof form, materials, setbacks and number of storeys, chimneys and scale;
- The proposal accommodates contemporary additions and alterations while retaining the significant components of the period dwelling house and garden;
- The alterations and additions at the rear and are not visible when viewed from the street; and
- The architectural plans and the schedule of materials and finishes submitted satisfy the details, materials and colour schemes for period building controls as outlined in Marrickville DCP 2011.

PART 9 – STRATEGIC CONTEXT

The property is located in the Newtown North and Camperdown Planning Precinct (Precinct 4) under Marrickville Development Control Plan 2011. The development satisfies the desired future desired character of the area in that:

- The period dwelling house is protected and preserved; and
- The development preserves the predominantly medium density residential character of the precinct.

5(d) The Likely Impacts

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

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

The site is zoned R2- Low Density Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified in accordance with Council's Notification policy for a period of 14 days to surrounding properties and 1 submission was received. The following issues raised in submission have been discussed in this report:

- The development breaches the FSR development standard– see Section 5(a) of this report (Clauses 4.4 and 4.6 of MLEP 2011);
- The development introduces significant bulk to the main house – See Section 5(a) of this report (Clause 4.6 of MLEP 2011) and Section 5(c) of this report (Parts 4.14, 4.15 and 4.1.6.1 of MDCP 2011);
- The development will overshadow the north facing windows (being the ground floor kitchen window and first floor bathroom and stairwell windows) of 28 Gibbens Street, particularly from 12:00pm to 3:00pm on 21 June - See Section 5(a) of this report (Clause 4.6 of MLEP 2011) and Section 5(c) of this report (Part 2.7 of MDCP 2011); and
- Bedroom 2 contains windows which will overlook the private open space of 28 Gibbens Street - See Section 5(c) of this report (Part 2.6 of MDCP 2011).

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

- (i) Bedroom 2 will block the existing direct sky views and views to the public tree line on Camperdown Park from the ground floor kitchen window on 28 Gibbens Street.

Comment:

Land and Environment Court (LEC) case *Tenacity Consulting v Waringah* [2004] NSWLEC 140 established planning principles regarding view sharing for new development. When considering planning objections concerning 'view loss', the court established important considerations that Council must factor into their assessment:

- The value of the views to be impacted. Water views and icons (such as the Opera House and Harbour Bridge) are considered more valuable views than views without icons. Land views are considered secondary to water and icon views; and
- The court also established that the expectation to maintain view corridors from side boundaries in comparison to front or rear boundaries is unreasonable, '*The expectation to retain side views and sitting views is often unrealistic*' (*Tenacity Consulting v Waringah* [2004] NSWLEC 140).

The view in contention is from the side (northern) elevation of the kitchen on the ground floor of the dwelling house on 28 Gibbens Street. The view to the sky and tree line at Camperdown Park is not assessed as 'highly valuable' under the LEC principles. Further, it is considered unreasonable to maintain views to the sky and tree line for windows which are positioned 1.17 metres from the respective side boundary of the objector's property.

Further to the above assessment, the first floor rear extension will be set back approximately 4.5 metres behind the existing first floor building line of 28 Gibbens Street and the development is under the maximum height limit under MLEP 2011. Based on the above, the development is considered reasonable in relation to building height, rear setbacks and bulk and scale in relation to that of the objector's property.

In view of the above, the development is considered reasonable in relation to view sharing.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineer

7. Section 94 Contributions

A Section 94A levy of \$5,935.00 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014 and a condition requiring the above levy to be paid has been included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

That Council, as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application No: 201700072 to demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

GENERAL

1. The development must be carried out in accordance with plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
A0.01 Revision B	Site Plan	18 May 2017	MASQ	19 May 2017
A1.02 Revision B	Ground Floor Plan	23 May 2017	MASQ	23 May 2017
A1.03 Revision B	Upper & Attic Plan	18 May 2017	MASQ	19 May 2017
A1.04 Revision B	Roof Plan	18 May 2017	MASQ	19 May 2017
A1.05 Revision A	Landscape Plan	2 February 2017	MASQ	19 May 2017
A2.01 Revision C	Section A-A	23 May 2017	MASQ	23 May 2017
A2.02 Revision C	Elevations North South	23 May 2017	MASQ	23 May 2017
A2.03 Revision C	Elevations Rear Front	23 May 2017	MASQ	23 May 2017
B1.02 Revision A	Site and Sediment Management Plan	22 February 2017	MASQ	24 February 2017
B1.01 Revision A	Concept Drainage Plan	22 February 2017	MASQ	24 February 2017
FF100	External Finishes Schedule	09 February 2017	MASQ	24 February 2017
A272700	BASIX Certificate	22 February 2017	Frys Energywise	24 February 2017

and details submitted to Council on 24 February 2017, 19 May 2017 and 23 May 2017 with the application for development consent and as amended by the following conditions.

2. Where any plans and/or information forming part of a Construction Certificate issued in relation to this consent are inconsistent with:
- the plans and/or information approved under this consent; or
 - any relevant requirements of this consent,

the plans, information and/or requirements of this consent (as the case may be) shall prevail to the extent of the inconsistency.

All development approved under this consent shall be carried out in accordance with the plans, information and/or requirements of this consent taken to prevail by virtue of this condition.

3. The premises must be used exclusively as dwelling houses and multi dwelling housing and not be adapted for use as a backpackers' accommodation, serviced apartments or a boarding house and must not be used for any industrial or commercial purpose.
4. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

For the purpose of interpreting this consent, a Principal Certifying Authority (PCA) means a principal certifying authority appointed under Section 109E(1) of the Environmental Planning and Assessment Act 1979. Pursuant to Section 109E(3) of the Act, the PCA is principally responsible for ensuring that the works are carried out in accordance with the approved plans, conditions of consent and the provisions of the National Construction Code (Building Code of Australia).

5. No work must commence until:
 - a) A PCA has been appointed. Where Council is appointed ensure all payments and paper work are completed (contact Council for further information). Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
 - b) A minimum of 2 days written notice given to Council of the intention to commence work.
6. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.
7. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences. Facilities must be located so that they will not cause a nuisance.
8. The person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to include colour photographs and is to be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the property owner of the identified property, before work commences, on the buildings on the adjoining property at 28 Gibbens Street, if the consent of the adjoining property owner can be obtained. In the event that the consent of the adjoining property owner cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.
Reason: To catalogue the condition of the adjoining property for future reference in the event that any damage is caused during work on site.
9. 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, before work commences.
10. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign is to be maintained at all times until all work has been completed. The sign must include:
 - a) The name, address and telephone number of the PCA;
 - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
 - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.

11. Sediment control devices must be installed before the commencement of any work and must be maintained in proper working order to prevent sediment discharge from the construction site.
12. The person acting on this consent shall apply as required for all necessary permits including crane permits, road opening permits, hoarding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.
13. Where it is proposed to carry out works in public roads or Council controlled lands, a road opening permit shall be obtained from Council before the carrying out of any works in public roads or Council controlled lands. Restorations shall be in accordance with Marrickville Council's Restorations Code. Failure to obtain a road opening permit for any such works will incur an additional charge for unauthorised works as noted in Council's adopted fees and charges.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

For the purpose of interpreting this consent the Certifying Authority (Council or an Accredited Certifier) is that person appointed to issue a Construction Certificate.

14. Evidence of payment of the building and construction industry Long Service Leave Scheme must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).

NOTE: The required payment is based on the estimated cost of building and construction works and the long service levy rate, set by the Long Service Payments Corporation. The rate set by the Long Service Payments Corporation is currently of 0.35% of the cost of the building and construction work.

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation.
http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm

15. A levy of \$5,935.00 has been assessed as the contribution for the development under Section 94A of the Environmental Planning and Assessment Act 1979 and Marrickville Section 94/94A Contributions Plan 2014 (a copy of which may be inspected at the offices of the Council).

The Section 94A Levy referred to above is based on the estimated cost of the proposed development at time of lodgement of the application indexed quarterly in accordance with Marrickville Section 94/94A Contributions Plan 2014.

The Section 94A levy (as adjusted) must be paid to the Council in cash or by unendorsed bank cheque (from an Australian Bank only) or EFTPOS (Debit only) or credit card* before the issue of a Construction Certificate. Under Marrickville Section 94/94A Contributions Plan 2014 payment of Section 94A levies CANNOT be made by Personal Cheque or Company Cheque.

*NB A 1% credit card transaction fee applies to all credit card transactions.

(LEVY PAYMENT REFERENCE NO. DC001923)

NOTE: Under Marrickville Section 94/94A Contributions Plan 2014, the proposed cost of carrying out development is adjusted quarterly at time of payment

of the levy in line with the *Consumer Price Index: All Groups Index Number for Sydney* provided by the Australian Bureau of Statistics.

16. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021-2000 in relation to interior design sound levels, in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021-2000. Plans fully reflecting the selected commitments must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
17. Before the issue of a Construction Certificate amended plans are to be submitted to the Certifying Authority's satisfaction demonstrating privacy treatments for Windows W11 and W12 as per one of the following options:
 - A minimum sill height of 1.6 metres above the floor level;
 - Fixed and translucent glazing to a minimum level of 1.6 metres above the floor level;
or
 - Suitable externally fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level.
18. Plans fully reflecting the selected commitments listed in BASIX Certificate submitted with the application for development consent must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

NOTE: The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate issued no earlier than 3 months before the date of lodgement of the application for the Construction Certificate. (Refer to Clause 6A of Schedule 1 to the Regulation).
19. Sediment control devices must be constructed and maintained in proper working order to prevent sediment discharge from the construction site. Sediment control plans and specifications must be submitted to the Principal Certifying Authority before the issue of a Construction Certificate.
20. The proposed development lies within the 1 in 100 year flood affectation area for the Johnstons Creek Drainage Catchment. The following flood protection measures shall be provided as follows:
 - a) All new parts of the building below RL 19.64m AHD (1 in 100 year flood level plus 300mm freeboard) shall be constructed from flood compatible materials as per Part 2.22 - Flood Management Controls of MDCP 2011;
 - b) All new electrical services and outlets to the existing dwelling shall be installed at or above RL 19.64m AHD.

Amended plans and specifications shall be submitted to and accepted by Council before the issue of the Construction Certificate.

21. Payment to Council of \$1,441.50 before the issue of a Construction Certificate as a Building Security Deposit (B.S.D.) to provide security against damage to Council's infrastructure. Council may utilise part or all of the B.S.D. to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.
22. Before the issue of a Construction Certificate the owner or builder shall sign a written undertaking that they shall be responsible for the full cost of repairs to footpath, kerb and

gutter, or other Council property damaged as a result of construction of the proposed development. Council may utilise part or all of any Building Security Deposit (B.S.D.) or recover in any court of competent jurisdiction, any costs to Council for such repairs.

SITE WORKS

23. All excavation, demolition, construction, and deliveries to the site necessary for the carrying out of the development, must be restricted to between 7.00am to 5.30pm Mondays to Saturdays, excluding Public Holidays. Notwithstanding the above no work must be carried out on any Saturday that falls adjacent to a Public Holiday.
24. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
25. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy – 'Placement of Waste Storage Containers in a Public Place'.
26. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another Certifying Authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
 - a) after excavation for, and prior to the placement of, any footings;
 - b) prior to pouring any in-situ reinforced concrete building element;
 - c) prior to covering of the framework for any floor, wall, roof or other building element;
 - d) prior to covering waterproofing in any wet areas;
 - e) prior to covering any stormwater drainage connections, and
 - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
27. All demolition work must be carried out in accordance with the following:
 - a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
 - b) all works involving the demolition, removal, transport and disposal of material containing asbestos must be carried out by suitably qualified persons in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
 - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
 - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
 - e) the generation of dust and noise on the site must be controlled;
 - f) the site must be secured to prohibit unauthorised entry;
 - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
 - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
 - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;

- j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
 - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
28. If the development involves an excavation that extends below the level of the base of the footings of a building on the adjoining allotments, including a public place such as a footway and roadway, the person acting on the consent, at their own expense must:
- a) protect and support the adjoining premises from possible damage from the excavation;
 - b) where necessary, underpin the adjoining premises to prevent any such damage. Where the proposed underpinning works are not "exempt development", all required consents shall be obtained prior to the required works commencing; and
 - c) at least 7 days' notice is given to the owners of the adjoining land of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

Where a dilapidation report has not been prepared on any building adjacent to the excavation, the person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to be submitted to and accepted by the PCA before works continue on site, if the consent of the adjoining property owner can be obtained.

Copies of all letter/s that have been sent via registered mail to the adjoining property owner and copies of any responses received shall be forwarded to the PCA before work commences.

29. If the proposed work is likely to cause obstruction of the public place and/or is likely to endanger users of the public place, a suitable hoarding or fence approved by Council must be erected between the work site and the public place.
30. A certificate of survey from a registered land surveyor must be submitted to the PCA upon excavation of the footings and before the pouring of the concrete to verify that the structures will not encroach on the allotment boundaries.
31. The person acting on this consent must comply with the requirements of the Dividing Fences Act in respect to the alterations and additions to the boundary fences.
32. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. Note: This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the issued alignment levels. Failure to comply with this condition will result in vehicular access being denied.
33. All roof and surface stormwater from the site any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code.

BEFORE OCCUPATION OF THE BUILDING

34. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:

- a) A copy of the determination;
 - b) Copies of any documents that were lodged with the Occupation Certificate application;
 - c) A copy of Occupation Certificate, if it was issued;
 - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
 - e) A copy of any missed inspections;
 - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
35. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
 36. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at www.basix.nsw.gov.au.
Reason: To ensure compliance with the requirements under Section 154C of the Environmental Planning and Assessment Regulations 2000.
 37. The Certifying Authority must be satisfied that each of the commitments listed in Aircraft Noise Assessment Report required by this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
 38. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
 39. No encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
 40. 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 shall be at no cost to Council and undertaken before the issue of the Occupation Certificate.

ADVISORY NOTES

- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- Contact "Dial Before You Dig" before 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 Before You Dig ☎ 1100

www.dialbeforeyoudig.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 Government		www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	☎ 131 555	www.environment.nsw.gov.au
Sydney Water	☎ 13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA ☎ 1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	☎ 13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

- B. THAT the person who lodged a submission in respect to the proposal be advised of the Council's determination of the application.
- C. THAT the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 – Exceptions to Development Standards, that Council has agreed to the variation of the following development standard:

<u>Premises:</u>	26 Gibbens Street, Camperdown
<u>Applicant:</u>	Tom Gilpin
<u>Proposal:</u>	To demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house
<u>Determination:</u>	Approval subject to conditions
<u>DA No:</u>	201700072
<u>Lot and DP:</u>	Lot 35 in Deposited Plan 68168
<u>Category of Development:</u>	1: Residential Alterations and Additions
<u>Environmental Planning Instrument:</u>	Marrickville Local Environmental Plan 2011
<u>Zoning of Land:</u>	R2 - Low Density Residential
<u>Development Standard(s) varied:</u>	Clause 4.4 – Floor Space Ratio
<u>Justification of variation:</u>	Strict compliance with the FSR development standard is unnecessary; the additional FSR does not contribute to additional adverse impacts on adjacent development; and the bulk/scale of the alterations and additions will not be

Extent of variation:

Concurring Authority:

Date of Determination:

seen from the primary streetscape and compare favourably to adjoining and surrounding developments.

FSR: 29.4%

Council under assumed concurrence of the Secretary
Department of Planning and Environment

Attachments B1 and B2 – Plans of the proposed development

FOR DEVELOPMENT APPLICATION



quinton margitt simonkowitz architects Pty Ltd
 Ted Quilton nominated architect, reg no 68890
 313 77 dunlop avenue rosebery NSW 2018
 p 9662 3500 www.masqarchitecture.com

PROJECT NO: 841

DATE: MAY 17

PROJECT: 26 GIBBENS ST, CAMPERDOWN

CLIENT: T AND V GILPIN

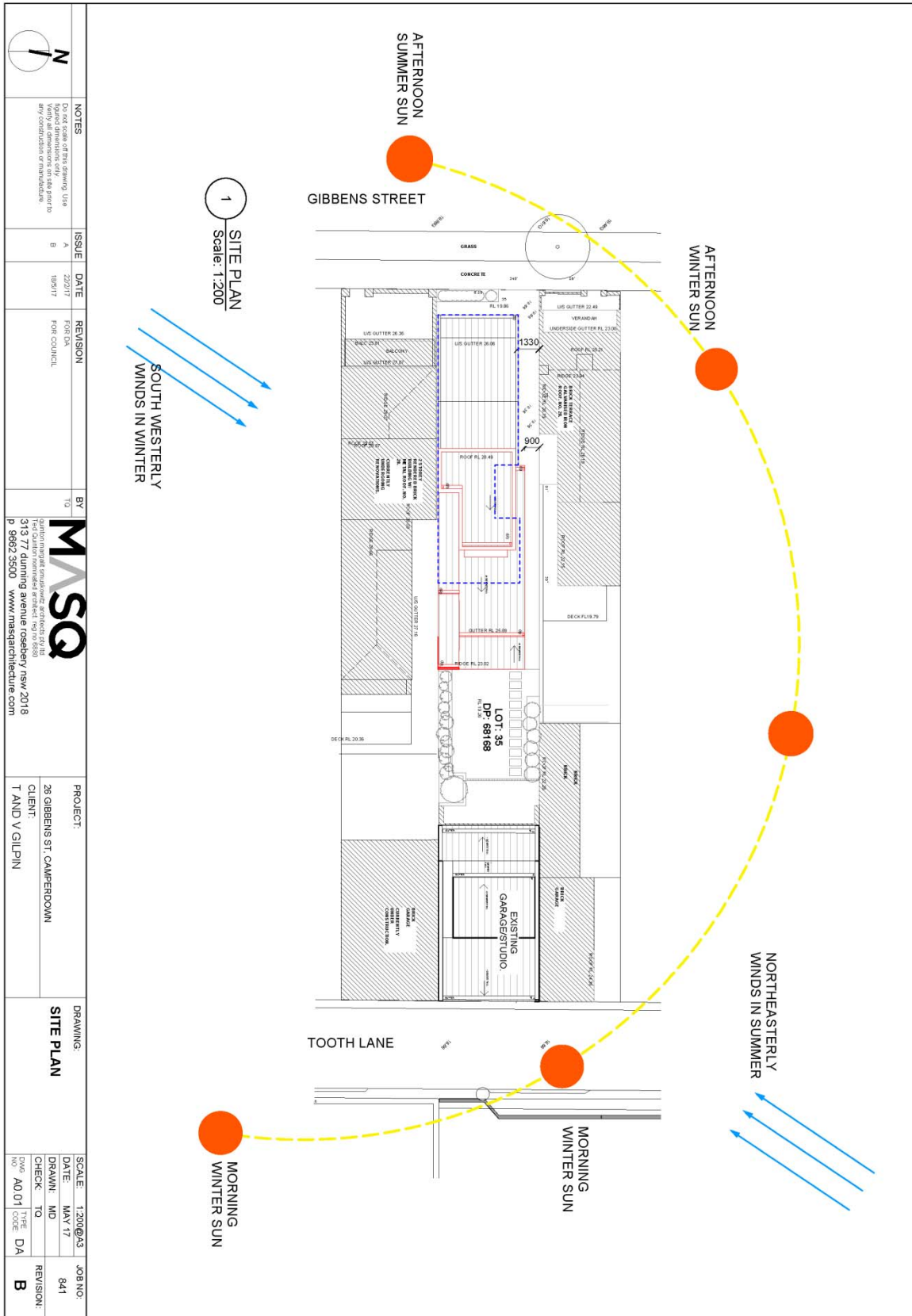
ISSUE: FOR DA

DRAWING LIST:

- A0.00 COVER SHEET
- A1.01 SITE PLAN
- A1.02 GROUND FLOOR PLAN
- A1.03 FIRST & ATTIC FLOOR PLAN
- A1.04 ROOF PLAN
- A1.05 LANDSCAPE PLAN
- A2.01 LONG SECTION EAST WEST
- A2.02 EAST AND WEST ELEVATIONS
- A2.03 NORTH AND SOUTH ELEVATIONS
- A3.01 JUNE SHADOWS 9AM
- A3.02 JUNE SHADOWS 12PM
- A3.03 JUNE SHADOWS 3PM
- A4.01 FSR CALCULATIONS

DRAWING LEGEND:

- | | | | |
|-----|----------------------|-----|------------------------|
| AL | ALUMINIUM LOUVRES | K | KITCHEN |
| AS | ALUMINIUM SCREEN | LD | LAUNDRY |
| B1 | BEDROOM 1 | LI | LIVING |
| B2 | BEDROOM 2 | MB | MASONRY |
| B3 | BEDROOM 3 | MB2 | MASTER BEDROOM |
| CB | CERAMIC TILE | OC | OFF TOAM/CONCRETE |
| CR | CERAMIC TILE | OC | OFF TOAM/CONCRETE |
| EN | ENSUITE | P | PANTRY |
| F | FRIDGE | QB | QUEENBED |
| FB | FRIDGE/BROILER | R | ROOF |
| FC | FEATURE CLADDING | RL | RELATIVE LABEL |
| FCL | FINISH CEILING LEVEL | SG | SIDE GATE |
| FFL | FINISH FLOOR LEVEL | ST | STORAGE |
| FPL | FINISH PAVED LEVEL | TP | THRESHOLD |
| FSS | FIRE STAIR | TP | THRESHOLD |
| LSW | LOW WALL | ZC | ZINC CLADDING |
| DS | DOWNPIPE | ZCS | ZINC CLADDING SPLITTER |

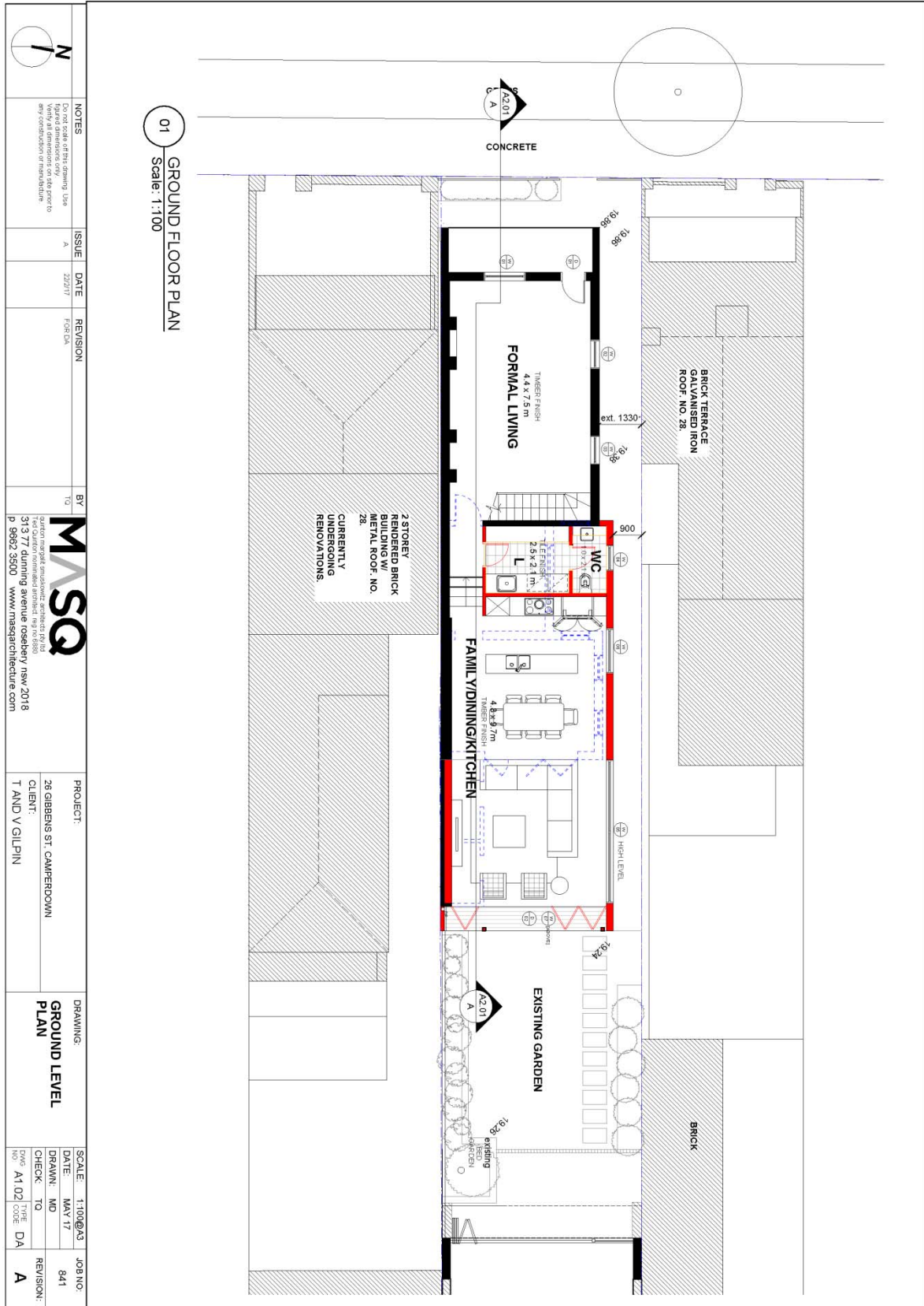


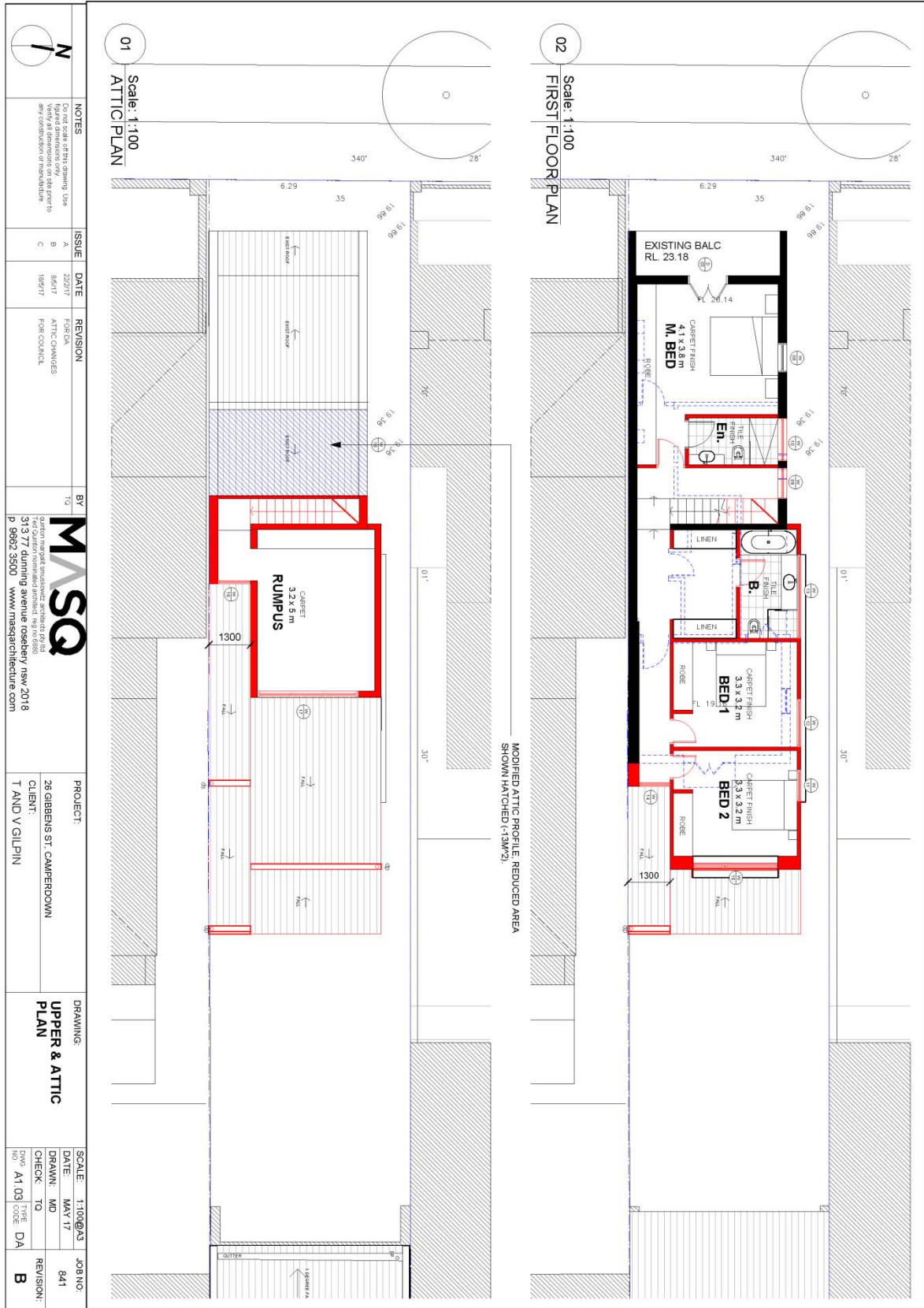
1 SITE PLAN
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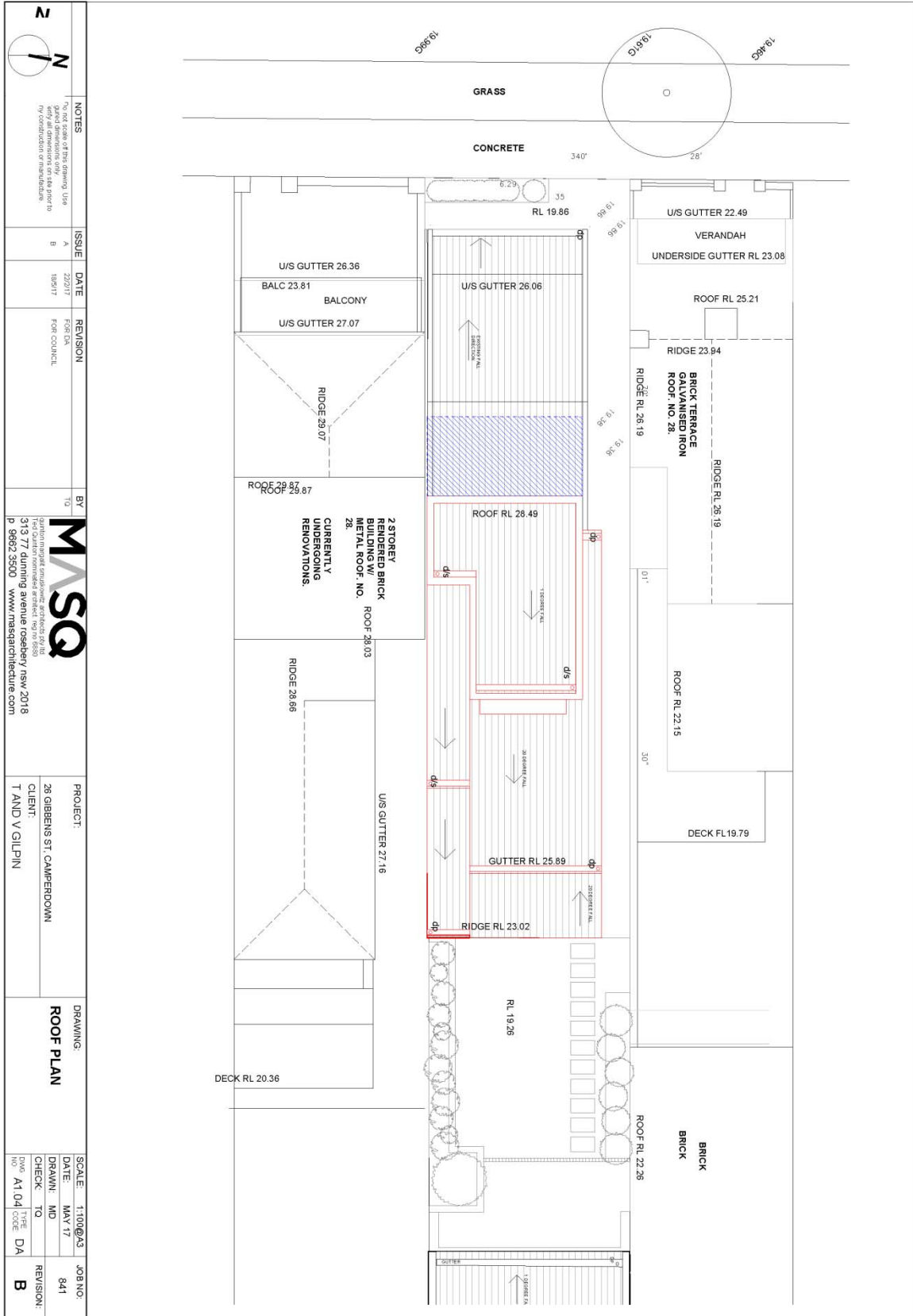
SOUTH WESTERLY
WINDS IN WINTER

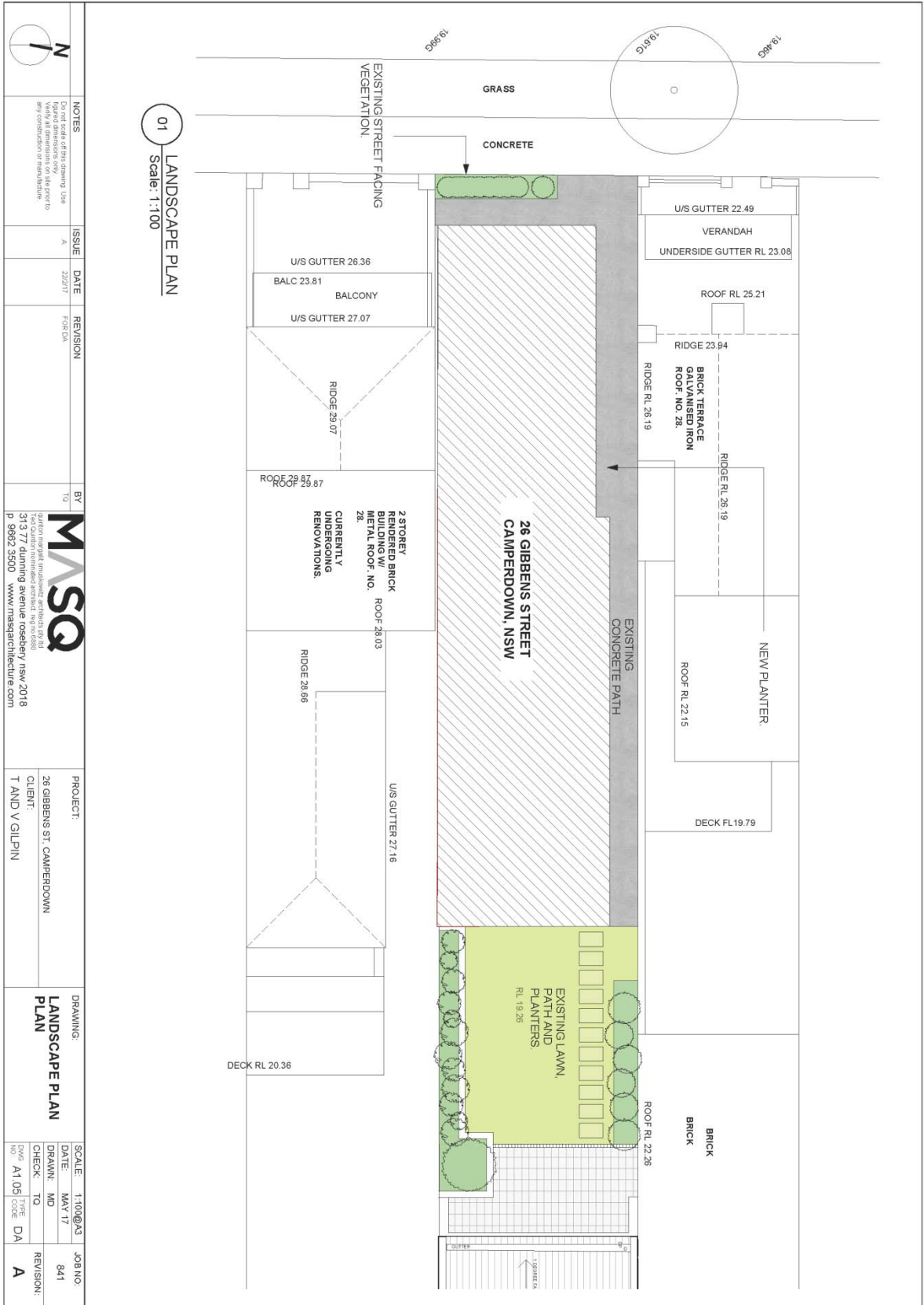
NORTHEASTERLY
WINDS IN SUMMER

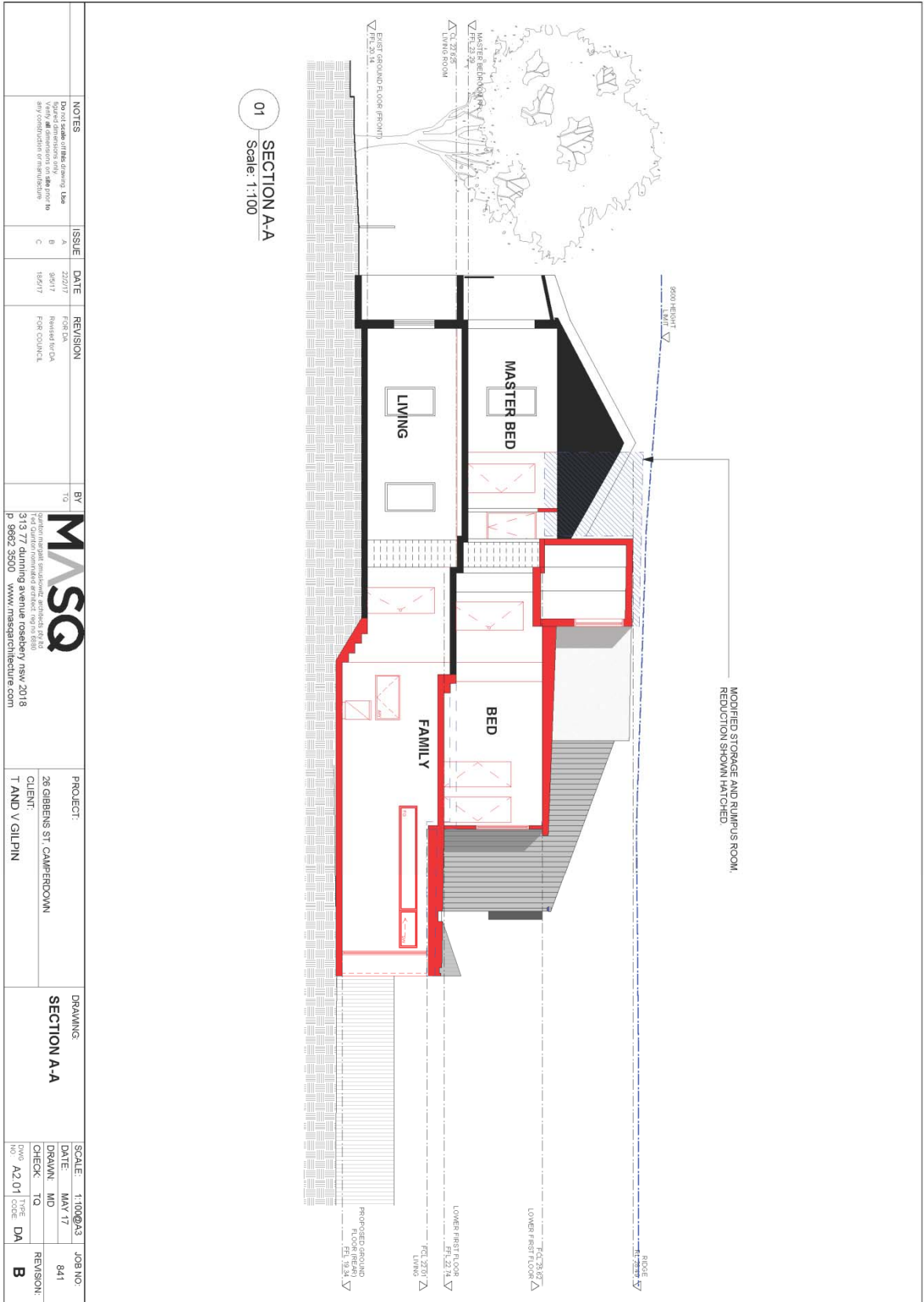
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		B		18/01/17		FOR COUNCIL		MSQ		CLIENT:		DATE: MAY 17	
								313 77 GIBBENS AVENUE CAMDEN NSW 2018		T AND V GILPIN		DRAWN: MD	
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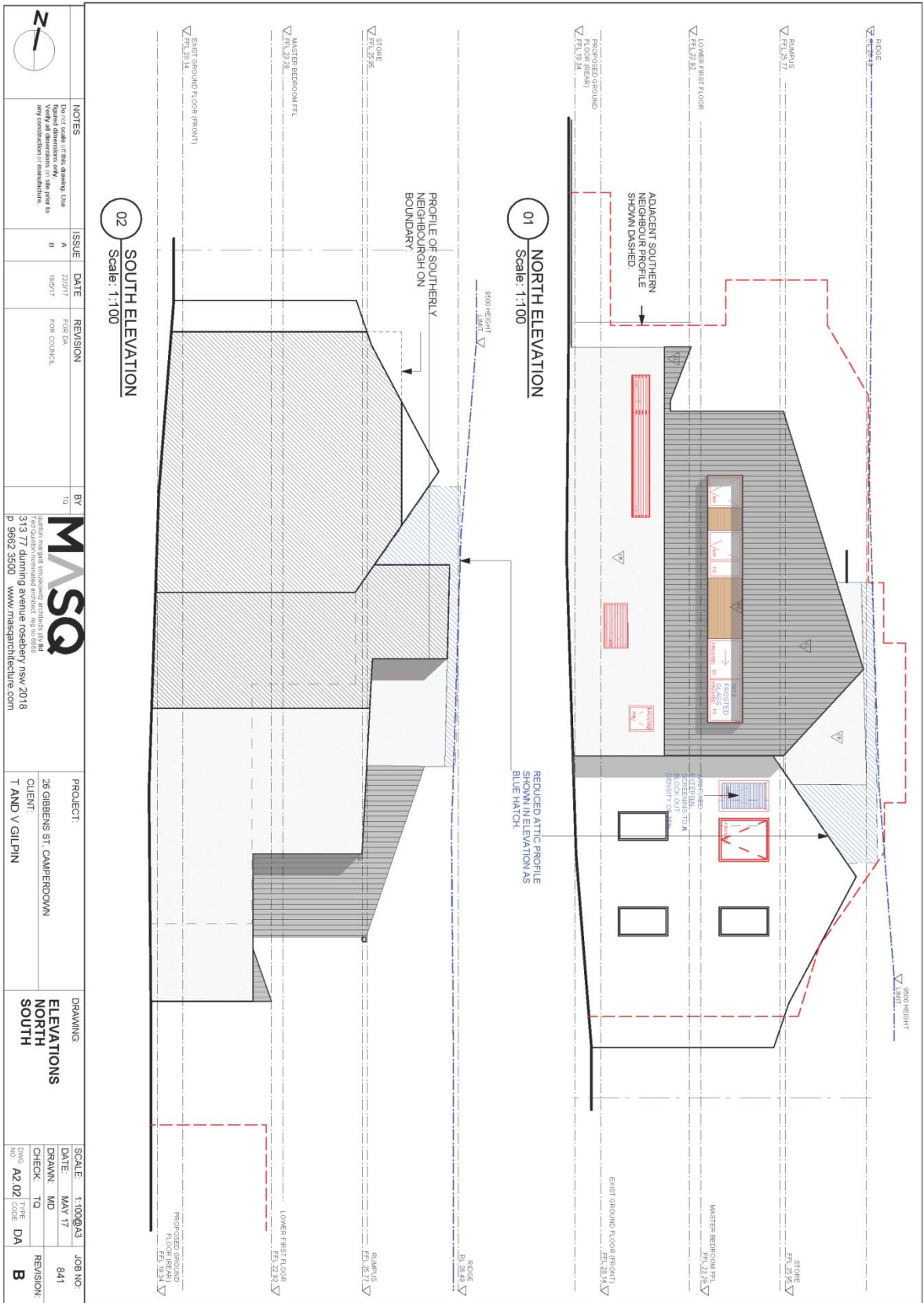


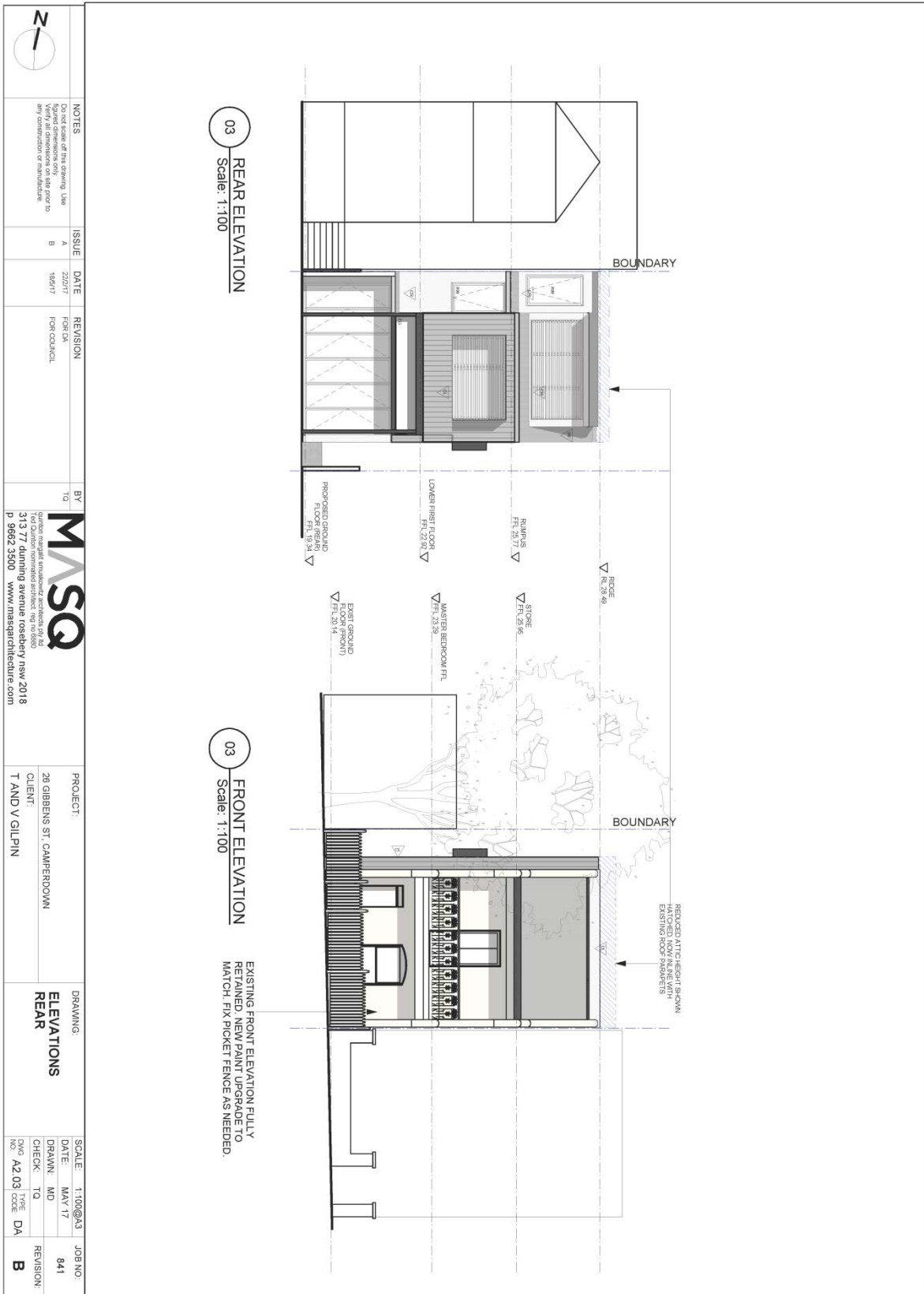


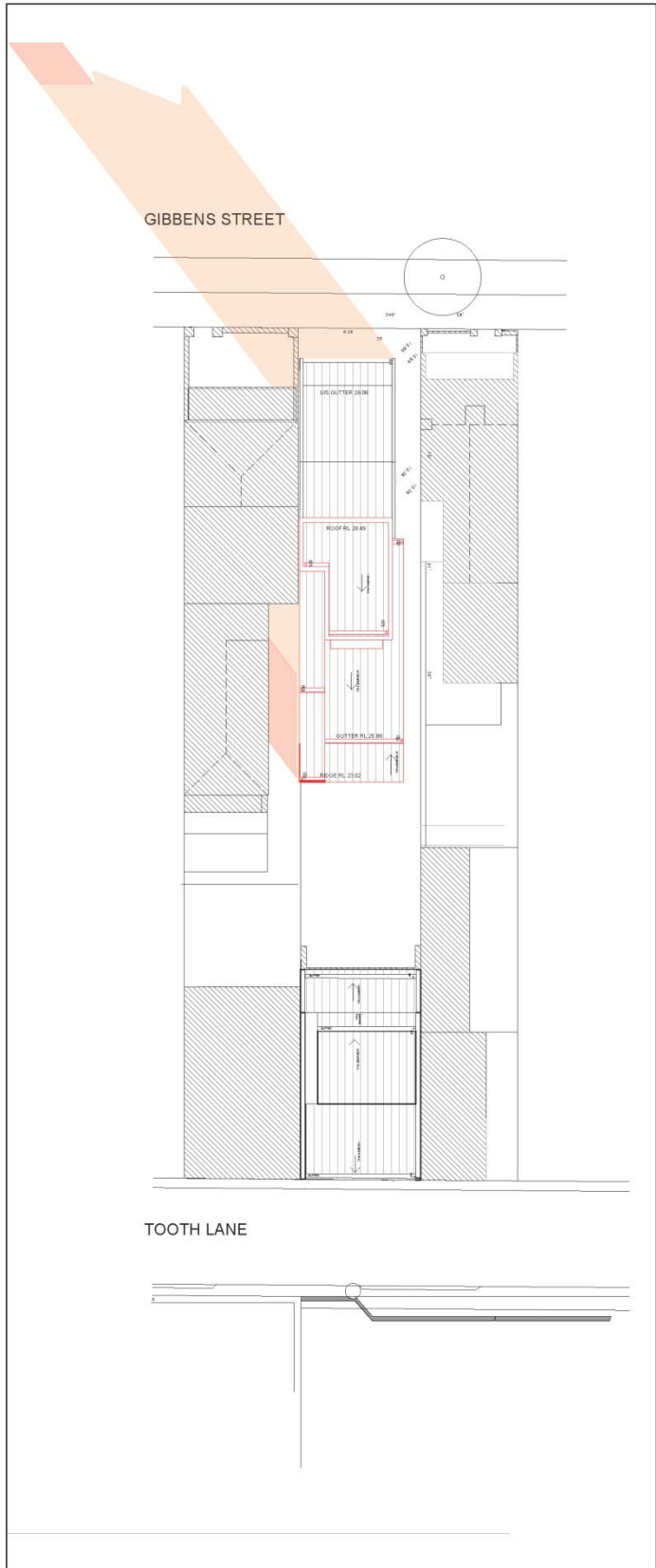
01 SECTION A-A
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Notes and other drawing. Use floor dimensions only. Vary all dimensions on site prior to any construction or installation.	A	22/07	FOR DA	TO	26 GIBBENS ST. CAMPERDOWN	SECTION A-A	1:100	MAY 17	841
	B	09/17	Revised for DA						
	C	16/17	FOR COUNCIL		T AND V GILPIN				

MASQ
 interior spatial, sustainable architecture
 313 77 dunning avenue rosebery nsw 2018
 P 9662 3500 www.masqarchitecture.com





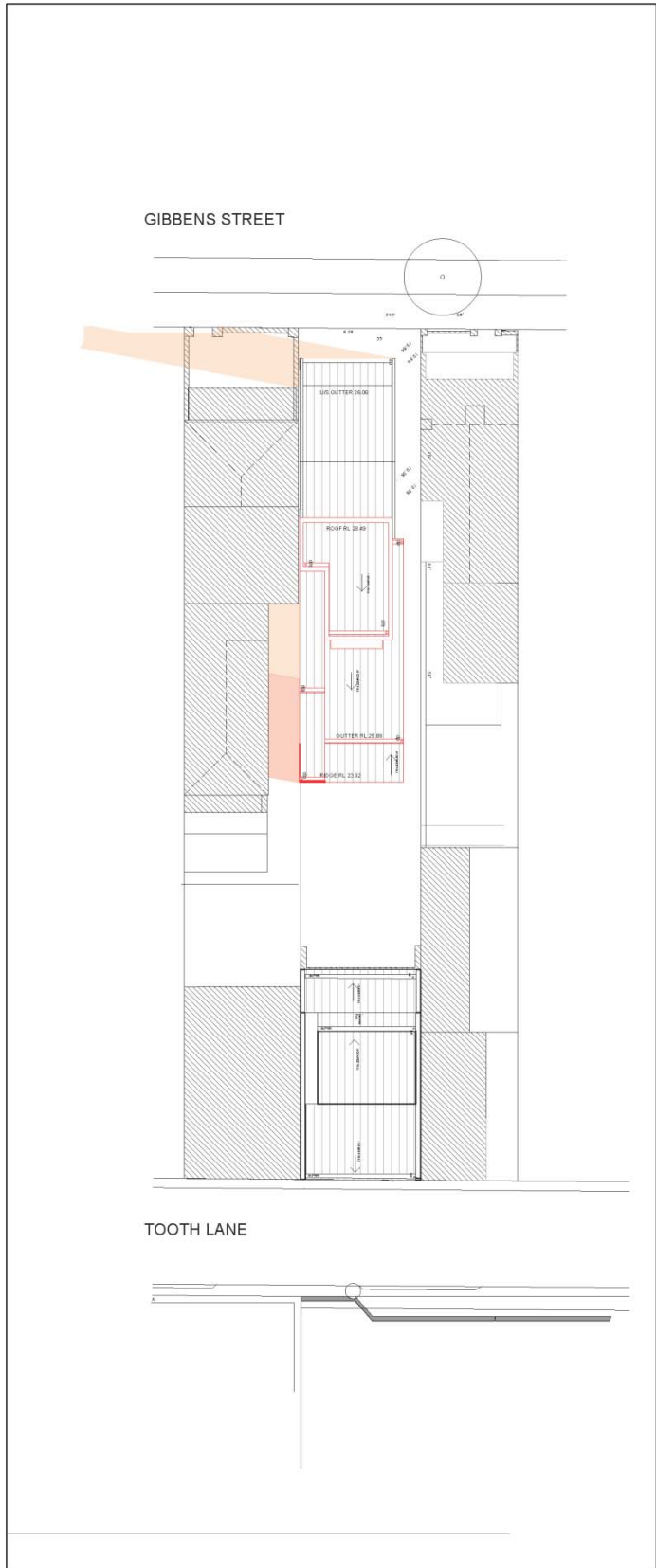


21 JUNE - 9AM

- EXISTING SHADOWS
- PROPOSED SHADOWS
- EXISTING BUILDING LINE

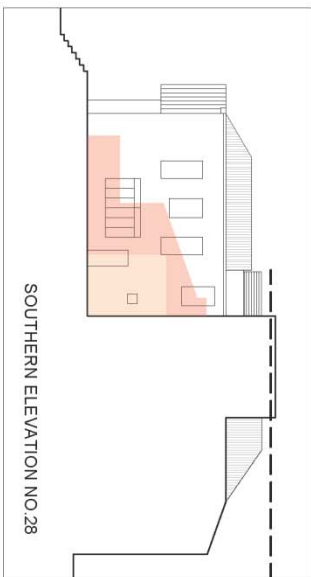


NOTES Do not scale off this drawing. Use stated dimensions or refer to any/combination of schedules.	ISSUE: A	DATE: 22/2/17	REVISION: FOR DA	BY: TO	PROJECT: 28 GIBBENS ST CAMPERDOWN CLIENT: T AND V GILPIN
 M/S/Q 313/77 during avenue roadshow / NSW 2018 Tel: 02 9592 5300 www.mssqarchitecture.com	DRAWING:		SCALE: NTS		JOB NO.:
	SHADOW DIAGRAMS		DATE: MAY 17	DRAWN: MD	841
JUNE 21 9AM		CHECK: TO	DATE: 06/06/17	REVISION:	A

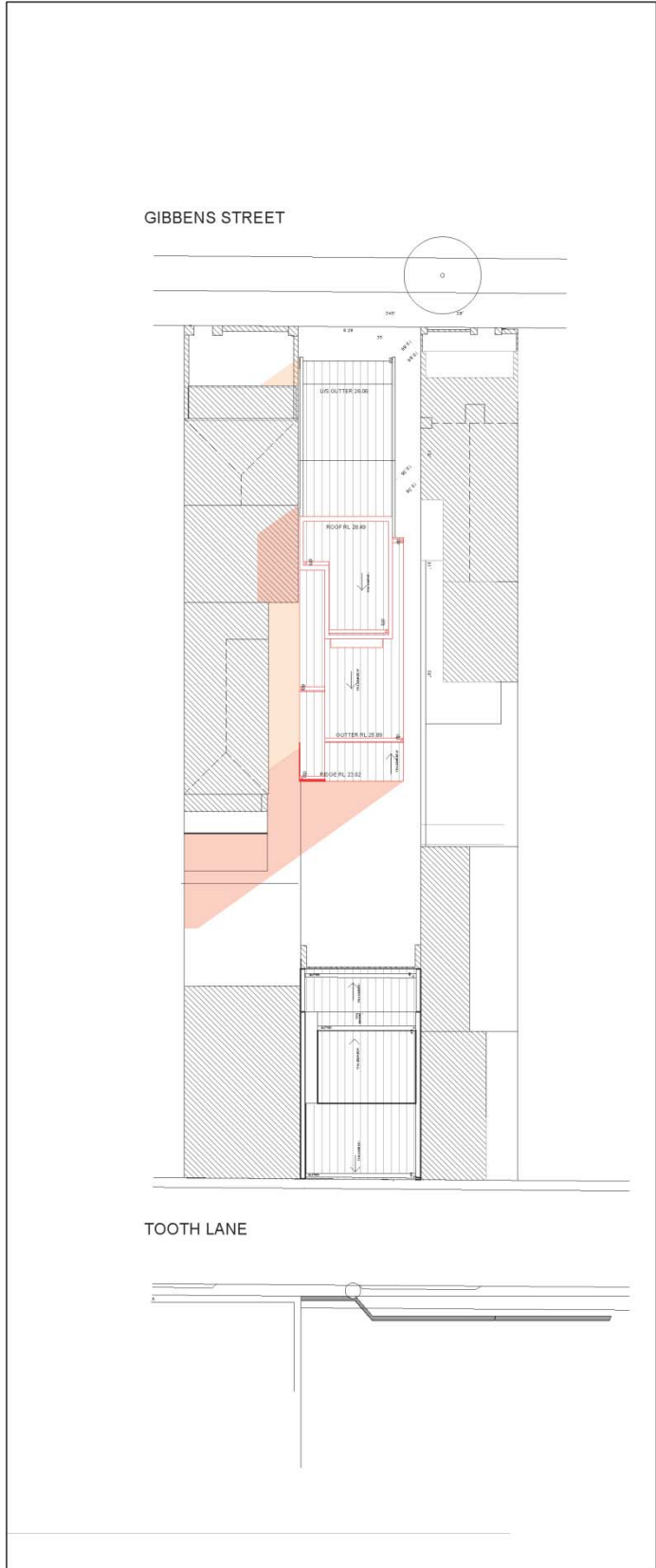


21 JUNE - 12PM

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- PROPOSED SHADOWS
- EXISTING BUILDING LINE

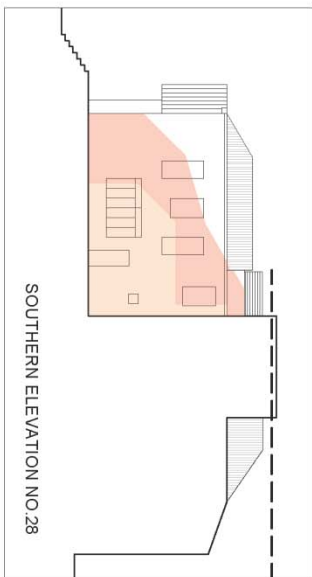


	<p>NOTES</p> <p>Do not scale off this drawing. Use figured dimensions only. All figures are approximate and subject to change without notice.</p>	<p>ISSUE</p> <p>A</p>	<p>DATE</p> <p>22/2/17</p>	<p>REVISION</p> <p>FOR DA</p>	<p>BY</p> <p>TO</p>	<p>MASQ</p> <p>architectural & interior design</p> <p>31/3/17 dunning avenue rosebery nsw 2018</p> <p>p 9592 5300 www.masqarchitecture.com</p>	<p>PROJECT</p> <p>28 GIBBENS ST CAMPERDOWN</p> <p>CLIENT</p> <p>T AND V GILPIN</p>	<p>DRAWING</p> <p>SHADOW DIAGRAMS</p> <p>JUNE 21 12PM</p>	<p>SCALE</p> <p>DATE</p> <p>DRAWN</p> <p>CHECK</p> <p>DWG</p> <p>REV</p>	<p>NTS</p> <p>MAY 17</p> <p>MD</p> <p>TQ</p> <p>ONE</p> <p>DA</p>	<p>JOB NO.</p> <p>641</p> <p>REVISION:</p> <p>A</p>
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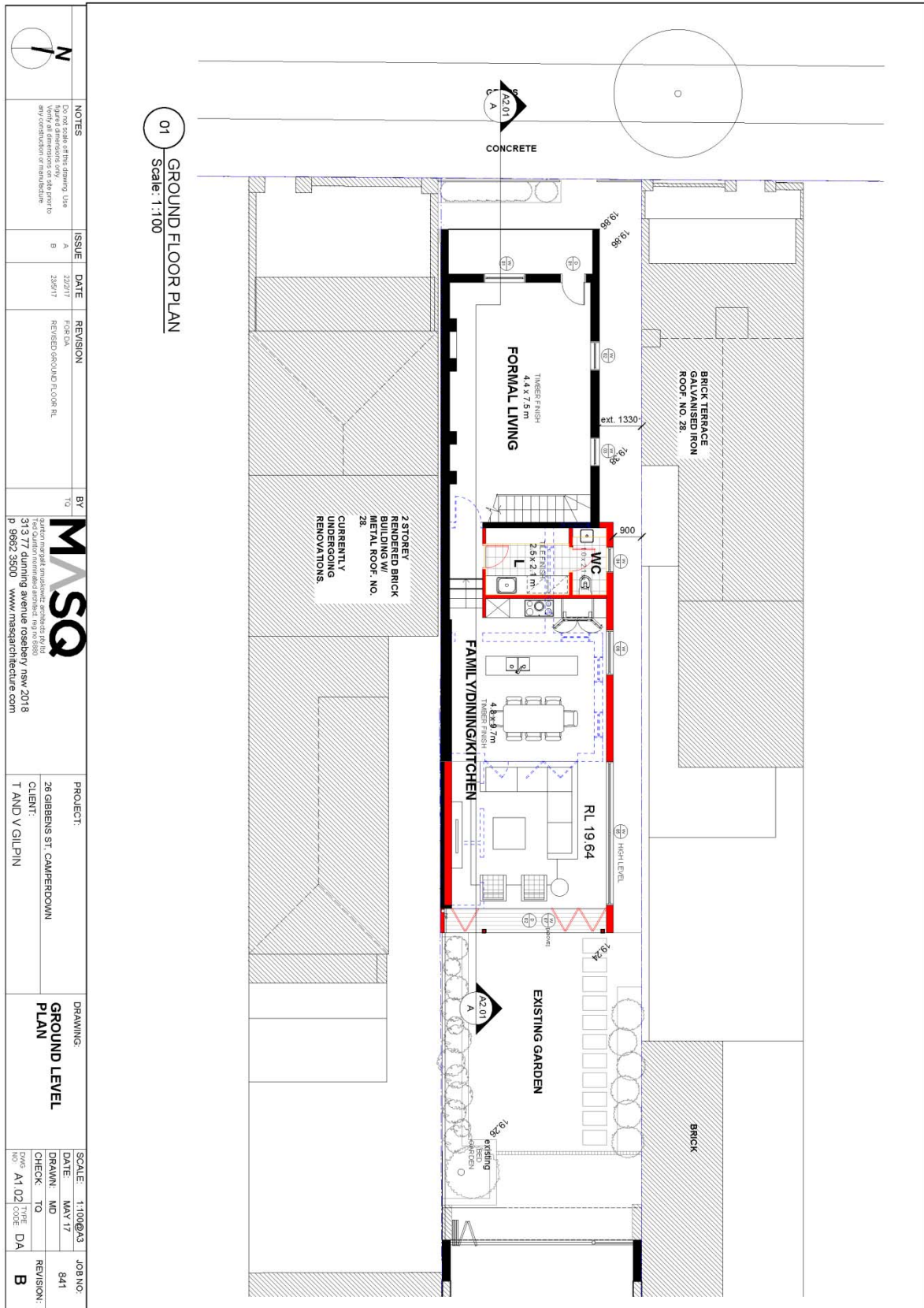
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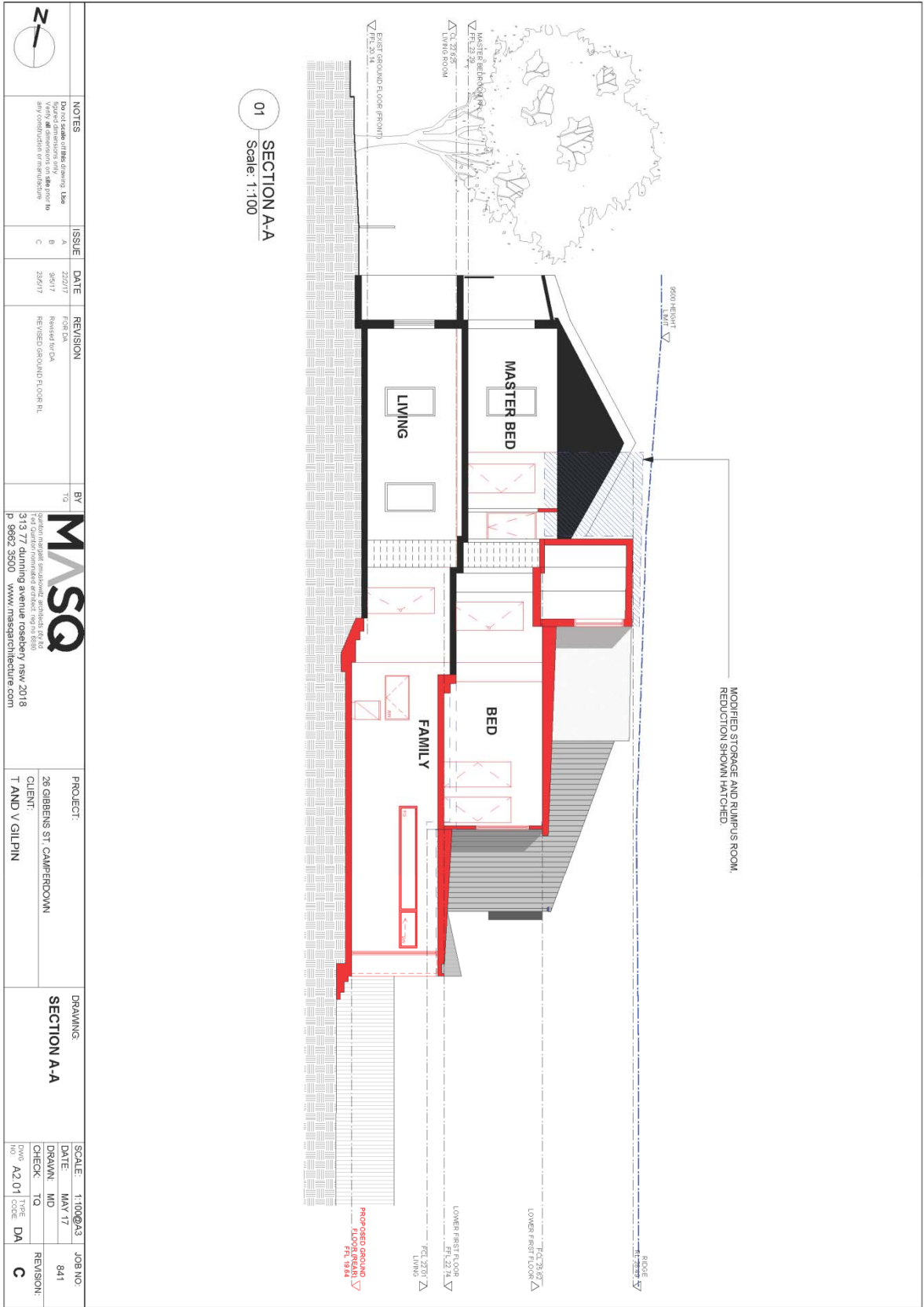
- EXISTING SHADOWS
- PROPOSED SHADOWS
- EXISTING BUILDING LINE



	<p>NOTES</p> <p>Do not scale of this drawing. Use signed dimensions only. All lengths are in millimetres unless otherwise stated.</p>	<p>ISSUE</p> <p>A</p>	<p>DATE</p> <p>22/2/17</p>	<p>REVISION</p> <p>FOR DA</p>	<p>BY</p> <p>TO</p>		<p>PROJECT</p> <p>26 GIBBENS ST CAMPERDOWN</p> <p>CLIENT</p> <p>T AND V GILPIN</p>	<p>DRAWING</p> <p>SHADOW DIAGRAMS</p> <p>JUNE 21 3PM</p>	<p>SCALE</p> <p>DATE: MAY 17</p> <p>DRAWN: MD</p> <p>CHECK: TO</p> <p>DATE: A3 01</p> <p>DATE: DA</p>	<p>JOB NO.</p> <p>641</p> <p>REVISION:</p> <p>A</p>
<p>13/77 dunning avenue rosebery NSW 2018 P 9592 5300 www.masqarchitecture.com</p>						<p>quinton masq architecture architects sydney 13/77 dunning avenue rosebery NSW 2018 P 9592 5300 www.masqarchitecture.com</p>				







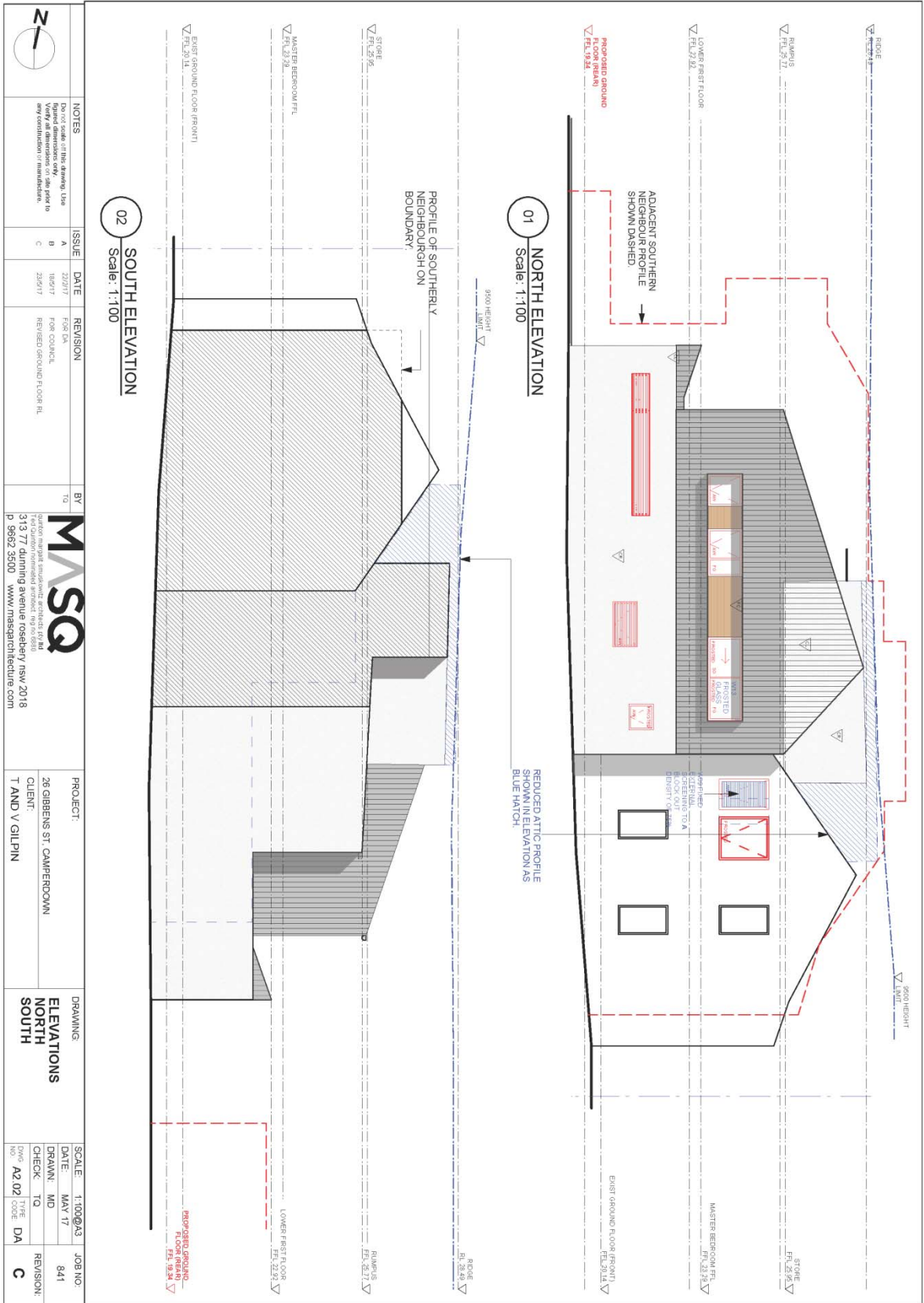
01 SECTION A-A
Scale: 1:100

ISSUE	DATE	REVISION	BY	PROJECT:	DRAWING:	SCALE:	DATE:	JOB NO.:
A	22/07	FOR DA	TO	26 GIBBENS ST CAMPERDOWN	SECTION A-A	1:100	MAY 17	841
B	09/17	REVISED FOR DA		CLIENT:				
C	25/17	REVISED GROUND FLOOR PL		T AND V GILPIN				

NOTES	BY	PROJECT:	DRAWING:	SCALE:	DATE:	JOB NO.:
Notes and other drawing. Use floor dimensions only. Vary all dimensions on site prior to any construction or installation.	TO	26 GIBBENS ST CAMPERDOWN	SECTION A-A	1:100	MAY 17	841
		CLIENT:				
		T AND V GILPIN				

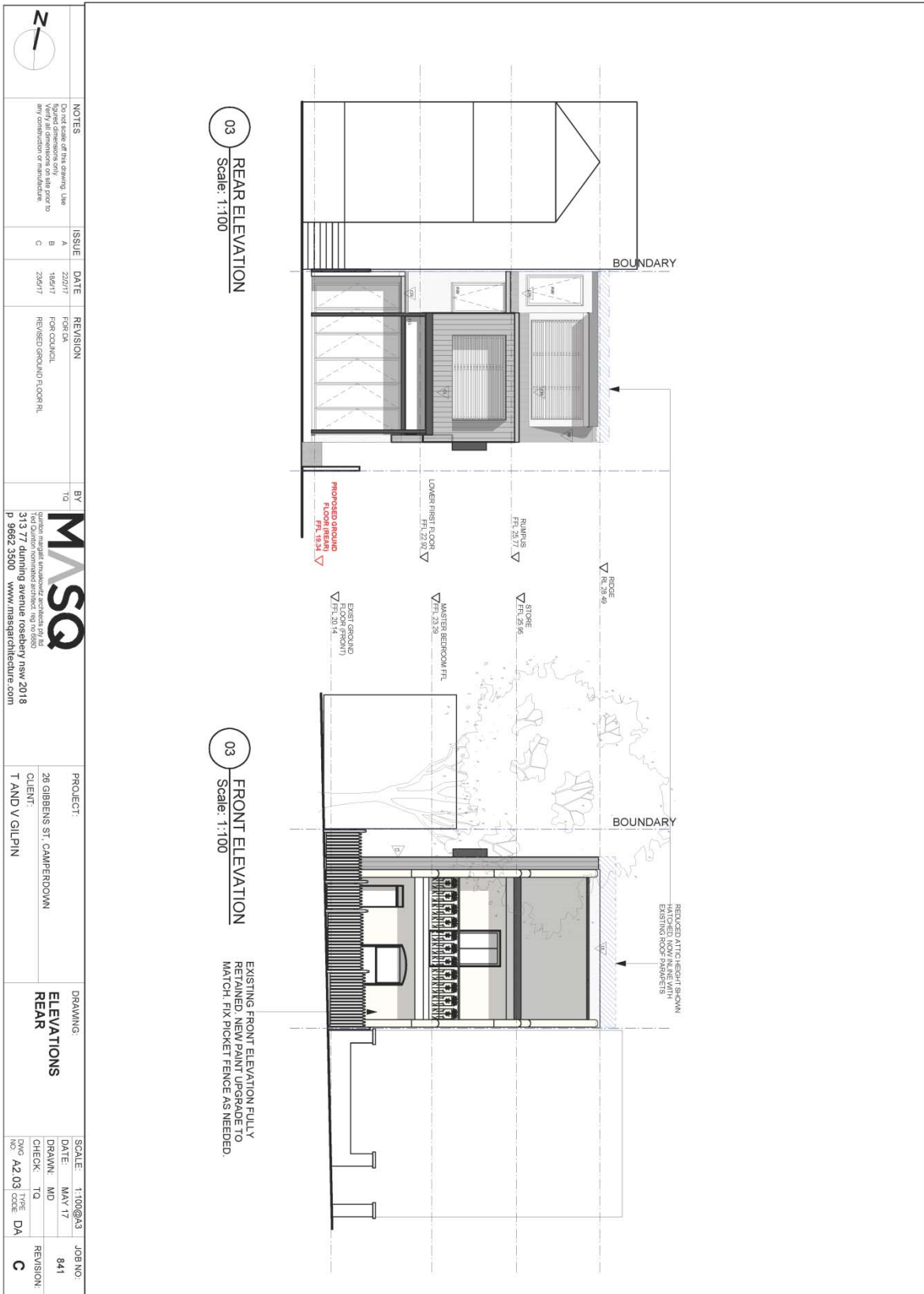
DATE	REVISION	BY	PROJECT:	DRAWING:	SCALE:	DATE:	JOB NO.:
22/07	FOR DA	TO	26 GIBBENS ST CAMPERDOWN	SECTION A-A	1:100	MAY 17	841
09/17	REVISED FOR DA		CLIENT:				
25/17	REVISED GROUND FLOOR PL		T AND V GILPIN				

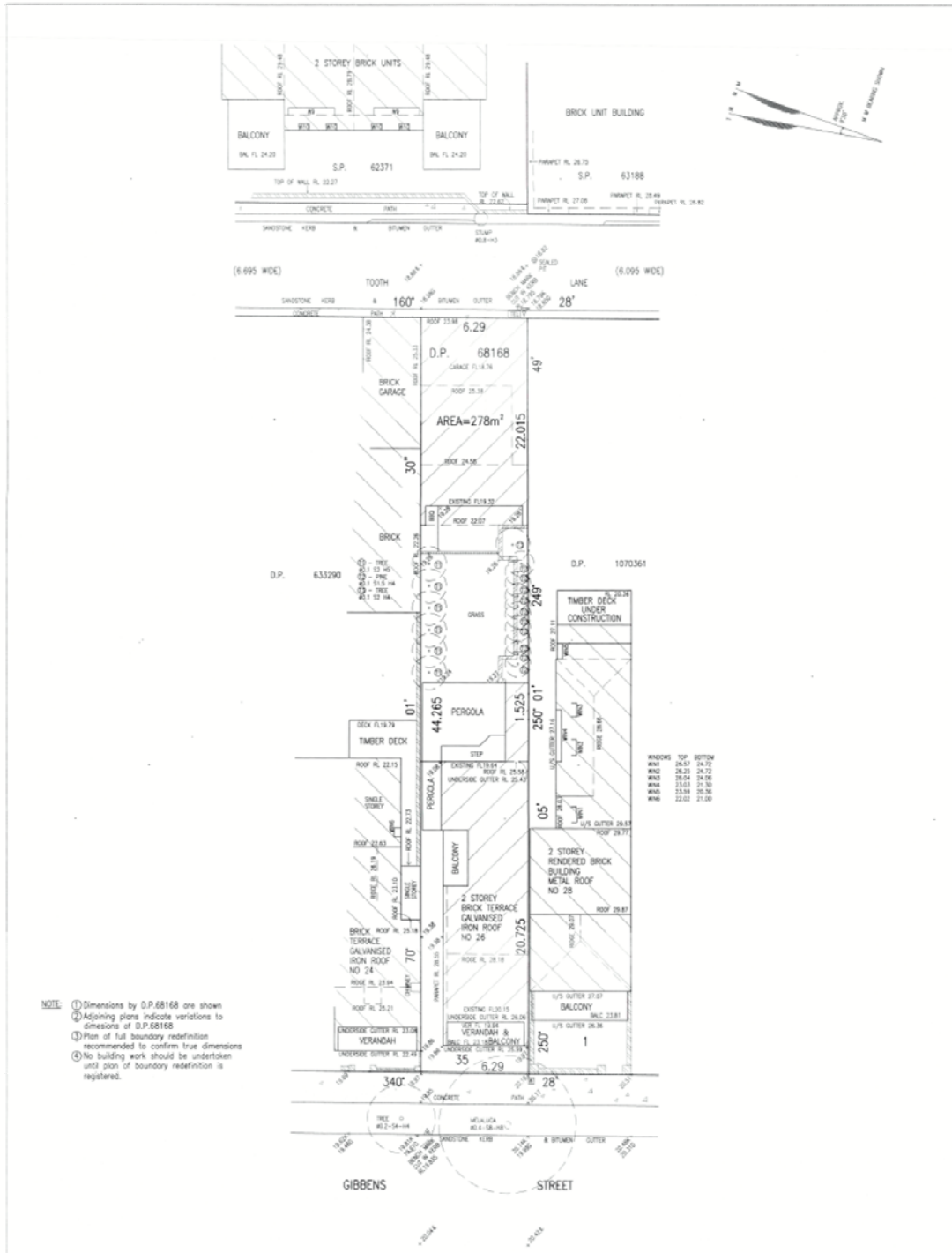
DATE	REVISION	BY	PROJECT:	DRAWING:	SCALE:	DATE:	JOB NO.:
MAY 17			26 GIBBENS ST CAMPERDOWN	SECTION A-A	1:100	MAY 17	841
			CLIENT:				
			T AND V GILPIN				



ISSUE	DATE	REVISION	BY	TO
02	22/07/17	FOR COUNCIL	MSA	MSA
01	18/05/17	FOR COUNCIL	MSA	MSA
C	25/04/17	REVISED GROUND FLOOR PL.	MSA	MSA

NOTES: Drawn in AutoCAD. Use Imperial dimensions only. Verify all dimensions on site prior to any construction or installation.		PROJECT: 26 GIBBENS ST. CAMPERDOWN CLIENT: T AND V GILPIN		DRAWING: ELEVATIONS NORTH SOUTH	
BY MSA MASON ARCHITECTS 313 77 dunning avenue rosebery nsw 2018 p 9662 3500 www.masarchitecture.com		PROJECT: 26 GIBBENS ST. CAMPERDOWN CLIENT: T AND V GILPIN		SCALE: 1:1000A3 DATE: MAY 17 DRAWN: MD CHECK: TO DWG NO: A2.02 TYPE: DA JOB NO: 841 REVISION: C	





NOTE: ① Dimensions by D.P.68168 are shown
 ② Adjoining plans indicate variations to dimensions of D.P.68168
 ③ Plan of full boundary redefinition recommended to confirm true dimensions
 ④ No building work should be undertaken until plan of boundary redefinition is registered.

NOTE: No underground services search has been carried out. You are advised to "Dig 1100 Before You Dig" before carrying out any building work.

PLAN OF LEVELS AND DETAILS AT
 26 GIBBENS STREET CAMPERDOWN
 FOR QUINTON-MARGALIT ARCHITECTS

Boundaries have not been surveyed. Dimensions and areas compiled from information obtained from the L.I.C. Implementations shown are approximate only and shown for planning purposes only.

Contours are approximate and previous should be plan to spot levels. No service search has been made and only those visible at time of survey have been recorded. Levels under buildings unknown. Appointing building levels shown are approximate only and to registered access.

DATUM	A.M.D.
REDUCTION RATIO	1:100
REFERENCE NO.	202503-1
DATE OF SURVEY	23/01/2017
SURVEYED BY	P.B./S./D.M.
DRAWN BY	U.Z./A.N.

W. BUXTON PTY LTD
 8/800 THE BAY
 ROCKSWORTH SURVEYERS
 74 WILLOW ROAD
 GARDNER NSW
 TEL: (02) 9837 8800
 FAX: (02) 9838 0700

Attachment C - written request in relation to the contravention to the floor space ratio development standard in accordance with Clause 4.6 (Exceptions to Development Standards)



Other relevant provisions:

Land Reservation Acquisition	Affectation not shown on LEP map, such control not applicable to site
Key Sites	Affectation not shown on LEP map, such control not applicable to site
Natural Resources - Biodiversity	Affectation not shown on LEP map, such control not applicable to site
Acid Sulfate Soil	Affectation not shown on LEP map, such control not applicable to site

*** Clause 4.6 - Exceptions to Development Standards**

FLOOR SPACE RATIO

This is a written request to seek an exception to a development standard under clause 4.6 - Exceptions to Development Standards of the Marrickville Local Environmental Plan 2013 (MLEP). The development standard for which the variation is sought is Clause 4.4 'Floor Space Ratio' (FSR).

This variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the following judgements:

1. *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
2. *Wehbe v Pittwater Council [2007] NSWLEC 827*
3. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*
4. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
5. *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248*

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) 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.*

Clause 4.6(3)(a) and 4.6(3)(b) require 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:

- (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.*



Clause 4.6(4)(a)(i) and (ii) require 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*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

A detailed assessment has been carried out below:

What is the Development Standard proposed to be varied?

Clause 4.4(2) of MLEP makes reference to FSR Maps with the site located with the subject site located within Area 'F' and subsequently allocated a floor space ratio of 0.6:1. However pursuant to the table of clause 2A a concession is applied to sites that have an area $> 250 \leq 300\text{m}^2$ with an FSR of 0.8:1 allocated. It is a numeric control, and can therefore be varied by way of a Clause 4.6 request.

The proposed development provides a total gross floor area of 278m^2 which equates to an FSR of 1.04:1, representing an exceedance of the standard of 65.4m^2 (29.4%).

Underlying objectives of the Floor Space Ratio Standard:

Objectives of the Floor Space Ratio standard outlined in Clause 4.4(2) of MLEP are as follows:

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

Underlying objectives of zone R2 – Low Density Residential:

Objectives of the R2 'Low Density Residential' zone in the land use table of MLEP 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 for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.*
- *To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.*
- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*

Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council* [2007] NSWLEC 827 has been utilised as a guide, noting also the more recent findings established in *Four2Five*.

Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.4(2) of the MLEP, is considered to remain consistent with the underlying objectives of the development standard as follows:

Objective (a) - Clause 4.6 provides a mechanism to vary development standards where on merit it is considered appropriate. As demonstrated within this submission the proposal is considered acceptable.

Objective (b) - The overall height is of the addition is reasonable, providing compliance with the 9.5m provision of the MLEP and a form comparative to development that adjoins. The floor space in excess of the standard does not unduly add to the perceived bulk or scale given its containment behind the ridge line of the existing dwelling and this in turn does promote the desired future character.

Objective (c) - As detailed above the bulk and scale of the proposed built form is considered acceptable. Noting setbacks that have been incorporated, reduced footprint of the attic level and treatment of each façade an appropriate level of amenity in the form of solar access, primacy and views is retained.

Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal achieves consistency with objectives of Clause 4.4 of MLEP, despite non-compliance.

Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required, however, as outlined above consistency with objectives is achieved despite noncompliance.

Has 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;

Built form within Gibbens Street and subsequent floor space ratio is considered to vary significantly. The adjoining site (28 Gibbens Street) did receive development approval in August 2013 for a similar scheme to that proposed, which required a clause 4.6 variation and endorsed an FSR of 1:1. We do not consider the standard to have been virtually abandoned or destroyed though the specific circumstance of the subject site and proposal is noted and on this basis, there is considered grounds for the departure.

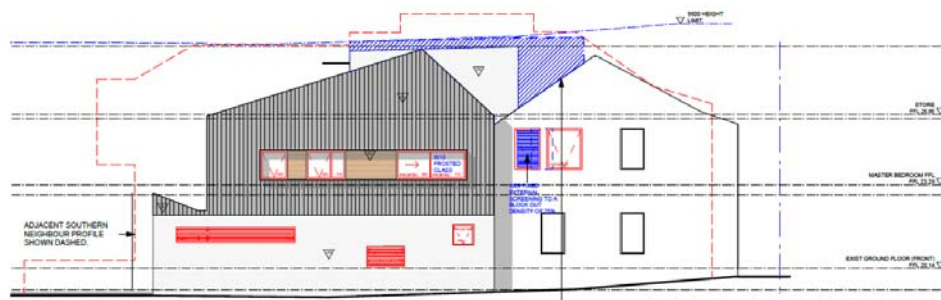


Figure 6 - North elevation also depicting building envelope of adjoining development at 28 Gibbens Street

Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S79C(1) of the EP&A Act 1979. In circumstances of the case, there are sufficient planning grounds particular to the site to justify contravening the development standard as follows:

- i. Bulk and scale of the proposed development is considered to remain acceptable when accessed against the detailed planning provision of the Inner West Council, noting particularly a compliant height and setbacks. Additions are contained behind the primary ridge of the existing building, thus not adding to the perceived bulk or scale as viewed from the public domain and remaining consistent with the desired future built form and character of the area;
- ii. No undue or unreasonable amenity impacts, such as loss of privacy, overshadowing or view loss, will be introduced towards neighbouring properties.

Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.



Generally speaking, there is public benefit in maintaining standards. However, there is public benefit in maintaining a degree of flexibility in specific circumstances. As previously outlined, consistency with underlying development standard objectives is achieved. Zone objectives are somewhat broader though still effectively addressed. In the current case, strict compliance would limit the development potential and result in a lesser outcome in respect to the desired accommodation needs.

There is, in the specific circumstances of this case, no public benefit in maintaining the standard, as the proposed development is considered to result in a planning outcome that is appropriate to the site.

As demonstrated in this submission, it would be unreasonable for strict compliance with the numerical FSR standard contained in clause 4.4 of MLEP to be enforced as allowing a degree of flexibility in this particular circumstance is considered to achieve a 'better outcome'.

4.2 (a)(ii) any Draft Environmental Planning Instruments

There are currently no draft planning instruments / amendments of relevance.

4.3 (a)(iii) any Development Control Plan

Marrickville Development Control Plan 2011

The proposed development is affected by provisions of the Marrickville Development Control Plan (MDCP). Compliance with prescriptive standards of the plan is outlined in the table below:

Requirement	Proposed	Compliance
Part 2 - Generic Provisions		
2.1 Urban Design		
Part 2.1 of MDCP 2011 contains objectives and controls relating to urban design and provides 12 urban design principles.	The height, bulk and scale of the proposal is appropriate in respect to surrounding built form with architectural style also in keeping with the character of the area.	✓
2.6 Acoustic and Visual Privacy		
2.6.3 Controls		
C3 Visual Privacy		
i. Private open spaces of new residential development must be located and designed to offer a reasonable level of privacy for their users;	Existing private open space consisting a lawn between existing house and garage to rear retained, affording a high level of amenity noting northerly orientation.	✓
ii. Elevated external decks for dwelling houses must generally be less than 10m2 in area and have a depth	No elevated external decks are proposed with ground	✓