

 DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2021/0480			
Address	2 Loughlin Street ROZELLE NSW 2039			
Proposal	Demolition of existing cottage and construction of new three level residence with parking			
Date of Lodgement	18 June 2021			
Applicant	Mr Ray Stevens			
Owner	Ms Karen J Twitchett Mr Ian C Jones			
Number of Submissions	Initial: 4 After Renotification: 3			
Value of works	\$970,000.00			
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%			
Main Issues	Permissibility Streetscape and local character Bulk and scale Visual privacy impacts			
Recommendation	Approval with Conditions			
Attachment A	Recommended conditions of consent			
Attachment B	Plans of proposed development			
Attachment C	Clause 4.6 Exception to Development Standards			
 <p>Figure 1: Locality Map</p>				
Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for Demolition of existing cottage and construction of new three level residence with parking at 2 Loughlin Street ROZELLE NSW 2039.

The application was notified to surrounding properties and four (4) unique submissions were received in response to the initial notification, including a petition signed by four (4) neighbouring properties.

Three (3) submissions were received in response to renotification of the application, which included the petition submitted in response to the initial notification.

The main issues that have arisen from the application include:

- Permissibility
- Streetscape and local character
- Bulk and scale
- Visual privacy impacts

The applicant has demonstrated existing use rights and the non-compliance with the floor space ratio is acceptable given that, subject to recommended conditions, no undue adverse amenity impacts arise. Therefore, the application is recommended for approval.

2. Proposal

The proposal is to demolish the existing single storey dwelling house and to construct a three storey dwelling-house as follows:

- Lower Ground: entry, family room, toilet, gym/cellar/laundry/utility room, tandem parking for two cars
- Upper Ground: three bedrooms (each with en-suite bathroom), rear courtyard, front balcony
- First floor: living/dining/kitchen, pantry, toilet, front and rear terrace

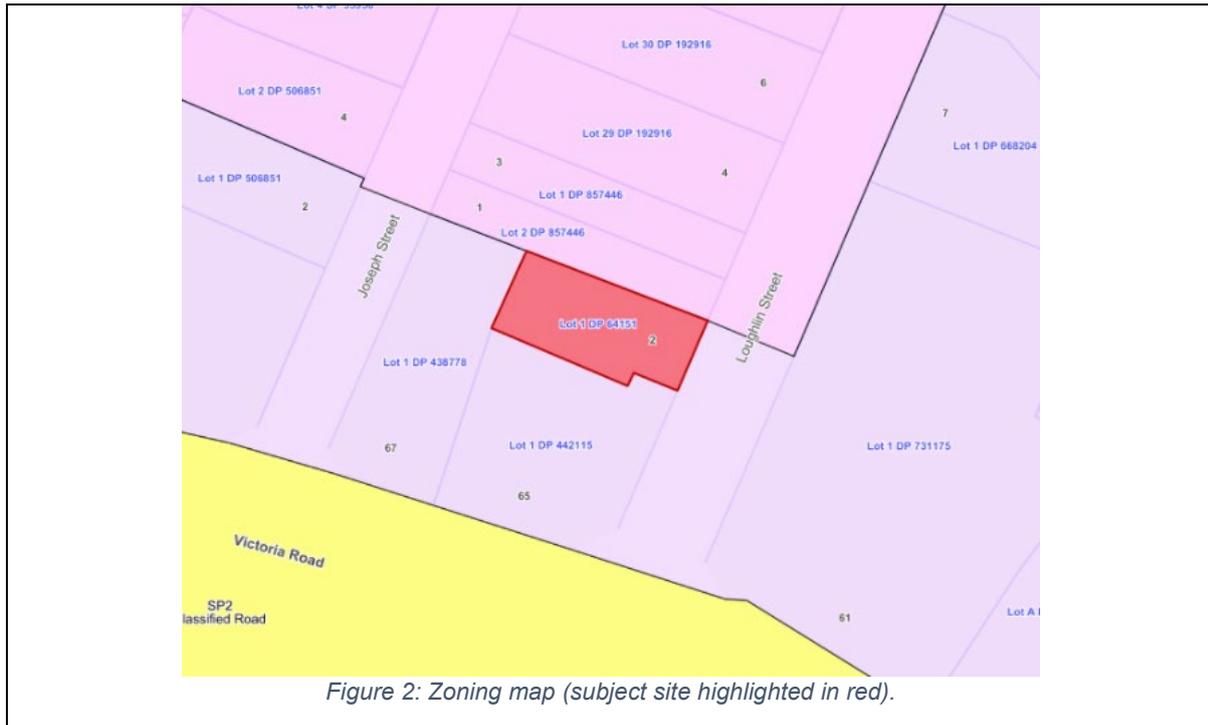
3. Site Description

The subject site is located on the western side of Loughlin Street, between Victoria Road and Brent Street. The site consists of one allotment and is generally rectangular in shape with a total area of area of 139.9sqm and is legally described as Lot 1 DP 64151.

The site has a frontage to Loughlin Street of measurement 6.91metres. The site benefits from an easement, a 1.2 – 1.4 metre wide and 4.6 metre long right of footway along the southern boundary from the Loughlin Street frontage.

The site supports a single storey dwelling house. The adjoining properties support single and two storey dwelling houses, three-storey townhouses and single to two storey industrial buildings.

The subject site is not listed as a heritage item and is not located within a conservation area; however, adjoins the 'The Valley Heritage Conservation Area'. The site is not identified as a flood prone lot and there are no trees located on the site.



4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Date & Date
PDA/2020/0446	Demolition and construction of a new dwelling-house.	11/12/2020 Issued
PDA/2020/0275	Advice on redevelopment options for the site.	20/08/2020 Issued
T/2019/139	Removal of 2 trees at the rear of property.	15/10/2019 Part Approval
T/2013/217	Tree Removal	24/07/2013 Approved

Surrounding properties

Application	Proposal	Decision & Date
D/2017/412	Adaptive re-use of a warehouse building and conversion into three strata titled residential terraces. Remediation of site at No. 10 Loughlin Street.	06/04/2018 Approved
PREDA/2019/83	To add a third floor to existing dwelling, preserving building lines. inclusion of 1 master bedroom, ensuite walk in robe and balcony to the rear, all contained within existing floorplan boundary at No. 1 Joseph Street.	05/07/2019 Issued

4(b) Application history

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

Date	Discussion / Letter / Additional Information
30/07/2021	<p>Council contacted the applicant raising the following issues:</p> <ul style="list-style-type: none"> • Streetscape impacts and bulk and scale. • Non-compliance with side boundary setback controls. • Adverse visual privacy impacts. <p>To address the above-mentioned issues, Council requested the following amendments and/or additional information:</p> <ul style="list-style-type: none"> • Setting back the proposed dwelling from the northern boundary. • Setting back the second floor terrace by at least 2 metres from to the eastern boundary to reduce the bulk and scale impacts when viewed from the street. • The height of the entire building to be reduced by 200mm. • If required, an updated BASIX certificate. <p>In addition, Council requested a response to one of the submissions received and advised the applicant to amend the design of the proposed parking space, and to provide additional information, to comply with the requirements of the LDCP 2013 and relevant Australian Standards.</p>
19/08/2021	The applicant submitted amended plans and additional information responding to the issues raised by Council.
25/08/2021	Council contacted the applicant requesting an additional elevation showing the fence line along the northern boundary, which was submitted on the same day.
31/08/2021 – 14/09/2021	Application renotified to surrounding properties.
27/10/2021	Council contacted the applicant, advising of a submission and advised to either consider submitting a Clause 4.6 with regard to the FSR or, to respond to the matters raised in this submission.
03/11/2021	The applicant submitted a Clause 4.6.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities, which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

However, given that the site adjoins, and is within, an industrial zone and given that adjoining land uses are industrial, the application was referred to Council’s Environmental Health Section. No objections were raised, and conditions have been recommended.

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

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

5(a)(iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

It is noted that the subject site is not located within the foreshores and waterways area. An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

5(a)(iv) Leichhardt Local Environment Plan 2013 (LLEP 2013)

The application was assessed against the following relevant clauses of *the Leichhardt Local Environmental Plan 2013*:

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater management

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

The site is zoned IN2 under the *LLEP 2013*. The *LLEP 2013* defines the development as:

dwelling house means a building containing only one dwelling

A dwelling house is a type of residential accommodation, which is prohibited development within the land use table.

Because the proposed development is ordinarily prohibited in the IN2 Light Industrial Zone, the Applicant relies upon the existing use right provisions under Division 4.11 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and Part 5 of the *Environmental Planning and Assessment Regulation 2000* for approval.

The applicant provided the following information in relation to existing use rights:

- The locality was subdivided into small lots by 1883 and the house at no. 2 Loughlin Street was built by 1890, when its outline is shown on the Sydney Metropolitan Water Board plan of the area.
- Sands Directory for 1930 shows 2 Loughlin Street as occupied by W. H. Cunningham.
- The hipped roof of the house is shown in the 1943 aerial photographic survey of Sydney.
- In 1985 Council approved a development application (DA 487/84) and building application (BA 22898) for alterations and additions that are consistent with the current layout of the house.
- Documentation available to the current owners shows that the property has been occupied as a house at various times before being bought by them in 2016, since when they have lived in it.
- The historic and current use is described in statutory planning terms as a “dwelling house”.
- The site was zoned Living Area under the County of Cumberland Planning Scheme (the County Scheme) from 1951, Industrial 4(b) under Leichhardt Interim Development Order No. 27 (IDO 27) from 12 April 1979, Industrial under Leichhardt Local Environmental Plan 2000 (LEP 2000) from 2000 and from 3 February 2014 has been zoned IN2 Light Industrial under Leichhardt Local Environmental Plan 2013 (LEP 2013).
- Development for the purpose of a dwelling house was permissible without consent under the County Scheme but was prohibited under IDO 27 and LEP 2000 and remains prohibited under LEP 2013.
- The use of the site as a dwelling house therefore became an existing use in 1979.
- Council accepted that the property enjoyed existing use rights as a dwelling house when it approved DA 487/84. As the use has been carried on since that time without being abandoned, the site continues to enjoy existing use rights as a dwelling house under Division 4.11 of the Act.

As per the information provided by the applicant, it is considered that an existing use of the site as a dwelling has been adequately demonstrated as per the requirements under Division 4.11 of the *EP&A Act 1979*.

As established in the Planning Principle regarding existing use rights and merit assessments, established in **Fodor Investments v Hornsby Shire Council** [2005] NSWLEC 71, “zone objectives... do not apply to the assessment of applications on sites with existing use rights”.

Also outlined in **Fodor Investments v Hornsby Shire Council** [2005] NSWLEC 71, for an application that relies on existing use rights, “planning controls that limit the size of a

proposal (ie floor space ratio, height and setback) have no application...they have relevance to the assessment of applications on such sites”.

As a result, it is considered appropriate to the assessment to consider those as relevant, in relation to the subject site, surrounding properties and context.

(ii) Clause 2.7 – Demolition

Clause 2.7 of the *LLEP 2013* 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 are included in the recommendation.

(iii) Clause 4.4 – Floor Space Ratio

The maximum permissible floor space ratio (FSR) for the site is 1:1. When including the garage in the gross floor area (GFA), which the applicant contends, the proposed development results in a FSR of 1.29:1 and the proposal would result in a variation of 29.19% (or 40.83sqm). If the garage is excluded from the GFA calculation, the proposed development would result in a FSR of 1.06:1, which would result in a variation of 5.67% (or 7.93sqm).

The proposed GFA and FSR has been assessed in detail under the Clause 4.6 assessment below.

(iv) Clause 4.6 Exceptions to Development Standards

Were the FSR development standard be applied, the proposal would result in a breach of the FSR development standard.

Whilst, as outlined above, for an application that relies on existing use rights, floor space ratio has no application for an assessment of applications that rely on existing use rights, Council received one submission stating recent caselaw (**Made Property Group Pty Limited v North Sydney Council** [2020] NSWLEC 1332), arguing that, in order for Council to consider a proposal that a) relies on existing use rights and b) seeks a variation with a development standard, “A Clause 4.6 written request must be prepared”.

Council contacted the applicant on 27/10/2021, advising of this submission and advised to either consider submitting a Clause 4.6 with regard to the FSR or, to respond to the matters raised in this submission.

The applicant, subsequently, submitted a Clause 4.6 written request with regard to the FSR, justifying the variation under Clause 4.6 of the *LLEP 2013*, which has been assessed below.

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the *LLEP 2013* below.

The written request that has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *LLEP 2013*, justifies the proposed contravention of the FSR development standard as follows:

- The proposed building will make a positive contribution to the streetscape and character of the neighbourhood by developing a transitional site at the edge of the industrial zone
- The proposed development is of a design that is complementary and compatible with regard to bulk, scale and siting with adjoining and nearby buildings.
- The proposal incorporates soft landscaping at the front and rear.
- To reduce visual impact, the lower-ground level of the proposal is partly excavated into the site and the upper levels are set back from the street alignment and the residential development adjoining on the northern side.
- The solar access of nearby residential properties will not be adversely affected.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not unreasonably affect views from nearby properties.
- Given that the existing use is prohibited in the IN2 Zone, the zone objectives have little relevance (if any) to the proposal.

It is considered that, would the FSR development standard be applicable, the applicant's written rational adequately demonstrates that compliance with it is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Given that the application relies on existing use rights, as outlined above, the zone objectives of the IN2 zone are not relevant to the proposal.

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

- (a) to ensure that residential accommodation—
 - (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and
 - (ii) provides a suitable balance between landscaped areas and the built form, and
 - (iii) minimises the impact of the bulk and scale of buildings,

It is considered that the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the *LLEP 2013*, for the following reasons:

- As outlined in detail elsewhere in this report, the proposed development will be compatible with the desired future character of the area in relation to building bulk, form and scale, and will have no adverse streetscape impacts.
- The proposed built form is sympathetic with other development along Loughlin Street and within the distinctive neighbourhood.
- The proposal includes adequate landscaped areas for the use and enjoyment of residents and the landscaped areas are complementary with other development within the streetscape.
- The proposed bulk and scale is similar with other development in the vicinity and, subject to recommended conditions, there are no undue amenity impacts to surrounding properties.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *LLEP 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ration development standard and it is recommended the Clause 4.6 exception be granted.

In addition, given the above, and, as outlined in the detailed assessment of other relevant clauses of the *LLEP 2013* and parts of the LDCP 2013, it is considered that the proposal results in acceptable amenity impacts to surrounding sites and satisfactory internal amenity. As such, the proposed GFA is considered acceptable.

(v) Clause 6.1 - Acid Sulfate Soils

The lot is identified as Class 5 acid sulphate soils (ASS) and is within 500 metres of land classified as Class 2 ASS. However, no works are proposed below 5 metres Australian Height Datum and the proposed works are not likely to lower the watertable below 1 metre AHD on the adjacent Class 2 land.

(vi) Clause 6.2 – Earthworks

The proposal involves excavation for the lower-ground level. As outlined elsewhere in this report, the proposal will not result in undue amenity impacts to surrounding properties, nor disruption of drainage patterns. Council's Development Engineer raised no concerns with regard to this part of the proposal and, subject to Council's standard conditions, which are included in the recommendation, the proposal is considered satisfactory with regard to this clause.

(vii) Clause 6.4 - Stormwater management

The proposal generally complies with this clause. Council's Development Engineer has assessed the proposal and raised no concerns, subject to conditions, which are included in the recommendation.

5(b) Draft Environmental Planning Instruments

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

5(b)(i) Draft State Environmental Planning Policy (Environment) 2018

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

5(b)(ii) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes – see discussion
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	Yes – see discussion
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A

Part C: Place – Section 2 Urban Character	
C2.2.5.5 Rozelle Commercial Distinctive Neighbourhood	Yes – see discussion
C2.2.5.5(b) Victoria Road Sub Area	Yes – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – see discussion
C3.3 Elevation and Materials	Yes – see discussion
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes – see discussion
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes – see discussion
C3.9 Solar Access	Yes – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes – see discussion
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	
	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A

Part F: Food	N/A
Part G: Site Specific Controls	
Insert specific control if relevant	N/A

The following provides discussion of the relevant issues:

Part C1.2 Demolition

The proposed demolition of the existing house can be carried out as complying development under Part 7 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP).

Part C1.11 Parking

The proposal includes two tandem on-site parking spaces, which are accessed from Loughlin Street. This is acceptable in this instance as the proposed parking spaces comply with control C48 as:

- The parking spaces are located behind the front wall of the dwelling.
- The proposed parking spaces have a single width space.
- There is only one access point.
- The vehicle crossing and parking space width is less than 50% of the front elevation of the proposed building.

In addition, the proposal is consistent with development on the adjoining sites and the general pattern of development along Loughlin Street, which includes various garages and driveways that are accessed from Loughlin Street. Whilst the proposed parking spaces and crossing are visible from the street, given that the parking spaces are located within the building envelope, and given that adequate landscaping has been included within the front setback along the northern boundary, the parking spaces, overall, will be subordinate to the building.

Whilst the proposal would result in the loss of one (1) on-street parking space, which is contrary to control C49, Council’s Development Engineer has advised that this, in this instance, is supportable.

To ensure that the proposed parking spaces, and access to them, complies with relevant Australian Standards, Council’s Development Engineer has recommended conditions, which have been included in the recommendation.

As such, the proposal is consistent with the intent and objectives of this part.

Part C1.12 Landscaping & Part C1.14 Tree Management

Whilst the submitted survey depicts an existing tree within the rear of the site, this tree has been removed prior to lodging this application. As such, the proposal does not include the removal of any trees. Further, the proposed works will not have any adverse impacts to trees on adjoining sites.

The proposed landscaped areas are adequate for new planting, including a new canopy tree at the rear of the site.

Part C2.2.5.5 Rozelle Commercial Distinctive Neighbourhood & Part C2.2.5.5(b) Victoria Road Sub Area

The proposal is generally consistent with the controls for the distinctive neighbourhood and sub-area. The proposed siting, bulk and scale, and colours and materials are consistent and compatible with other development.

Whilst the original building is not retained, as outlined elsewhere in this report, the existing building could be demolished under complying development.

The proposed parking spaces and vehicular crossing will not disrupt traffic along Victoria Road and the proposed on-site parking will be adequately hidden from the streetscape whilst maintaining pedestrian access.

Whilst, initially, to reduce bulk and scale impacts from the street, Council requested to increase the setback of the proposed first floor terrace from the front boundary to 2 metres, it is considered that the proposal, given the context and pattern of development, is acceptable. In this regard, the applicant provided, *inter alia*, the following justification for the proposed setback, which is considered reasonable.

We also point out that the main living area is on the upper floor and the terrace provides important outdoor living area with good views and excellent solar access and a space that is 3.0 m wide all conforming to the controls of the DCP clause 3.8-Private open space.

It is argued further that in terms of streetscape the front facade is approximately 6.5 m in height this is compared to the adjoining side facade of 65 Victoria Road which is 7.8m adjoining No. 2 Loughlin Street. The commercial premises opposite have a height of 7.5m. Further when compared to the heights of the factory conversion to the apartments at No. 10 Loughlin Street the heights are similar. The facade height is appropriate in an industrial zone and does form an orderly transition down to the adjoining residential zone.



Figure 3: View looking down Loughlin Street, showing the recently completed development at No. 65 Victoria Road. Image provided by the applicant, noting that "The proposed facade height at the boundary is 1.3 m lower than the height of the facade of 65 Victoria Road".

In addition, it is noted that Council's Urban Design Advisor assessed and supports the amended proposal; however, raised concerns regarding the extent of openings on the upper ground level and their potential for adverse visual privacy impacts. Visual privacy has been assessed in detail below.

Part C3.2 Site Layout and Building Design

Building Location Zone (BLZ)

Given the subdivision pattern of the subject and the adjoining sites and the different orientation of the subject site and the adjoining site at No. 1 Joseph Street there is no prescribed BLZ. As such, the proposed BLZs have been assessed against the requirements of C6, which outlines the following requirements:

- a. *amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved;*
- b. *the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;*
- c. *the proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping;*
- d. *retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and*
- e. *the height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.*

The proposed BLZs, subject to recommended conditions, are considered acceptable on merit for the following reasons:

- As outlined in detail below, the proposal, subject to recommended conditions, has acceptable amenity impacts to surrounding sites and does not result in overshadowing of adjoining residential sites.
- The proposal is compatible with the style and character of other development in the vicinity and is consistent with the desired future character of the neighbourhood.
- The proposal includes adequate areas of private open space and landscaping for outdoor recreation.
- No tree removal is proposed, and the proposed landscape areas are adequate for the planting of new vexation.
- Any proposal on the site, whether new development or additions to the existing dwelling house, would have some additional bulk and scale impact to the adjoining site at No. 1 Joseph Street. The proposed height, subject to the conditions recommended below, is acceptable in this instance as it will not result in undue bulk and scale impacts. Further, given the excavation to accommodate the lower ground floor, and by setting back the first floor by approximately 2 metres from the northern boundary, the height and, therefore, visual bulk and scale of the proposed building has been minimised and is acceptable. In this regard, it is noted that, were a first floor addition be proposed to the existing building, the overall height would be similar to that proposed.

Side boundary setbacks

The table below depicts compliance with the side boundary setback graph of C7.

Elevation	Proposed wall height (m)	Prescribed setback (m)	Proposed setback (m)	Complies
North (LGF and GF)	~ 5.6 – 7	1.62 – 2.43	1	No
North (FF)*	~ 6 – 8.3	1.85 – 3.18	2.4	No
South (LGF and GF)	~ 6.3	2.02	Nil	No
South (FF)	~ 8.5	3.29	Nil	No

Given the above and given that the intent of the side boundary setback graph is to ensure that applications achieve the objectives of this part of the DCP, the proposed side boundary setbacks have been assessed against Control C8, which states that Council may allow for a departure from the side setback control where:

- the proposal is consistent with the relevant Building Typology Statement as outlined in Appendix B of the DCP;*
- the pattern of development in the streetscape is not compromised;*
- the bulk and scale is minimised by reduced floor to ceiling heights;*
- amenity impacts on adjoining properties are minimised and / or are acceptable; and*
- reasonable access is retained for necessary maintenance of adjoining properties.*

The proposed side setbacks are considered acceptable on merit for the following reasons:

- Appendix B of the DCP is not applicable as the proposal is for a new building.
- Given the different zones and type of development along Loughlin Street, there is no distinctive pattern of development in the vicinity. It is considered that the proposed building is appropriate in the context, providing a transition between the industrial and residential zone.
- The proposed floor to ceiling heights of 2.4 metres on the lower ground floor are acceptable. However, the floor to ceiling height of the upper ground floor, which accommodates bed and bathrooms, of 2.7 metres are considered unnecessary. A condition is included in the recommendation, requiring the floor to ceiling height of this level to be reduced to 2.4 metres. The floor to ceiling height on the first floor, given the roof pitches up from north to south, varies between 2.7 metres and 3.8 metres. To minimise bulk and scale impacts, it is recommended to also reduce the floor to ceiling height of the first floor by 300mm. This reduces the overall height of the building by 600mm, which would result in an overall height along the northern boundary that is similar to the height of the adjoining buildings at No. 1 and No. 3 Joseph Street. Given the industrial development to the south, it is considered that the proposal will have no adverse impacts to this site and the proposed nil setback is considered acceptable.
- As outlined in detail below, the proposal, as recommended to be conditioned, has acceptable amenity impacts.
- Reasonable access arrangements for No. 1 Joseph Street are retained. The nil setback, given the proposed materials at No. 65 Victoria Road are low maintenance, and acceptable.

Building Height and the Building Envelope

A maximum wall height is not prescribed for the site. The proposed overall height, as recommended to be conditioned, and envelope, is considered acceptable as it is consistent with other development in the street. Given that there is a variety of roof forms in the vicinity,

the proposed roof form is compatible with those of residential and industrial and development in the street.

Overall, subject to recommended conditions, the proposal is considered to be consistent with the objectives of this part as:

- The buildings on the subject and adjoining sites are sufficiently separated to provide adequate air circulation. As outlined in detail below, the proposal will not result in overshadowing of adjoining residential lots and the proposed dwelling, subject to recommended conditions, will result in acceptable visual and acoustic privacy impacts.
- As outlined above, the proposal generally complies with the desired future character of the neighbourhood and the proposed building is consistent with other development in the vicinity. Given that the upper floor is set back by approximately 4.7 metres from the front boundary, the proposed dwelling appears as a two storey development from Loughlin Street, which is consistent with other residential development in the neighbourhood.
- The proposed lower and upper ground floors are set back by 1 metre, and the proposed first floor is set back by at least 2 metres, from the northern boundary, which minimises bulk and scale impacts of the proposed building, when viewed from the adjoining residential properties to the north.
- The proposed floor to ceiling heights, subject to recommended conditions are reasonable.
- The proposal includes adequate private open space and landscaping for outdoor recreation.
- No tree removal is proposed and opportunities for new significant vegetation is acceptable.

C3.3 Elevation and Materials

The proposed building facades, finishes and materials are sympathetic with, and complement, other development in the vicinity and are consistent with the desired future character. Further, the proposed vertical bays and horizontal bandings are consistent and/or complement other development in the vicinity and provide a transition between industrial and residential development along the street.

C3.6 Fences

The proposed front fence exceeds the maximum prescribed height of 1.2 metres. The proposed front fence, which is between 1.7 and 2.2 metres in height, is acceptable as, given its transparency, it still enables visual engagement between the public and private domain. Further, the proposed front fence, given the context and pattern of development along the street, in particular the industrial development, is compatible with the building and other development in the streetscape.

C3.8 Private Open Space

In principle, pursuant to C1, private open space for dwelling houses must have a minimum area of 16sqm and minimum dimension of 3m and it is noted that the proposed rear yard complies with this control. Whilst the rear yard is not connected directly to the principal indoor living areas, which are located on the first floor, this is acceptable as the proposal includes an additional private open space at first floor, which is connected directly to the main living areas. In this regard, the first floor balcony, which faces Loughlin Street, as

outlined in detail below, is considered to provide better amenity to the subject site whilst also protecting the amenity of surrounding sites.

C3.9 Solar Access

Given the orientation of the site and given that there are no residential sites along the southern boundary and to the rear of the subject site, the proposal will not result in additional overshadowing of residential private open space nor windows servicing living areas.

By locating the living areas and principle private open space on the first floor, solar access to these areas has been maximised and, complies with solar access controls for the subject site.

C3.11 Visual Privacy

Given that the adjoining sites to the south and rear are not residential development, the proposal will not have any adverse privacy impacts to these sites. However, the proposal includes a number of windows and balconies that have the potential for additional overlooking into residential sites.

The proposed windows to the upper ground floor service bed and bathrooms. As such control C7 applies, which outlines the following:

New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms).

The windows are not aligned with windows on adjoining sites within 9 metres and 45 degrees. However, it is noted that the proposal includes external privacy screening to the bathroom window on the northern elevation to minimise any overlooking between this window and the properties at No. 1 and No.3 Joseph Street.

The proposed windows to the northern elevation on the first floor service living areas. As such, the following controls applies:

- *C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.*
- *C2 Sill heights and screening devices should be provided to a minimum of 1.6m above finished floor level. Screening devices should have reasonable density (i.e. 75%) and have no individual opening more than 30mm wide, and have a total area of all openings that is less than 30 per cent of the surface area of the screen and be made of durable materials.*
- *C10 Living areas are to be provided at ground floor level to minimise opportunities for overlooking of surrounding residential properties.*

Whilst the proposal is contrary to C10, the proposal includes external privacy screening to these windows to minimise adverse visual privacy impacts. A condition has been included to ensure that the proposed privacy screening complies with C2. In addition, it is considered that, by locating the living areas on the first floor, internal amenity, including solar access, has been maximised.

The proposal also includes three balconies, one facing Loughlin Street on the upper ground level and two on the first floor; one to the front, facing Loughlin Street, and one to the rear.

Pursuant to C9

Balconies at first floor or above at the rear of residential dwellings will have a maximum depth of 1.2m and length of 2m unless it can be demonstrated that due to the location of the balcony there will be no adverse privacy impacts on surrounding residential properties with the provision of a larger balcony.

Whilst all three balconies are larger than prescribed by C9, given that balconies are private open space, visual privacy impacts from these have been assessed, in particular against C1, as follows:

- There will be no adverse visual privacy impacts from the upper ground floor balcony as the balcony overlooks Loughlin Street and the garage at No. 1 Joseph Street.
- Overlooking from the proposed first floor balcony at the rear is minimal as views between this balcony and the private open spaces, including the upper level balcony at No. 1 Joseph Street, will be mostly screened by the kitchen on the first floor.

However, there will be direct sightlines, within 9 metres and 45 degrees, between the private open space at No. 1 Joseph Street and the proposed first floor balcony to the front. Given that the living areas are located on the first floor, this balcony is the principle private open space and, as such, a high traffic area. As such, it is considered that these sightlines are contrary to O1, which stipulates that -

...spaces are designed with a high level of consideration to protecting visual privacy within the dwelling, in particular the main living room, and private open space of both the subject site and nearby residential uses.

In addition, a planter is proposed along the northern boundary on the first floor. In this regard, it is noted that vegetation cannot be, solely, used for screening. Further, to maintain the planter boxes, e.g., watering, these need to be accessed, which will result in additional adverse privacy impacts to adjoining sites, in particular to No. 1 Joseph Street.

As a result, a condition is recommended, requiring that this planter be deleted from the proposal. To ensure that this area is not used, it is also recommended to delete the balustrade along the proposed planter. Further, it is recommended to impose a condition, requiring a privacy screen along the western and northern edge of the first floor balcony at the front. The length of this screen, along the northern boundary, must ensure that there will be no sightlines within 9 metres and 45 degrees between this balcony and open space at the adjoining sites, No. 1 and No. 3 Joseph Street. Given that this balcony is adjacent to the garage at No. 1 Joseph Street, it is considered that this screening will not result in undue bulk and scale impacts to adjoining sites.

No change is proposed with regard to the finished level of the private open space at the rear. As such, there will be no additional overlooking opportunities.

C3.12 Acoustic Privacy

The proposed principle private open space is located at the front, adjacent to the garage at No. 1 Joseph Street, and, as such, not adjacent to bedrooms on adjoining sites. The proposed air-conditioning unit is located at the front, adjacent to the garage at No. 1 Joseph Street and, as such, subject to Council's standard conditions concerned with noise impacts

from residential development, including noise impacts from mechanical equipment, the proposal contains noise within the dwelling and minimises the transmission of external noise.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

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

Four (4) submissions were received in response to the initial notification.

Three (3) submissions were received in response to renotification of the application.

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

- Visual Privacy Impacts to No. 1 and No. 3 Joseph Street.
- Non-compliance with numerical controls and objectives of FSR, BLZ and side boundary setback.
- No Clause 4.6 submitted and, therefore, not enough justification for the variation to the development standard has been provided.
- Overall height and visual bulk and scale impacts.
- Proposal not consistent with the character of the area.
- Proposal does not complement industrial or residential development in the area.
- Proposal contrary to the desired future character of the area.
- Adverse impacts on solar access of adjoining sites (additional overshadowing).
- Residential amenity of site.
- Air circulation between properties.
- Wall and roof height.
- Incompatible roof pitch and form.
- Location and noise impacts from proposed air-conditioning unit.

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

Issue: The submitted SEE argues both, that industrial zoning is and that it is not relevant.

Comment: Council does not agree with this statement. As outlined elsewhere in this report, the proposal relies on existing use rights.

Issue: The submitted SEE and proposal is contrary to the planning principle regarding existing use rights and merit assessment, established in **Stromness Pty Ltd v Woollahra Municipal Council** [2006] NSWLEC 587 and **Fodor Investments v Hornsby Shire Council** [2005] NSWLEC 71.

Comment: The proposal is considered to be consistent with this planning principle. Whilst it is acknowledged that, given it is proposed to demolish the existing building, the applicant is not entitled to a building that has a GFA and FSR similar to that of the existing building, as outlined elsewhere in this report, the proposal is considered acceptable as it does not,

subject to recommended conditions, result in undue amenity impacts to surrounding sites nor undue streetscape impacts.

Issue: Regard should be given to “considerations similar to those applicable when the land is zoned residential.

Comment: A merit assessment for residential development consistent with the LDCP 2013 has been conducted. Given that the site is zoned IN2, and given that the proposal relies on existing use rights, Council cannot assess the proposal against other residential provisions, including the provisions/objectives of the adjacent R1 zone or development standards specific to the R1 zone.

Issue: Demolition of existing building diminishes the streetscape and heritage value of the area.

Comment: As outlined previously, the subject site is not located within a HCA and the dwelling could be demolished under complying development.

Issue: Proposed three storey dwelling is not consistent with the character of the area.

Comment: As outlined previously, it is considered that the proposal is consistent with other development in the area, which includes other three storey development. The first floor has been set back from the front and northern boundary to minimise visibility from the street and to minimise visual bulk and scale to surrounding sites.

Issue: Insufficient information regarding privacy screening to first floor living areas and potential sightlines into bedroom windows on adjoining sites.

Comment: As outlined above, a condition has been recommended, requiring the privacy screening to comply with council’s standard requirements for screening to ensure an adequate level of privacy is maintained.

Issue: View Loss at No. 1 and No.3 Joseph Street

Comment: Figure 3 shows the views currently obtained from the upper level bedroom and balcony at No. 1 Joseph Street.



Figure 4: Views from upper level bedroom and balcony at No. 1 Joseph Street. Source: <https://www.realestate.com.au/sold/property-house-nsw-rozelle-135848294>

Only district views across the southern (side) boundaries from No. 1 and No.3 Joseph Street will be impacted by the proposal; significant views, in particular views obtained across the rear boundaries of these properties, including views of the city skyline will not be impacted by the proposal. As such, the proposal is considered satisfactory with regard to view sharing.

Issue: Adverse visual privacy impacts to No. 4 and, possibly, other houses along Loughlin Street.

Comment: Privacy controls within the LDCP 2013 only protect sightlines within 9 metres of the subject site. No. 4 Loughlin Street and properties further to the north are not within 9 metres of the subject site.

Issue: Gap between windows and privacy screening allows overlooking into neighbouring sites.

Comment: As outlined previously, a condition is recommended, which requires that the privacy screening complies with LDCP 2013 privacy controls and standard conditions for screening.

Issue: Location and noise impacts of air-conditioning unit.

Comment: The proposed air-conditioning unit is located at the front, adjacent to the garage at No. 1 Joseph Street. As such, As outlined previously, a condition is recommended, regarding 'offensive noise' and it is noted that air-conditioning units are also regulated in terms of their operations under the *Protection of the Environment Operations (Noise Control) Regulation 2017*. As a result, any breach of the consent and regulation can be investigated and action taken as necessary.

Issue: The applicant has not commented on the initial submission, which was requested by Council, or this document is not on Council's tracker.

Comment: The applicant submitted a response to this submission; however, this was not publicly available Council's DA tracker during the notification period.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Urban Design
- Development Engineer
- Environmental Health

6(b) External

The application was referred to the following external bodies.

- Ausgrid (advisory notes provided, which have been included in the recommendation)

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$9,700.00 would be required for the development under the *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in the *Leichhardt Local Environmental Plan 2013* and the Leichhardt Development Control Plan 2013.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval, subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2021/0480 for Demolition of existing cottage and construction of new three level residence with parking at 2 Loughlin Street ROZELLE NSW 2039, subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
2020/19/MD.02/A - Amendment A	2 Loughlin St - Plans - Site & Roof	10/07/2020	Oikos Architects
2020/19/MD.03/A - Amendment A	2 Loughlin St - Plans - Ground	10/07/2020	Oikos Architects
2020/19/MD.04/A - Amendment A	2 Loughlin St - Plans - First	10/07/2020	Oikos Architects
2020/19/MD.05/A - Amendment A	2 Loughlin St - Sections - A & B	10/07/2020	Oikos Architects
2020/19/MD.07/A - Amendment A	2 Loughlin St - Elevation - North & South	10/07/2020	Oikos Architects
2020/19/MD.06/A - Amendment A	2 Loughlin St - Elevation - East & West	10/07/2020	Oikos Architects
2020/19/MD.07/A - Amendment A	2 Loughlin St - Elevation - North & South	10/07/2020	Oikos Architects
2020/19/DA.02/D - Amendment F	Plans - Site & Roof	12/08/2021	Oikos Architects
2020/19/DA.03/D - Amendment F	Plans - Lower Ground	12/08/2021	Oikos Architects
2020/19/DA.04/D - Amendment F	Plans - Upper Ground	12/08/2021	Oikos Architects
2020/19/DA.05/D - Amendment F	Plan - First & Roof	12/08/2021	Oikos Architects

2020/19/DA.06/D - Amendment F	Sections - A & B	12/08/2021	Oikos Architects
2020/19/DA.07/D - Amendment F	Sections - C & D	12/08/2021	Oikos Architects
2020/19/DA.08/D - Amendment F	Elevation - East & West	12/08/2021	Oikos Architects
2020/19/DA.09/D - Amendment F	Elevation - North & South	12/08/2021	Oikos Architects
LD 01 - Revision B	Landscape Plan - Lower Ground	19/08/2021	Lorna Harrison
LD 02 - Revision B	Landscape Plan - Upper Ground Floor	19/08/2021	Lorna Harrison
LD 03 - Revision B	Landscape Plan - First Floor	19/08/2021	Lorna Harrison
210129 - D01 - Revision C	LOWER & UPPER GROUND FLOOR STORMWATER DRAINAGE PLAN	13/08/2021	Smart Structures Australia
210129 - D02 - Revision B	1ST FLOOR AND ROOF STORMWATER DRAINAGE PLAN	13/08/2021	Smart Structures Australia
1188097S_02	BASIX	12/08/2021	Oikos Architects

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a. That the overall height of the building has been reduced by 600mm by:
 - i. reducing the floor to ceiling height of the upper ground floor by 300mm to 2.4 metres.
 - ii. reducing the floor to ceiling height on the first floor by 300mm to 2.7 metres along the northern boundary.

- b. That the planter and balustrade on the first floor along the northern boundary has been deleted.

FEES

3. Security Deposit - Custom

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	Min \$2254.00
Inspection Fee:	\$241.50

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.

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

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with the *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

Note:

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

Payment amount*:

\$9,700.00

*Indexing of the Section 7.12 contribution payment:

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

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000))**. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

5. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed

rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

GENERAL CONDITIONS

6. Boundary Alignment Levels

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

7. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating that windows W08, W15, W16, and W17 being amended in the following manner:

- a. The external screening be fixed with a minimum block out density of 75% .
Note: The louvers are to individual opening more than 30mm wide and a total area of opening that is less than 30% of the surface area of the screen and made of durable materials. Louvered screens must be securely fitted and may be able to be tilted open from a closed position to an angle of 45 degrees in a downward or upward position.

8. Balcony

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating the erection of a privacy screen on the northern and western sides/edges of the first floor balcony/terrace at the front (Loughlin Street). The privacy screen must have a minimum block out density of 75% and a height of 1.6 metres above the finished floor level of the balcony/terrace.

The length of this screen, along the northern boundary, must ensure that there will be no sightlines within 9 metres and 45 degrees between this balcony and open space at the adjoining sites, No. 1 and No. 3 Joseph Street.

Note: No additional privacy screening is required on the upper ground floor balcony at the front.

9. 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.

10. 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.

11. 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.

12. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**13. 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.

14. Dilapidation Report

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

that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

15. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

16. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE

17. Light Spill

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that any lighting of the premises complies with Australian Standard AS4282:1992: Control of Obtrusive Effects of Outdoor Lighting.

18. Dilapidation Report – Pre-Development – Minor

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

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

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention, certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The design must be generally in accordance with the stormwater drainage concept plan on Project No. 210129 prepared by Smart Structures Australia, dated 5/3/2021, as amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any

rainwater tank(s), by gravity to the kerb and gutter of a public road via the OSD tank as necessary;

- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
- e. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- f. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);
- g. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- i. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- j. An overland flowpath must be provided within the setback to the southern side boundary between the rear of the dwelling and the Loughlin Street frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flowpath;
- k. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- l. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- m. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
- n. No nuisance or concentration of flows to other properties;
- o. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to

convey the additional runoff generated by the development and be replaced or upgraded if required;

- p. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- q. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- r. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- s. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- t. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;

20. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. New concrete footpath along frontage of the site the full width and length of is to be reconstructed as per Councils standard footpath drawing F1 (80mm thick unreinforced concrete footpath);
- b. Installation of a stormwater outlet to the kerb and gutter.

All works must be completed prior to the issue of an Occupation Certificate.

21. Driveway Long Section - Dwelling

The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template (Figure C1) from AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 or 1:25 natural scale, shall be submitted to and approved by Council before the issue of a Construction Certificate. The long section shall begin from the centreline of the adjacent road to a minimum of 3 metres into the property. The long section approved by Council shall define the Alignment Levels at the property boundary. The long section shall show both existing surface levels and proposed surface levels with changes.

22. Parking Facilities - Domestic

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

- a. The internal vehicle hardstand area must be redesigned such that the level at the boundary must match the invert level of the adjacent gutter plus 150mm at both sides of the vehicle entry. This will require the internal garage slab or hard stand area to be adjusted locally at the boundary to ensure that it matches the above-issued alignment levels;
- b. The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- c. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- d. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements;
- e. The garage/carport/parking space must have minimum clear internal dimensions of 11400 x 3000mm (length x width) and a door opening width of 2800mm at the street frontage. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- f. Where the drop adjacent to the end of the parking module(s) exceeds 600mm, structural barriers must be provided. Where the drop is between 150-600mm, wheel stops must be provided. These physical controls must be installed in accordance with the requirements of Section 2.4.5 of AS/NZS2890.1-2004. The design of structural barriers must be certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications;
- g. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- h. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004;

- i. The parking space must be set back from the property boundary by a minimum of 1000mm to [improve sight distance to pedestrians and/or accommodate a transition between the parking space and the boundary]; and
- j. The external form and height of the approved structures must not be altered from the approved plans.

23. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

24. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION

25. Contamination – New Evidence

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

26. Imported Fill Materials

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

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

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

27. 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.

28. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

PRIOR TO OCCUPATION CERTIFICATE

29. Contamination – Disposal of Soil

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

30. No Encroachments

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

31. 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.

32. Works as Executed – Site Stormwater Drainage System

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

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

33. Public Domain Works

Prior to the issue of an Occupation 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. Light/Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site must be reconstructed; and
- d. 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".

34. Operation and Management Plan

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

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

35. Parking Signoff – Minor Developments

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

ON-GOING

36. Noise General

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

37. Operation and Management Plan

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

ADVISORY NOTES

Asbestos Removal

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

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

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

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

Permits

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

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

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

Insurances

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

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

Disability Discrimination Access to Premises Code

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

National Construction Code (Building Code of Australia)

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by

this consent must be carried out in accordance with the requirements of the National Construction Code.

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

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

WorkCover Authority of NSW

13 10 50

www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

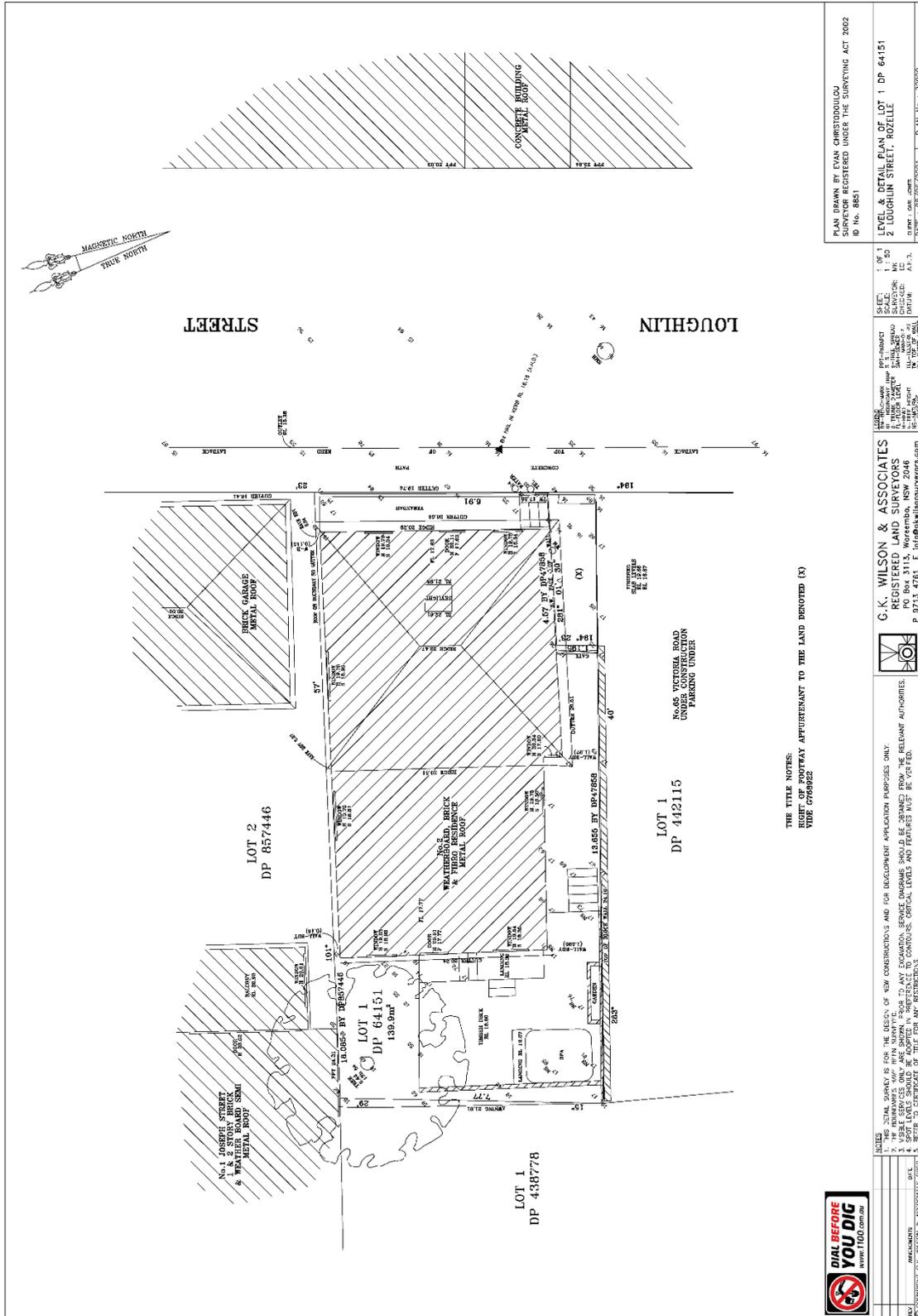
Ausgrid Network Standards and SafeWork NSW

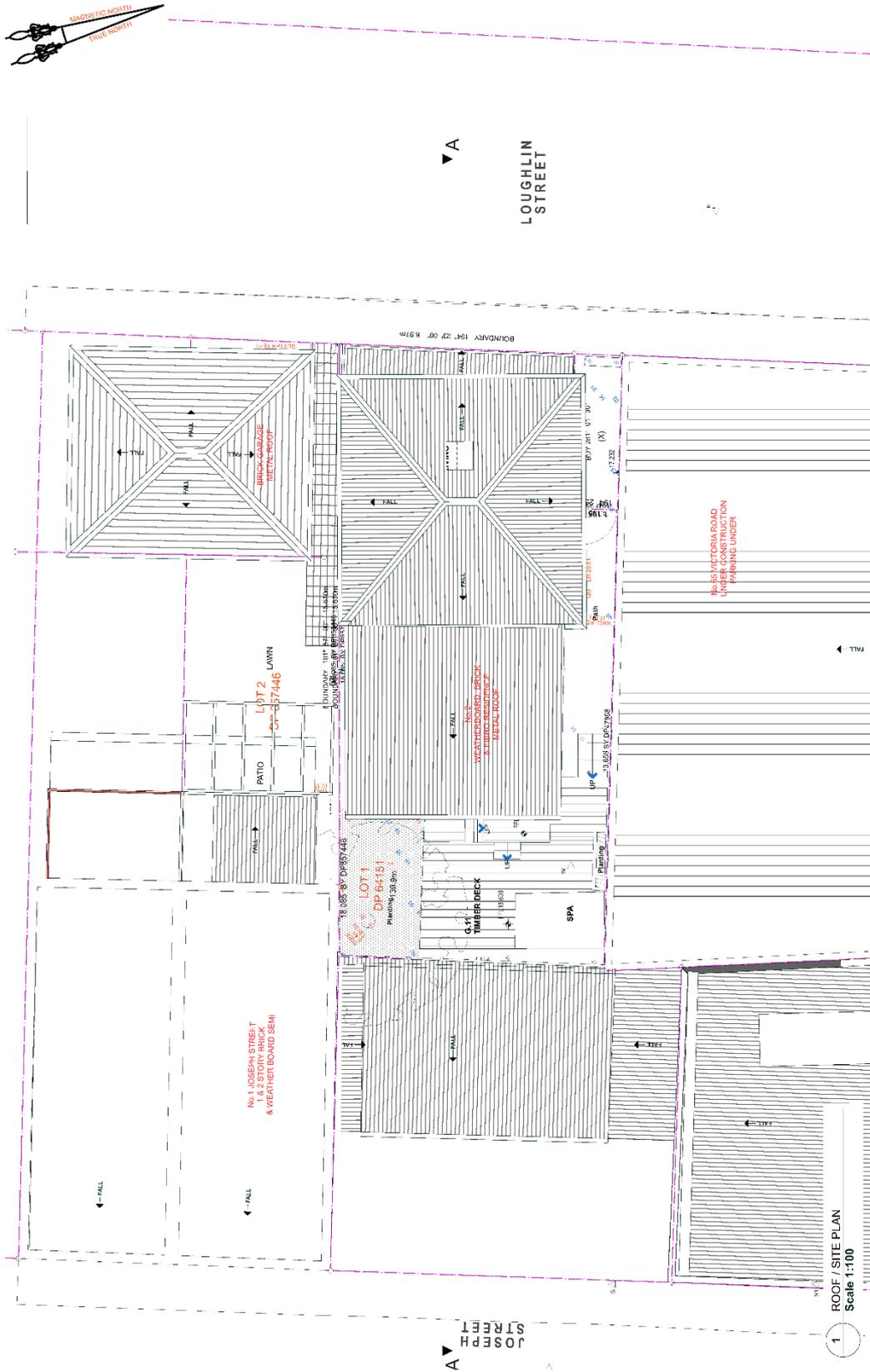
The design must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.

Minimum clearances to Ausgrid's infrastructure

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

Attachment B – Plans of proposed development





Amend. Description A MD - Draft 1	Date 10/07/20
	Scale: 1:100 @ A3
This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect.	
Drawing Title: 2 Loughlin St - Plans - Site & Roof	
Date: 26/06/20 Drawing No: 2020/19/MD.02/A Plot No: 10/07/2020	
Client: CARL JONES & KAREN TWITCHETT Project: MD Drawings of 2 LOUGHLIN ST. ROZELLE NSW	
OIKOS Architects Ray Stevens B. Arch (Hons), M. Arch (UNSW), A.I.A., A.C.A. NSW ARB No. 4458 15 Elliott Street Balmain NSW 2041 E-mail: ray@oikos.com.au Tel: (02) 9810 7854 Mob: 0411 455 869	
Member of the Institute of Architects of Australia	



Scale: 1:100 @ A3
 Date: 26/06/20
 Drawing No: 2020/19/MD.03/A
 Project: 10/07/2020

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 Drawing Title:
2 Loughlin St - Plans - Ground

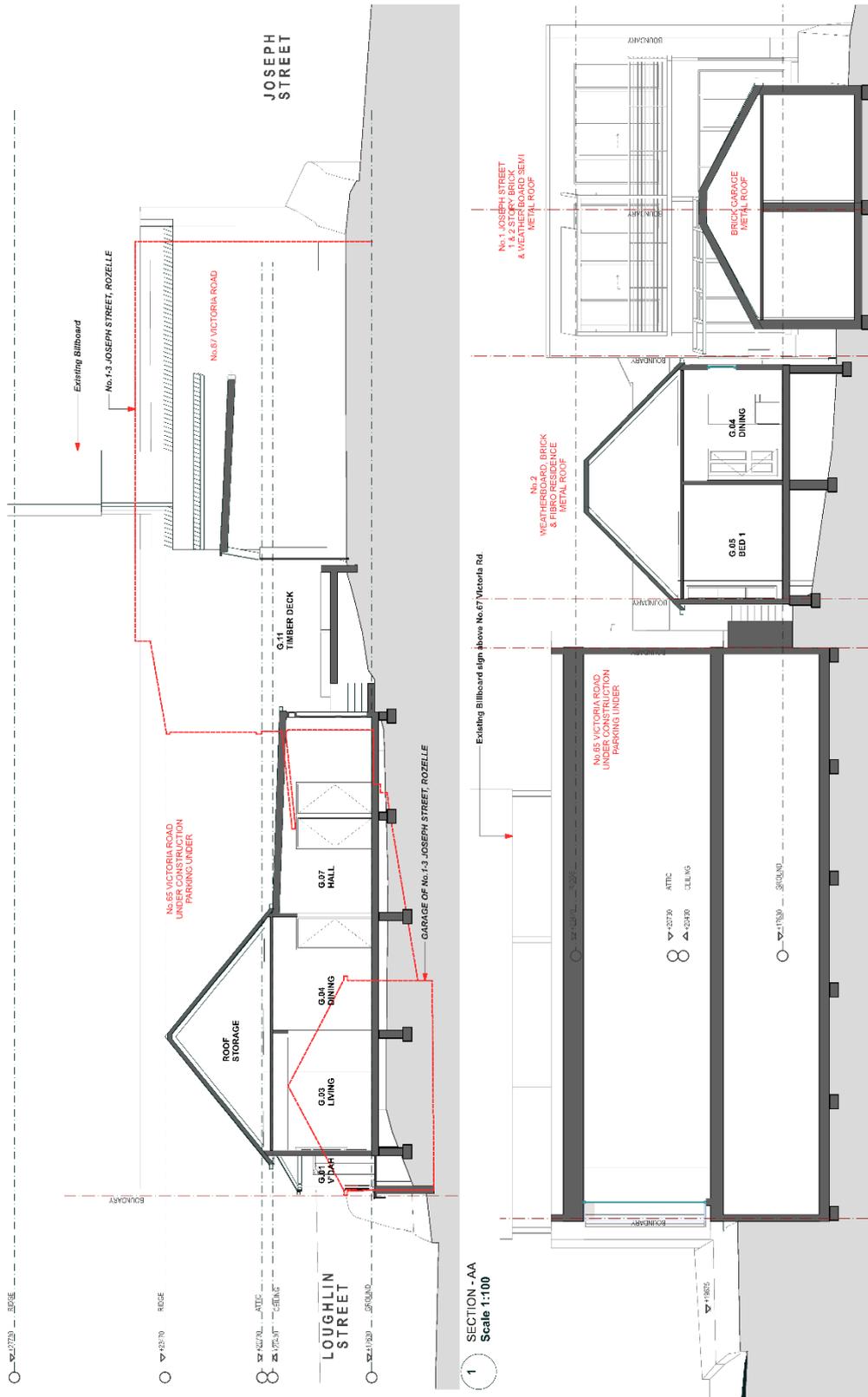
Client:
CARL JONES & KAREN TWITCHETT
 Project:
MD Drawings of 2 LOUGHLIN ST. ROZELLE NSW

OIKOS Architects
 Ray Stevens
 B. Arch (Hons), M. Arch (UNSW), A.I.A., A.C.A.
 NSW APB No. 4458
 15 Elliott Street Balmain NSW 2041
 E-mail: ray@oikos.com.au
 Tel: (02) 9810 7854 Mob: 0411 455 869



Amend.	Description	Date
A	MD - Draft 1	10/07/20

1: PLAN - GROUND
 Scale: 1:100



Scale: 1:100 @ A3
 Date: 26/06/20
 Drawing No: 2020/19/MD.05/A
 Project: 10/07/2020

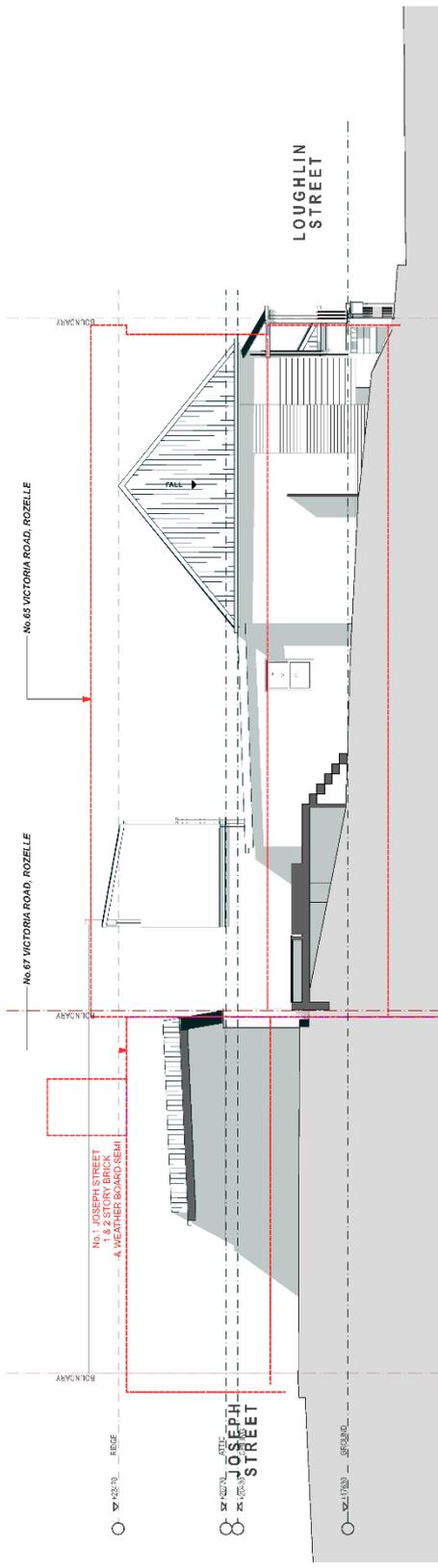
This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect.
 Drawing Title:
2 Loughlin St - Sections - A & B

Client:
CARL JONES & KAREN TWITCHETT
 Project:
**MD Drawings of
 2 LOUGHLIN ST. ROZELLE NSW**

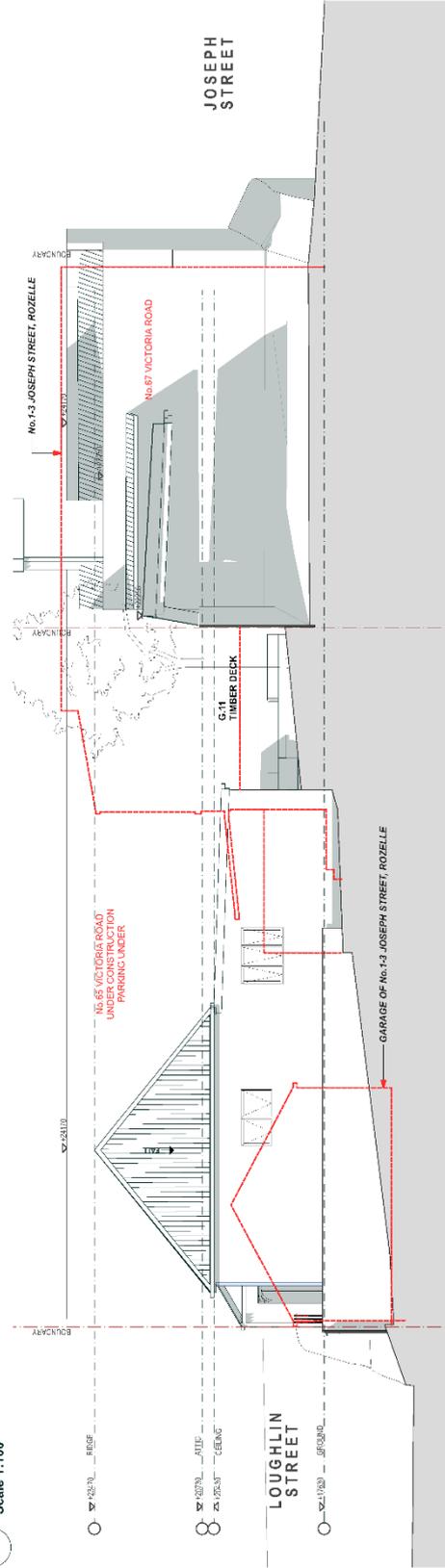
OIKOS Architects
 Ray Stevens
 B. Arch (Hons), M. Arch (UNSW), A.I.A., A.C.A.
 NSW ARB No. 4458
 15 Elliott Street Balmain NSW 2041
 E-mail: ray@oikos.com.au
 Tel: (02) 9810 7854 Mob: 0411 455 669



Amend.	Description	Date
A	MD - Draft 1	10/07/20

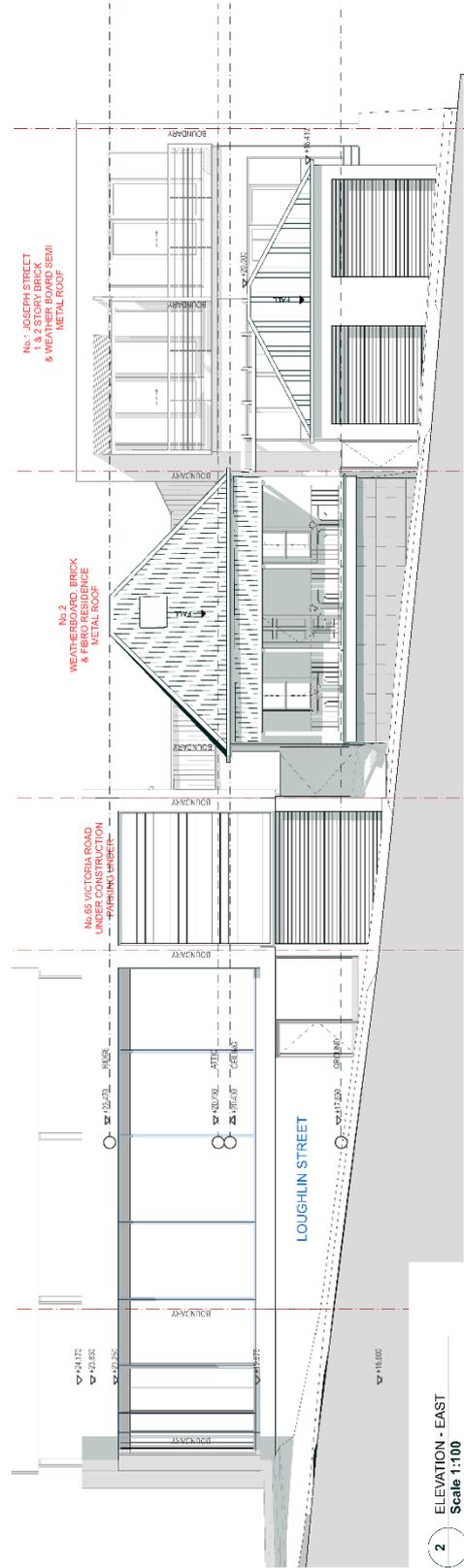
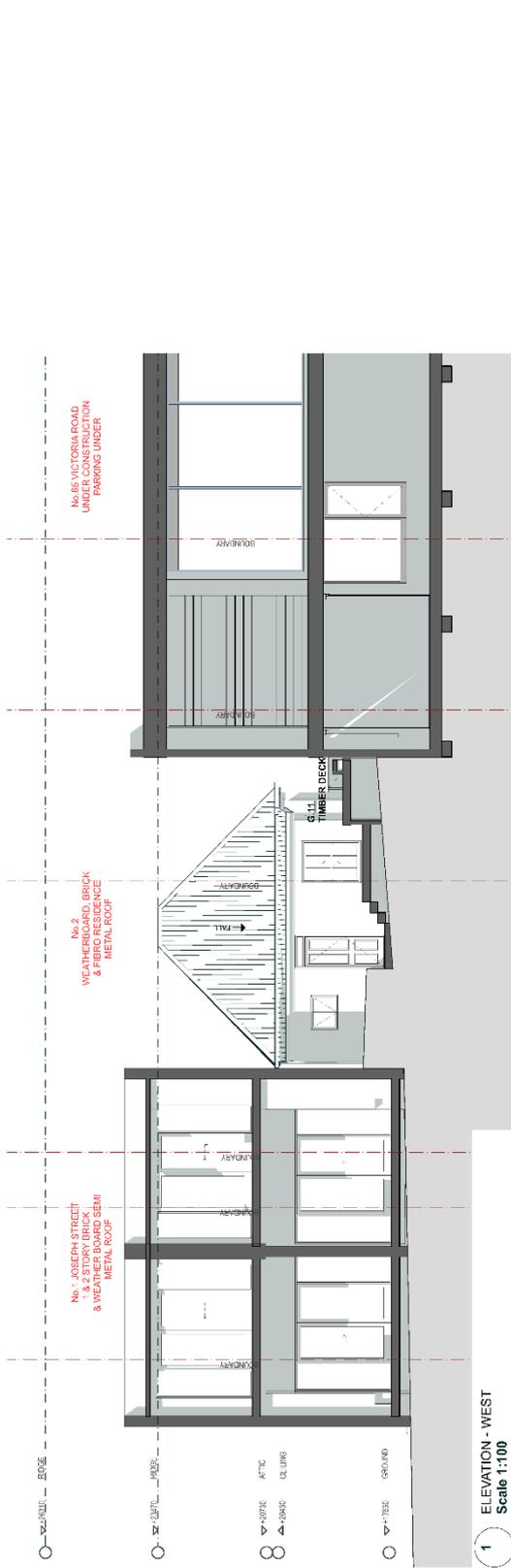


1 ELEVATION - SOUTH
Scale 1:100



2 ELEVATION - NORTH
Scale 1:100

A	MD - Draft 1	Amend.	Description	Date
				10/07/20
				
Client: CARL JONES & KAREN TWITCHETT		Project: MD Drawings of 2 LOUGHLIN ST. ROZELLE NSW		
Ray Stevens B. Arch (Hons), M. Arch (UNSW, A.I.A., A.C.A.), NSW ARB No. 4458 15 Elliott Street Balmain NSW 2041 E-mail: ray@oikos.com.au Tel: (02) 9810 7854 Mob: 0411 455 869		This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect. Drawing Title: 2 Loughlin St - Elevation - North & South		
		Scale: 1:100 @ A3 Date: 26/06/20 Drawing No: 2020/19/MD/07/A Plotter: 10/07/2020		EC



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Scale: 1:100 @ A3
 Date: 26/06/20
 Drawing No: 2020/19/MD.06/A
 Plot: 10/07/2020

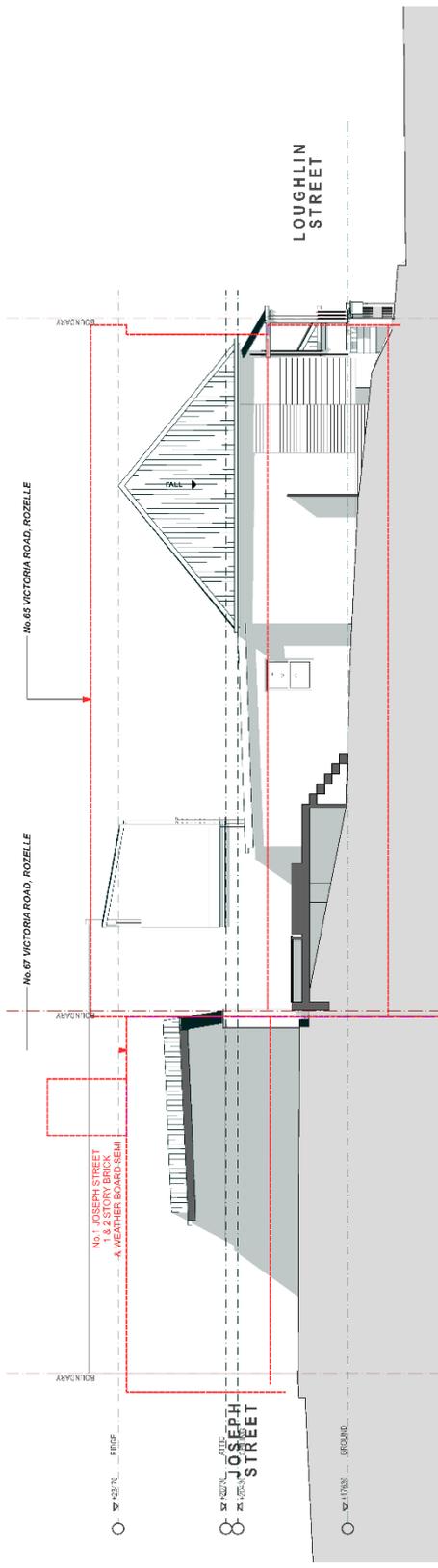
Client: **CARL JONES & KAREN TWITCHETT**
 Project: **MD Drawings of 2 LOUGHLIN ST. ROZELLE NSW**

OIKOS Architects
 Ray Stevens
 B. Arch (Hons), M Arch (NSW), A.I.A., A.C.A.
 NSW ARB No.4458
 15 Elliott Street Balmain NSW 2041
 E-mail: ray@oikos.com.au
 Tel: (02) 9810 7854 Mob: 0411 455 669

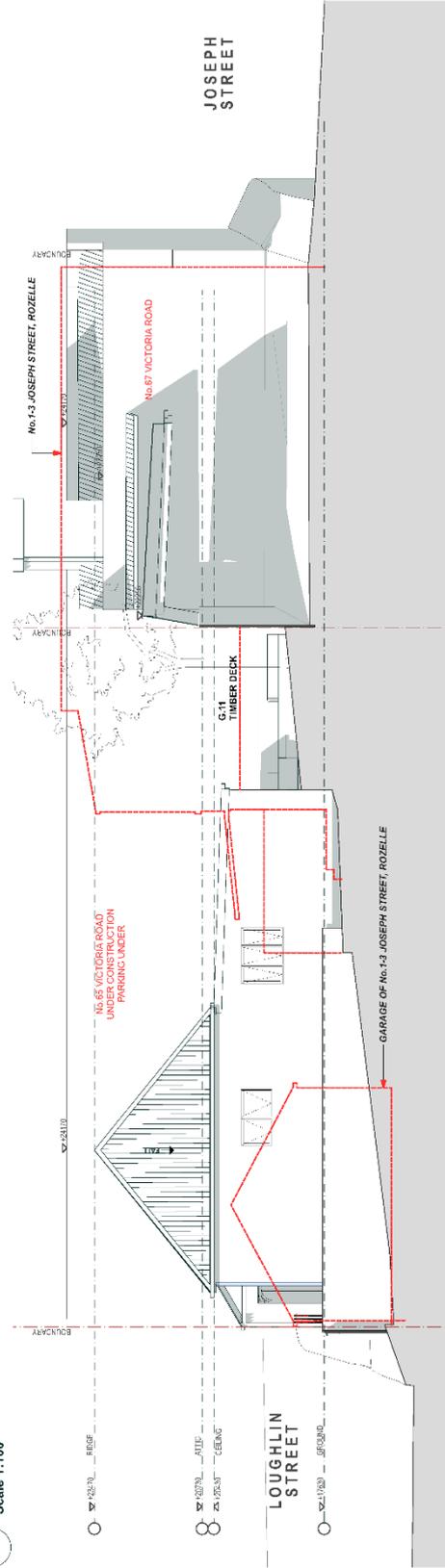
AITP
 Member of the Institute of Architects of NSW

Amend.	Description	Date
A	MD - Draft 1	10/07/20

EC

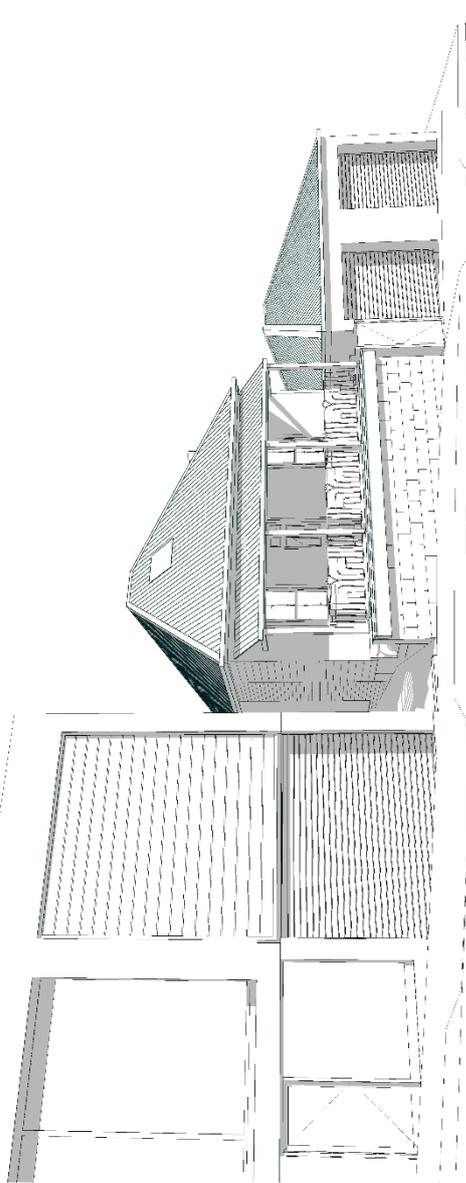


1 ELEVATION - SOUTH
Scale 1:100

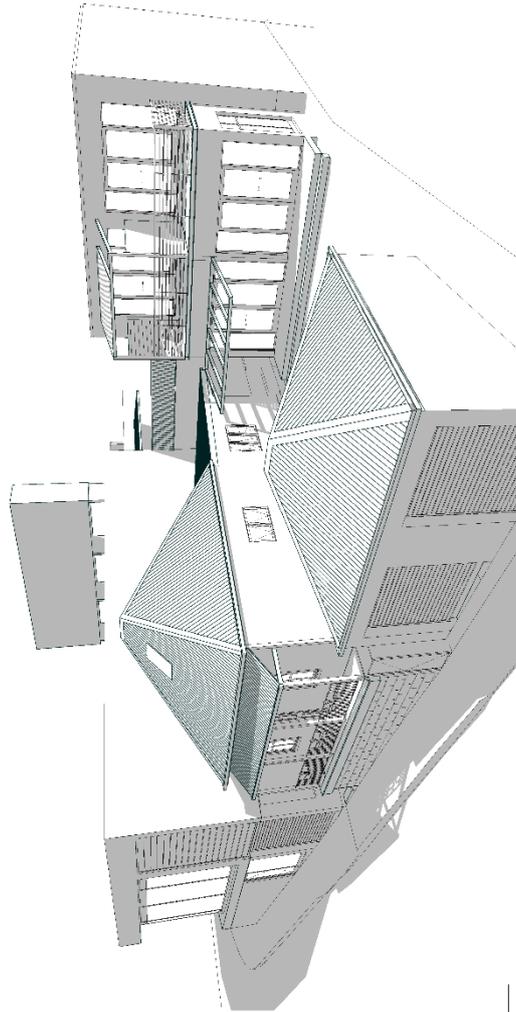


2 ELEVATION - NORTH
Scale 1:100

A	MD - Draft 1	Amend.	Description	Date
				10/07/20
				
Client: CARL JONES & KAREN TWITCHETT		Project: MD Drawings of 2 LOUGHLIN ST. ROZELLE NSW		
Ray Stevens B. Arch (Hons), M. Arch (UNSW, A.I.A., A.C.A.) NSW ARB No. 4458 15 Elliott Street Balmain NSW 2041 E-mail: ray@oikos.com.au Tel: (02) 9810 7854 Mob: 0411 455 869		This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect. Drawing Title: 2 Loughlin St - Elevation - North & South		
		Scale: 1:100 @ A3 Date: 26/06/20 Drawing No: 2020/19/MD/07/A Plotter: 10/07/2020		EC



1 PERSPECTIVE VIEW 2
Scale N.T.S



2 PERSPECTIVE VIEW 3
Scale N.T.S

Amend.	A	MD - Draft 1	10/07/20	Date



Member
of the
Institute of
Architects
of
Australia



OIKOS Architects
Ray Stevens
B. Arch (Hons), M Arch (UNSW), A.I.A., A.C.A.
NSW ARB No.4458
15 Elliott Street Balmain NSW 2041
E-mail: ray@oikos.com.au
Tel: (02) 9810 7854 Mob: 0411 455 869

Client:
CARL JONES & KAREN TWITCHETT

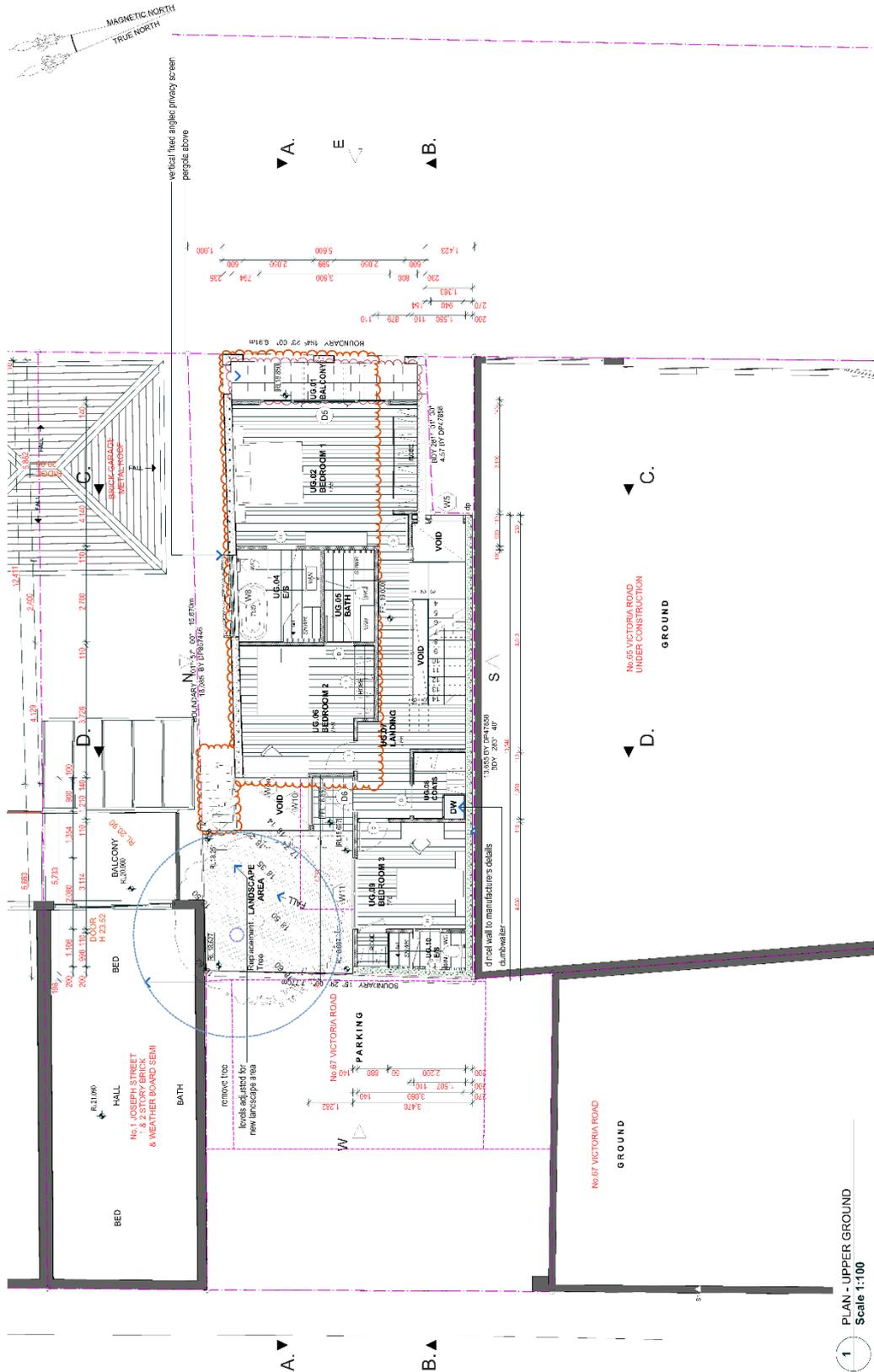
Project:
**MD Drawings of
2 LOUGHLIN ST. ROZELLE NSW**

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Drawing Title:
2 Loughlin St - Perspective Views

Scale: 1:100 @ A3
Date: 26/06/20
Drawing No: 2030/19/MD.08/A
Project: 10/07/2020

EC



1 PLAN - UPPER GROUND
Scale 1:100

Scale: 1:100 @ A3
Date: 26/06/20
Drawing No: 202019/DA-04D
Plotted: 12/08/21

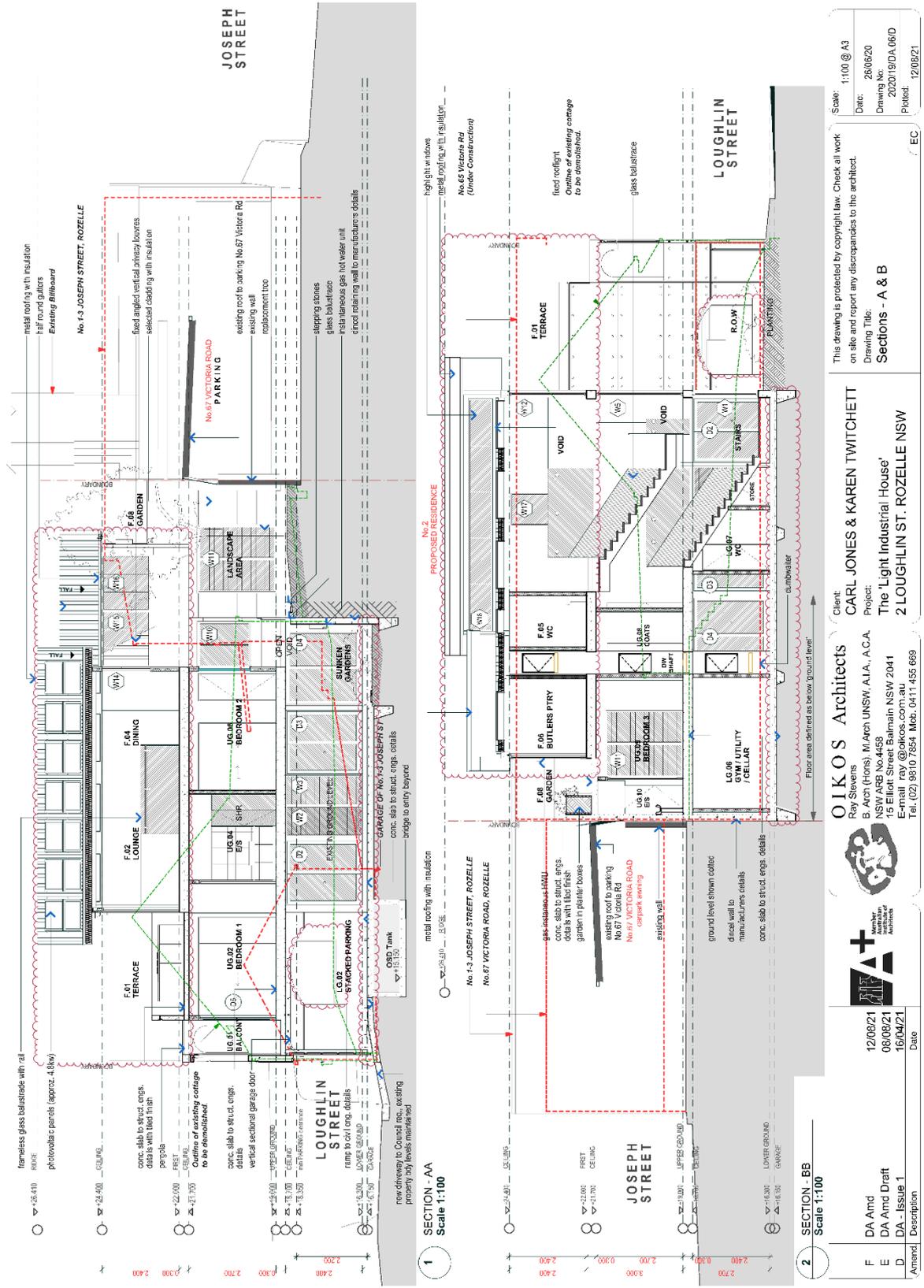
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Drawing Title:
Plans - Upper Ground

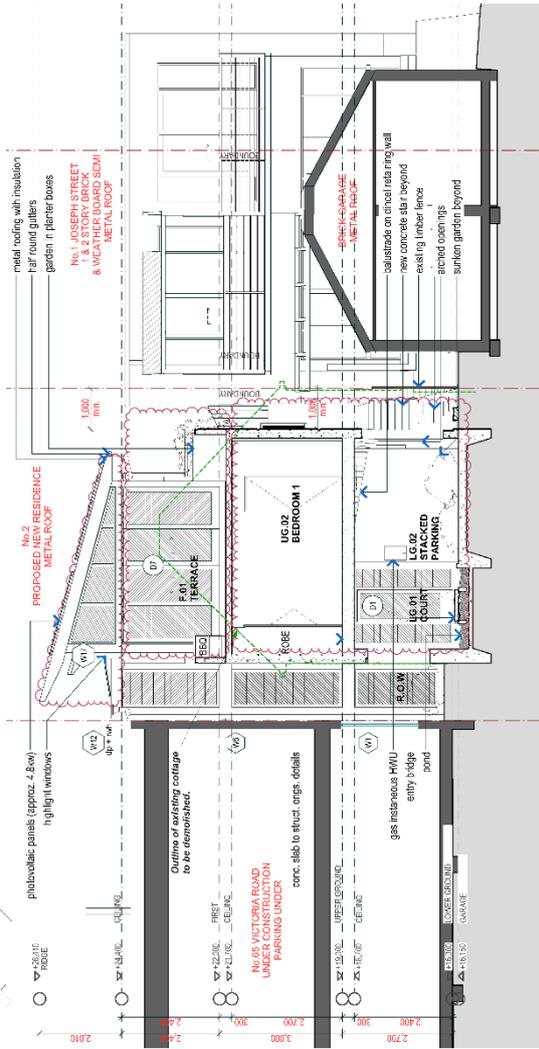
Client:
CARL JONES & KAREN TWITCHETT
Project:
The 'Light Industrial House'
2 LOUGHLIN ST. ROZELLE NSW

OIKOS Architects
Ray Stevens
B. Arch (Hons) M. Arch UNSW, A.I.A., A.C.A.
NSW ARB No. 4458
15 Elliott Street Balmain NSW 2041
E-mail: ray@oikos.com.au
Tel: (02) 9810 7854 Mob: 0411 455 669

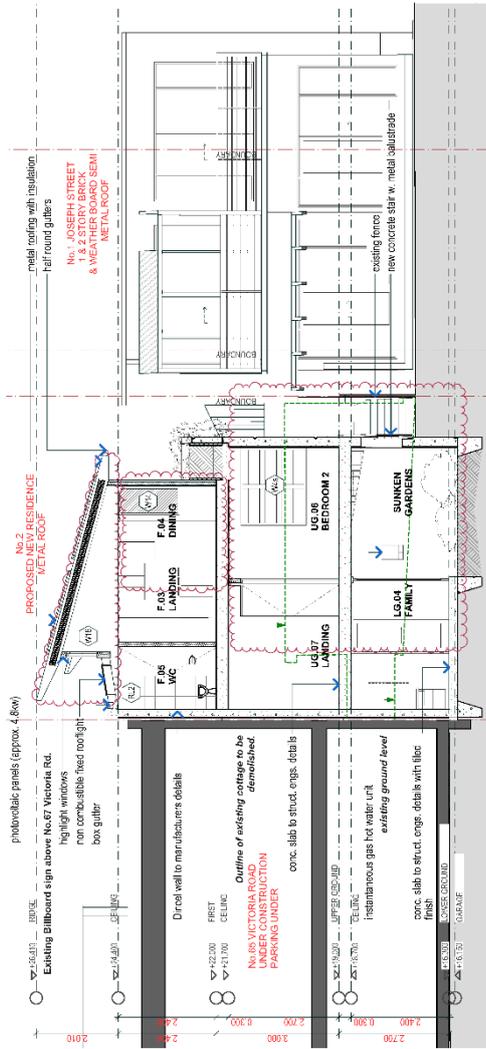


Amend.	Description	Date
F	DA Amd	12/08/21
E	DA Amd Draft	08/09/21
D	DA - Issue 1	16/04/21





2 SECTION - CC
Scale 1:100



2 SECTION - DD
Scale 1:100

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Scale: 1:100 @ A3
Date: 28/06/20
Drawing No: 202019/DA/07/D
Plotted: 12/08/21

Client: **CARL JONES & KAREN TWITCHETT**
Project: **The 'Light Industrial House'**
2 LOUGHLIN ST. ROZELLE NSW

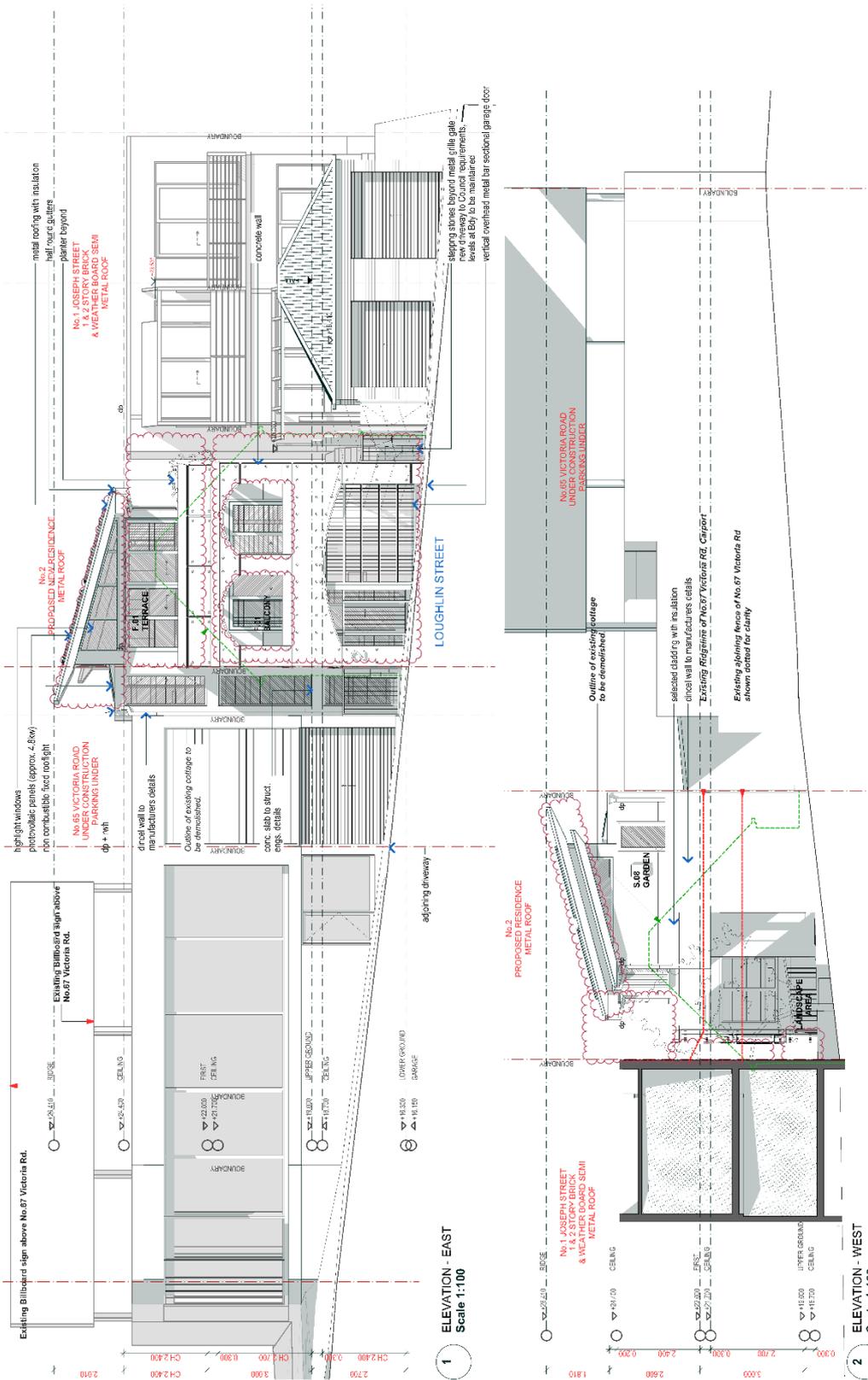
OIKOS Architects
Ray Stavros
B. Arch (Hons) M Arch UNSW, A.I.A., A.C.A.
NSW ARB No.4458
15 Elliott Street Balmain NSW 2041
E-mail: ray@oikos.com.au
Tel: (02) 9810 7854 Mob: 0411 455 669

12/08/21
08/09/21
16/04/21

Amend. Description Date

F DA Amend
E DA Amend Draft
D DA - Issue 1

EC



Scale: 1:100 @ A3
 Date: 26/06/20
 Drawing No: 202019/DA.08/D
 Plotted: 12/08/21

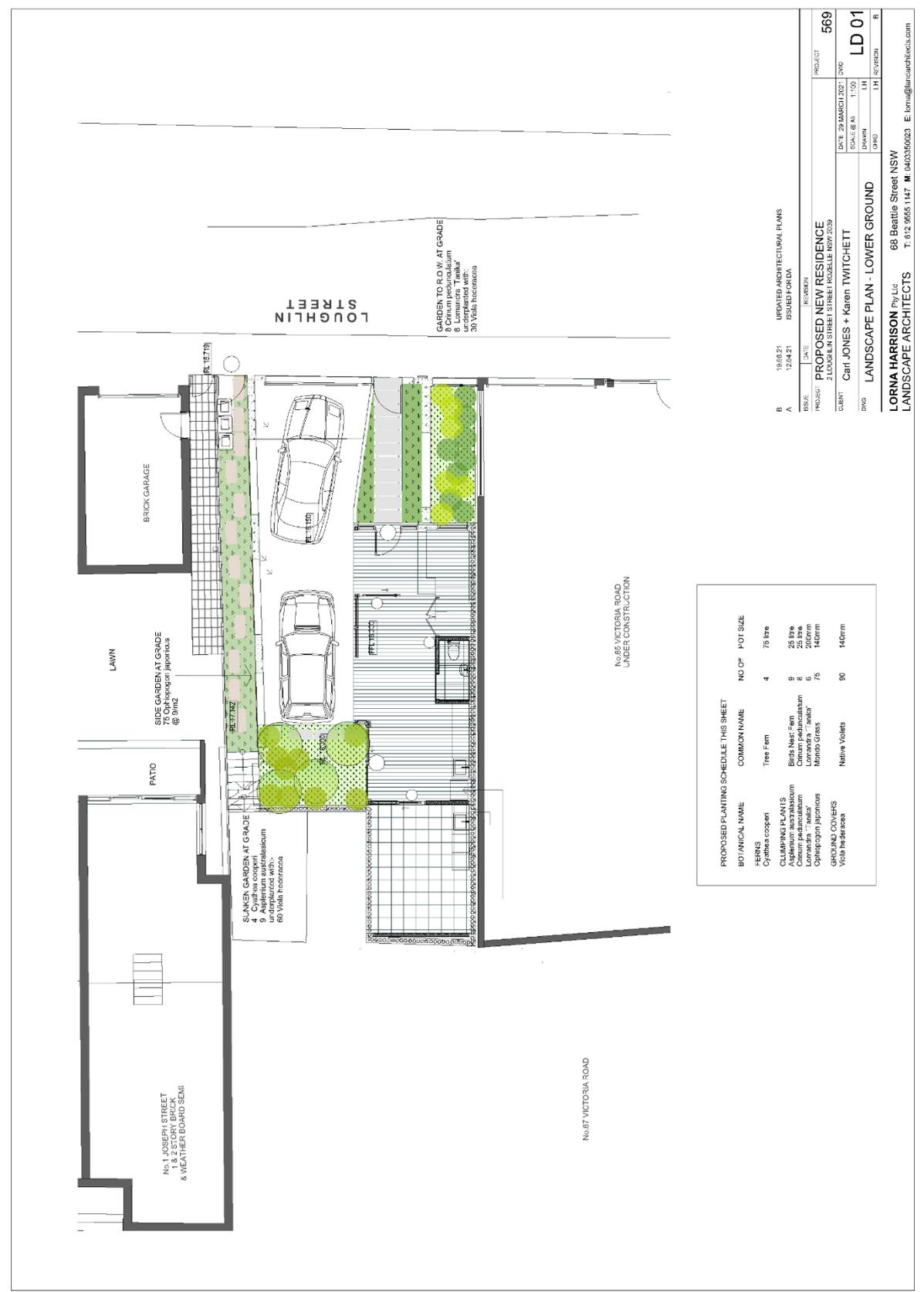
This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect.
 Drawing Title: **Elevation - East & West**

Client: **CARL JONES & KAREN TWITCHETT**
 Project: **The 'Light Industrial House'**
2 LOUGHLIN ST. ROZELLE NSW

OIKOS Architects
 Roy Stevens
 B. Arch (Hons) M. Arch UNSW, A.I.A., A.C.A.
 NSW ARB No. 4458
 15 Elliott Street Balmain NSW 2041
 E-mail: ray@oikos.com.au
 Tel: (02) 9810 7854 Mob: 0411 455 669



Amend.	Description	Date
F	DA Amd	12/08/21
E	DA Amd Draft	08/08/21
D	DA - Issue 1	16/04/21





UPPER TERRACE GARDEN PLANTER









SUNKEN GARDEN AT GRADE LOWER GROUND FLOOR





R.O.W. GARDEN AT GRADE



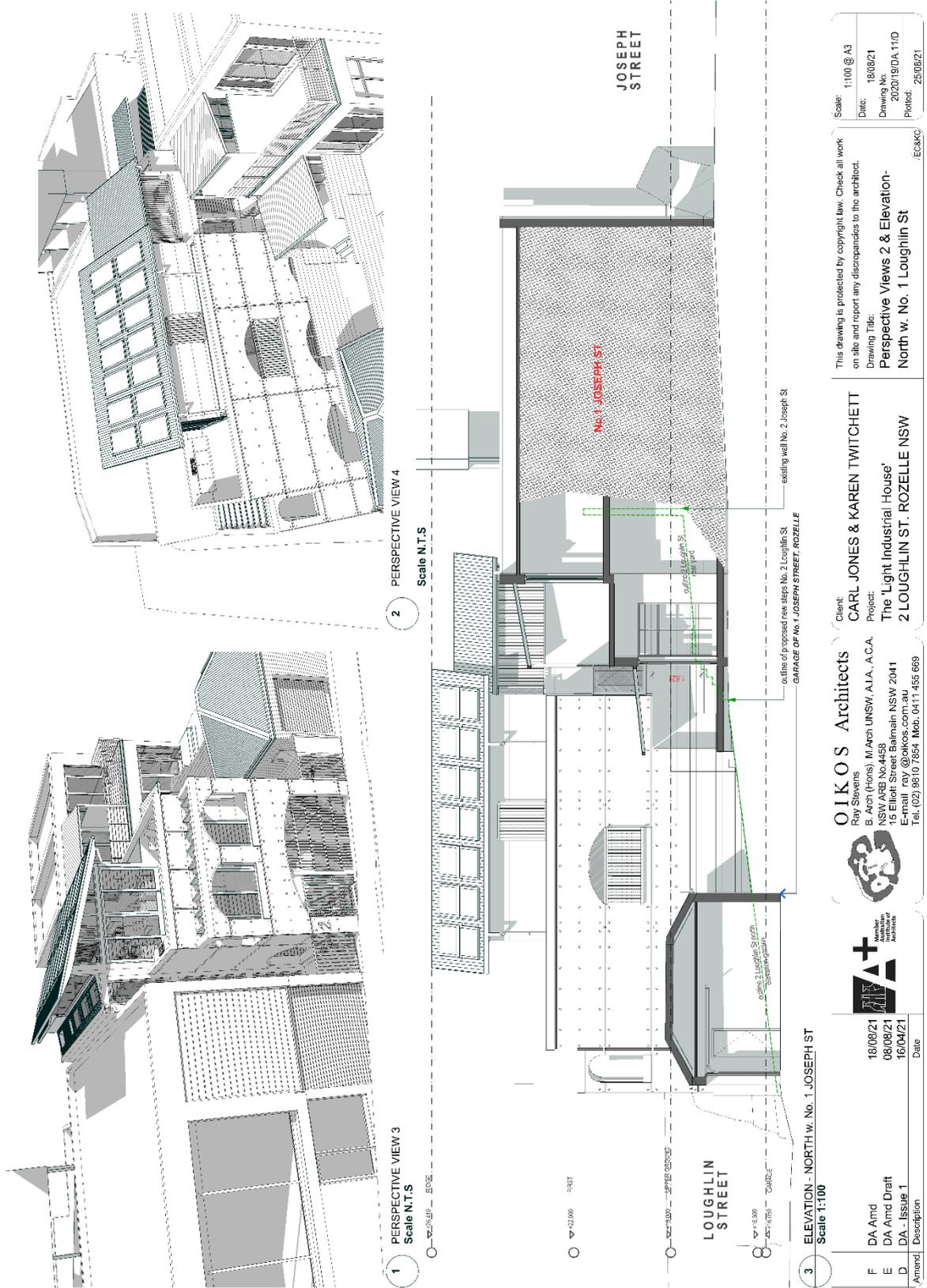
NEW GARDEN AT GRADE UPPER GROUND FLOOR






REVISED	DATE	ISSUED FOR	PROJECT
B	18/08/21	ARCHITECTURAL PLANS (UPDATED)	569
A	12/04/21	ISSUED FOR DA	
PROJECT			PROPOSED NEW RESIDENCE
SUBJECT			2 COUCHFIELD STREET, STRIVE ROSSETTE NSW 2253
DESIGN			Carl JONES + Karen TWITCHETT
DRAWN			PLANTING PALETTE
DATE			10/02/21
SCALE			1:100
DRAWN			LH
CHECKED			LH
DATE			10/02/21
PROJECT			LD 04
DATE			
PROJECT			B

LORNA HARRISON Pty Ltd 68 Beattie Street NSW
 LANDSCAPE ARCHITECTS T: 612 9556 1147 M: 0403350023 E: lornah@lornaharrison.com



2 PERSPECTIVE VIEW 4
Scale N.T.S

1 PERSPECTIVE VIEW 3
Scale N.T.S

3 ELEVATION - NORTH w. No. 1 JOSEPH ST
Scale 1:100

F	DA Amd	18/08/21	18/08/21	Scale: 1:100 @ A3
E	DA Amd Draft	08/08/21	08/08/21	Date: 18/08/21
D	DA - Issue 1	16/04/21	16/04/21	Drawing No: 202019/DA.1/1D
Amend.	Description			Plotted: 25/08/21

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Drawing Title: **Perspective Views 2 & Elevation - North w. No. 1 Loughlin St**

Client: **CARL JONES & KAREN TWITCHETT**

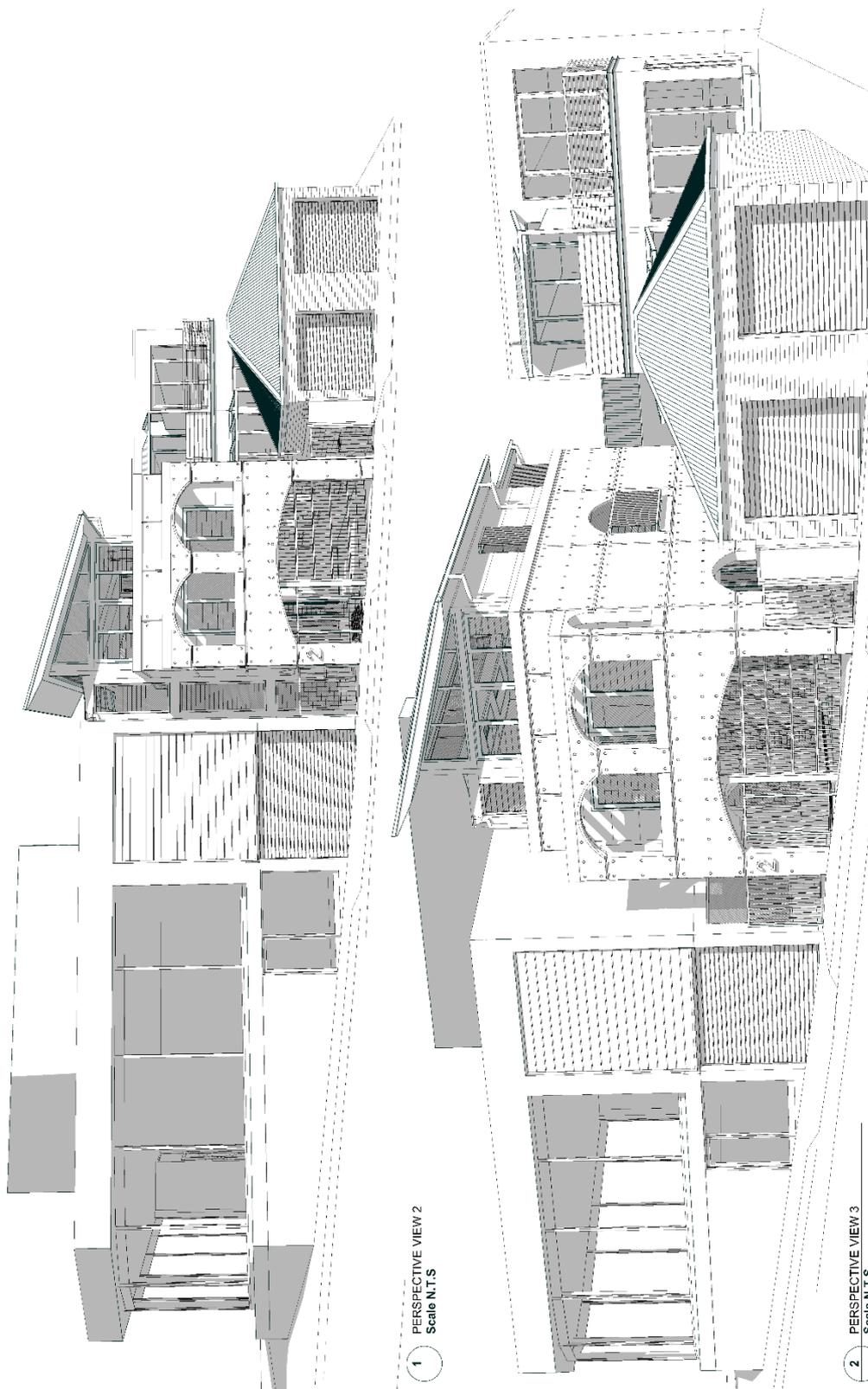
Project: **The 'Light Industrial House'**

2 LOUGHLIN ST. ROZELLE NSW

Architect: **OIKOS Architects**
 Roy Stevens
 B. Arch (Hons) M. Arch UNSW, A.I.A., A.C.A.
 NSW ARB No. 4458
 15 Elliott Street Balmain NSW 2041
 E-mail: ray@oikos.com.au
 Tel: (02) 9810 7854 Mob: 0411 455 669

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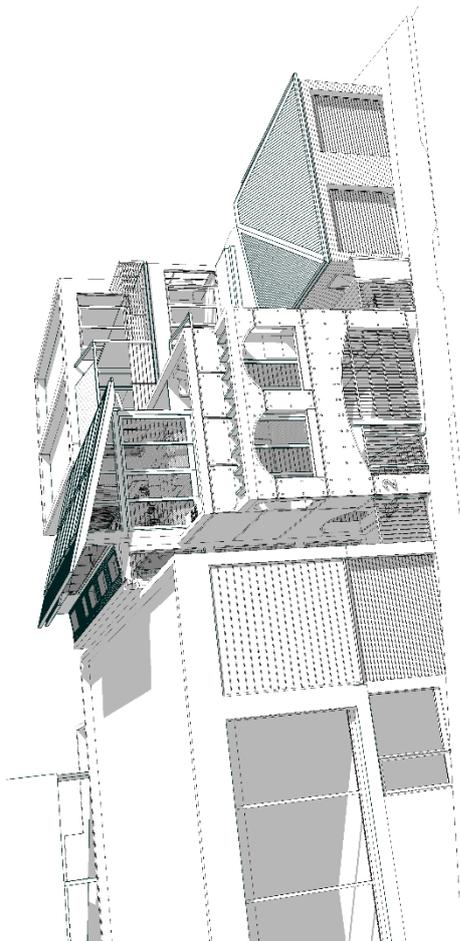
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 Date: 18/08/21
 Drawing No: 202019/DA.1/1D
 Plotted: 25/08/21
 (E:CKK)



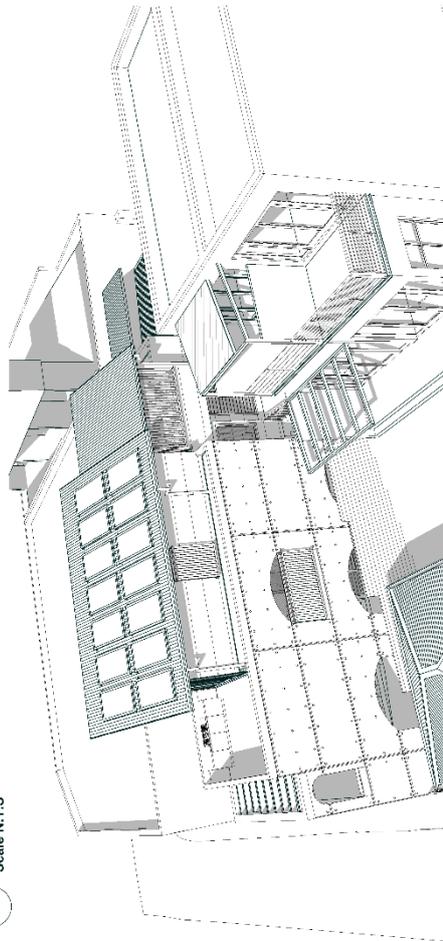
1 PERSPECTIVE VIEW 2
Scale N.T.S

2 PERSPECTIVE VIEW 3
Scale N.T.S

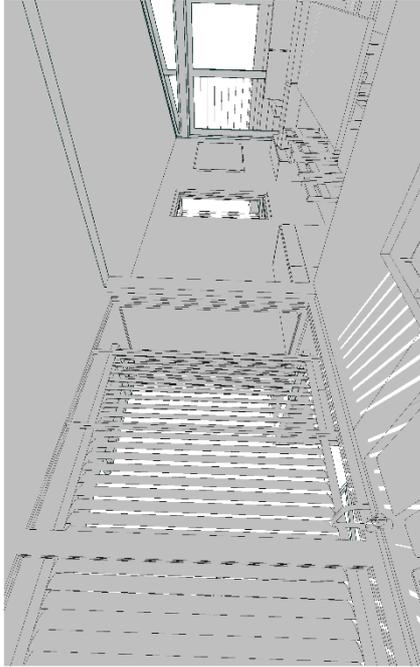
Amend. Description F DA Amd E DA Amd Draft D DA - Issue 1	12/08/21	Date
	08/09/21	Date
	16/04/21	Date
		Date
 		
OIKOS Architects Roy Stevens B. Arch (Hons), M. Arch UNSW, A.I.A., A.C.A. NSW ARB No. 4458 15 Elliott Street Balmain NSW 2041 E-mail: ray@oikos.com.au Tel: (02) 9810 7854 Mob: 0411 455 669		
Client: CARL JONES & KAREN TWITCHETT Project: The 'Light Industrial House' 2 LOUGHLIN ST. ROZELLE NSW		
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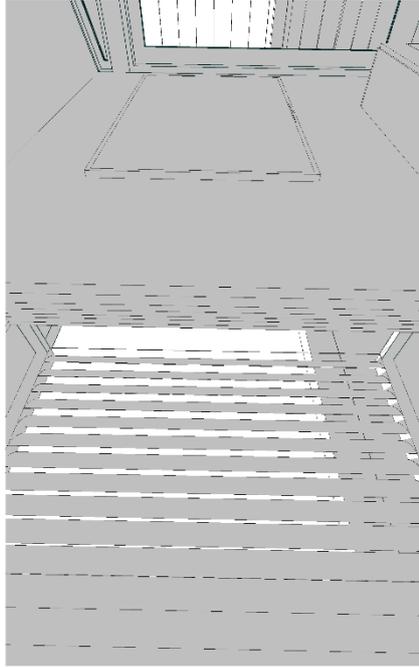
1 PERSPECTIVE VIEW 3
Scale N.T.S



2 PERSPECTIVE VIEW 4
Scale N.T.S



3 INTERIOR KITCHEN SINK PERSPECTIVE
Scale N.T.S



4 INTERIOR W17 LIVING AREA PERSPECTIVE
Scale N.T.S

Amend.	Description	Date
F	DA Amd	12/08/21
E	DA Amd Draft	08/08/21
D	DA - Issue 1	16/04/21

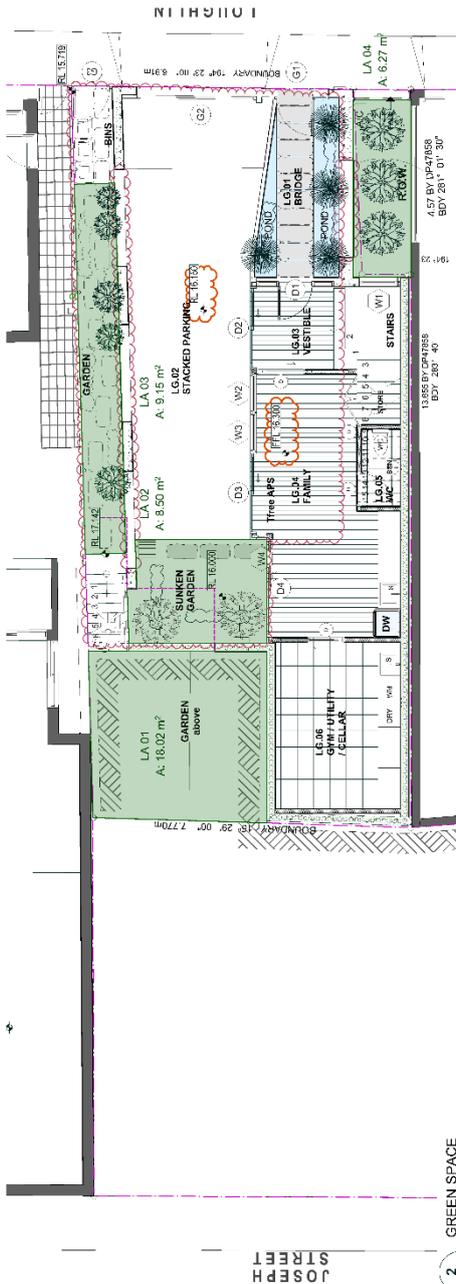
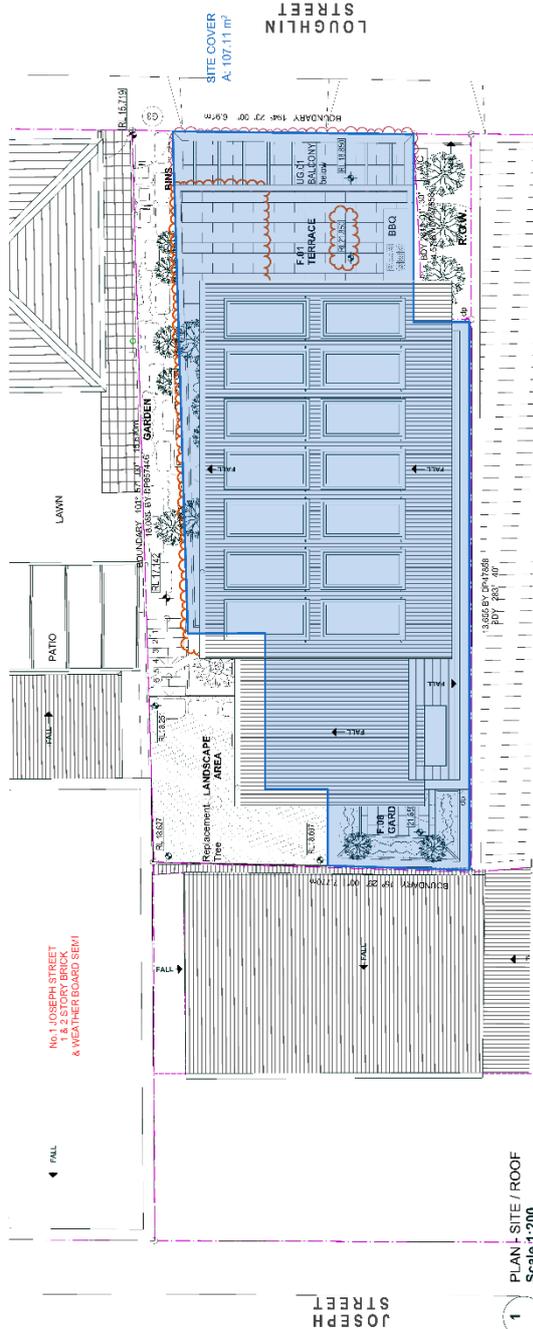
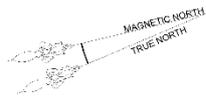


OIKOS Architects
Ray Stevens
B. Arch (Hons), M. Arch UNSW, A.I.A., A.C.A.
NSW ARB No. 4458
15 Elliott Street Balmain NSW 2041
E-mail: ray@oikos.com.au
Tel: (02) 9810 7854 Mob: 0411 455 669

Client: **CARL JONES & KAREN TWITCHETT**
Project: **The 'Light Industrial House'**
2 LOUGHLIN ST. ROZELLE NSW

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Drawing Title: **Perspective Views 2- Exterior & Interior**

Scale: 1:100 @ A3
Date: 28/06/20
Drawing No: 202019/DA.11/D
Plotted: 12/08/21
EC



AREAS ALL TOTAL

Site area -by survey	= 138.9m.sq
Site coverage	= 107.11m.sq of site = 76.6%
Landscape Area (LA) total	41.94m.sq = 30.0% of site

Scale:	1:100 @ A3
Date:	28/06/20
Drawing No:	20/2019/DA 16/D
Plotted:	12/08/21

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 Drawing Title:
Site Calculations

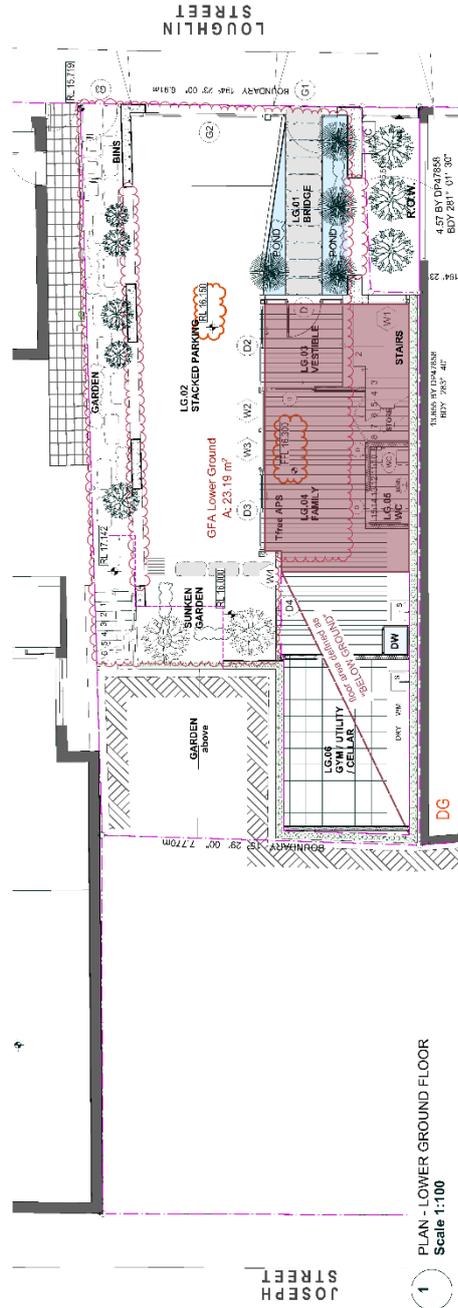
Client:
CARL JONES & KAREN TWITCHETT
 Project:
 The 'Light Industrial House'
 2 LOUGHLIN ST. ROZELLE NSW



DA Amd	12/08/21	Date
DA Amd Draft	08/09/21	Date
DA - Issue 1	16/04/21	Date
Amend.	Description	Date



2 PLAN - UPPER GROUND FLOOR
Scale 1:100



1 PLAN - LOWER GROUND FLOOR
Scale 1:100

AREAS Total

Site area total -by survey	=139.9m.sq
Floor area - Proposed	
First Floor	=18.79m.sq
Upper Ground floor	=76.85m.sq
Lower Ground floor	=23.19m.sq
GROSS FLOOR AREA	=118.83m.sq
Floor Space Ratio	= 1.06 : 1.00
F.S.R	

Scale:	1:100 @ A3
Date:	28/06/20
Drawing No:	202019/DA.17/10
Plotted:	12/08/21

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Drawing Title: FSR Calculations
EC

OIKOS Architects
Ray Stavens
B. Arch (Hons) M. Arch UNSW, A.I.A., A.C.A.
NSW ARB No.4458
15 Elliott Street Balmain NSW 2041
E-mail: ray@oikos.com.au
Tel: (02) 9810 7854 Mob: 0411 455 669

Client: CARL JONES & KAREN TWITCHETT
Project: The 'Light Industrial House'
2 LOUGHLIN ST. ROZELLE NSW

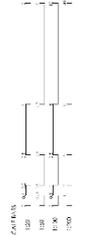
Amend.	Description	Date
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E	DA Amd Draft	08/08/21
D	DA - Issue 1	16/04/21



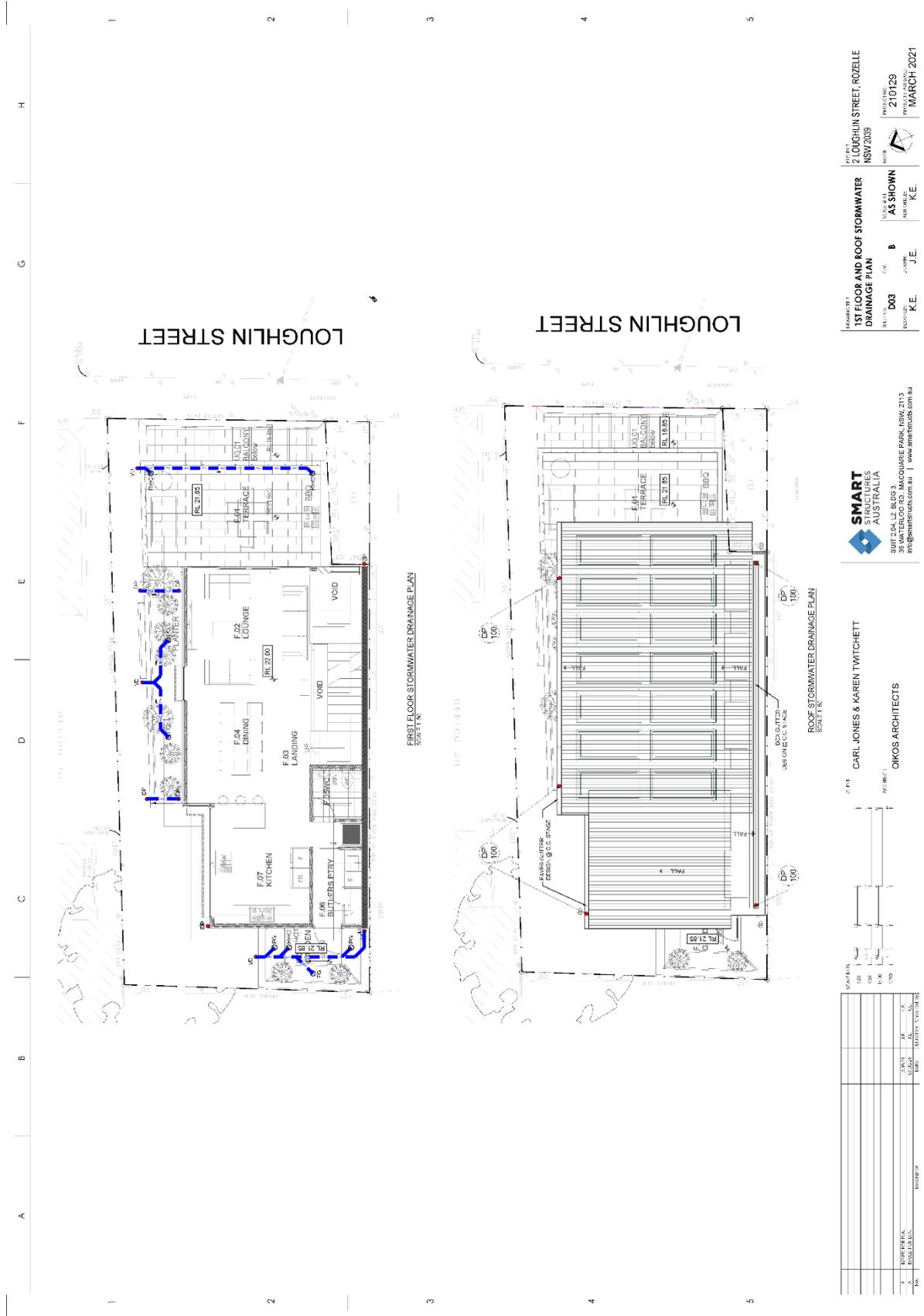
PROJECT: 21 LOUGHLIN STREET, ROZELLE NSW 2038
 DRAWN BY: J.E.
 CHECKED BY: K.E.
 DATE: 21/03/2021
 PROJECT NO: 210129
 DRAWING NO: 1001

SMART STRUCTURES AUSTRALIA
 SUITE 04.12, BLDG 3
 35 WATERLOO RD, MACQUARIE PARK, NSW, 2113
 info@smartstructures.com.au | www.smartstructures.com.au

DESIGNED BY: CARL JONES & KAREN TWITCHETT
 ARCHITECTS: ONKOS ARCHITECTS



NO.	REVISION	DATE	BY	CHK
1	ISSUED FOR PERMIT	21/03/2021	J.E.	K.E.
2	AS SHOWN			

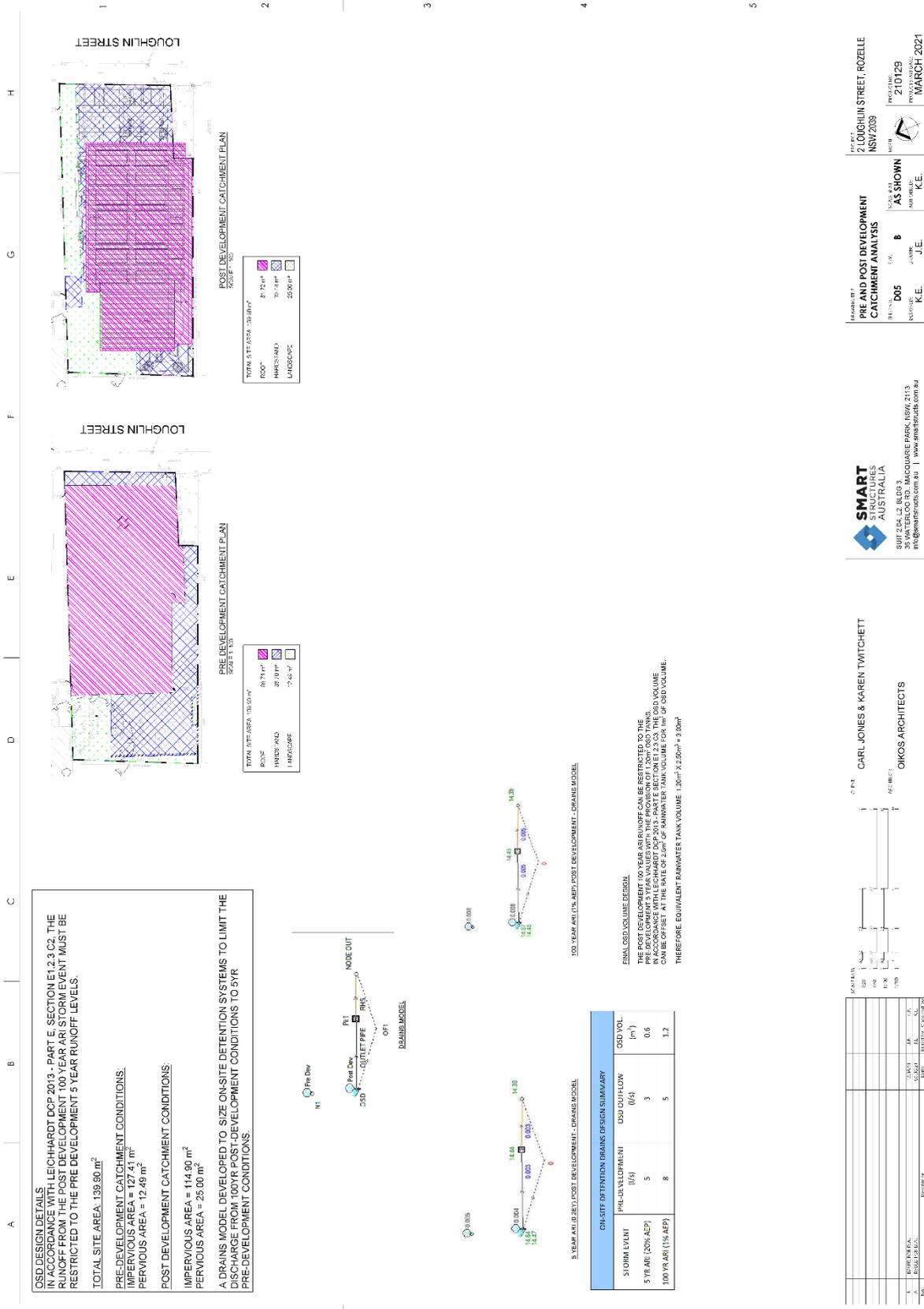


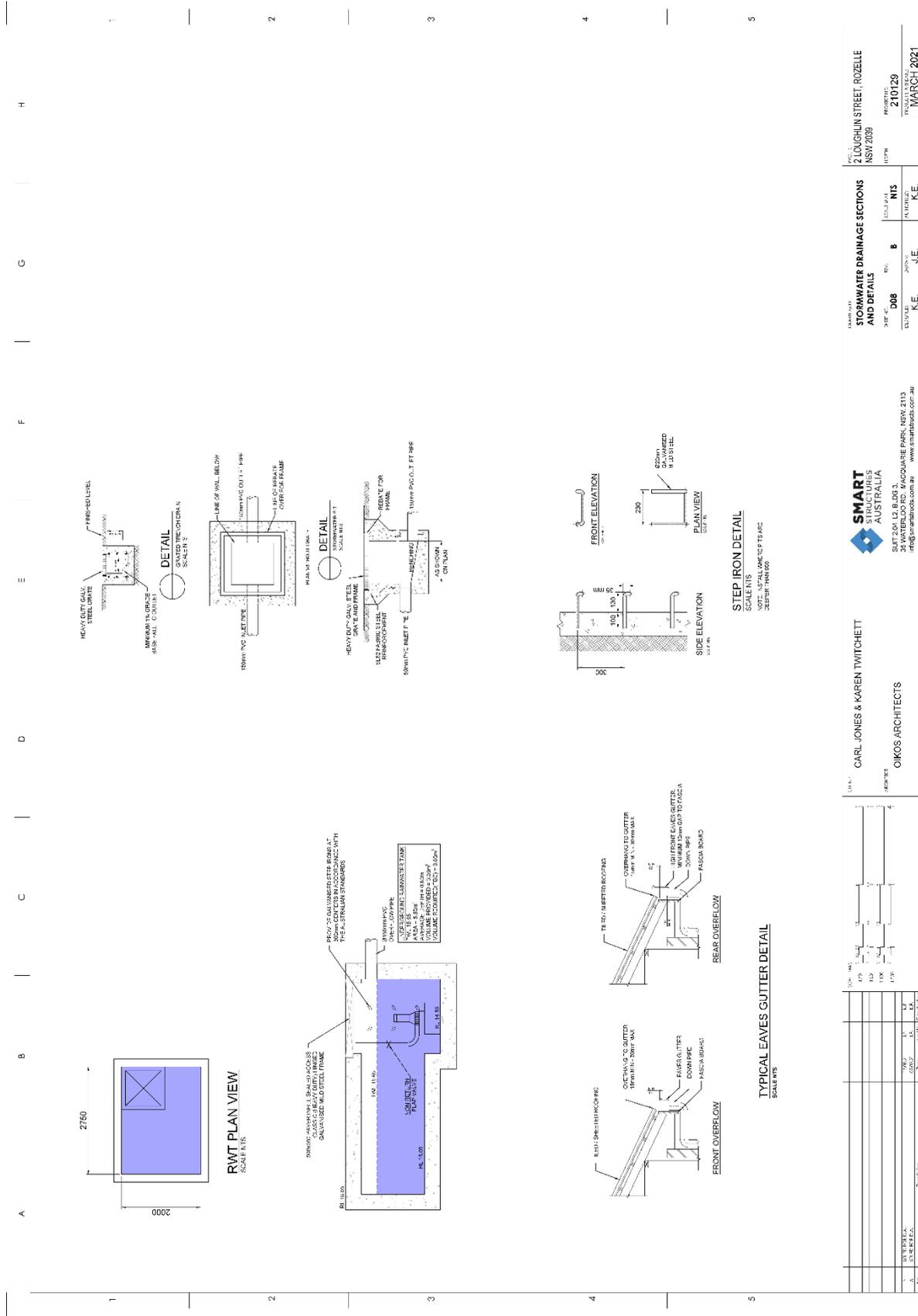
PROJECT: 21 LOUGHLIN STREET, ROZELLE NSW 2038
 SHEET: D03
 DATE: 21/03/2021
 DRAWN BY: J.E.
 CHECKED BY: K.E.
 APPROVED BY: K.E.
 PROJECT NO: 210129
 DATE: 11/03/2021
 DATE: MARCH 2021

SMART
 STRUCTURES
 AUSTRALIA
 SUITE 04.12, BUILD 3
 35 WATERLOO RD, MACQUARIE PARK, NSW, 2113
 info@smartstructures.com.au | www.smartstructures.com.au

CARL JONES & KAREN TWITCHETT
 OKOS ARCHITECTS

NO.	REVISION	DATE	BY	CHK





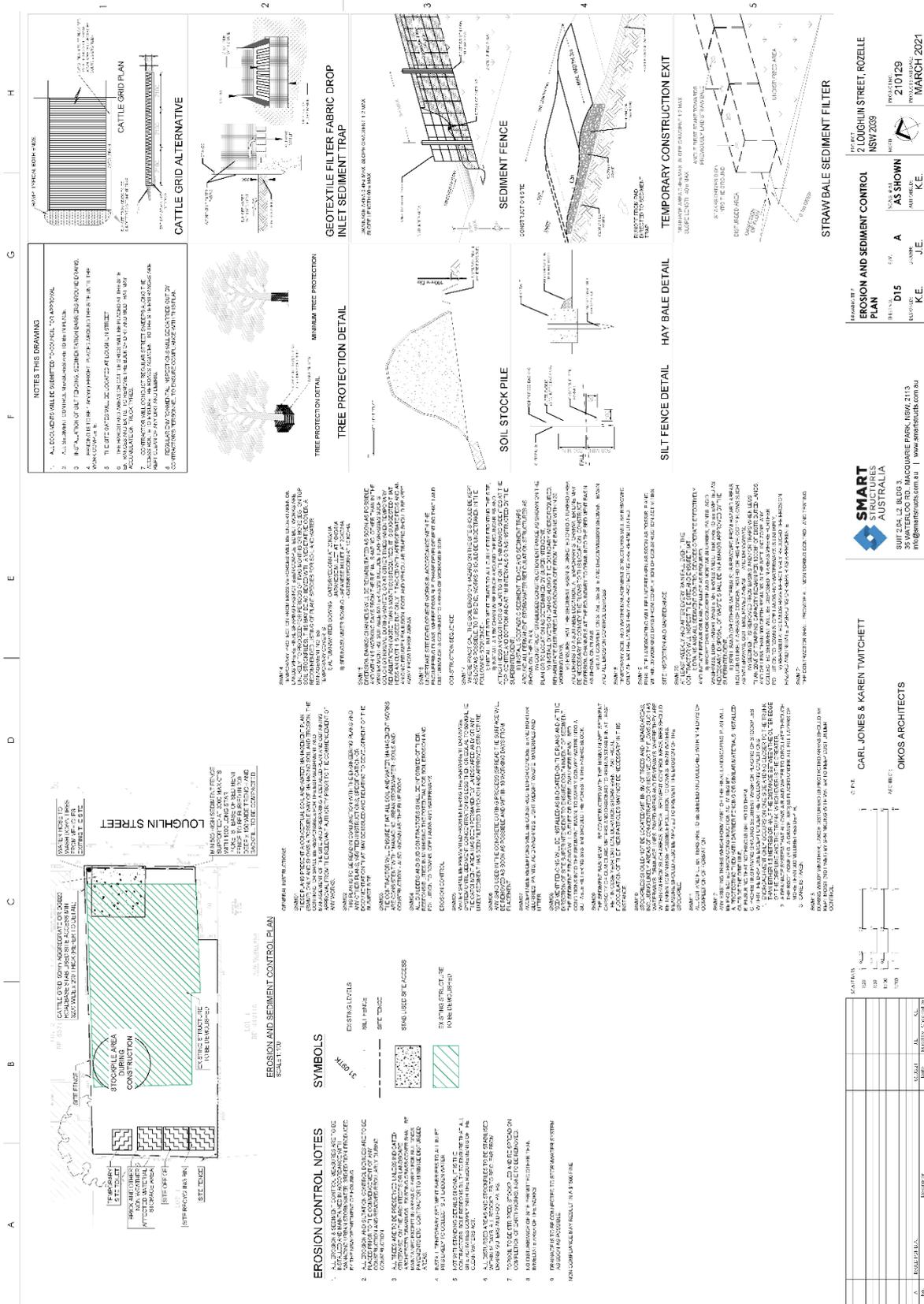
PROJECT NO: 210129
 DATE: MARCH 2021

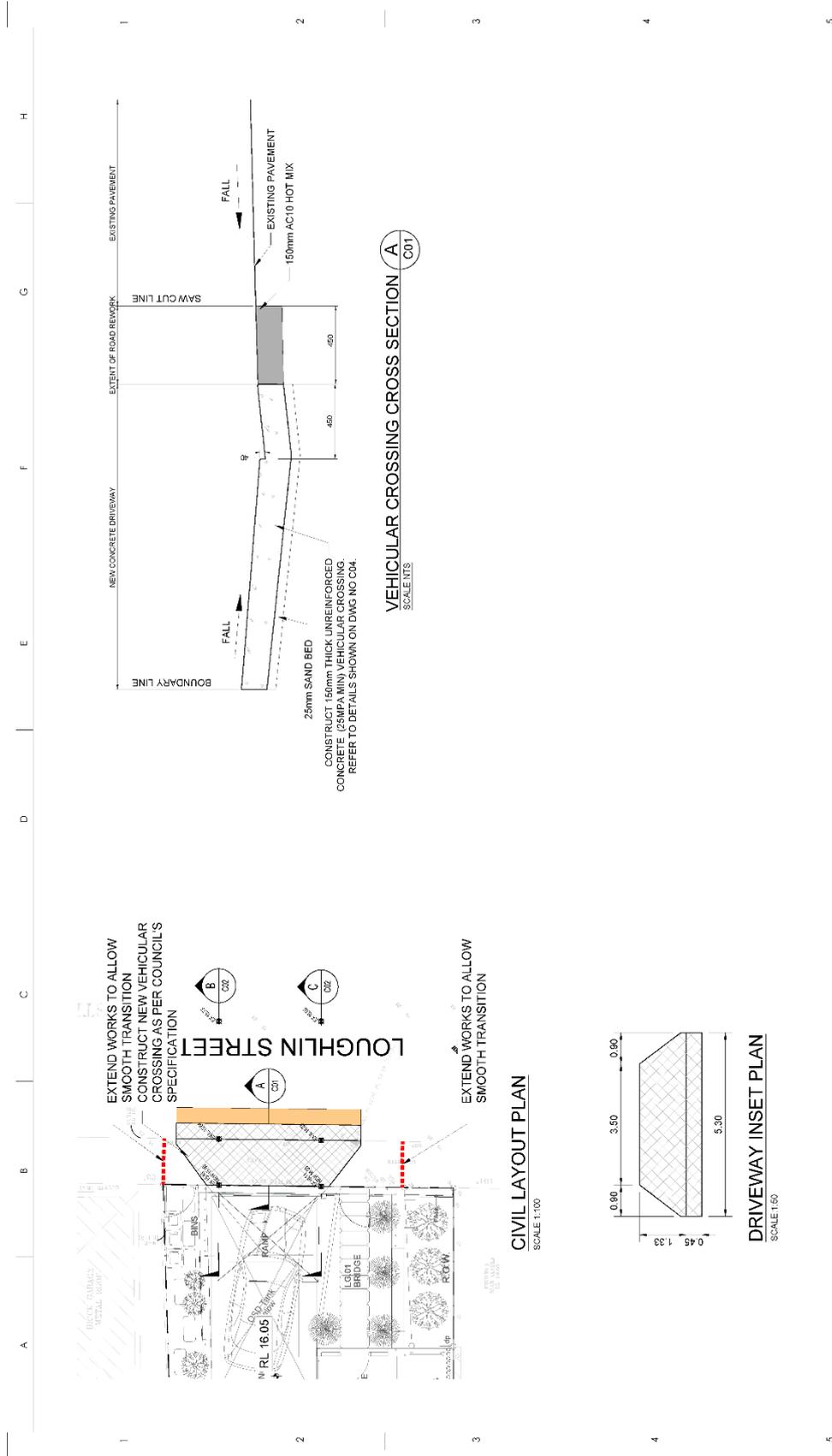
SMART AUSTRALIA
 SUITE 04, 15, 16, 17, 18
 34 WATERLOO ROAD, MACQUARIE PARK, NSW, 2113
 info@smartaustralia.com.au www.smartaustralia.com.au

SMART AUSTRALIA
 SUITE 04, 15, 16, 17, 18
 34 WATERLOO ROAD, MACQUARIE PARK, NSW, 2113
 info@smartaustralia.com.au www.smartaustralia.com.au

CARL JONES & KAREN TWITCHETT
 OIKOS ARCHITECTS

NO.	REVISION	DATE	BY	CHECKED BY
1	ISSUED FOR PERMIT	2021/03/02	KL	KL
2	REVISED PER PLANING PANEL COMMENTS	2021/03/02	KL	KL





EXTEND WORKS TO ALLOW SMOOTH TRANSITION CONSTRUCT NEW VEHICULAR CROSSING AS PER COUNCIL'S SPECIFICATION

LOUGHLIN STREET

EXTEND WORKS TO ALLOW SMOOTH TRANSITION

25mm SAND BED
CONSTRUCT 150mm THICK UNREINFORCED CONCRETE (25MPA MIN) VEHICULAR CROSSING. REFER TO DETAILS SHOWN ON DWG NO C04.

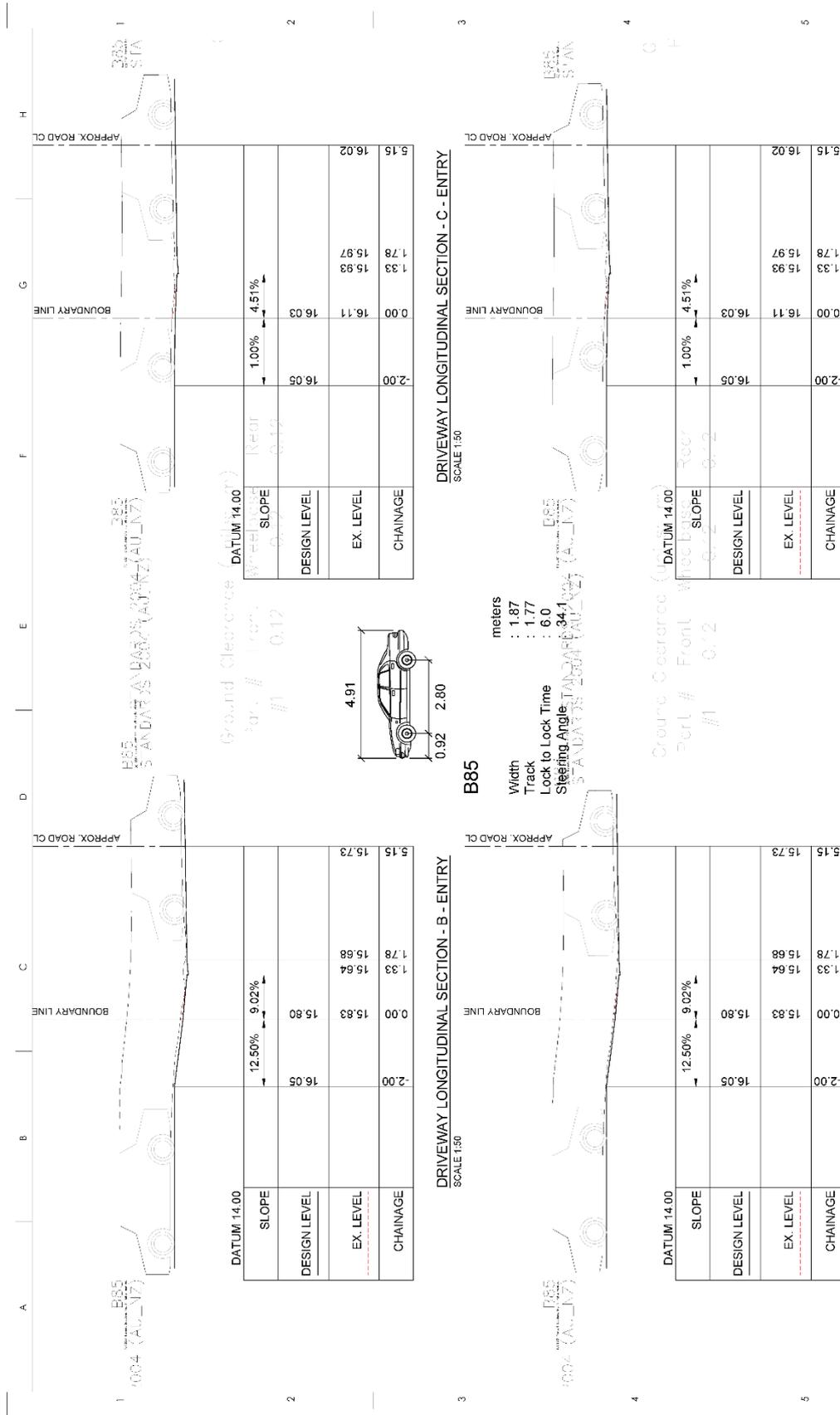
VEHICULAR CROSSING CROSS SECTION A C01
SCALE: NTS

SMART STRUCTURES AUSTRALIA
SUITE 04, L2, BLDG 3
35 WATERLOO RD, MACQUARIE PARK, NSW, 2113
info@smartstructs.com.au | www.smartstructs.com.au

CIVIL WORKS LAYOUT PLAN
PROJECT: C01
DRAWN BY: K.E.
CHECKED BY: J.E.
DATE: 21/01/20
REVISED BY: K.E.
DATE: 17/03/2021

21 LOUGHLIN STREET, ROZELLE NSW 2038

C.P.E. CARL JONES & KAREN TWITCHETT
ONKOS ARCHITECTS



SMART
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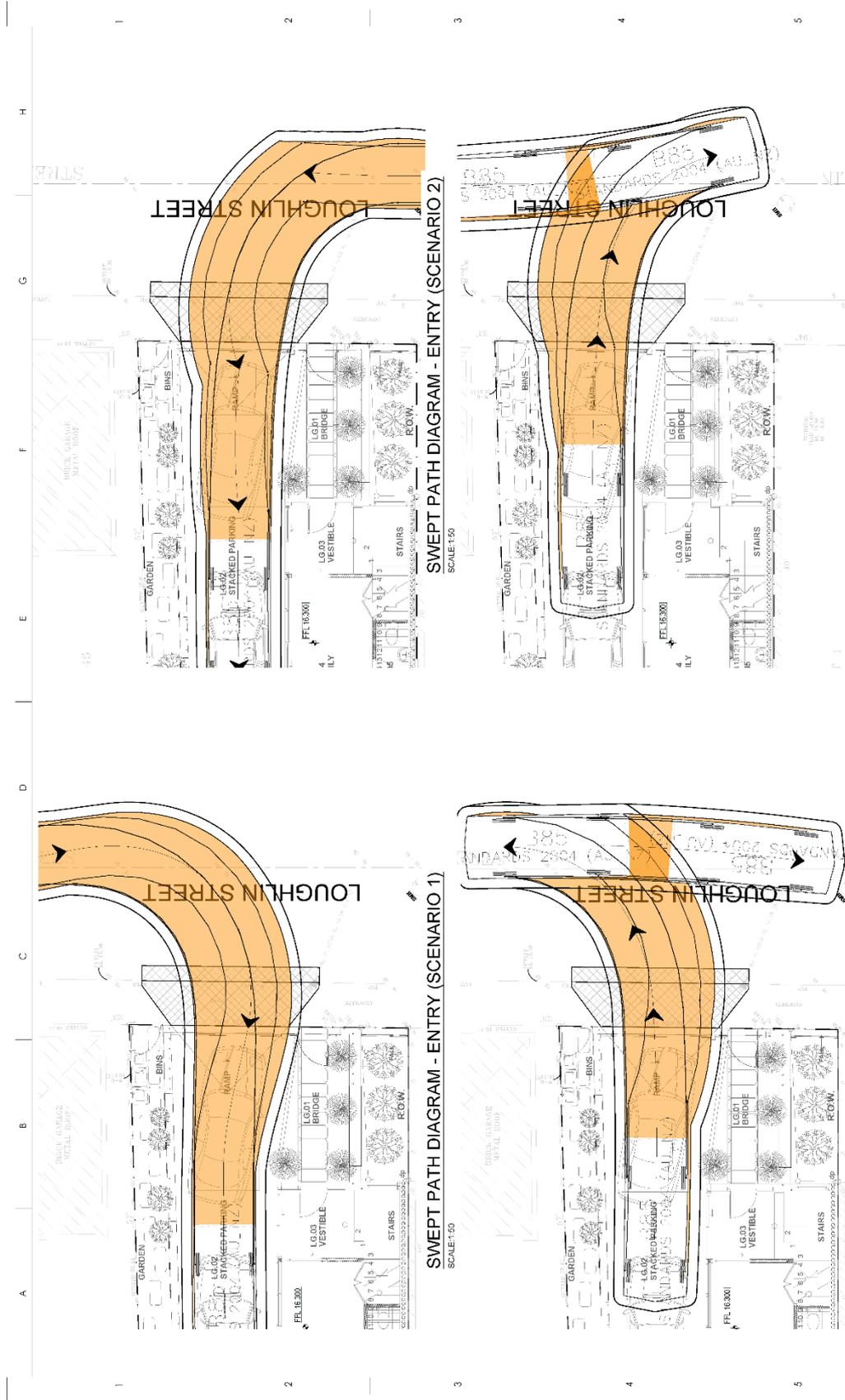
SUITE 102, BLDG 3
 35 WATERLOO RD, MACQUARIE PARK, NSW, 2113
 info@smartstrategies.com.au | www.smartstrategies.com.au

DRIVEWAY LONGITUDINAL SECTIONS
 21 COUCHLIN STREET, ROZELLE
 NSW 2038

DATE: 21/01/20
 DRAWN BY: K.E.
 CHECKED BY: J.E.
 APPROVED BY: K.E.

ONKOS ARCHITECTS
 CARL JONES & KAREN TWITCHETT

DATE: 21/01/20
 DRAWN BY: K.E.
 CHECKED BY: J.E.
 APPROVED BY: K.E.



SWEPT PATH DIAGRAM - ENTRY (SCENARIO 1)
SCALE:1:50

SWEPT PATH DIAGRAM - ENTRY (SCENARIO 2)
SCALE:1:50

SWEPT PATH DIAGRAM - EXIT (SCENARIO 1)
SCALE:1:50

SWEPT PATH DIAGRAM - EXIT (SCENARIO 2)
SCALE:1:50

NO.	REVISION	DATE	BY	CHKD.	APP.
1	ISSUED FOR PERMIT	15/03/2021	J.E.	K.E.	C.A.

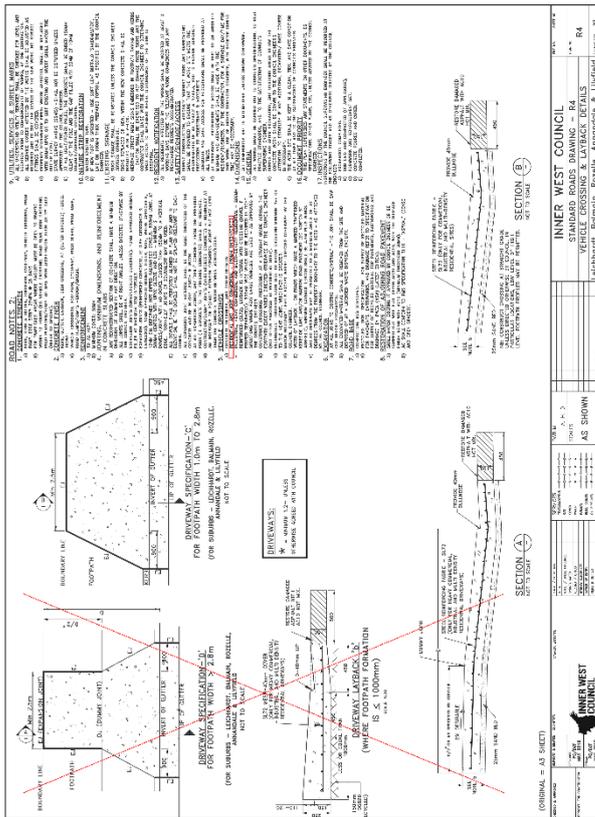
SCALE: 1:50
 METRES
 0 1 2 3 4 5
 CARL JONES & KAREN TWITCHETT
 ONKOS ARCHITECTS
 SUITE 04.12, BUILD 3
 35 WATERLOO RD, MACQUARIE PARK, NSW, 2113
 info@onkosarch.com.au | www.onkosarch.com.au

SMART
 STRUCTURES
 AUSTRALIA
 35 WATERLOO RD, MACQUARIE PARK, NSW, 2113
 info@smartstruct.com.au | www.smartstruct.com.au

PREPARED BY: SWEPT PATH ANALYSIS
 DATE: 03/03/2021
 DRAWN BY: AS SHOWN
 CHECKED BY: J.E.
 APPROVED BY: K.E.

PROJECT NO: 210129
 PROJECT DATE: MARCH 2021
 SITE: 21 LOUGHLIN STREET, ROZELLE NSW 2038

A | B | C | D | E | F | G | H



1

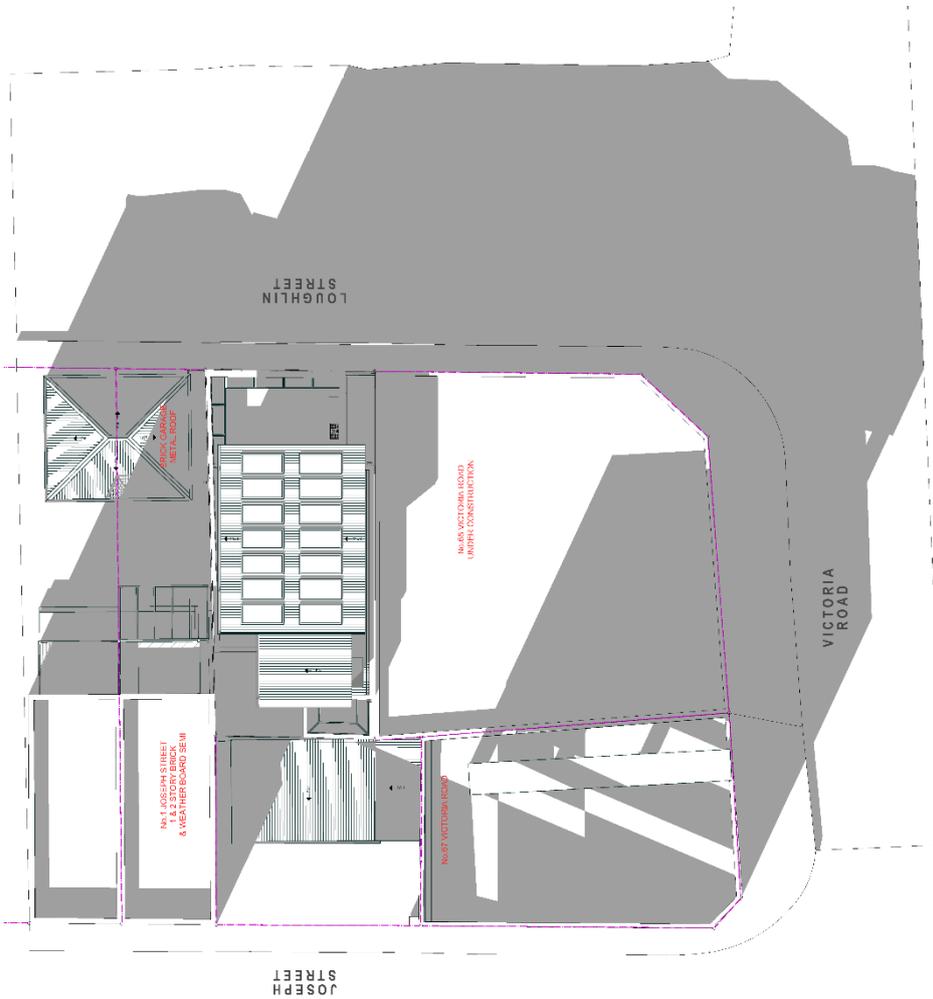
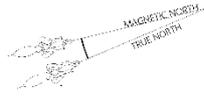
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3

4

5

		TYPICAL DETAILS		21 COUCHMAN STREET, ROZELLE NSW 2038	
SHEET NO: COM	NO: A	DATE: 21/01/20	NO: NIS	DATE: 21/01/20	NO: 100
PREPARED BY: K.E.	CHECKED BY: J.E.	DRAWN BY: NIS	DATE: 21/01/20	NO: 100	DATE: 21/01/20
SUITE 101, 13, BLUFF 3, 35 WATERLOO RD, MACQUARIE PARK, NSW 2113 info@smartsolutions.com.au www.smartsolutions.com.au					
CLIENT: CARL JONES & KAREN TWITCHETT			ARCHITECT: OKOS ARCHITECTS		



3 PLAN - SHADOW ANALYSIS
June 21 @ 3:00pm

Amend.	Description	Date
D	DA - Issue 1	16/02/21
C	DA - Draft 3	12/03/21
B	DA - Draft 2	05/03/21
A	DA - Draft 1	26/02/21



OIKOS Architects
Ray Stevens
B. Arch (Hons), M Arch (UNSW), A.I.A., A.C.A.
NSW A&E No. 4458
15 Elliott Street Balmain NSW 2041
E-mail ray@oikos.com.au
Tel. (02) 9910 7854 Mob. 0411 455 669

Client: **CARL JONES & KAREN TWITCHETT**
Project: **The 'Light Industrial House'**
2 LOUGHLIN ST, ROZELLE NSW

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Drawing title: **Shadow Diagrams 2 @ 3pm**

Scale:	1:200 @ A3
Date:	26/06/20
Drawing No:	2020/03/04_13/D
Project:	23/04/2021

Attachment C- Clause 4.6 Exception to Development Standards

CLAUSE 4.6 SUBMISSION (floor space ratio)

for
Proposed rebuilding of dwelling house
(amended plans)

at
2 Loughlin Street, Rozelle

for
Karen Twitchett and Carl Jones

prepared by
John Pagan

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

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

November 2021

2 Loughlin Street, Rozelle : Clause 4.6 Submission (floor space ratio)

1. INTRODUCTION

This submission accompanies a development application to demolish and rebuild the existing house at 2 Loughlin Street, Rozelle, as shown in the amended drawings numbered 2020/19 DA01F-DA11F dated 1 August 2021 prepared by Oikos Architects. The floor space ratio of the proposal will exceed the maximum of 1:1 allowed under *Leichhardt Local Environmental Plan 2013* (the LEP) and Council has requested a submission under clause 4.6 of the LEP seeking an exception to the development standard.

2. LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

2.1 Floor space ratio

By reference to the Floor Space Ratio Map, clause 4.4(2) provides that the floor space ratio (FSR) of any building on the site is not to exceed 1:1, which represents a gross floor area (GFA) of 139.9m² on the site area of 139.9m². The Architect has calculated the gross floor area of the proposed building as amended to be 147.8m², an FSR of 1.06:1. The extent of the non-compliance is 7.9m², a 5.6% variation to the standard.

Council has advised that it considers the GFA, including the proposed car parking spaces, to total 180.7m²; that is, an FSR of 1.29:1. For the following reasons, however, this submission is made on the basis that the Architect's calculations as shown on drawing numbers 2020/19 DA17D-DA18D Revision F are correct and should be preferred:

- The car parking spaces are in a structure analogous to a carport that is open or predominantly open on three sides and does not constitute GFA
- Consistent with our current understanding of Council's interpretation of voids and GFA, only the lowest level of the internal stairs constitutes GFA
- Part of the lower-ground level is non-habitable/basement storage and therefore excluded from GFA

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

2.2 Exception to Development Standard (Floor space ratio)

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

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard and*

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- the consent authority is satisfied that
 - (4)(a)(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- the concurrence of the Secretary has been obtained

The FSR control contained in clause 4.4 of the LEP is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6.

In accordance with the guidelines provided by decisions of the Land and Environment Court, this submission addresses the requirements of clause 4.6 in turn.

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

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

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

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

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

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

- (a) *to ensure that residential accommodation:*
 - (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) *provides a suitable balance between landscaped areas and the built form, and*
 - (iii) *minimises the impact of the bulk and scale of buildings*
- (b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale*

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Objective (a)

(i) *Bulk, form and scale compatible with desired future character:*

Consistent with the relevant desired future character provisions set out in part 2.2.5.5 Rozelle Commercial Distinctive Neighbourhood of *Leichhardt Development Control Plan 2013*, the proposed building will make a positive contribution to the streetscape and the character and identity of the neighbourhood by developing a transitional site at the edge of the industrial zone with a complementary contemporary design that is compatible in bulk, scale and siting with adjoining and nearby buildings.

The industrial/commercial buildings adjoining to the rear of the site, adjoining to the south and on the opposite side of Loughlin Street are generally of two-storey scale and built generally to the boundaries of their sites. To the north the site adjoins residential development, which at nos. 1 and 3 Joseph Street is of two-storey scale at the front of its site and single-storey scale at the rear with an unbuilt-upon area in the middle.

The proposed building has three storeys, but the lower-ground level is partly excavated into the site, the top level is set back and designed as a subordinate and recessive element and unbuilt-upon areas and voids adjoin the rear of the dwelling to the north. As shown by the elevation drawings and in particular by the perspective views, the proposed building is of compatible bulk, form and scale to those surrounding.

(ii) *Suitable balance between landscaped area and built form:*

There is no landscaped area requirement but the proposal incorporates soft landscaping at the front and rear, including a consolidated area at the rear sufficient to support planting of a small tree, and will provide a good standard of amenity for the occupants.

(iii) *Minimises impact of bulk and scale:*

To reduce visual impact, the lower-ground level of the proposal is partly excavated into the site, the upper levels are set back from the street alignment and the residential development adjoining on the northern side and the top level is designed as a subordinate and recessive element. Unbuilt-upon areas and voids adjoin the rear of the dwelling to the north.

Objective (b)

Compatibility of non-residential development with the desired future character of the area in relation to building bulk, form and scale:

Consistent with the second method in *Wehbe*, this objective, relating to non-residential development, is not relevant to the development.

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

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

The following environmental planning grounds are relevant:

- The proposal is a contemporary design that will make a positive contribution to the streetscape and the character and identity of the neighbourhood.
- In the context (generally industrial/commercial buildings of two-storey scale with a two-storey house adjoining to the north), the proposal will provide a built form outcome compatible in terms of bulk, form, scale and visual impact.
- Although no landscaped area development standard is applicable, the proposal complies with the usual landscaped area requirement for residential development.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The solar access of nearby residential properties will not be adversely affected and the properties adjoining to the west and south are not sensitive to shading.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not unreasonably affect views from nearby properties.

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

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

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

The objectives of the IN2 Light Industrial zone are:

- *to provide a wide range of light industrial, warehouse and related land uses*
- *to encourage employment opportunities and to support the viability of centres*
- *to minimise any adverse effect of industry on other land uses*
- *to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area*
- *to support and protect industrial land for industrial uses*
- *to retain existing employment uses and foster a range of new industrial uses to meet the needs of the community*
- *to ensure the provision of appropriate infrastructure that supports Leichhardt's employment opportunities*
- *to retain and encourage waterfront industrial and maritime activities*
- *to provide for certain business and office premises and light industries in the arts, technology, production and design sectors*

Given that the existing use is by definition prohibited in the zone, it is to be expected that these objectives will have little relevance (if any) to the proposal.

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Concurrence of the Secretary

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

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

3. CONCLUSION

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard if not with those of the zone.

John Pagan BTP MPlA
Town Planner

2 November 2021