

 DEVELOPMENT ASSESSMENT REPORT		
Application No.	DA/2021/0816	
Address	141 Bedford Street NEWTOWN NSW 2042	
Proposal	Substantial demolition of the existing dwelling house, alterations and additions including a new second storey addition	
Date of Lodgement	06 September 2021	
Applicant	Habitat Planning	
Owner	Mr Craig S Kentell & Ms Melissa G Poyner	
Number of Submissions	Initial: 1	
Value of works	\$225,000.00	
Reason for determination at Planning Panel	Clause 4.6 variation - FSR exceeds 10%	
Main Issues	FSR, Period Building, Built form and Character, Landscape and Open Space, Desired Future Character	
Recommendation	Refusal	
Attachment A	Reasons for refusal	
Attachment B	Plans of proposed development	
Attachment C	Clause 4.6 Exception to Development Standards	
Attachment D	Draft Conditions of Consent should consent be granted	
		
LOCALITY MAP ↑ N		
Subject Site 	Objectors 	Notified area 

1. Executive Summary

This report is an assessment of the application submitted to Council for substantial demolition of the existing dwelling house, alterations and additions including a new second storey addition at 141 Bedford Street Newtown.

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

The main issues that have arisen from the application include:

- Non-compliance with the Floor Space Ratio development standard
- Bulk and scale impacts resulting from the proposed variation
- Non-compliance with development controls for period buildings
- Non-compliant open space
- Inconsistency with the desired future character of the area

Having regard to the totality of the proposal, the non-compliances are unacceptable because a more sensitive development could be achieved without unreasonably restricting the development potential of the site. The application is therefore recommended for refusal.

2. Proposal

The application seeks to carry out substantial demolition of the existing dwelling house, and construct alterations and additions including a new second storey addition. Amended plans submitted during the assessment process are the subject of this assessment report. The plans propose the following on each level of the development:

Demolition

- Demolish the entire internal building fabric
- Demolish a portion of the side wall on the north west elevation
- Demolish the entire rear elevation
- Demolish paving in the courtyard
- Demolish all the existing roof

Ground Floor

- Construct a kitchen and living area at the front
- Construct a new living area at the rear
- Construct a new stairway with laundry and toilet below
- Construct a small lightwell in the centre and north west of the floor plate
- Construct private open space combined with permeable paving for car parking

First Floor

- Construct a bedroom at the front with walk-in-robe and ensuite
- Construct a bedroom at the rear with walk-in-robe and ensuite and a cantilever balcony
- Construct a small lightwell in the centre and north west of the floor plate

Second Floor

- Construct a bedroom at the front with walk-in-robe and ensuite
- Construct a bedroom at the rear with walk-in-robe and ensuite and a cantilever balcony
- Construct a small lightwell in the centre and north west of the floor plate

3. Site Description

The subject site is located on the northern side of Bedford Street, between Liberty Street and Albert Street. The site consists of one allotment and is generally rectangular shaped with a total area of 98.2 sqm and is legally described as 141 Bedford Street Newtown.

The site has a frontage to Bedford Street of 4.57 metres and a rear frontage of 4.57 metres to Bedford Lane.

The site supports a two storey terrace style dwelling house. The adjoining properties support two storey dwelling houses, 139 contains a dwelling house of the same height and design as the subject dwelling house while 143 contains a dwelling house of a lesser height. The subject dwelling house is part of a row of three terraces houses of the same height and design.

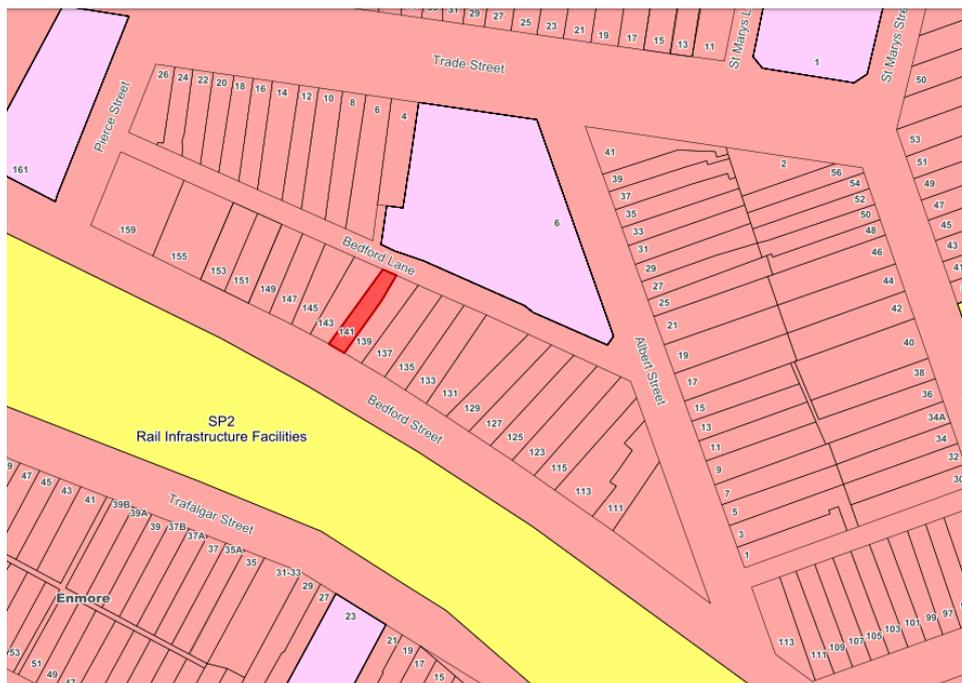


Figure 1: Zoning Map



Figure 2: Front and rear of the subject 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

A search of Council records failed to reveal any previous applications for the subject site.

Surrounding Sites

Location	Application	Proposal	Decision & Date
139 Bedford Street, Newtown	BA-D511/98	To carry out ground floor additions, a first floor deck and a second floor bedroom	Approved, 14 December 1998
143 Bedford Street, Newtown	DA200300691	To demolish the existing improvements, subdivide the land into two allotments and erect a two storey dwelling house on each allotment	Approved, 11 June 2004

4(b) Application history

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

Date	Discussion / Letter / Additional Information
16 September 2021	Application lodged with Council

21 September 2021 to 5 October 2021	Public Notification
20 October 2021	Recommendation to withdraw due issues regarding Floor Space Ratio, Period Building, Built Form and Character, Overshadowing, Parking, Amenity
10 November 2021	Revised plans including off-street parking and request to vary FSR Development Standard submitted

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 (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*

The following provides further discussion of the relevant issues:

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

A BASIX Certificate was submitted with the application indicating that the proposal achieves full compliance with the BASIX requirements.

5(a)(ii) *State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)*

Rail Corridors (Clause 85-87)

SEPP Infrastructure provides guidelines for development immediately adjacent to rail corridors including excavation in, above or adjacent to rail corridors. Clause 87 of the SEPP Infrastructure 2007 relates to the impact of rail noise or vibration on non-rail development, and for a development for the purpose of a building for residential use, requires appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

The development is located less than 12 metres from a railway line, and the development is immediately adjacent to the railway land as referenced in Clause 85. The application was referred to Sydney Trains and at the time of writing this report no comment has been received. While the development is located close to a railway corridor, it does not penetrate the ground below 2 metres (Clause 86). The applicant has submitted an acoustic report which identifies that the development is capable of being attenuated to ensure that the dwelling would comply with the noise criteria specified by Clause 87 of ISEPP 2007.

5(a)(iii) *Marrickville Local Environment Plan 2011 (MLEP 2011)*

The application was assessed against the following relevant clauses of the *Marrickville Local Environmental Plan 2011*:

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- 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- Earthworks
- Clause 6.5 - Development in areas subject to aircraft noise

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

Standard	Proposal	Non compliance -	Complies
Height of Building Maximum permissible: 9.5 m	9.49m	Nil	Yes
Floor Space Ratio Maximum permissible: 1.1:1 or 108.2sqm	1.5:1 or 148sqm	39.8sqm or 37%	No

(i) Clause 1.2 – Aims of the Plan

Clause 1.2 prescribes the following aims of MLEP 2011:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,*
- (b) *to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,*
- (c) *to protect existing industrial land and facilitate new business and employment,*
- (d) *to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,*
- (e) *to promote accessible and diverse housing types including the provision and retention of affordable housing,*
- (f) *to ensure development applies the principles of ecologically sustainable development,*
- (g) *to identify and conserve the environmental and cultural heritage of Marrickville,*
- (h) *to promote a high standard of design in the private and public domain.*

The proposal is considered to be generally consistent with the above aims with the exception of aim (h). The excessive bulk and scale of the proposal fails to promote a high standard of design. The amended plans submitted to Council do not adequately address concerns raised about visual impact on the amenity of adjoining properties, and results in a poor outcome in terms of private open space and off-street car parking.

The form and scale of the proposal is uncharacteristic and excessively bulky having regard to the prevailing character of Bedford Street and affords inadequate amenity to future occupants which is demonstrated through a number of non-compliances with Council's controls as identified throughout this assessment report.

The development does not demonstrate consistency with the provisions of Clause 1.2 of MLEP 2011 and as such, the application is recommended for refusal

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

The site is zoned R2 Low Density Residential under the *MLEP 2011*. The *MLEP 2011* defines the development as a *dwelling house*.

The development is permitted with consent within the land use table and is consistent with the objectives of the zone.

(iii) Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 - Floor space ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.6 of the *Marrickville Local Environmental Plan 2011* by 37% (39.8 sqm).

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 *Marrickville Local Environmental Plan 2011* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Marrickville Local Environmental Plan 2011*. An excerpt of the applicant's justification to the proposed contravention of the development standard is summarised as follows:

- *Areas such as stairs are excluded from GFA calculations, and the development proposes a total GFA of 121.85m² which represents an FSR of 1.2:1 which equates to a total floor area of 13.94m² over the permissible 107.91m² (1.1:1) GFA on the subject land or a variation of 12.9%*
- *That the development is permissible with consent.*
- *The development is reasonable when compared to LEP provisions for minimum lot requirements specified in adjoining LGA's within Inner West Council with similar FSR requirements (500m², or 200m² with min. lot width of 7 metres in Ashfield, and 200m² in Leichhardt). That comparatively, the development of the 98.1m² allotment with a width of 4.5 metres is supportable, because it proposes a less site coverage and more permeable area than the existing situation.*
- *The proposal complies with the maximum building height (9.5 metres) as specified in the LEP, and the new additions will not increase the existing building height and the additions will not be visible from the street.*
- *The narrow lot width and area makes compliance makes it difficult to provide a functional and liveable dwelling house with suitable amenity.*
- *The development complies with all other relevant LEP and DCP controls.*
- *The proposal has considered potential impacts on adjoining properties including overshadowing, views, overlooking and privacy, streetscape significance, building separation and has been designed to minimise these impacts.*
- *The proposed alterations and additions will not be visible from the street and will not cause any adverse off street amenity impact.*
- *The development achieves the objectives of both Clause 4.4 and the R2 zone of the LEP as outlined above.*

- *The proposed alterations and additions have been designed without compromising the potential for future development of adjoining dwellings specifically 139 Bedford Street.*
- *The subject land immediately adjoins and is located opposite a train station, which is separated from the site by an approximately 2.5m high solid brick wall with associated sound barrier located on top.*

The applicant's written rationale fails to adequately demonstrate compliance with the development standard is unreasonable in the circumstances of the case, and that there are insufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in not the public interest because it is inconsistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the *Marrickville Local Environmental Plan 2011* for the following reasons:

- The development results in excessive bulk for the subject and to adjoining sites, particularly due to the rear building alignment of the first and second floors that extend significantly beyond the neighbouring properties which would not comply with Part 4.1.6 of MDCP 2011 and is inconsistent with the desired future character of the area
- Compliance with the height development standard is not a relevant consideration as to why compliance with the FSR development standard is unreasonable or unnecessary. There is not a ranking of one control over another, such that height prevails over FSR. They are both maxima and it is not a justification for breaching one standard (FSR) to say that the maximum allowable under another standard (height) has been met. Maximising one control at the expense of another is not of itself an environmental planning ground.
- The extent of building results in a lack of a suitable area for private open space and landscaping which does not comply with Part 2.18 of MDCP 2011 and is inconsistent with the desired future character of the area and may result in environmental impacts.
- The height, scale and bulk of the development towards the rear of the site results in adverse amenity impacts to neighbouring properties by way of visual bulk presenting to the neighbouring private open spaces and the rear of those dwellings, potentially creating adverse overshadowing. These adverse impacts are directly attributable to the additional GFA sought (beyond the prescribed standard)
- The development would result in a first floor rear building setback that is inconsistent with the predominant rear first floor building alignment visible from Bedford Lane resulting in adverse bulk to the public domain.

For the reasons outlined above, there are insufficient planning grounds to justify the departure from floor space ratio and it is considered the Clause 4.6 exception is not worthy of support.

5(b) Draft Environmental Planning Instruments

- Draft Inner West Local Environmental Plan 2020

5(c) 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*.

In relation to the development proposal, the Draft IWLPP 2020 contains substantially the same provisions relating to floor space ratio as MLEP 2011. As such, the proposal would remain inconsistent with the objectives of these provisions for the reasons discussed earlier in this report.

However, the Draft IWLEP 2020 also contains provisions for the inclusion of amended/new clauses which are applicable to the proposal as discussed below:

(i) Clause 1.2 – Aims of the Plan

Clause 1.2 prescribes the following aims of Draft IWLEP 2020:

- (a) to ensure development applies the principles of ecologically sustainable development,*
- (b) to mitigate the impact of climate change and adapt to its impacts,*
- (c) to protect, enhance and sustainably manage biodiversity, natural ecosystems, water resources, ecological processes and urban forest,*
- (d) to ensure that the risk to the community in areas subject to urban and natural hazards is minimised,*
- (e) to ensure that existing and future residents, visitors and workers have access to sustainable transport including walking and cycling, social and community infrastructure, services and public open space,*
- (f) to retain, protect and increase industrial and employment land and enhance the function and vitality of centres,*
- (g) to promote accessible and diverse housing types to support people at all stages of life, including the provision and retention of affordable housing,*
- (h) to identify, protect and conserve environmental and cultural heritage and significant local character,*
- (i) to achieve a high-quality urban form and open space in the public and private domain by ensuring new development exhibits architectural and urban design excellence,*
- (j) to protect and enhance the amenity, vitality and viability of Inner West for existing and future residents, workers and visitors,*
- (k) to protect and enhance significant views and vistas from the public domain and promote view sharing from and between private dwellings,*
- (l) to prevent adverse social, economic and environmental impacts including cumulative impacts.*

The proposal is generally considered to be consistent with the above aims of draft IWLPP 2020 with the exception of aims h), i) and j).

The development is considered to have adverse impacts on the significant local character, and this is contrary to aim h), for the following reasons:

- The increased building height and altered rear and side setback arrangements overwhelm the subject terrace house, the adjoining matching terrace houses and the terrace house at 139 Bedford Street and results in a built form that is inconsistent and excessively larger than adjoining dwellings. The scale and proportions of the floors proposed, and the 3-storey form fails to respect the existing dwelling on the site and neighbouring dwellings and the roof form protrudes above the side parapet walls and as such will be visible from the Bedford Street frontage particularly having regard to the smaller scale terrace at 143 Bedford Street. The period building on this site and on adjoining properties

contribute positively to the significant local character and the proposal with its excessive bulk and scale diminishes this character.

The development is not considered to promote a high standard of design, contrary to aim i), for the following reasons:

- The development relies on light and ventilation from a very small and centrally located light-well on the east boundary (1.2m by 1.66m), with minimal opportunity for air circulation within the dwelling house and poor outlook and amenity for occupants of bedroom 3.
- The proposed design does not respond well to the context of the two storey traditional Victorian terrace houses at 137, 139 and 141 Bedford Street, and in particular, the identical pair of terrace houses at 139 and 141 Bedford Street, which are of a smaller scale
- The proposed additions extend above the existing parapet walls and will be visible from Bedford Street diminishing the character of the dwelling
- The proposal lacks detail on solar access received by neighbouring properties.

The development is not considered to protect and enhance the amenity for existing and future residents, contrary to aim j), for the following reasons:

- As noted above the amenity of the dwelling is compromised through the proposed design
- The bulk and scale of the proposal adversely impacts neighbouring development and the streetscape/lanescape.

The development does not demonstrate consistency with the provisions of Clause 1.2 of Draft IWLPP 2020 the provisions of which are considered imminent and certain as the draft instrument is awaiting ministerial consideration and gazettal. As such, the application is recommended for refusal.

(ii) Clause 2.3 – Land Use Table and Zone Objectives

The site is zoned R2 Low Density Residential under the *MLEP 2011*. The *MLEP 2011* defines the development as a *dwelling house*. The development is permitted with consent within the land use table.

However, the draft R2 zone includes the following additional applicable objectives:

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood*

For the reasons discussed throughout this report in relation to consistency with the aims of the plans, floor space ratio and period building controls, the proposal is not considered to be compatible with the character, style and pattern of surrounding buildings. The development also lacks an adequately landscaped private open space area and results in amenity impacts to neighbouring properties. The development is not consistent with the objectives of the R2 zone within Draft IWLPP 2020, the provisions of which are considered imminent and certain as the draft instrument is awaiting ministerial consideration and gazettal. As such, the application is recommended for refusal.

5(d) Development Control Plans

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

Part of MDCP 2011	Compliance
Part 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes – see discussion
Part 2.7 – Solar Access and Overshadowing	No – see discussion
Part 2.10 – Parking	Yes – see discussion
Part 2.18 – Landscaping and Open Space	No – see discussion
Part 2.20 – Tree Management	Yes – see discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes – see discussion
Part 4.1.6 – Built form and character	No – see discussion
Part 4.1.11 – Additional controls for period buildings	No – see discussion
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

(i) Part 2.6 – Acoustic and Visual Privacy

Part 2.6.1 of MDCP 2011 contains the following objectives:

O1 To ensure new development and alterations and additions to existing buildings provide adequate visual and acoustic privacy for the residents and users of surrounding buildings.

O2 To design and orientate new residential development and alterations and additions to existing residential buildings in such a way to ensure adequate acoustic and visual privacy for occupants.

O3 To ensure new development does not unreasonably impact on the amenity of residential and other sensitive land uses by way of noise or vibration.

Given the proposal is built to the side boundaries, visual privacy impacts to neighbouring properties are most likely to occur from the rear facing balconies and openings. The first floor balconies include blade walls at either end. Overlooking of the open spaces of adjoining properties is restricted such that least 50% of the open space of both properties cannot be seen from the balconies. That is, views are directed toward the rear. As such, the proposal is not considered to result in adverse visual privacy impacts. The development therefore complies with Part 2.6 of MDCP 2011.

The application is however, recommended for refusal for reasons identified throughout this report.

(ii) Part 2.7 – Solar Access and Overshadowing

Control C2 of Part 2.7.3 of MDCP 2011 states:

Direct solar access to windows of principal living areas and principal areas of open space of nearby residential accommodation must:

- i. Not be reduced to less than two hours between 9.00am and 3.00pm on 21 June; or*
- ii. Where less than two hours of sunlight is currently available on 21 June, solar access should not be further reduced. However, if the development proposal results in a further decrease in sunlight available on 21 June, Council will consider:*

- a. *The development potential of the site;*
- b. *The particular circumstances of the neighbouring site(s), for example, the proximity of any residential accommodation to the boundary, the resultant proximity of windows to the boundary, and whether this makes compliance difficult;*
- c. *Any exceptional circumstances of the subject site such as heritage, built form or topography; and*
- d. *Whether the sunlight available in March to September is significantly reduced, such that it impacts upon the functioning of principal living areas and the principal areas of open space. To ensure compliance with this control, separate shadow diagrams for the March/September period must be submitted in accordance with the requirements of C1;*

Where less than two hours of sunlight is currently available on 21 June and the proposal is not reducing it any further, Council will still consider the merits of the case having regard to the above criteria described in points a to d.

June Shadow diagrams indicate:

- The development does not impact on the open space of adjoining properties.
- At least two hours sunlight is retained to skylights in 143 Bedford Street.

However, the shadow diagrams do not contain sufficient information to enable a comprehensive assessment or demonstrate compliance with control C2 above, because the indicative shadow casts are not considered accurate. The diagrams show additional shadowing to the roof top of 139 Bedford Street only, despite the proposed additions extending beyond the rear alignment of the neighbouring property. Given the extent of the development, its position beyond the neighbouring property and the angle of the additional shadows, additional shadowing would likely be cast to the rear wall of 139 Bedford Street and possibly to a portion of the neighbours private open space. However, no such shadowing is shown on the diagrams and as such the diagrams are considered to be inaccurate.

The development therefore has not provided sufficient information for Council to be satisfied of compliance with Part 2.7 of MDCP 2011.

The application is recommended for refusal.

(iii) Part 2.10 – Parking

Part 2.10.5 of MDCP 2011 requires at least one car parking space for a dwelling house. Control C5 states:

C5 The minimum dimensions for an off-street parking space is 5.4 metres by 2.5 metres and clearly marked to be easily identified by users.

Amended plans submitted during the assessment process indicate that minimum parking dimensions are achieved with parking obtained from the rear lane.

The development therefore complies with Part 2.10 of MDCP 2011.

The application is however recommended for refusal for other reasons identified in this report.

(iv) Part 2.18 – Landscaping and Open Spaces

Control C12 of Part 2.18.11.1 of MDCP 2011 requires:

- i. *The greater of 45m² or 20% of the total site area with no dimension being less than 3 metres, must be private open space.*
- ii. *A minimum 50% of private open space must be pervious*

For this site of 98.2sqm, minimum of 45sqm open space is required and 22.5sqm (50%) of such open space is required to consist of pervious landscaping.

The plans indicate the provision of approximately 24sqm of open space, the majority being 14sqm of which is proposed for off-street parking. The plans specify permeable paving. The development therefore does not comply with the minimum requirement for private open space.

The development fails to comply with Part 2.18 of MDCP 2011.

The application is recommended for refusal.

(v) Part 2.20 – Tree Management

Council's Tree Urban Forest Advisor has provided a condition that a replacement tree be provided as follows;

A minimum of 1 x 45 litre size tree, which will attain a minimum mature height of six (6) metres, must be planted in a suitable location within the property at a minimum of 1 metres from any boundary and 2.2 metres from the dwelling wall and allowing for future tree growth. The tree is to conform to AS2303—Tree stock for landscape use. Trees on the on the DCP Minor Works list, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

However having regard to the limited size of the open space provided and even more limited ability to provide soft landscaping, it is clear that the proposal is unlikely to be able to comply with such a requirement because of the proposed layout as the tree would seemingly conflict with the car parking space, indicating that the proposal is an overdevelopment of the site as it is unable to afford landscaping in accordance with Councils controls.

Having regard to the above the proposal fails to comply with Part 2.20 of MDCP 2011.

(vi) Part 4.1.6 – Built form and character

Relevant objectives and controls of in Part 4.1.6 of MDCP 2011 are reproduced hereunder:

- O10 *To ensure development is of a scale and form that enhances the character and quality of streetscapes.*
- O11 *To ensure alterations and additions to residential period dwellings do not detract from the individual character and appearance of the dwelling being added to and the wider streetscape character.*
- C8 *Notwithstanding compliance with the numerical standards, applicants must demonstrate that the bulk and relative mass of development is acceptable for the street and adjoining dwellings in terms of:*
- i. *Overshadowing and privacy;*
 - ii. *Streetscape (bulk and scale);*
 - iii. *Building setbacks;*
 - iv. *Parking and landscape requirements;*

- v. *Visual impact and impact on existing views (Council encourages view sharing between surrounding residences) ...*

C10 Attached dwellings, dwelling houses and semi-detached dwellings:

iii. Rear setback must:

- a. *Where a predominant first storey rear building line exists, is consistent and visible from the public domain, aim to maintain that upper rear building line;*
- b. *In all other cases, be considered on merit with the adverse impacts on the amenity of adjoining properties being the primary consideration along with ensuring adequate open space; and*
- c. *Where the prominent form of development is terrace housing with access to a rear lane, maintain the capacity for off-street parking.*

As identified earlier, the development results in a substantial variation to the FSR development standard. The exceedance is approximately 40sqm of GFA and creates unwarranted massing. The bulk and scale of the development is considered excessive and out of character with the streetscape and the period buildings at the subject and adjoining sites. The inclusion of blade walls to mitigate overlooking further exacerbates the bulk of the building at the rear and indicates that the proposal is an overdevelopment of the 98.2sqm site.

Furthermore as noted previously, the addition will be visible from the Bedford Street frontage as the height of the roof of the 2nd storey exceeds the height of the western wall, and the lower height of the neighbour at 143 Bedford Street exposes this side elevation. This combined with slope of the street results in an unsympathetic addition to a period building being visible from Bedford Street diminishing the streetscape character and setting a poor precedent for future development, particularly as there are no other 3 storey dwelling houses in this street block.

The height and length of the development results in considerable bulk presented to residents of adjoining properties primarily to the neighbouring private open space and rear facing windows due to the inconsistent rear setback proposed. 137-151A Bedford Street have a reasonably consistent first floor rear building alignment which is visible from the public domain and allows for areas of private open space that are not overwhelmed by the visual bulk of neighbouring properties. The proposal does not conform to this predominant first floor building line, contrary to control C10a.

Additionally, the rear alignment of the first and second floor additions extends beyond the rear alignment of both neighbouring properties which results in adverse visual bulk presenting to the neighbouring open spaces and rear windows as a result of the shear three storey side wall presenting to each neighbour. This additional bulk to the rear may also result in adverse overshadowing impacts. The rear building alignment and excessive rear bulk results in adverse amenity impacts to neighbouring properties, contrary to control C10b of Part 4.1 of MDCP 2011.

The rear building alignment also does not allow the proposal to provide an adequate level of private open space to the rear of the dwelling, contrary to control C10b.

The development fails to comply with Part 4.1.6 of MDCP 2011 and is recommended for refusal.

(vii) Part 4.1.11 – Additional period building controls

It is an objective of Part 4.1 of MDCP 2011 to encourage restoration and sympathetic alterations and additions to residential period buildings in a manner that retains and enhances their architectural character and streetscape presentation. The subject dwelling house meets the definition of a period building at Part 4.1.10.1 because the subject building:

“Is not a contemporary dwelling and is a building which represents a historical period which is either substantially intact or with reversible alterations”

The development does not demonstrate compliance with the following controls contained in Part 4.1.11 of MDCP 2011:

- C60** *Alterations and additions at the rear and the sides and above the roof line, other than reconstruction of elements removed from the period building and garden, must be subordinate to the main body of the period building when viewed from the street.*
- C61** *Rear additions to terraces must not alter the parapet, ridgeline, chimneys and profile of party walls projecting above the roof of the terrace, as perceived from the front streetscape.*
- C62** *Additions and alterations to one of a pair of semi-detached dwellings must not compromise the symmetry, massing and/or proportions of the pair.*
- C63** *Additions to one of a pair of semi-detached dwellings must not inhibit the potential for additions to the adjoining property. The pair must be treated as a unified composition. Adjoining owners must work together to achieve an integrated facade treatment for both dwellings and complementary rear design solutions*

The dwelling houses known as 137, 139 and 141 Bedford Street form a row of identical two-storey Victorian terrace houses, 139 and 141 are an attached pair within the row of three. Both the front and rear elevations of 139 and 141 Bedford Street remain intact and original, unlike 137 the first floor balcony has not been enclosed at the street elevation and breezeways are a feature of the side setbacks of the rear building wing of both 139 and 141. It is also noted that the proposal results in a rear setback that extends beyond that of any other nearby dwelling.

Notably, the proposal seeks to build within the breezeway and create a large addition that compromises the symmetry, massing and proportions of the pair and consideration has not been given to the subsequent development of 139. It is evident from the side elevations that the three storey proposal alters the fundamental building design of the terrace houses at 139 and 141 Bedford Street and that this is not a good precedent for No.139 to replicate.

The alterations and additions proposed are not subordinate to the main body of the period building, and as noted previously the roof of the 2nd storey would exceed the height of the existing side boundary walls being particularly visible on the western elevation.

The development therefore fails to comply with the provisions of Part 4.1.11 of MDCP 2011.

The application is recommended for refusal.

(viii) Part 9 – Strategic Context

The subject site is located within the Newtown North and Camperdown Planning Precinct (Precinct 4). The relevant elements of the desired future character as specified in Part 9.4.2 of MDCP 2011 are:

- 1. To protect and preserve contributory and period buildings within the precinct and require their sympathetic alteration or restoration.*
- 4. To protect groups or runs of buildings which retain their original built form including roof forms, original detailing and finishes.*

As identified in this report, the development results in variations to the period building controls, and the extent of the development does not constitute a sympathetic alteration or restoration. Rather, the voluminous nature of the proposal is overambitious and overwhelming of the subject and adjoining period buildings within Precinct 4. Also identified earlier, is the fact that the subject dwelling house is part of three two-storey terrace houses, and the original form and detailing of the pair (139 and 141) are as original but the proposal alters the overall form.

It is considered the proposal fails to provide for sympathetic alterations and additions and diminishes the character of the original building.

The development therefore fails to comply with Part 9 of MDCP 2011.

The application is recommended for refusal.

5(e) The Likely Impacts

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

- The development is insensitive to the period buildings which characterise the area
- The development would set an undesirable precedent for Newtown North
- The development would result in adverse impacts to the neighbouring properties and the public domain

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

It is considered that the proposal will have an adverse impact on the adjoining properties, is inconsistent with the desired future character of the area and is considered to be an overdevelopment of the site and is at odds with the locality. The scale and form seek to achieve a yield on the site which exceeds the prescribed FSR and has unacceptable streetscape/lanescape impacts and the site is not suitable for the proposed extent of development sought.

5(g) Any submissions

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

One submission was received in response to the initial notification.

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

- Unsympathetic to the pair of semi-detached dwellings at 139 and 141 Bedford Street

- Overdevelopment of the subject site
- Exceeds Floor Space Ratio development standard
- Out of character with other development in the area
- Loss of solar access
- Excessive bulk and scale
- Loss of privacy due to balconies
- Parking
- That a variation to the FSR development standard is unnecessary

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

Issue: The proposal has the potential for use as a boarding house or some other type of development that is not permitted in the zone

Comment: The proposal is for a single residential dwelling house and has been assessed accordingly.

Issue: Impacts associated with excavations and demolition.

Comment: This issue could be addressed by conditions of consent. The applicant has provided a Certificate of Structural Adequacy in which an engineer states the common party wall has been inspected, and that proposed additions and alterations will be engineered independent of the existing party wall.

5(h) The Public Interest

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

The proposal is contrary to the public interest given the numerous variations from Council's controls contained in Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011.

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.

- Engineering
- Urban Forests

7. Section 7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that contribution to be paid should be imposed on any consent granted.

8. Conclusion

The proposal fails to comply with a number of aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 *Marrickville Local Environmental Plan 2011* to vary Clause 4.4 of the LEP. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are insufficient environmental grounds to support the variation. The proposed development will not be in the public interest because the exceedance is inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2021/0816 for partial demolition, alterations and additions to an existing residential dwelling including a second storey addition at 141 Bedford Street NEWTOWN NSW 2042 for the following reasons listed in Attachment A.

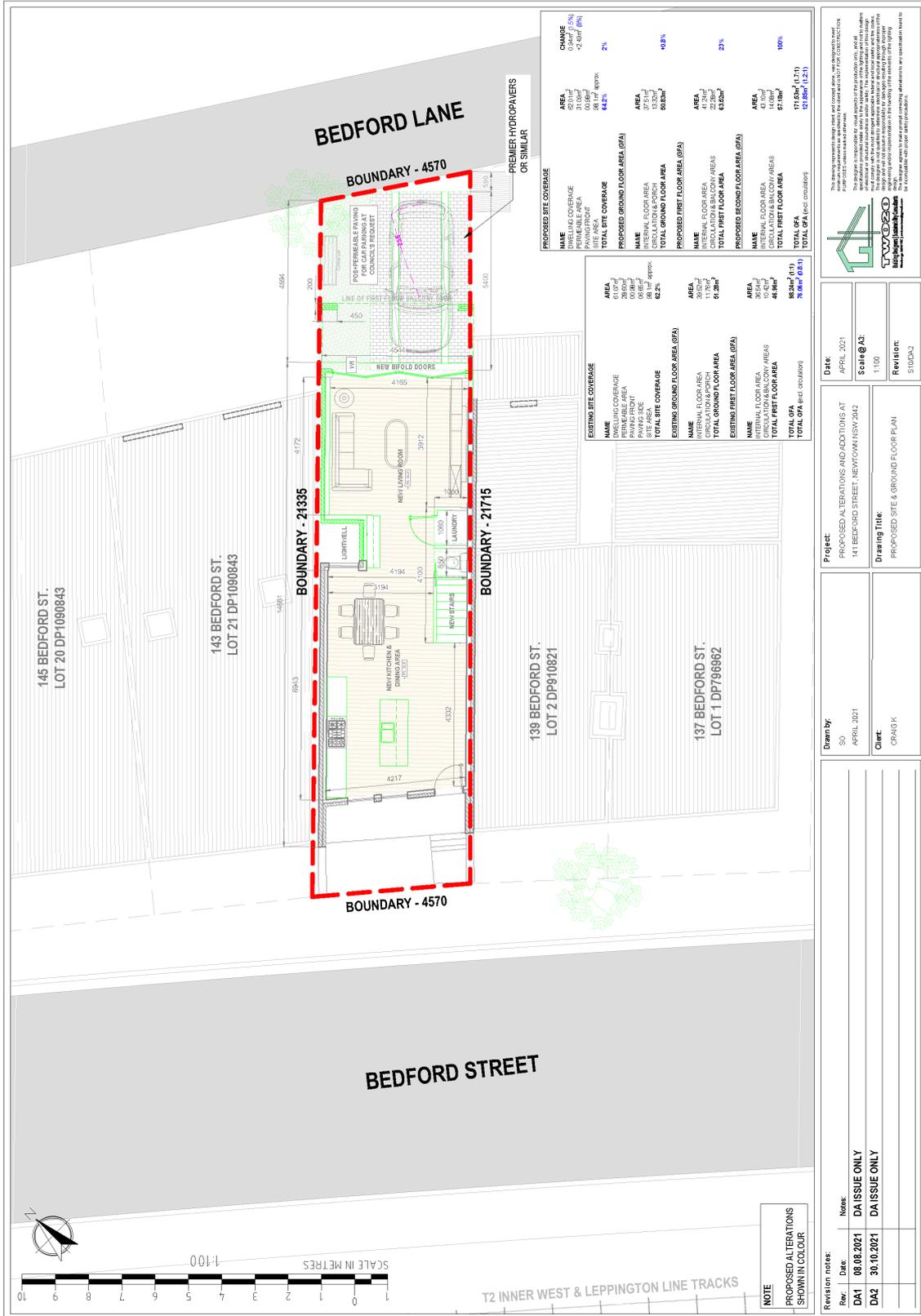
Attachment A – Reasons for refusal

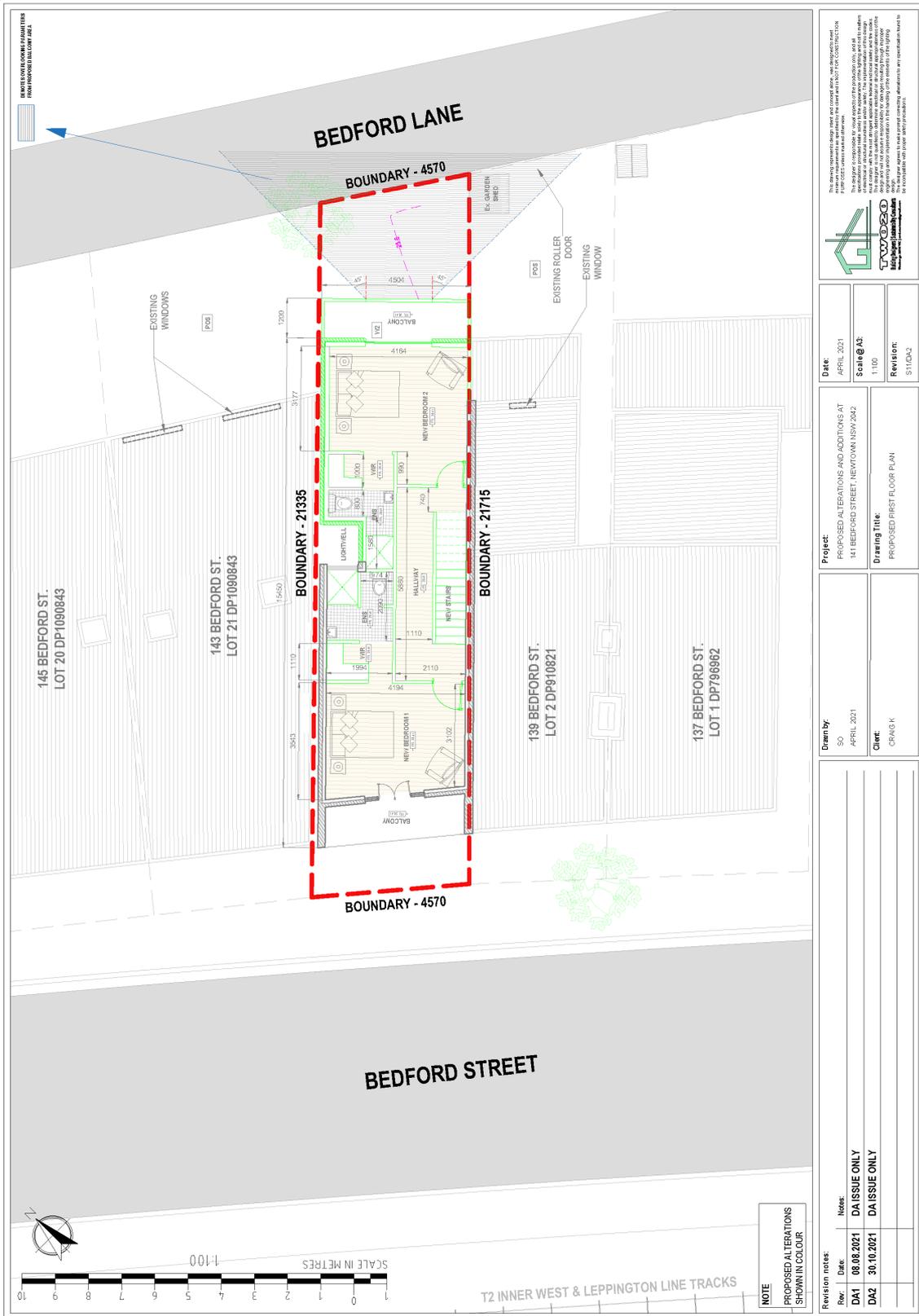
REASONS FOR REFUSAL

1. The proposed development is inconsistent with the following Clauses of *Marrickville Local Environmental Plan 2011*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2(h) - Aims of the Plan, as the proposal fails to exhibit a high standard of design.
 - b. Clause 4.4 - Floor Space Ratio, as the development exceeds that maximum floor space ratio applicable to the site resulting in a compromised amenity for adjoining properties, the streetscape and the subject site itself.
 - c. Clause 4.6 - Exceptions to Development Standards, in that the requirements of the standard have not been found to be unreasonable or unnecessary and the proposal is inconsistent with the objectives of the floor space ratio development standard.
2. The proposed development is inconsistent with the following Clauses of draft *Inner West Local Environmental Plan 2020*, pursuant to Section 4.15 (1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2(h), (i) and (j) - Aims of the Plan, as the proposal fails to protect residential amenity, the significant local character or promote a high standard of design.
 - b. Clause 2.3 - Land Use Table and Zone Objectives, as the development is incompatible with the character, style and pattern of surrounding buildings and fails to protect residential amenity.
 - c. Clause 4.4 - Floor Space Ratio, as the development exceeds the maximum floor space ratio applicable to the site.
 - d. Clause 4.6 - Exceptions to Development Standards, as the requirements of the standard have not been found to be unreasonable or unnecessary and the proposal is inconsistent with the objectives of the floor space ratio development standard.
3. The proposed development does not comply with the following Parts of *Marrickville Development Control Plan 2011*, pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:

- a. Part 2.7 - Solar Access and Overshadowing, as insufficiently detailed shadow diagrams fail to demonstrate the development protects solar access to surrounding properties.
 - b. Part 2.18 - Landscaping and open space, as the development does not provide sufficient private open space for occupants of the subject dwelling house thereby compromising amenity and the ability for providing adequate tree planting.
 - c. Part 4.1.6 - Building form and character, as the development proposes a height, bulk, and scale that overwhelms the adjoining properties and results in adverse amenity impacts for both residents of adjoining properties and the subject dwelling house.
 - d. Part 4.1.11 – Additional controls for residential period dwellings, as the development alters the fundamental building design of the subject terrace house and compromises the symmetry, massing, and proportions of the pair of terraces at 139 and 141 Bedford Street and the proposed additions are not subordinate to the main body of the period building.
 - e. Part 9.4.2 -Strategic context, in that the development fails to protect and preserve contributory buildings within the Newtown North planning precinct and results in the loss of original building form for terraces in Bedford Street.
4. The adverse streetscape/lanescape impacts illustrate that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
 5. Having regard to submissions received and the adverse impacts of the proposal, the application as proposed is not in the public interest, pursuant to Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B – Plans of proposed development





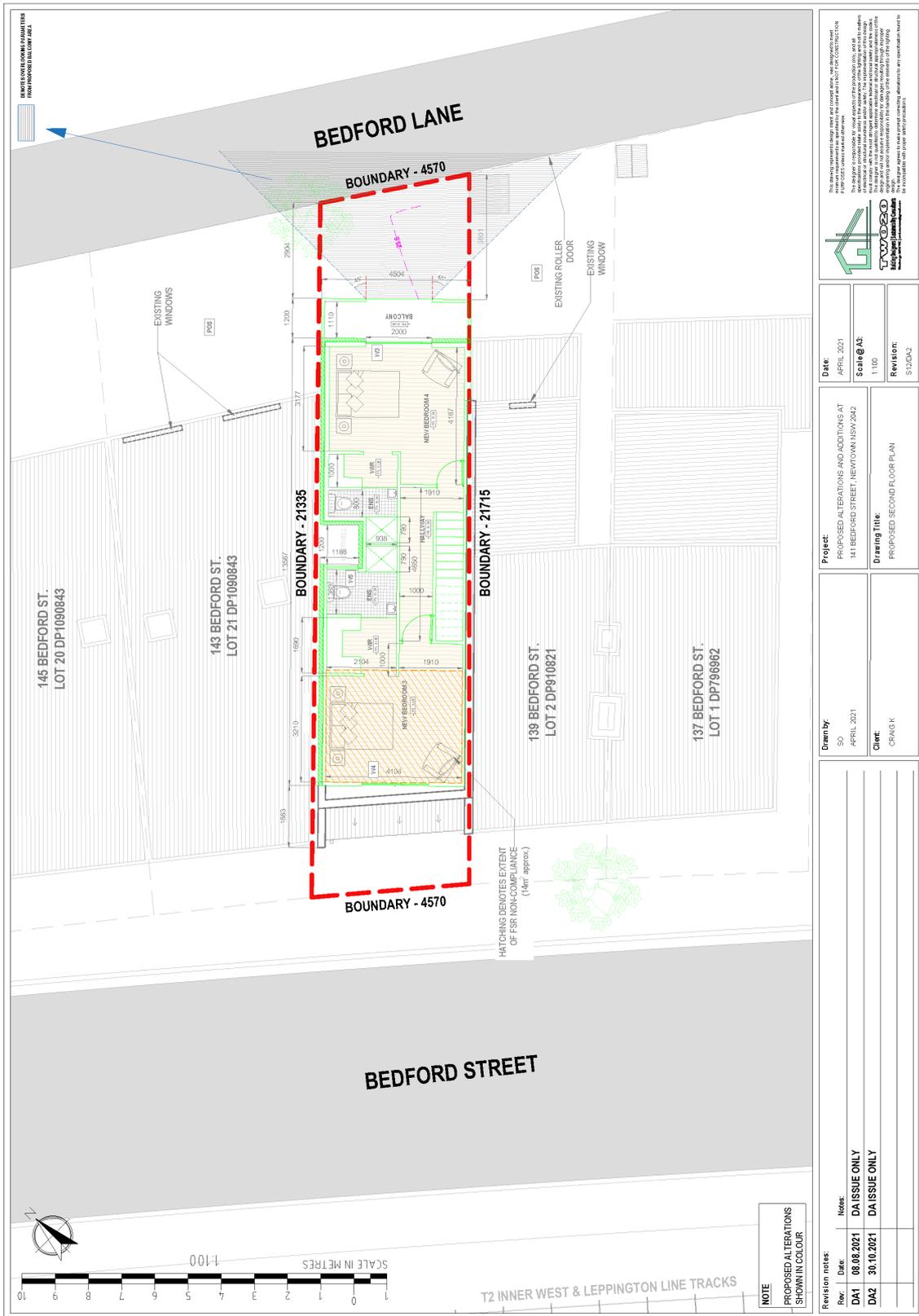
The information on this plan is provided as a guide only. It is not intended to be used as a basis for any legal or financial transaction. The user of this plan should seek professional advice. The user of this plan should be aware that the information on this plan is provided as a guide only and is not intended to be used as a basis for any legal or financial transaction. The user of this plan should seek professional advice.

Date: APRIL 2021
Scale: A3
Scale: 1:100
Revision: S11242

Project: PROPOSED ALTERATIONS AND ADDITIONS AT 141 BEDFORD STREET, NEWTOWN NSW 2042
Drawing Title: PROPOSED FIRST FLOOR PLAN

Drawn by: S.O.
Date: APRIL 2021
Client: CRAIG K

Rev.	Date	Notes
DA1	03.08.2021	DA ISSUE ONLY
DA2	30.10.2021	DA ISSUE ONLY



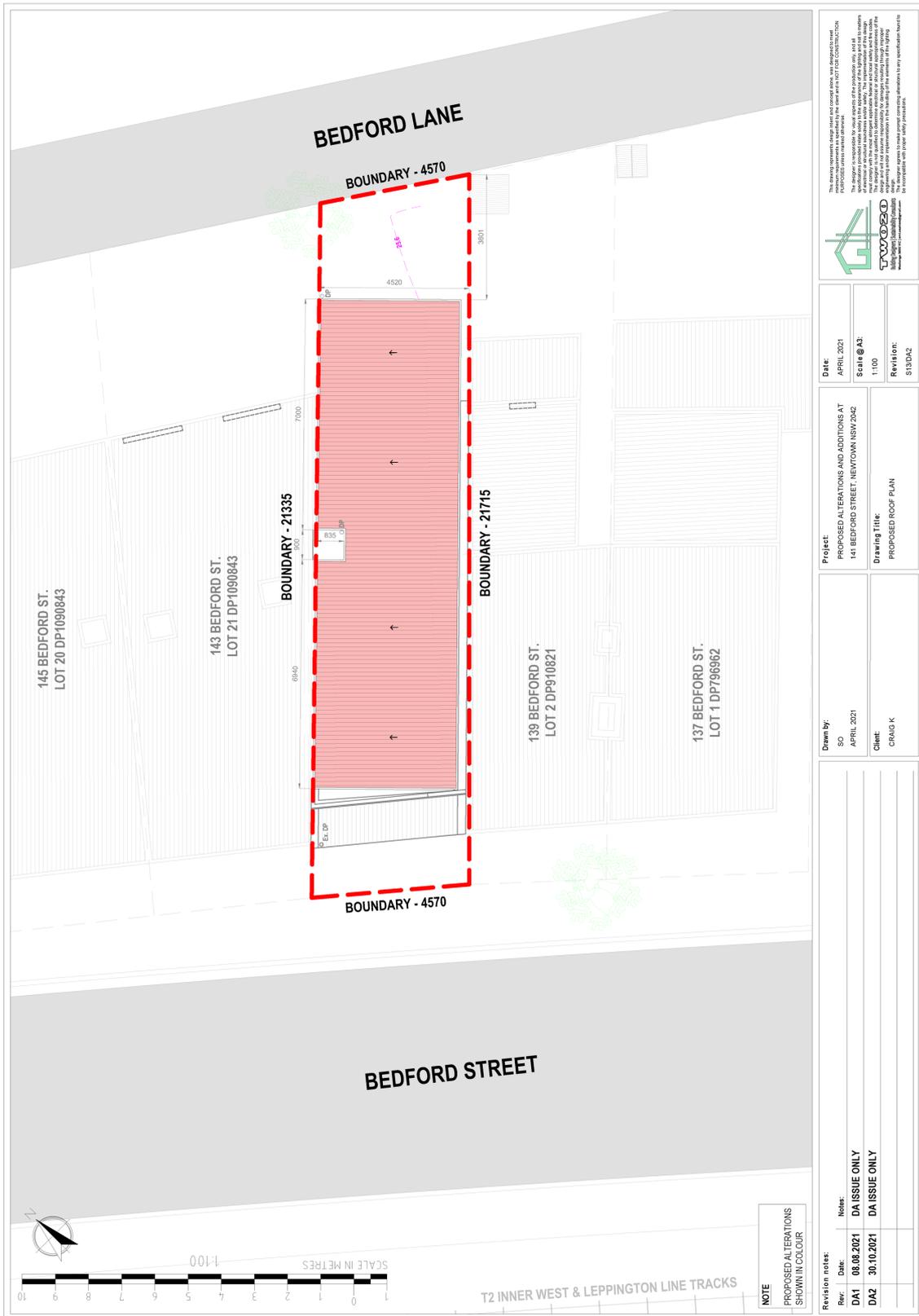
This drawing is for information only. It is not to be used for construction purposes. The client is responsible for ensuring that the drawing is used for the intended purpose. The client is also responsible for ensuring that the drawing is used in accordance with the relevant legislation.

Date:	APRIL 2021
Scale:	A3
Revision:	S72DKJ

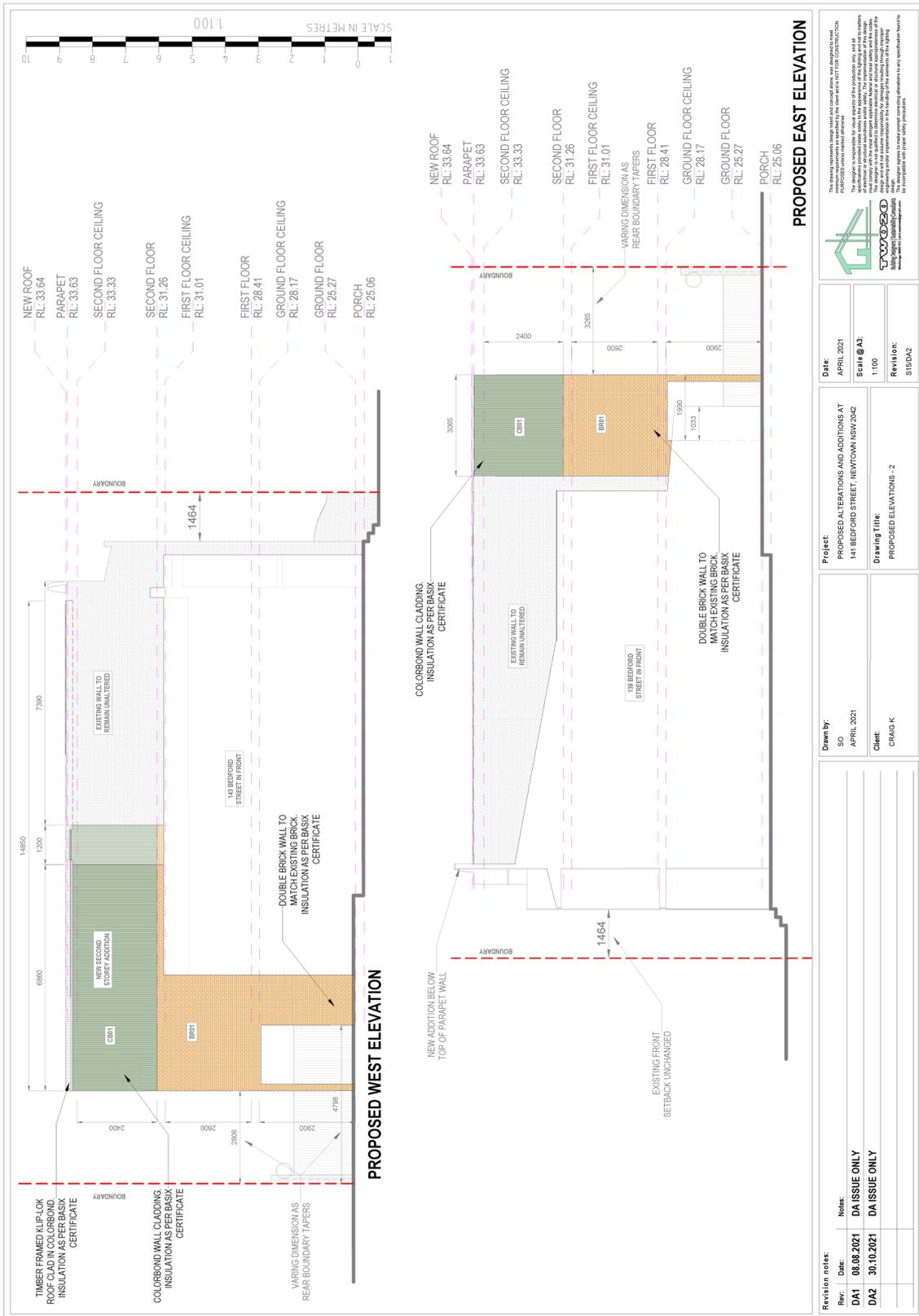
Project:	PROPOSED ALTERATIONS AND ADDITIONS AT 141 BEDFORD STREET, NEWTOWN NSW 2042
Drawing Title:	PROPOSED SECOND FLOOR PLAN

Drawn by:	SO
Date:	APRIL 2021
Client:	CPMG K

Rev.	Date	Notes
DA1	03.08.2021	DA ISSUE ONLY
DA2	30.10.2021	DA ISSUE ONLY







PROPOSED EAST ELEVATION

Revision notes:

Rev.	Date	Notes
DA1	08.08.2021	DA ISSUE ONLY
DA2	30.10.2021	DA ISSUE ONLY

Drawn by:
SO
APRIL 2021

Client:
CRAG K

Project:
PROPOSED ALTERATIONS AND ADDITIONS AT
141 BEDFORD STREET, NEWTON NSW 2042

Drawing Title:
PROPOSED ELEVATIONS - 2

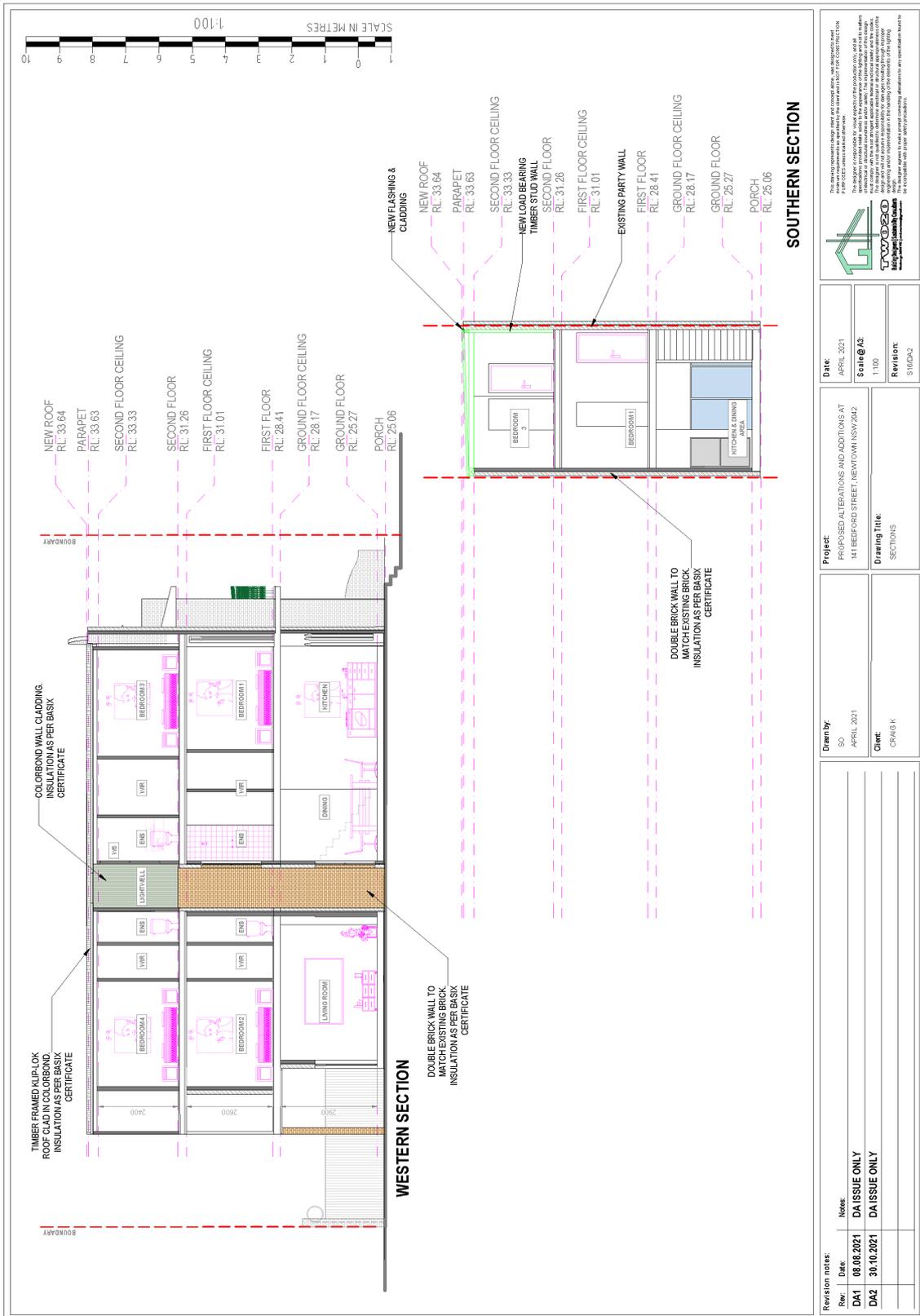
Date:
APRIL 2021

Scale @ A3:
1:100

Revision:
S102AC

Notes:

The information contained in this drawing is for the use of the client only. It is not to be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in this drawing. The client is responsible for ensuring that the information provided in this drawing is accurate and complete. The architect is not responsible for any errors or omissions in this drawing. The client is responsible for ensuring that the information provided in this drawing is accurate and complete.



The Inner West Local Planning Panel is a statutory body established under the Local Government Act 1995. It is responsible for the administration of the Inner West Council's planning functions. The Panel is made up of representatives from the community, business, industry and academia. The Panel's role is to provide advice and recommendations to the Council on planning matters. The Panel's decisions are subject to the approval of the Council.

Date:	APRIL 2021
Scale:	A3
Scale:	1:100
Revision:	S/16/04J

Project:	PROPOSED ALTERATIONS AND ADDITIONS AT 141 BEDFORD STREET, NEWTON (NSV/242)
Drawing Title:	SECTIONS

Drawn by:	SO
Date:	APRIL 2021
Client:	CPMG K

Rev.	Date	Notes
DA1	03.08.2021	DA ISSUE ONLY
DA2	30.10.2021	DA ISSUE ONLY

Attachment C- Clause 4.6 Exception to Development Standards

The objectives of this clause are:

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

More specifically, subclause 2A applies to the development. The total area of the subject land is less than 150m² and therefore, a 1.1:1 maximum floor space ratio applies to the subject land.

The proposal is generally consistent with the objectives of this clause as it proposes a building form that is compatible with the site area and will not cause a significant change to the existing streetscape character. The development also proposes a sympathetic design to minimise impacts on adjoining properties and the existing character on Bedford Street.

It is acknowledged however that the proposal does not comply with the maximum FSR of 1.1:1. Accordingly, approval is sought under Clause 4.6 of the Marrickville LEP 2011.

4.4.5. Clause 4.6 – Exceptions to development standards

As outlined within Section 4.5 above, the development does not comply with the maximum FSR requirement. Specifically, the development proposes an FSR of 1.3:1 and therefore is seeking a variation to the 1.1:1 maximum floor space ratio requirement, which applies to the subject land as specified in Clause 4.4(2A) of the LEP.

Therefore, the development seeks approval to vary a development standard under Clause 4.6 of the Marrickville Local Environmental Plan 2011.

It is noted that to satisfy the requirements of clause 4.6 of the LEP, a development must satisfy the requirements of subclauses (3) and (4) before council can grant development consent. An extract of these clauses is outlined below with emphasis added:

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) *that compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case, and*
- (b) *that **there are sufficient environmental planning grounds** to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless—*

- (a) *the consent authority is satisfied that—*
 - (i) *the applicant's written request has **adequately addressed the matters required to be demonstrated by subclause (3)**, and*
 - (ii) *the proposed development **will be in the public interest because it is consistent with the objectives of the particular standard** and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

The development satisfies the requirements of subclause (3) above, as follows:

- Compliance with the development standard is considered 'unreasonable' and 'unnecessary' in this instance given the size and configuration of the subject land. More specifically, whilst it is acknowledged that the Marrickville LEP does not include minimum lot sizes, the overall size of the lot (98.1m²) and width of the property (4.5 metres) is well under the minimum lot size of adjoining LGA's with similar FSR requirements. [Ashfield – 500m² (or 200m² with min 7 metres width) and Leichhardt – 200m²]

Because of the narrow width and small area of the lot, it is very difficult to improve the amenity, functionality and liveability of the existing dwelling and its functionality, in accordance with the current FSR requirements of the LEP.

Therefore, compliance with this standard is unnecessary in this instance as the development proposes more functional room layouts and only marginally exceeds the FSR requirements.

With an existing site coverage of approximately 63% (61.07m²), the development proposes a site coverage of 67.7% (66.51m²) which is only a marginal increase (4.7%) of what is already existing.

- Quantitatively, the works represent a relatively minor addition in calculated floor area (approximately 37m²) above the maximum permitted FSR. This equates to a variation in FSR of 1.3:1 as compared to 1.1:1.
- While it is acknowledged that the development proposes a second storey addition, the additions will not be readily visible from the street as they will almost all entirely be located behind the existing parapet when viewed from Bedford Street. This will ensure that the streetscape character will remain largely unchanged. Similarly, the rear addition will not be readily visible from the rear Bedford Lane due to the presence of an existing solid rear boundary fence and roller door. The development also complies with the 9.5m height requirement of Clause 4.3 of the LEP.

It is therefore considered unreasonable to restrict the second storey addition based on the maximum FSR requirement when the additions will not cause any streetscape impact in terms for visual bulk and scale with the surrounding locality. The development proposes a high standard of architectural design that aligns with the establishing residential character of the area notably in the examples provided above.

- The development achieves the objectives of Clause 4.4 and is considered appropriate based on the following environmental planning grounds (qualitative assessment):
 - As outlined above, the lot width and size only allow for vertical development to the existing dwelling with limited opportunities to construct a functional and liveable dwelling.
 - The proposal has considered potential impacts on adjoining properties including overshadowing, views, overlooking & privacy, streetscape significance, building separation and has been designed to minimise these impacts.
 - The proposed alterations and additions will not be readily visible from the street and will not cause any adverse off street amenity impact.
 - The development achieves the objectives of both Clause 4.4 and the R2 zone of the LEP as outlined above.
 - The proposed alterations and additions have been designed without compromising the potential for future development of adjoining dwellings specifically 139 Bedford Street.
 - The subject land immediately adjoins and is located opposite a train station, which is separated from the site by an approximately 2.5m high solid brick wall with associated sound barrier located on top.

For these reasons, compliance with the development standard is considered unreasonable and unnecessary and the development


INNER WEST COUNCIL
Development Applications
Exceptions to Development Standards

PURSUANT TO CLAUSE 4.6 OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

About this form:	Use this form to request a variation to a development standard for a Development Application.
How to complete:	<ol style="list-style-type: none"> 1. Ensure that all fields have been filled out correctly. 2. Once completed, please refer to the lodgement details section for further information.

Development Application Details:	
Address:	141 Bedford Street, Newtown
Proposed Development:	Part demolition, Alterations and Additions to an existing residential dwelling including the construction of a second storey addition.

Standard sought to be varied:	
<input checked="" type="checkbox"/>	Floor Space Ratio – Clause 4.4 or 4.4A of LEP 2013
<input type="checkbox"/>	Landscaped Area – Clause 4.3A(3)(a) of LEP 2013
<input type="checkbox"/>	Site Coverage – Clause 4.3A(3)(b) of LEP 2013
<input type="checkbox"/>	Subdivision Allotment size – Clause 4.1 of LEP 2013
<input type="checkbox"/>	Foreshore Building Area – Clause 6.5 of LEP 2013
<input type="checkbox"/>	Diverse Housing – Clause 6.13 of LEP 2013
<p>The purpose of the above standards is to ensure that the proposed works are compatible with the surrounding environment in terms of bulk, scale, amenity, streetscape, setting, transport and preserving the character of the building and surrounding conservation area and heritage items</p>	
<p>Where an applicant wishes to vary a development standard, the application must be accompanied by a well-founded, written request which seeks to justify the contravention of the development standard by demonstrating:</p> <ol style="list-style-type: none"> a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case b. that there are sufficient environmental planning grounds to justify contravening the development standard. 	

 **INNER WEST COUNCIL**
Development Applications
Exceptions to Development Standards

What are the environmental planning grounds that justify contravening the development standard?
The proposal is for partial demolition, alterations and additions to an existing dwelling.
The proposal complies with the objectives of the R2 Zone and will continue to provide for the housing needs of the community. The development proposes a design that is sympathetic to the urban character of the area.
The development also complies with the relevant requirements of the Marrickville LEP 2011 and the Marrickville DCP 2011.
The proposed FSR is also consistent with the objectives of Clause 4.4 - Floor Space ratio as it will not cause any significant change to the existing streetscape character on Bedford Street as the works are located behind the parapet.
Given the relatively small size of the subject land and the need to provide a useable and functional dwelling layout and design, a variation from the FSR requirement is requested in this instance.
Why is compliance with the standard unreasonable or unnecessary? What are the special circumstances in this case? (To answer consider whether a development that complies is unnecessary or unreasonable)
Compliance with the development standard is considered 'unreasonable' and 'unnecessary' in this instance given the size and configuration of the subject land. More specifically, whilst it is acknowledged that the Marrickville LEP does not include minimum lot sizes, the overall size of the lot (98.1m ²) and width of the property (4.5 metres) is well under the minimum lot size of adjoining LGA's with similar FSR requirements.
[Ashfield – 500m ² (or 200m ² with min 7 metres width) and Leichhardt – 200m ²]
Further details are provided in section 4.4.5 of the attached Statement of environmental effects
Is the proposed development consistent with the objectives of the particular standard? Is the proposal consistent with the objectives of the relevant zone?
The proposed development is consistent with the objectives of the FSR standard and proposes a building form that is compatible with the site area and will not cause a significant change to the existing streetscape character.
The development also proposes a sympathetic design to minimise impacts on adjoining properties and the existing character on Bedford Street. The proposal is also consistent with the objectives of the R2 Zone and will continue to provide for the housing needs of the community.



INNER WEST COUNCIL

Development Applications Exceptions to Development Standards

Applicant's signature:	Sam Osakwe	Date:	18 / 08 / 2021
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Privacy statement

Application forms and/or names and addresses of people making an application is information that is publicly available. In accordance with section 18(1)(b) of the *Privacy and Personal Information Protection Act 1998 (NSW)*, you are advised that all application forms received by Council will be placed on the appropriate Council file and may be disclosed to Councillors, Council officers, consultants to Council or members of the public. Pursuant to the provisions of the *Government Information (Public Access) Act 2009*, Council is obliged to allow inspection of its documents, including any application you make. However, should you wish for your contact details to be suppressed, please indicate on this application form.

Instructions for applicants

Lodging an application requires a completed application form, all relevant information and the payment of the required fee. The Application will be checked at lodgement to ensure the required information is provided. For a list of required information, please refer to Council's [Development Application Checklist](#) and [DA Document Requirements](#).

Incomplete/illegible applications will not be accepted and will be returned to you.

Lodge online: <https://www.planningportal.nsw.gov.au/onlineDA>

Fees and charges: Find fees and charges on the Council website: www.innerwest.nsw.gov.au/FeesAndCharges

Upon review of the documentation, if found to be satisfactory, the application will be entered into our system. You will then be sent an invoice. Please note that the application is not considered to be 'Lodged' until the fees have been paid.

Inconsistency in Lodgement Information: Where information on this form differs from information entered into the Planning Portal Application (PAN) the information on this form will prevail.

Attachment D- Conditions of Consent (if approved by the Panel)

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
S10/DA2	PROPOSED SITE AND GROUND FLOOR PLAN	30/10/21	TWO20 BUILDING DESIGNERS
S11/DA2	PROPOSED FIRST FLOOR PLAN	30/10/21	TWO20 BUILDING DESIGNERS
S12/DA2	PROPOSED SECOND FLOOR PLAN	30/10/21	TWO20 BUILDING DESIGNERS
S13/DA2	PROPOSED ROOF PLAN	30/10/21	TWO20 BUILDING DESIGNERS
S14/DA2	PROPOSED ELEVATIONS - 1	30/10/21	TWO20 BUILDING DESIGNERS
S15/DA2	PROPOSED ELEVATIONS - 2	30/10/21	TWO20 BUILDING DESIGNERS
S16/DA2	SECTIONS	30/10/21	TWO20 BUILDING DESIGNERS
4879 - V1	ACOUSTICAL REPORT	19/07/21	KOIKAS ACOUSTICS
A425988	BASIX CERTIFICATE	7/08/21	MELVIN AGOMUOH

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. Those portions of the building which form a cantilever arrangement shall be deleted.
- b. The lightwell shall be increased to a minimum of 3m in length.

FEES

3. 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 *Marrickville Section 94/94A Contributions Plan 2014*.

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*:

\$2,250

*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.**

4. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

5. Security Deposit - Standard

Prior to the commencement of demolition works or 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:	\$8,432.00
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.

GENERAL CONDITIONS

6. Tree Protection

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

7. Works Outside the Property Boundary

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

8. Waste Management Plan

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

9. Erosion and Sediment Control

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

10. Standard Street Tree Protection

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

PRIOR TO ANY DEMOLITION**11. 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 at 139 Bedford Street and 143 Bedford Street to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

12. 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.

13. 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**14. 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.

15. 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

16. Acoustic Report – Aircraft and Rail Noise

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction and SEPP Infrastructure 2007.

17. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

DURING DEMOLITION AND CONSTRUCTION**18. 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.

19. Stormwater Drainage System

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

20. 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**21. Certification of Tree Planting**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of 1 x 45 litre size tree, which will attain a minimum mature height of six (6) metres, must be planted in a suitable location within the property at a minimum of 1 metres from any boundary and 2.2 metres from the dwelling wall and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. Trees on the on the DCP Minor Works list, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the tree is found dead or dying before it reaches a height where it is protected by Council's Tree Management Controls, it must be replaced with the same species in accordance with this condition.

22. Aircraft and Rail Noise –Alterations and Additions

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with a report from a suitably qualified person demonstrating that each of the commitments listed in Aircraft and Rail Noise Assessment Report required by this consent has been satisfied.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

ADVISORY NOTES

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.

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.

Lead-based Paint

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

Construction of Vehicular Crossing

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 www.lspc.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.