

# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2023/0110
<b>Address</b>	10 Cambridge Street ENMORE
<b>Proposal</b>	Demolition of the existing garage and construction of a new garage with associated fencing
<b>Date of Lodgement</b>	01 March 2023
<b>Applicant</b>	Mr Nigel White
<b>Owner</b>	Mr Robert A Wiltshire Mrs Karen L Wiltshire
<b>Number of Submissions</b>	Initial: 0
<b>Value of works</b>	\$83,600.00
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10%
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Clause 4.6 request to vary the maximum floor space ratio under the <i>IWLEP 2022</i></li> <li>• Variation to DCP height control</li> </ul>
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Section 4.6 Exception to Development Standards



Figure 1: Locality Map

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of the existing garage and construction of a new garage with associated fencing at 10 Cambridge Street Enmore.

The application was notified to surrounding properties and no submissions were received in response to the notification.

The main issues that have arisen from the application include:

- The application results in a minor additional variation to the floor space ratio development standard of 101.02 sqm or 34.20%, noting that there is an existing breach to this development standard and the proposal seeks to increase the total GFA by 1.7 sqm.
- The application results in a non compliance in the maximum height for garages within Part 4.1 of the MDCP 2011.

A Clause 4.6 exemption was submitted to Council to vary the Floor Spacer Ratio development standard, which seeks to justify an additional breach. Subject to recommended conditions, the proposal generally complies with the aims and objectives of the *Inner West Local Environmental Plan 2022* and the Marrickville Development Control Plan 2011. The proposal is considered acceptable and recommended for approval.

## 2. Proposal

The application seeks development consent for the demolition of the existing detached garage and storage structure at the rear of the site, construction of a new garage and store structure, construction of a 1.95m boundary fence, and removal of two (2) Cocos Palms at the rear of the site. Specifically, the following is proposed:

- Demolition of the existing single-storey detached garage and store area at the rear of the site;
- Demolition of dilapidated timber paling fence along the south-western boundary;
- Removal of two (2) *Syagrus romanzoffianum* (Cocos Palms) at the rear of the site; and
- Construction of a single storey detached garage and store area, and associated fencing, along the secondary frontage of the site.

## 3. Site Description

The subject site is located on the south-western side of Cambridge Street, on the corner of Cavendish Street and Cambridge Street. The site consists of one allotment and is generally triangular shaped with a total area of 492.3sqm and is legally described as Lot 1 in DP 940038. The site has a primary frontage of 31.675m to Cambridge Street and a secondary frontage of 41.58m to Cavendish Street.

The site supports an existing two storey dwelling house and detached garage and store area. The adjoining properties support a range of residential uses and is in close proximity to commercial land uses.

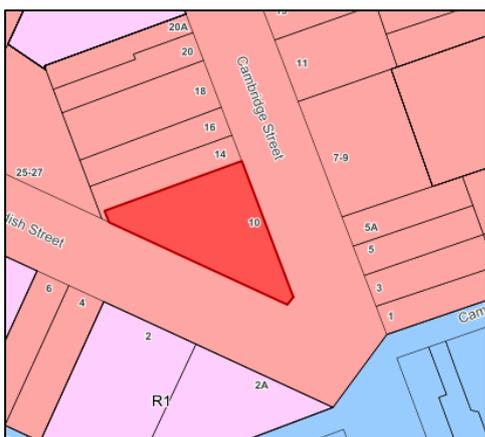


Figure 2: Zoning Map of the subject site (R2 Low Density Residential, highlighted red).



Figure 3: Photo of the existing garage on the subject site (as viewed from Cavendish Street)

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
PDA/2022/0285	Demolition of existing garage and proposed construction of new garage	Advice Issued – 24/10/2022
PDA/2022/0086	Demolition of existing garage and construction of a new detached garage	Advice issued – 26/05/2022
DA/2020/0932	To demolish an existing garage and construct a two storey freestanding building containing a garage and shed on the ground floor and a secondary dwelling on the first floor	Refused (Local Planning Panel) – 25/03/2021
PDA/2020/0147	Construction of garage with studio above	Advice issued – 07/07/2020
DA201900443	Demolition of the existing garage. Construction of a 2 storey building containing a garage and a secondary dwelling.	Withdrawn – 28/02/2020

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
01/03/2023	Application lodged.
15/03/2023 29/03/2023	– Application notified.
06/04/2023	Request for information (RFI) letter issued to the applicant requiring additional information to address the following:

	<ul style="list-style-type: none"> <li>• Clause 4.6 request to vary the floor space ratio development standard under the <i>Inner West Local Environmental Plan 2022</i>;</li> <li>• Floor plans of the existing dwelling house;</li> <li>• Reduction of the garage height to comply with relevant controls within the Marrickville Development Control Plan 2011; and</li> <li>• Details and materials of the proposed boundary fence.</li> </ul>
08/05/2023	<p>Additional information submitted in response to Council’s RFI request, noting that the proposed garage was not reduced in height.</p> <p>Note: This information forms the basis of the assessment outlined below.</p>

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Inner West Local Environmental Plan 2022*

The following provides further discussion of the relevant issues:

#### 5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

##### Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

- “(a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

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

## Chapter 2 Vegetation in non-rural areas

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

The application seeks the removal of two (2) Cocos Palm trees at the rear the site.

Council's Urban Forest advisor supports the removal of the trees, as they are species that are listed on the Tree Minor Works list in the MDCP 2011. Council's Urban Forest advisor has recommended a condition for replacement tree planting, however, as discussed in Part 5(d), this condition is considered unnecessary given the circumstances.

Overall, the proposal is considered acceptable with regard to the SEPP and Part 2.20 of MDCP 2011.

## Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

*5(a)(iii) Inner West Local Environmental Plan 2022 (IWLEP 2022)*

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*.

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3 – Height of buildings
- Section 4.4 – Floor space ratio
- Section 4.4A – Exception to maximum floor space ratio for active street frontages
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 6.3 – Stormwater management

Section 1.2 Aims of Plan

The proposal is consistent with the relevant aims of the plan as follows:

- The proposal is considered to conserve and maintain the natural, built and cultural heritage of Inner West;
- Subject to recommended conditions, the proposal promotes a high standard of design; and
- The proposal will not result in adverse social, economic or environmental impacts.

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R2 Low Density Residential under the *IWLEP 2022*. The application proposes a structure ancillary to a dwelling house.

The development is permitted with consent within the R2 Low Density Residential zone and meets the objectives of the zone.

Section 2.7 – Demolition requires development consent

Clause 2.7 of the *IWLEP 2022* 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 have been included in Attachment A.

Section 4 Principal Development Standards

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

Standard	Existing	Proposal	Noncompliance	Complies
<b>Height of Buildings</b> Maximum permissible: 9.5m	4.6m	4.6m	N/A	Yes
<b>Floor Space Ratio</b> Maximum permissible: 0.6:1 or 295.38sqm	0.801:1 or 394.7 sqm	0.805:1 or 396.4 sqm (1.7sqm increase)	101.02 sqm or 34.20%	No

Section 4.6 Exceptions to Development Standards

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

- Floor Space Ratio

The applicant seeks a variation to the floor space ratio development standard under Section 4.6 of the *IWLEP 2022* by 34.20% (101.02sqm), noting that the applicant’s calculations and Council’s calculations differ by 8.7sqm. Both Council and the applicant agree that the floor space ratio is to be increased by 1.7sqm.

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

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

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

- *The proposal does not undermine the objective to provide effective control of building bulk for future development.*
- *The building represents an appropriate level of development for the subject.*
- *The subject site is zoned low density residential and the adjoining lots incorporate dwellings with similar scale and FSR.*

- *The proposed development provides an appropriate low-density infill development and contemporary construction.*
- *The proposal is not inconsistent with other developments in the immediate locality.*
- *The building height, scale and massing of the development is considered to be compatible with the established built character of the area.*
- *There will be no disruption of views, loss of privacy or any loss of solar access given the site context and orientation and design resolution.*
- *The additional gross floor area above the maximum permitted under clause 4.4 does not add any undesirable bulk to the subject site when viewed from the public domain.*
- *The proposed floor space ratio in this instance is comparable to that of neighbouring properties within the visual catchment of the subject site.*
- *The variation does not manifest in an overdevelopment of the site, as the additional FSR is only 1.7sqm above that of the existing floor space on-site.*
- *The building represents an appropriate level of development for the subject site given the wide frontage to Cavendish Street, substantial separation between dwellings, the modest nature of the proposal and inherent benefits derived by the design benefitting the residents on-site and the public domain.*
- *There will be no disruption of views, loss of privacy or any loss of solar access given the site context and orientation and design resolution.*
- *The additional gross floor area above the maximum permitted under clause 4.4 does not add any undesirable bulk to the subject site when viewed from the public domain.*
- *A development proposal replicating the existing footprint of the garage (in relation to floor space) would be an inferior planning outcome. An improvement to the amenity offered on-site is achieved.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R2 Low Density Residential zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

The objectives of the R2 zone are as follows:

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

The application is considered to be consistent with the objectives listed above, as the proposal will maintain the existing character of the built and natural environment of the area, and results in a development that is low-density in nature. The application does not propose any works to the existing dwelling house located on the subject site and proposes the construction of a garage and store area; thus, the development will not impact the existing housing needs of the community.

The objectives of the Floor Space Ratio development standard are as follows:

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

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposal enables appropriate density for the subject site and locality.
- The proposed additional variance is minor in nature and has a minimal impact on the locality, noting that it is only proposed to increase the existing GFA by an additional 1.7m<sup>2</sup>.
- The proposal protects the use and enjoyment of the subject site and the public domain.

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Floor Space Ratio and it is recommended the Section 4.6 exception be granted.

#### Section 6.3 – Stormwater management

The proposal generally complies with this clause. Council's Development Engineer has assessed the proposal and raised no concerns, subject to the imposition of conditions, which have been included in Attachment A.

#### 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 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes – see discussion below
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes – see discussion below
Part 2.11 – Fencing	No – see discussion below
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	Yes – see discussion below
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 4.1 – Low Density Residential Development	No – see discussion below
Part 9 – Strategic Context	Yes

#### Part 2.6 Acoustic and Visual Privacy

The application proposes one window along the south-eastern elevation, and a glass door along the north-eastern elevation.

As the window faces into the site, there will be no adverse visual or acoustic privacy impacts to any neighbouring properties. In addition, while the proposed door faces the neighbouring property, it will be predominately screened by the existing boundary fence and will not create adverse visual or acoustic privacy impacts to neighbours.

Thus, the proposal is compliant with this part.

#### Part 2.10 Parking

The development proposes the demolition and construction of a combined garage with one (1) parking space, and store area along the Cavendish Street frontage.

The application was referred to Council's Development Engineer who, in principle, has no objections to the proposed garage, subject to recommended conditions to ensure the design of the parking space is compliant with the relevant Australian Standards, specifically AS2890.1-2004. These conditions have been included in Attachment A.

#### Part 2.11 Fencing

The application proposes to demolish an existing dilapidated timber paling fence and construct a new brick fence along the north-western boundary on Cavendish Street. The fence is proposed to have a height of 1.95 metres, to match the existing brick fence located on the site. The proposed fence will have a mural to match the existing fence and dwelling house.

Control C21 reads,

*Side fences (behind the front building setback) and rear fences must not be higher than 1.8 metres.*

While the application proposes a minor non-compliance to the above control, it is considered that as the proposed fence is to replace an existing timber paling fence of a similar height, non-compliance with the aforementioned control is acceptable. The proposed fence is considered to be consistent with the existing fencing found along the site and will not detract from the period building located on the property, or the streetscape.

Given the above, the proposed fence is considered acceptable, and is consistent with the following objectives:

*O3 The new fence is sympathetic to the period building on the site, and complements and conserve the visual character of the streetscape*

*O5 The fence is unobtrusive and will not distract from the building or streetscape.*

*O7 The side fencing provides privacy and amenity without impacting on pedestrian safety*

### Part 2.20 Tree Management

The application proposes the removal of two (2) Cocos Palms at the rear of the site. The proposal was referred to Council's Urban Forest advisor who has raised no concern with the removal of the palms as they are on the Trees Minor Works list, subject to one (1) replacement tree being planted.

In this regard, it is noted that, pursuant to control C10,

*A replacement tree/s must be planted to replace any prescribed tree approved for removal. This will enable Council to effectively retain and maintain the urban forest canopy across the Inner West. Replacement trees are to be located on the same site as the tree removal, as determined by Council.*

The site currently has eight (8) trees that are over 4 metres in height and, as outlined above, the trees proposed for removal are not prescribed trees (listed in control C6.6 as exempt species). As such, control C10 is not applicable in this instance.

In addition, given the substantial amount of existing vegetation on the site, it is considered that the planting of a replacement tree is unreasonable and onerous in this case. Thus, it is recommended not to impose the condition recommended by Council's Urban Forest advisor.

Should the Inner West Local Planning Panel choose to impose the replacement planting condition, the condition recommended by Council's Arborist is reproduced below:

*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 AQF5 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 and or a minimum mature canopy spread of three (3) metres, has been planted in a suitable location within the property at a minimum of one (1) from any boundary or structure and allowing for future tree growth. The tree is to conform to AS2303—Tree stock for landscape use. Trees listed as exempt species from Council's Tree Management Controls, 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 dimensions where it is protected by Council's Tree Management Controls, it must be replaced in accordance with this condition.*

#### 4.1.7 – Car Parking

Control 16 specifies that,

*Garages and car ports should be not higher than 3 metres for a flat roof or 3.6 metres for a pitched roof.*

The application is inconsistent with control C16. Considering the applicable objectives of this part, the variation to this control is not considered supportable for the following reasons:

O18 Given the height, bulk and scale, the proposed garage is not considered to enhance the character of the street.

O19 The bulk and height of the garage is considered to be a dominant element in the streetscape and on the site, obstructing or impacting views to the dwelling house on the subject site and the neighbouring property.

As such, a design change condition has been included in Attachment A, requiring reducing the overall height of the garage to comply with control C16.

#### 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 Council's Community Engagement Strategy for a period of 14 days to surrounding properties.

No submissions were received.

#### 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 and issues raised in those referrals have been discussed above in Part 5.

- Urban Forest
- Development Engineering

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are not payable for the proposal as the cost of works is under the minimum threshold.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Marrickville Development Control Plan 2011.

Subject to compliance with the recommended conditions, 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 Section 4.6 of the *Inner West Local Environmental Plan 2022* to vary the Floor Space Ratio development standard. 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/2023/0110 for demolition of the existing garage and construction of a new garage with associated fencing at 10 Cambridge Street, Enmore 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:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
DWG No. 2222, DA01, Issue A	Site Analysis	Jan 2023	RJK Architects
DWG No. 2222, DA02, Issue A	Site Plan	Jan 2023	RJK Architects
DWG No. 2222, DA03, Issue A	Existing Garage - Plan & Elevations	Jan 2023	RJK Architects
DWG No. 2222, DA04, Issue A	Proposed Garage - Plan, Elevations, Section & Stormwater Diagram	Jan 2023	RJK Architects
DWG No. 2222, DA05, Issue B	3D Views & Material Schedule	May 2023	RJK Architects
DWG No. SK-001, Issue A	Existing House Area Calculation	May 2023	RJK 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. The proposed garage and store structure be reduced in height to a maximum height of 3.6 metres (the ridge must not exceed RL 39.2).  
 Note: This can be achieved by reducing the floor to ceiling height and/or the pitch of the roof)

**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.

<b>Security Deposit:</b>	<b>\$2,800.00</b>
<b>Inspection Fee:</b>	<b>\$350.00</b>

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**

##### **4. 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.

##### **5. Stormwater Drainage System – Simple**

Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.

Any existing component of the stormwater system that is to be retained, 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.

##### **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 to Trees**

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
2 x <i>Syagrus romanzoffianum</i> (Cocos Palms) - Rear	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

**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.

**11. Works Outside the Property Boundary**

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

**PRIOR TO ANY DEMOLITION****12. 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.

**13. 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 the adjoining property 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.

**14. 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.

**15. 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****16. 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.

**17. Amended Architectural Plans to Reflect Requirements of this Condition**

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

1. A minimum of 2200 mm 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.
2. Longitudinal sections along each outer edge of the access and parking facilities, demonstrating compliance with the above requirements.
3. The garage parking space must have minimum clear internal dimensions of 5400 mm x 3000 mm (length x width) and a door opening width of 2800 mm 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.
4. 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.
5. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004.; and
6. No changes to the external form or appearance of the development contrary to the approved plans must occur except as identified by this condition. Any changes to such must be subject to separate approval.

**18. 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.

**19. 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**

**20. Tree Protection Zone**

To protect the following trees, no work must commence until their Protection Zone is fenced off at the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area in accordance with Council’s *Development Fact Sheet—Trees on Development Sites*. The fences (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name	Radius in metres
	All prescribed trees (trees >6m in height or > 4 m in canopy width) within four (4) metres of the garage	Fencing at edge of canopies.
-	<i>Triataniopsis laurina</i> (Water Gum) / Street trees within 5 metres of the works	Fencing around edges of tree pits. No part of fencing to cause a trip hazard to footpath users.

**21. 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.

**22. 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****23. 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.

**24. 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.

**ON-GOING****25. Bin Storage**

All bins are to be stored within the site.

**ADVISORY NOTES****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.

#### **Tree Protection Works**

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

#### **Tree Pruning or Removal (including root pruning/mapping)**

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

#### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

**Notification of commencement of works**

At least 7 days before any demolition work commences:

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

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

**National Construction Code (Building Code of Australia)**

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

**Notification of commencement of works**

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

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

#### **Dividing Fences Act**

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

#### **Permits from Council under Other Acts**

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

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

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

#### **Noise**

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

**Amenity Impacts General**

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

**Construction of Vehicular Crossing**

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

**Lead-based Paint**

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

**Dial before you dig**

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

**Useful Contacts**

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

[www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Department of Fair Trading 13 32 20

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig	1100	
		<a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660	
		To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	
		<a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406	
		<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government		
		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a>
		<a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a>
		Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	
		<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92	
		<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA	Environmental Solutions 1300 651 116	
		<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50	
		<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>
		Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development

# 10 CAMBRIDGE STREET ENMORE



DRAWING LIST

DA00	COVER PAGE	A
DA01	SITE ANALYSIS	A
DA02	SITE PLAN	A
DA03	EXISTING GARAGE	A
DA04	PROPOSED GARAGE	A
DA05	3D VIEWS & MATERIAL SCHEDULE	A

COVER PAGE

**10 CAMBRIDGE ST, ENMORE  
PROPOSED GARAGE**

INNER WEST COUNCIL  
Doc ID: 158158 | 15/07/2023  
Version: 1, Version Date: 12/05/2023

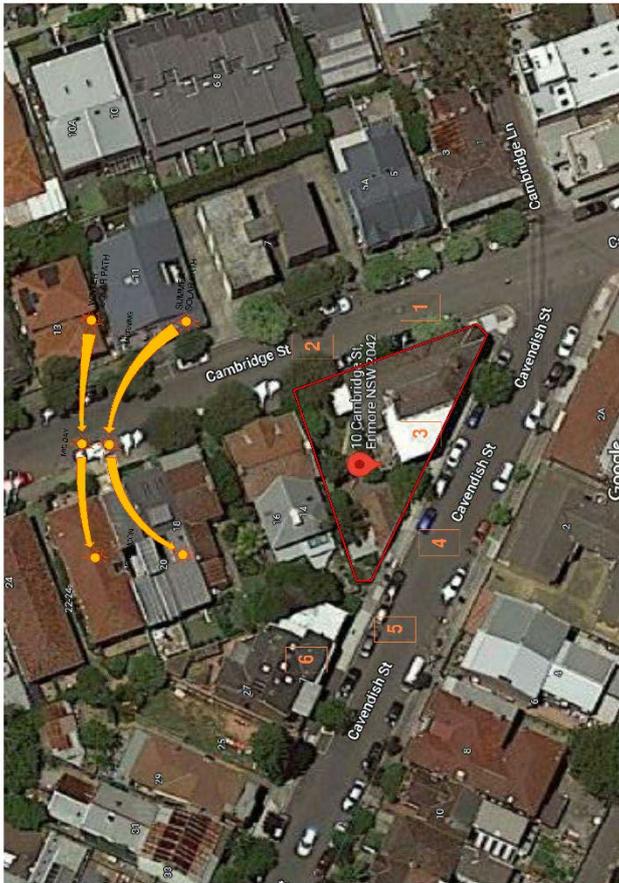
SHAWNS WOOD ARCHITECTS  
10/150-152 WILSON ROAD, WILSONS PROMENADE, SYDNEY NSW 1588  
Tel: 02 9550 1500 | Fax: 02 9550 1501 | Email: info@shawnswood.com.au  
www.shawnswood.com.au  
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15/07/23	05	CS	JK
		DRAWN	
		DATE	
		ISSUE	
		REVISION	
		DATE	
		BY	
		CHECKED	

SITE ANALYSIS



PHOTOS OF SURROUNDING AREA



1. Subject Site No. 10 Cambridge street View from Cambridge street



2. Cambridge street view



3. Subject Site View from Cavendish street



4. Subject Site access to garage from Cavendish street



5. Cavendish street view



6. No. 27 Cavendish street 2 storey units

SITE ANALYSIS

10 CAMBRIDGE ST, ENMORE  
PROPOSED GARAGE

Inner West Council  
Doc ID: 15510377-17823  
Version: 1, Version Date: 12/05/2023

CD 2024/2022  
 1. This report is prepared by RPK Architects for the purpose of providing a visual assessment of the proposed development.  
 2. The visual assessment is based on the information provided by the applicant and is not a guarantee of the accuracy of the information.  
 3. The visual assessment is based on the information provided by the applicant and is not a guarantee of the accuracy of the information.  
 4. The visual assessment is based on the information provided by the applicant and is not a guarantee of the accuracy of the information.  
 5. The visual assessment is based on the information provided by the applicant and is not a guarantee of the accuracy of the information.  
 6. The visual assessment is based on the information provided by the applicant and is not a guarantee of the accuracy of the information.

**RPK ARCHITECTS**  
 ARCHITECTS  
 10/11-13/15 The Arcade, 100 York Street, Sydney, NSW 2000  
 Tel: (02) 9232 4000  
 Email: info@rpka.com.au  
 Website: www.rpka.com.au

ISSUE NO: 2023/001  
 ISSUE DATE: 12/05/2023  
 SHEET: A

PROJECT NAME: 10 Cambridge St, Enmore NSW 2042  
 PROJECT NO: 15510377-17823  
 DATE: 12/05/2023  
 DRAWN BY: D. NAW  
 CHECKED BY: J. K.



**STREETSCAPE ELEVATION- CAVENDISH STREET**

1 : 200 @ A1  
1 : 400 @ A3

- LEGEND**
- ▶ Pedestrian Entry
  - ▶ Vehicle Entry
  - Trees To Be Removed
  - Trees To Be Retained
  - New Planted Trees
  - Structural Root Zone
  - Building To Be Demolished



**SITE PLAN**

**10 CAMBRIDGE ST. ENMORE  
PROPOSED GARAGE**

Doc: **HWLPS17-377-17823**  
Version: 1, Version Date: 12/05/2023

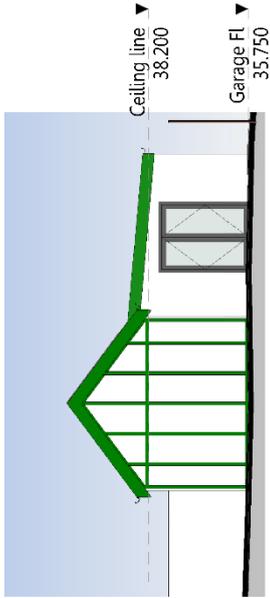


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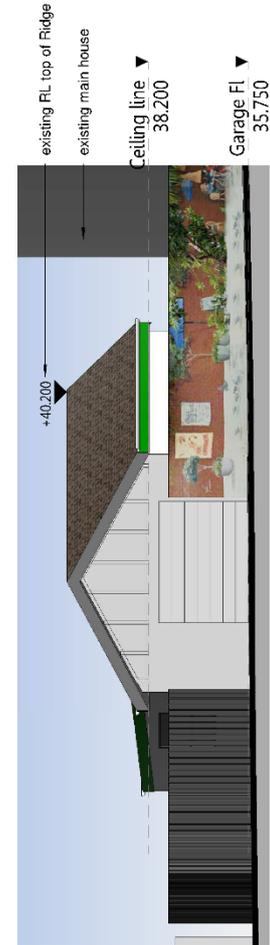


**RK ARCHITECTS**  
10/100 CAMBRIDGE STREET, ENMORE NSW 1511  
TEL: 02 9550 1234  
WWW.RKARCHITECTS.COM.AU

PROJECT NO.	2222 0002
ISSUE	A
DATE	JAN/23
SCALE	A3
DESIGNER	CS
CHECKER	JK
APPROVED	DR/DA
DATE	12/05/2023



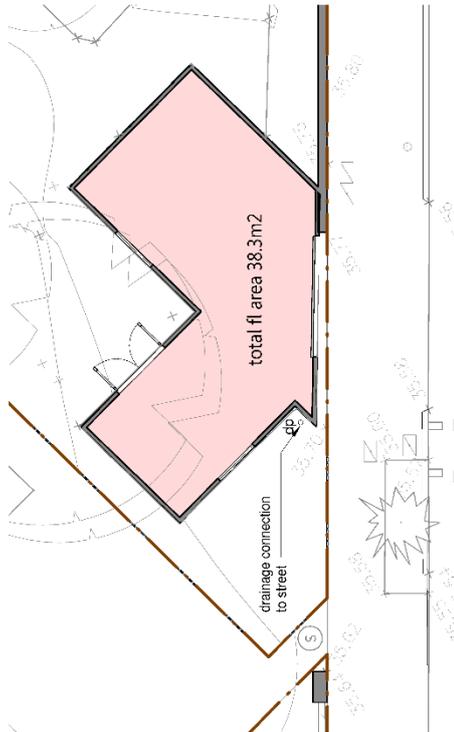
EAST ELEVATION



CAVENDISH STREET ELEVATION



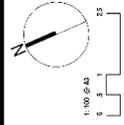
3D VIEW - EXISTING GARAGE



**EXISTING GARAGE - PLAN & ELEVATIONS**

**10 CAMBRIDGE ST, ENMORE  
PROPOSED GARAGE**

Inner West Council  
Doc: IWP/NS/HP/377-17823  
Version: 1, Version Date: 12/05/2023

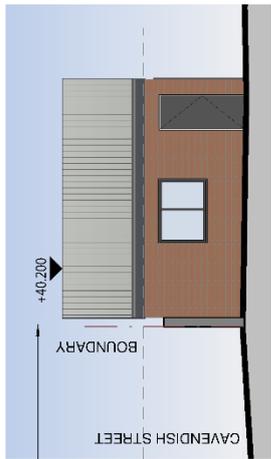


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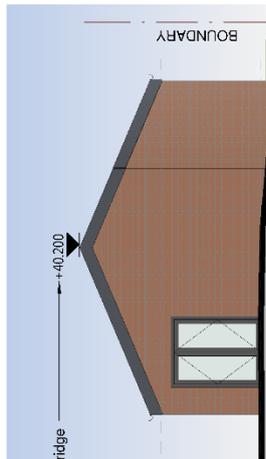


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SCALE	A

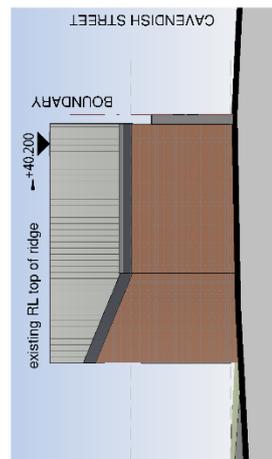
NO.	DATE	DESCRIPTION	BY	CHK
1	10/03/23	ISSUE	GS	JK
2	10/03/23	REVISION	D-NWA	DI-ENCO



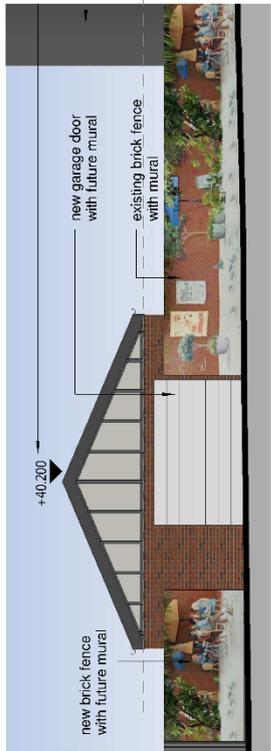
SOUTH EAST ELEVATION



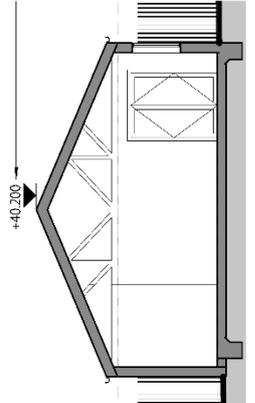
NORTH EAST ELEVATION



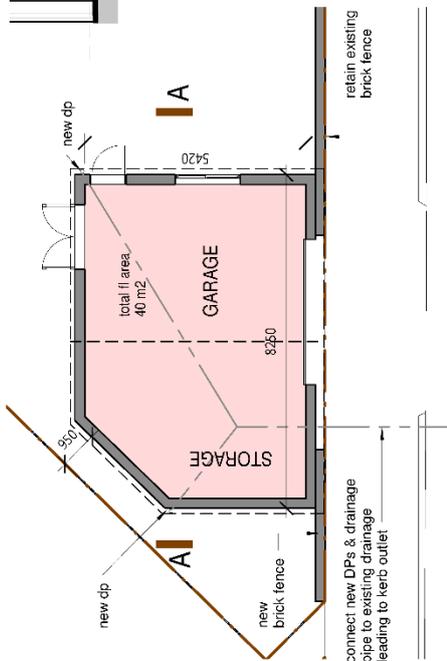
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CAVENDISH STREET ELEVATION



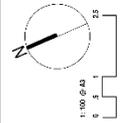
SECTION A - A



PROPOSED GARAGE - PLAN, ELEVATIONS, SECTION & STORMWATER DIAGRAM

**10 CAMBRIDGE ST. ENMORE  
PROPOSED GARAGE**

Inner West Council  
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PKA 222 0004  
RISK  
A

ISSUE	DATE	BY	CHKD
A	JAN 2023	GS	JK
A - MARK'S INTERPRETATION			
A - RICHARD			

**MATERIAL**



1 CORRUGATED METAL ROOF  
- COLOURBOND SHALE GREY

2 DANIEL ROBERTSON BRICK ( AUSTRAL BRICK )  
TRADITIONAL RED OR EVERYDAY LIFE - UNWIND  
OR SIMILAR MATCHING EXISTING BRICK HOUSE

3 DUJUX COLOUR : SNOW SEASON S14B3  
OR SIMILAR

4 DUJUX COLOUR : WATER WORN GR 21  
OR SIMILAR

5 WINDOW FRAME  
GUTTER & FASCIA  
COLOURBOND IRON STONE

**3D VIEWS & MATERIAL SCHEDULE**

**10 CAMBRIDGE ST, ENMORE  
PROPOSED GARAGE**

INNER WEST COUNCIL  
Doc: IWP/2023/17823  
Version: 1, Version Date: 12/05/2023

DATE: 2023  
22/05/2023  
RSC  
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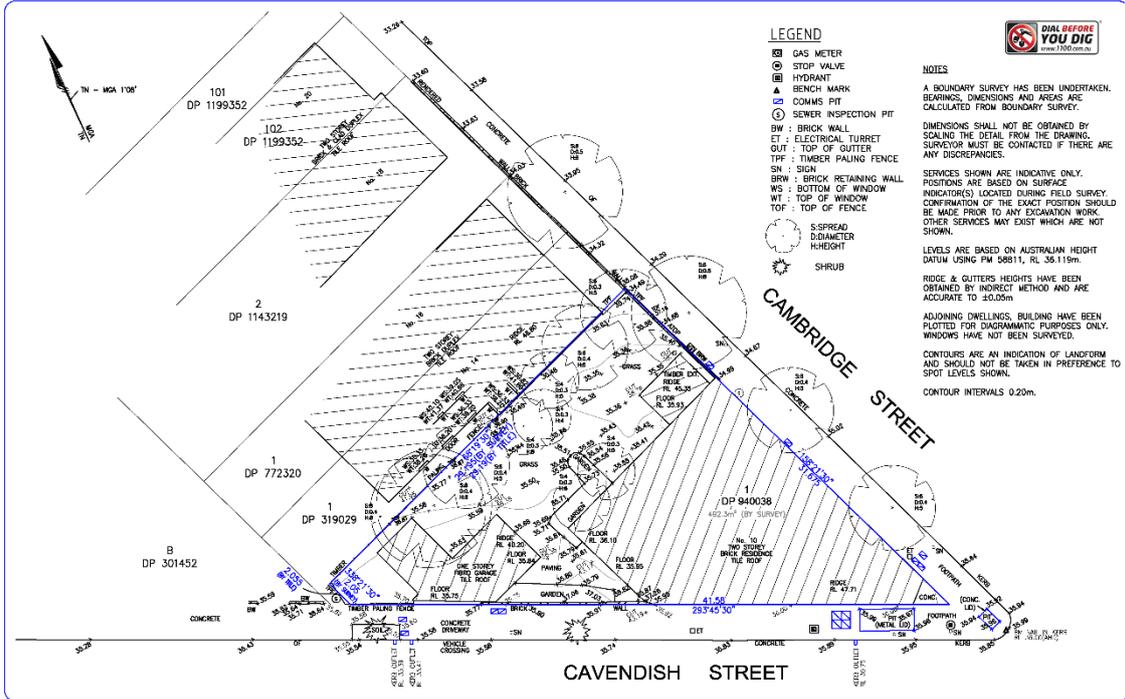
ISSUE	DATE	BY	REVISION
A	JAN 2023	OS	OS
		DRWA	C-REVISED



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R&K ARCHITECTS  
10/11 CAMBRIDGE STREET, ENMORE NSW 1511  
TEL: 02 9550 1111  
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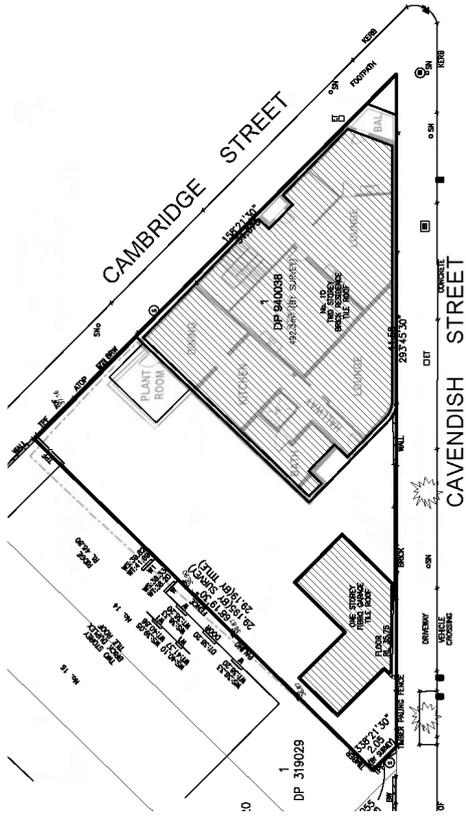


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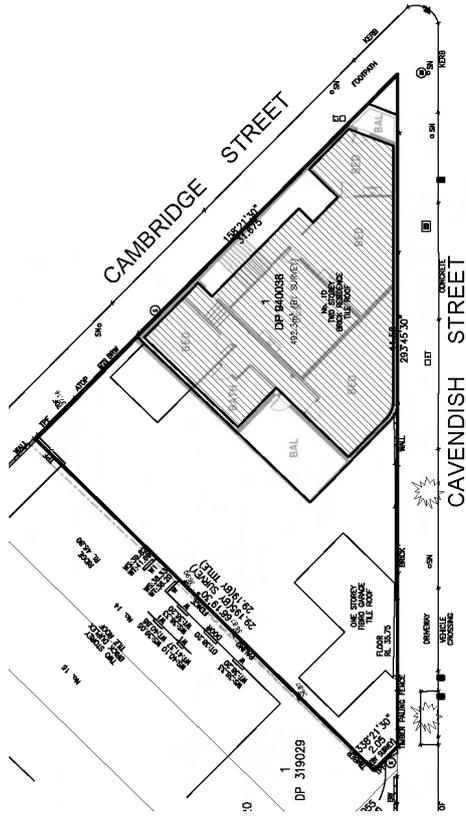


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B	11.12.19	ADDITIONAL INFO ADDED							
D	17.11.22	UPDATE							
<p>HEY THAI REGISTERED SURVEYOR</p>			<p>UNLESS THERE IS AN AMENDED VERSION IN THE NEW VERSION, THE PLAN IS NOT VALID AND IS NOT FOR CONSTRUCTION.</p>						
			<p><b>DATE OF SURVEY:</b></p> <p>15.07.19</p>		<p><b>CLIENT:</b></p> <p>KAREN WILTSHIRE</p>		<p><b>DRAWING TITLE:</b></p> <p>PLAN SHOWING LEVELS &amp; DETAIL OVER LOT 1 IN DP 940038</p>		
			<p><b>DATE OF SURVEY CHECKED:</b></p> <p>R.M.</p>		<p><b>APPROVED:</b></p> <p>H.T.</p>		<p><b>DRAWING NO:</b></p> <p>190687/001</p>		
							<p><b>SHEET 1 OF 2</b></p>		
							<p><b>JOB NAME:</b></p> <p>P-206183</p>		
							<p><b>REV:</b></p> <p>D</p>		

Document No: 27/1/2022  
 Version 1, Version Date: 15/05/2023



GROUND FLOOR PLAN scale 1:250 (A3)



FIRST FLOOR PLAN scale 1:250 (A3)

SITE AREA:	492.3m <sup>2</sup>
FLOOR AREA CALCULATION	
EXISTING HOUSE GROUND FLOOR	197.0m <sup>2</sup>
EXISTING HOUSE FIRST FLOOR	165.7m <sup>2</sup>
EXISTING GARAGE AREA	38.3m <sup>2</sup>
LESS ONE PARKING SPACE	-15.0m <sup>2</sup>
TOTAL EXISTING GFA	386.0m <sup>2</sup>
TOTAL PROPOSED GFA	387.7m <sup>2</sup>
EXISTING FSR	0.784:1
PROPOSED FSR	0.787:1

Note:  
Area Calculation Drawing prepared on basis and utilizing  
Survey drawing prepared by RCM Property Surveys and House  
Measurements taken by Beachwood Homes Pty Ltd.

**EXISTING HOUSE AREA CALCULATION**

DWP No.	SC-501
TABLE	<b>A</b>

ISSUE	DATE	DRAWN	CHECKED
A	MAY 2023	K	

The drawings and specifications herein are to be read in conjunction with the Conditions of Contract for Construction and the relevant Building Code of Australia. It is the responsibility of the client to ensure that the drawings and specifications are correct and that the construction is carried out in accordance with the drawings and specifications. The architect is not responsible for any errors or omissions in the drawings and specifications.



**10 CAMBRIDGE ST., ENMORE**

**PROPOSED GARAGE**

For Mrs. Karen Whitshire  
Document Ref ID: 3771823  
Version: 1, Version Date: 12/05/2023



## Attachment C – Section 4.6 Exception to Development Standards

### CLAUSE 4.6 JUSTIFICATION

#### Introduction - Content of the clause 4.6 request

Clause 4.4 of the Inner West Local Environmental Plan 2022 (IWLEP) relates to Floor Space Ratio (FSR). The maximum permissible floor space ratio for the subject site is 0.6:1 pursuant to clause 4.4(2C) and 4.4(2D) of the Inner West Local Environmental Plan 2022, which reads as follows:

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

<b>Site area</b>	<b>Maximum floor space ratio</b>
$\leq 150m^2$	1.1:1
$> 150 \leq 200m^2$	1:1
$> 200 \leq 250m^2$	0.9:1
$> 250 \leq 300m^2$	0.8:1
$> 300 \leq 350m^2$	0.7:1
<b><math>&gt; 350m^2</math></b>	<b>0.6:1</b>

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

The proposed development has a total FSR of 0.787:1 being non-compliant with the maximum floor space ratio applicable to the subject site.

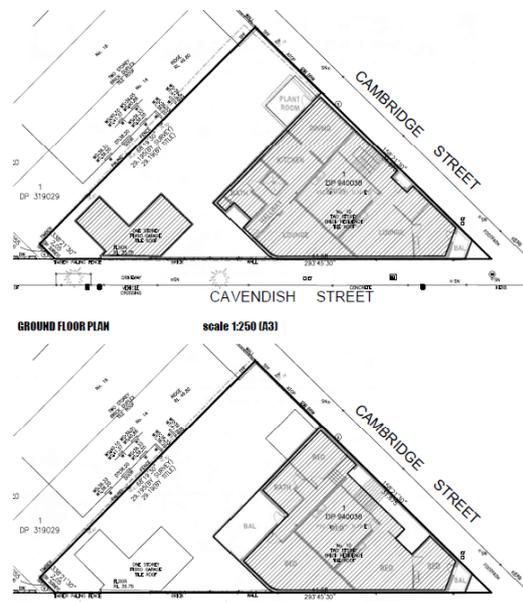
Given the above non-compliance with clause 4.4 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the IWLEP 2022.

Of note from the statistical table over the page is that the proposed development generates only an additional floor space on-site of **1.7sqm**.

The existing floor space amounts to 386sqm contained in the principal dwelling and the existing garage/store.

SITE AREA:	492.3m <sup>2</sup>
FLOOR AREA CALCULATION	
EXISTING HOUSE GROUND FLOOR	197.0m <sup>2</sup>
EXISTING HOUSE FIRST FLOOR	165.7m <sup>2</sup>
EXISTING GARAGE AREA	38.3m <sup>2</sup>
LESS ONE PARKING SPACE	-15.0m <sup>2</sup>
TOTAL EXISTING GFA	386.0m <sup>2</sup>
TOTAL PROPOSED GFA	387.7m <sup>2</sup>
EXISTING FSR	0.784:1
PROPOSED FSR	0.787:1

Note:  
Area Calculation Drawing prepared on basis and utilizing Survey drawing prepared by RSM Property Surveys and House Measurements taken by Beachwood Homes Pty Ltd.



Floor space calculation plan

The objectives of clause 4.6 of the LEP are as follows:

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

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.**

The proposed floor space ratio in this instance is comparable to that of neighbouring properties within the visual catchment of the subject site. It is apparent that the broad based FSR control applying to the R2 Low Density Residential zone is not reflective of existing built form in the precinct and should not be construed as being the determining development control to guide future development in the zone/precinct.

The subject property generates a current FSR of 0.784:1. The floor space on site occurs in a triangular shaped dwelling benefitting with zero setbacks to both streets and enables a large expanse of open space at the rear. The proposed development increases the FSR to 0.787:1 however maintains a similar site coverage and sense of openness on-site.

Given the circumstances of the case, an appropriate degree of flexibility to the application of the FSR development standard is warranted.

The proposed building is modest in size and contemporary in design offering quality floor space opportunities to the residents.

The proposed development has been site specifically designed for ease of streetscape integration and to negate direct impacts to the adjoining western property. It should be noted that the proposed FSR is less than that of many nearby dwellings/flat buildings.

It is significant to note that the variation does not result in excessive building height or development density. A single storey structure is proposed in this instance. The variation does not manifest in an overdevelopment of the site, as the additional FSR is only 1.7sqm above that of the existing floor space on-site.

No adverse planning consequences (shadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise as a result of the variation. Rather, in this particular case the variation facilitates the provision of quality regular shaped internal space within the garage structure and an exterior treatment to the street.

The proposed development will sit comfortably in its context in terms of scale, massing and form. The variation to the floor space ratio standard will not be discernible to the casual observer from a streetscape perspective given that the subject site will retain a sense of openness and a large landscaped area.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates a design outcome that does not impact on any adjoining property despite the proposed variation to the floor space ratio standard.

**Application of Clause 4.6**

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

Comment:

Clause 4.6(2) of the LEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this does not apply to a development standard that is expressly excluded from the operation of this clause.

Clause 4.4 of the LEP is not expressly excluded from the operation of clause 4.6 and thus Council would have the authority to grant consent to a breach of the specified development standard under clause 4.4 subject to being satisfied of other matters under clause 4.6.

**Contravention of a Development Standard**

Clause 4.6(4)(a)(i) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that a written request prepared by or for the applicant (as required under clause 4.6(3)) has adequately addressed the matters required to be demonstrated by clause 4.6(3).

The matters required to be demonstrated by clause 4.6(3) are considered below.

- (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.*

#### **Clause 4.6(3)(a) - Unreasonable and Unnecessary**

Clause 4.6(3)(a) requires the applicant to provide a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether compliance with the development standard is unreasonable or unnecessary in the circumstances.

The term “unreasonable or unnecessary” is not defined in the relevant environmental planning instruments or in the Act. Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49] identifies 5 ways by which strict compliance with a development standard may be unreasonable or unnecessary. This written request adopts the first way identified by Preston CJ.

*42... .. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*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)."*

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, the Chief Judge of the Land and Environment Court stated that the commonly cited tests he set out in *Wehbe* remain relevant to a consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances under clause 4.6.

Justice Preston's analysis requires the following questions to be answered.

1. What are the objectives of the development standard?
2. Does the development proffer an alternative means of achieving the objectives of the development? (unnecessary)
3. Would no purpose be served if strict compliance was required? (unreasonable)

Provided below is a commentary in relation to the above three considerations.

### **1 Objectives of development standard**

The objectives of clause 4.4 - FSR control are:

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

The proposal does not undermine the objective to provide effective control of building bulk for future development as the proposed building is compliant at a single storey and provided in situ of the existing garage; the building represents an appropriate level of development for the subject site given the wide frontage to Cavendish Street, substantial separation between dwellings, the modest nature of the proposal and inherent benefits derived by the design benefitting the residents on-site and the public domain.

The subject site is zoned low density residential and the adjoining lots incorporate dwellings with similar scale and FSR. The proposed building and FSR on the subject site will be consistent in this regard.

There will be no disruption of views, loss of privacy or any loss of solar access given the site context and orientation and design resolution.

There will be no erosion of bushland or scenic quality as a result of the proposed FSR.

The additional gross floor area above the maximum permitted under clause 4.4 does not add any undesirable bulk to the subject site when viewed from the public domain.

#### **Compliance unnecessary**

The development proffers alternative means of achieving the objective of the floor space ratio standard. The surrounding precinct maintains residential buildings of a two storey scale, which have an equal and/or greater FSR than that proposed for the subject site.

The proposed development achieves an acceptable residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.

The additional floor space on the subject site is effectively contained within the existing site coverage with only a minor increase in site coverage occurring. The minor departure from the site coverage is not discernible from the public domain.

As the development proffers alternative means of achieving the objectives of clause 4.4 based on the site context, strict compliance is unnecessary.

#### **Compliance unreasonable**

There would be no purpose served if strict compliance was required by the consent authority given that the proposed FSR is comparable to and/or less than the FSR displayed in surrounding sites.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non-compliances or adverse environmental impacts arising from the variation in this instance.

A development proposal replicating the existing footprint of the garage (in relation to floor space) would be an inferior planning outcome. The proposed redesign of the garage and store improves the function of the space, access to the space from the street and provides a safer environment to pedestrians given the wider garage opening. An improvement to the amenity offered on-site is achieved in this instance.

Despite the floor space ratio variation, a compliant building height and consistent setbacks are achieved facilitating the orderly and economic development of the land. A large open space area is also retained on-site.

No particular benefit would be derived from the strict application of the floor space ratio standard in this instance, particularly in terms of streetscape considerations; strict compliance is therefore unreasonable.

The proposed design represents an orderly and economic outcome for the site.

#### **Clause 4.6(3)(b) - Sufficient Environmental planning grounds**

Clause 4.6(3)(b) requires the applicant's written request to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether there are sufficient environmental planning grounds to justify contravening the development standard.

The term “environmental planning grounds” is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in clause 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meagher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

In this particular case the variation to the floor space ratio control does not impact on the ability to accord with all other development standards and controls.

The proposed design of the garage achieves a complementary built form relative to the principal dwelling on-site and the adjoining dwellings.

Compliance with the building height control demonstrates that a suitable modulation of built form has been achieved.

An improved urban design outcome is achieved with a safer and sturdy building replacing a dangerous dilapidated irregular shaped building. Pedestrian safety and vehicle access is also improved with the inclusion of a wider opening to the garage. A continuation of the brick fence and inclusion of a suitable mural will enhance the streetscape and reduce the potential for graffiti.

In addition, there are no adverse amenity impacts arising, which affect existing residential properties.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

#### **Clause 4.6(4) Public Interest**

Clause 4.6(4)(a)(ii) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that 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.

Unlike clause 4.6(4)(a)(i), this requires Council, as consent authority to form a direct opinion of satisfaction the proposed development will be in the public interest (rather than considering whether the applicant's written request demonstrates that the proposed development will be in the public interest).

A consideration of the public interest aspects of the development is provided in the following, to assist Council form the requisite opinion of satisfaction.

The proposed development will be in the public interest because it is consistent with the objective of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

With regards to the objectives for FSR, it is noted that the scale and form of the proposed building is consistent with the group of buildings within its visual catchment.

The objectives of the R2 Low density zone are:

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

The proposed development is consistent with the zone objectives as follows:

The proposed development provides an appropriate low-density infill development and contemporary construction.

Is not inconsistent with, or incapable of, existing in harmony with other developments in the immediate locality.

The building height, scale and massing of the development is considered to be compatible with the established built character of the area.

The floor space ratio variation is of no consequence in respect of the zone objective. Approval of the proposed development will have no impact on any other nearby development opportunities.

The floor space generated on-site does not result in any significant view loss, loss of privacy or overshadowing in the context of the site. There are no adverse heritage impacts associated with the proposed development.

A standard floor to ceiling height is proposed inclusive of a low roof profile.

Having regard to the above the proposal is consistent with the objectives of the floor space ratio control and the objectives of the zone.

#### **Concurrence of the Planning Secretary**

*(5) In deciding whether to grant concurrence, the Planning Secretary must consider—*

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

It is expected that the Council will obtain the concurrence of the Planning Secretary as required (possibly through delegation).

The variation to the floor space ratio standard does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining strict adherence with the development standard or compromised by approving the proposal. It is contextually appropriate not to strictly apply the development standard in this instance and it is not an abandonment of the standard.

**Conclusion**

The proposed development maintains a consistent built form and a compatible architectural style with the principal dwelling on the subject site and adjoining buildings.

The proposed building has been site specifically designed after undertaking a site analysis process. Only 1.7sqm of floor space is proposed over and above the existing floor space on-site.

Amenity considerations has been reasonably resolved through design.

Strict compliance with the development standard is therefore unnecessary and unreasonable given the circumstances of the site and context.

There are sufficient environmental grounds to justify the breach in this instance.

The FSR as construed is in the public interest.

It should be noted that had an FSR of up to 0.85:1 can be contemplated for a residential flat building in the precinct. From simply a built form perspective, the proposal would be in compliance.

It is recommended that Council invoke its powers pursuant to clause 4.6 and approve the application. In consideration of the merits of the application, the proposal is reasonable.

It is noted that Acting Commissioner P Clay (SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112) in a recent consideration in relation to the consideration of clause 4.6, deemed that there is no numerical limitation to the extent of the variation sought. Such will be determined on merit.



Nigel White  
0418 644 604