





 DEVELOPMENT ASSESSMENT PANEL REPORT				
Application No.	DA/2024/0526			
Address	10 Victoria Street LEWISHAM			
Proposal	Alterations and additions to an existing building, including retention of the building façade and construction of a mixed use building containing a single storey commercial premises and four storey residential dwelling with garage and removal of trees.			
Date of Lodgement	27 June 2024			
Applicant	Susan Yap			
Owner	RKO Yap Investments Pty Ltd			
Number of Submissions	Initial notification: 31 total (17 in support, 14 in opposition) Renotification: 6 total (6 in opposition)			
Cost of works	\$2,464,169.00			
Reason for determination at Planning Panel	Number of submissions			
Main Issues	Permissibility, Matters raised in the submissions			
Recommendation	Refusal			
Attachment A	Reasons for refusal			
Attachment B	Recommended conditions of consent (in the event of approval)			
Attachment C	Plans of proposed development			
Attachment D	Statement of Heritage Significance			
Attachment E	Applicants Legal Advice			
				
LOCALITY MAP				
Subject Site		Objectors		 N
Notified Area		Supporters		
Note: Due to scale of map, not all objectors and supporters could be shown.				

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing building, including retention of the building façade and construction of a mixed use building containing a single storey commercial premises and four storey residential dwelling with garage and removal of trees at 10 Victoria Street, Lewisham.

The application was notified to surrounding properties and 37 submissions were received in total in response to notification.

The subject site is within the Lewisham Estate Heritage Conservation Area and is also part of a master planned area within the Lewisham South Precinct (Precinct 9.5) under MDCP 2011. These two provisions occasionally present conflicting requirements, particularly in balancing the masterplan's intentions for increased density with the historical commercial streetscape character in addition to other existing site conditions.

The main issues that have arisen from the application include:

- Permissibility
- Categorisation of the residential component as dwelling house
- Size and flexibility of the commercial use
- Built form and scale
- Heritage conservation
- Privacy impacts
- Contamination
- Parking
- Solar Access

The application has not satisfactorily demonstrated that the residential component of the development meets the definition of **dwelling house** as the 'building' does not contain 'only one dwelling'. The building contains one dwelling and one commercial premises; and residential accommodation other than a 'dwelling house' or 'shop top housing' is prohibited in the zone. It is Council's opinion that the proposal is for a mixed-use development with a residential component that neither meets the definition of 'dwelling house' nor 'shop top housing' being the only two forms of 'residential accommodation' permitted in the zone.

The proposed residential component has not satisfactorily demonstrated that it meets the definition of **dwelling house** as the 'building' does not contain 'only one dwelling', the building contains one dwelling and one commercial premises; and residential accommodation other than a dwelling house or shop top housing is prohibited in the zone.

With the exception of the permissibility issue, the proposal, as amended (and conditioned in the event of approval), generally complies with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Inner West Local Environmental Plan 2022*, and Marrickville Development Control Plan 2011.

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable, given the context of the site and the desired future character of the precinct.

However, given this fundamental issue regarding permissibility, the application is recommended for refusal.

2. Proposal

Alterations and additions to an existing building, including retention of the building façade and construction of a mixed use building containing a single storey commercial premises and four storey residential dwelling with garage and removal of trees.

The proposal as amended comprises the following:

- Demolition and retention of the following structures:
 - Retention and restoration of the existing Federation period shopfront
 - Demolition of all remaining structures on the site
 - Removal of 2 x trees
- Construction of a 4-storey mixed-use building containing a 4-storey dwelling and a ground floor commercial premises occupying the front (Victoria Street) portion of the floor plate. The development is comprised as follows at each level:
 - Ground floor: Commercial premises with frontage to Victoria Street, includes accessible bathroom. Dwelling behind, with single car garage and new vehicle crossing, residential entry and storage area accessed off Jubilee Lane, new, guest bedroom with rumpus room and amenities.
 - First floor: Master bedroom with ensuite, bedroom 1 & 2 and laundry
 - Second floor: Living, dining/kitchen, tv room and outdoor terrace
 - Mezzanine: Home office.
 - Associated landscaping and fencing.
- Commercial premises comprising:
 - 82sqm commercial GFA with accessible toilet and dedicated waste area
 - Future use, fitout and signage will be subject to separate approvals
 - Reinstate awning

3. Site Description

The subject site is located on the western side of Victoria Street, bound by Jubilee Lane to the north and west. The site consists of two allotments and is generally triangular with a total area of 222.3sqm and is legally described as Lot 1 in DP 229318 and Lot 2 in DP 229318.

The site has a frontage to Victoria Street of 14.4 metres (m) and a secondary side and rear frontage to Jubilee Lane of approximate 30.3m and 1.7m respectively.

The site supports a single storey building comprising a dwelling with ground floor commercial premises fronting Victoria Street. There is no on-site car parking. The building on the site is currently vacant. The adjoining properties towards Lewisham Train Station are largely two-

storey shop top housing developments, and toward the south the street is predominately single storey dwelling houses.

The subject site is within the Lewisham Estate Heritage Conservation Area, and within a master planned area within the Lewisham South Precinct (Precinct 9.5) under MDCP 2011. The desired future character for the Lewisham South Precinct envisions the transitioning of area to higher densities.

The following trees are located on the site and within the vicinity.

- 1x *Morus alba* (Mulberry tree) located in the western corner of the rear yard
- 1x Eucalypt tree located on the northern boundary of the rear/side yard.

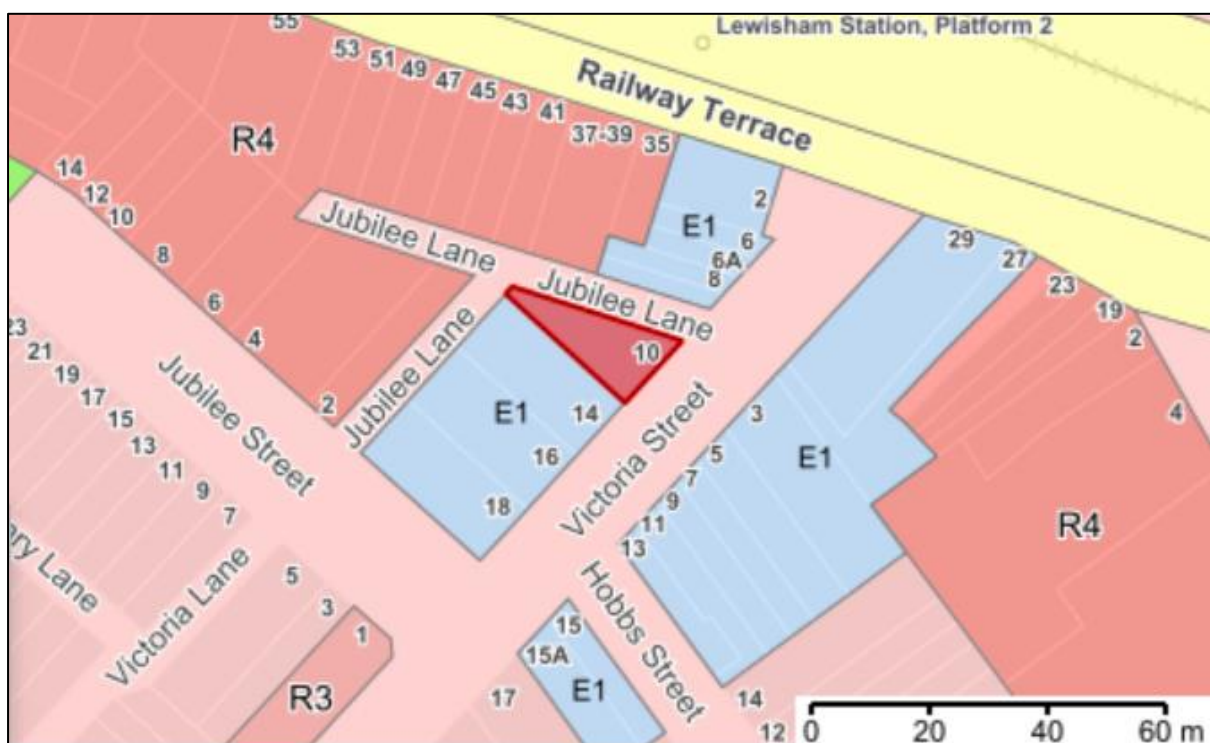


Figure 2: Zoning Map (subject site in red)

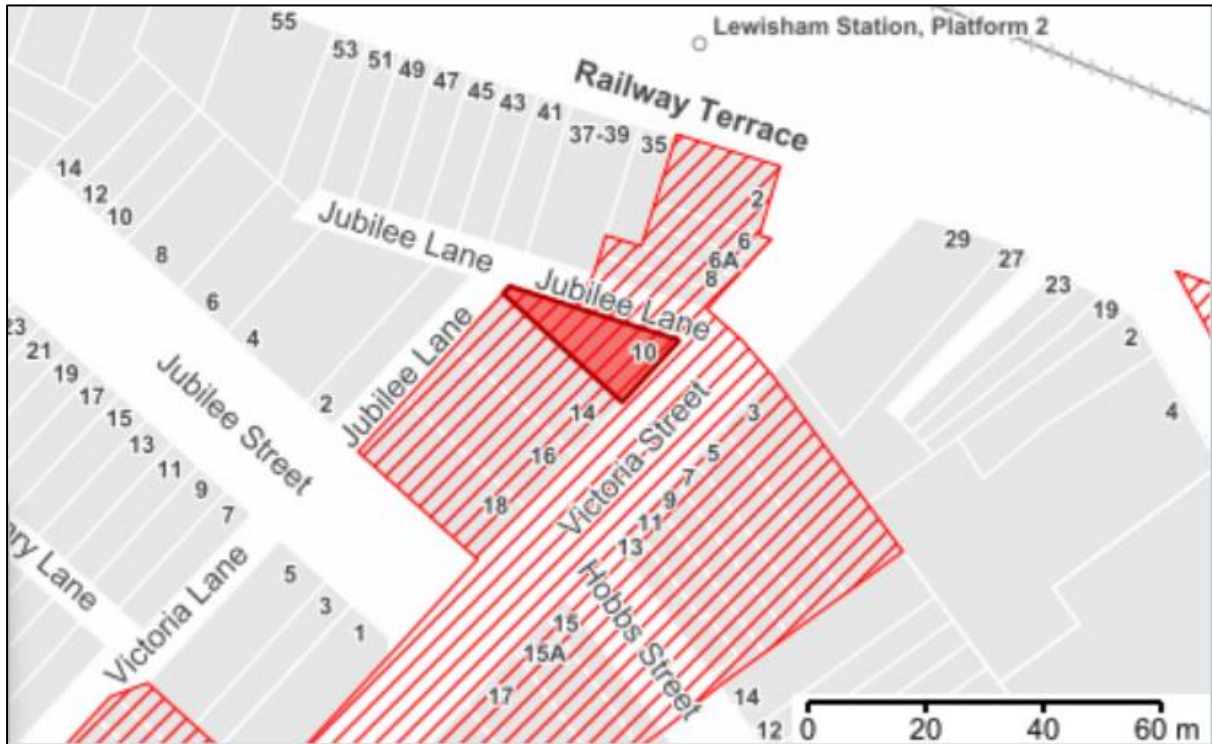


Figure 3: Heritage Conservation Area Map (subject site in red)



Figure 4: Photo of subject site as viewed from Victoria Street

4. Background

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
DA/2022/0329	Alterations to existing shopfront	09/08/2022 Withdrawn by Applicant
PDA/2022/0293	Demolition of existing structures. Construction of shop top housing comprising a retail shop on the ground floor and three dwellings, with parking and associated works.	15/11/2022 advice letter issued

Surrounding properties

Application	Proposal	Decision & Date
8A Victoria Street - DA/2021/1341 (Currently under construction)	Alterations and additions, including demolition to the existing mixed-use building, to provide for café on the ground floor with a two storey dwelling above	08/11/2022 Approved - Local Planning Panel

Application history

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

Date	Discussion / Letter / Additional Information
27 June 2024	Application lodged.
2 July 2024 – 23 July 2024	Application notified.
19 September 2024	Council requested that further details and/or amendments are required to address the following key matters: <ul style="list-style-type: none"> • Potentially contaminated land • Size and functionality of the commercial use • Rear setback alignment • Pattern of fenestration to the east and north elevations • Privacy and future development impacts from southern windows • Retention of the surviving heritage detailing of the shopfront, including lead lighting. • Swept path diagrams demonstrating vehicle manoeuvrability without the loss of on street parking

	<ul style="list-style-type: none"> • Updated shadow diagrams • Green roof landscape plan • A fencing plan to clarify works to fences
1 October 2024	Meeting held between Council and the applicant to discuss the matters raised in Council's letter.
29 November 2024	<p>A number of revisions were discussed and reviewed with the final revised architectural plans submitted as follows:</p> <ul style="list-style-type: none"> • Size and functionality of the commercial use enlarged/improved • Pattern of fenestration to the north elevations simplified • Onsite parking reduced to one space and a swept path diagrams provided • Updated shadow diagrams submitted • A planting/tree schedule clarified on plans • Fencing clarified on plans
11 December 2024	A Remediation Action Plan (contamination report) was submitted by the applicant. In accordance with Schedule 1 of the <i>EP&A Act 1979</i> , the application now seeks development consent for category 1 remediation works which are required to be notified for 28 days.
31 January 2025	<p>Council requested further information to address the following key matter:</p> <ul style="list-style-type: none"> • Categorisation of the residential component as dwelling house
11 February 2025 – 11 March 2025	Application re-notified.
12 February 2025	<p>Legal advice was submitted by the applicant. However, the legal advice is based on the proposal as originally submitted, not the proposal as amended, accepted on the NSW Planning Portal and publicly renotified.</p> <p>The applicant requested to revert to the original Architectural Drawings dated 17.06.24.</p>
7 March 2025	<p>Council advised the amended plans have already been formally accepted in the NSW Planning Portal. The amended plans resolved a number of issues (i.e. loss of on-street parking and size of commercial component) which have now been renotified to the community. As such, to accept a third scheme (being the original plans) is at the discretion of Council and would require a third round of notification.</p> <p>Council requested that the legal advice be updated to be based on the current (amended) set of plans, as paragraph 5 of the legal advice states;</p> <p><i>If any of this information is incorrect, incomplete or has changed, please urgently let me know as it may significantly affect or change the conclusions reached in this opinion.</i></p> <p>Notwithstanding, it is Council's opinion that reverting to the original plans does not resolve the permissibility concern of satisfying the definition of dwelling house, as relying on the BCA classification of the building is not a pathway to permissibility.</p>

13 March 2025	Planning advice was submitted by the applicant directing Council to rely on the original set of plans.
14 March 2025	<p>Council reinterated that they would not revert to the original plans and advised that without legal advice reflecting the accepted amended application, it could only be recommended for refusal.</p> <p>The amended plans and additional information form the basis of this assessment report.</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 (EP&A Act 1979)*.

A. Environmental Planning Instruments

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards 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 evidence of contamination on the site.

In consideration of Section 4.6(2) the applicant has provided a contamination assessment and Remediation Action Plan. The applicant has provided a report that concludes:

“that remediation was required for the site to be suitable for mixed, commercial (retail) and residential land use. Given that some excavation would be performed under DA/2024/0526, for new building footings and service trenches, the most feasible

remediation strategy involved off-site disposal of impacted materials during the early stages. ...

Upon completion of the proposed development, much of the final site surface will be paved with buildings and concrete, or the equivalent. Hence, soil exposure pathways for future users of the site will be sufficiently limited, while the remaining (remediated) substrate itself would not pose any risks to human health, the environment or the aesthetic enjoyment of the land. On this basis, post validation, the area will be suitable for the proposed use, in accordance with the Contaminated Land Management Act 1997 and State Environmental Planning Policy (Resilience and Hazards) 2021.'

On the basis of this report the consent authority can be satisfied that the land can be made suitable for the proposed use and that the land is to be remediated.

The application involves category 1 remediation under the SEPP and has been notified for 28 days.

Any approval of the proposal would require compliance with the RAP provided.

SEPP (Sustainable Buildings) 2022

Section 4.2 Saving and transitional provisions within the Sustainable Buildings SEPP states:

- (1) *This policy does not apply to the following—*
- (a) *a development application submitted on the NSW planning portal but not finally determined before 1 October 2023,*
 - (c) *a development application for BASIX development or BASIX optional development submitted on the NSW planning portal on or after 1 October 2023, if the BASIX certificate that accompanies the development application was issued before 1 October 2023,*
 - (e) *an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal but not finally determined before 1 October 2023,*
 - (f) *an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal on or after 1 October 2023, if the development application for the development consent was submitted on the NSW planning portal before 1 October 2023.*

In this regard, the provisions of the repealed SEPP (*Building Sustainability Index: BASIX*) 2004 remain applicable to this application.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has included a BASIX Certificate as part of the lodgment of the application (lodged within 3 months of the date of the lodgment of this application) in compliance with the EP&A Regulation 2021.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and has been referred for comment for 21 days.

Ausgrid raised no objections to the application and provided comments with regard to overhead powerlines in the vicinity of the development which have been included as a general condition in the recommendation in the event of approval.

Overall, subject to compliance with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice the proposal satisfies the relevant controls and objectives contained within Chapter 2 Infrastructure of *SEPP (Transport and Infrastructure) 2021*.

In addition to the above, Section 2.100 of *SEPP (Transport and Infrastructure) 2021* specifies the following;

2.100 Impact of rail noise or vibration on non-rail development

(1) *This section applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration—*

(a) *residential accommodation,*

(b) *a place of public worship,*

(c) *a hospital,*

(d) *an educational establishment or centre-based child care facility.*

(2) *Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.*

(3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*

(a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*

(b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The applicant submitted an acoustic report which specifies measures that identify the proposal can be attenuated to ensure adequate residential amenity for occupants.

SEPP (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The *Biodiversity and Conservation SEPP* requires consideration for the protection and/or removal of vegetation and gives effect to the local tree preservation provisions of Part 2.20 of the MDCP 2011.

The application seeks the removal of;

- 1x *Morus alba* (Mulberry tree) located in the western corner of the rear yard
- 1x Eucalypt tree located on the northern boundary of the rear/side yard.

An assessment of the proposal by Council's Tree Specialist against the abovementioned provisions has identified the following:

- The submitted Arboricultural Impact Assessment and Management Plan prepared by George Palmer dated June 2024 has been reviewed. It is noted that the report at numerous points incorrectly makes reference the City of Sydney Council DCP and the tree being an exempt species that does not require Council permission for its removal
- An assessment of the *Morus alba* (Mulberry tree's) health was not possible at the time of inspection as it is currently in dormancy and without any leaves due to it being a deciduous species. The structural condition of the tree was rated as being fair to poor. The canopy is made up of multiple branches stemming from approximately 2m height known as epicormic growth. This type of growth is typically poorly attached and susceptible of failure during high winds. Due to it fair to poor structural condition, it is recommended that the tree is removed and replaced with a more suitable species that will provide greater amenity and canopy cover in the short to medium term. This has been detailed in the attached conditions in the event of approval.
- The removal of the Eucalypt tree located on the northern boundary of the rear/side yard is supported as it is dead.
- There is large *Jacaranda mimosifolia* (Jacaranda) located within the rear yard of 14 Victoria Street adjacent to the south-western corner of the subject site. The tree has been noted in good healthy condition and provides a positive contribution to the amenity and canopy cover of the immediate area. The plans indicate works are proposed within the Tree Protection Zone (TPZ) of the tree which has been calculated as being 7.7m (radius from tree trunk). This includes construction of a new building. The works have been deemed as a Minor Encroachment (less than 10% of TPZ) as defined by the *Australian Standards AS4970 'Protection of trees on development site'* and are within acceptable limits. To ensure the tree is not adversely impacted during the works, tree sensitive construction methods and tree protection measures are to be implemented.
- The plans indicate new tree planting is proposed on the rooftop fronting Victoria Street. To ensure successful planting of any type of vegetation is undertaken, a landscaping condition specific to planting on structures is attached for inclusion into the DA consent.

Overall, the proposal is considered acceptable with regard to the *Biodiversity and Conservation SEPP* and Part 2.20 of the MDCP 2011 subject to the imposition of conditions in the event of approval.

Chapter 6 Water Catchments

Section 6.6 under Part 6.2 of the *Biodiversity and Conservation SEPP* provides matters for consideration which apply to the proposal. The subject site is located within the designated hydrological catchment of the Sydney Harbour Catchment and is subject to the provisions contained within Chapter 6 of the above *Biodiversity Conservation SEPP*.

It is considered that the proposal remains consistent with the relevant general development controls under Part 6.2 of the *Biodiversity Conservation SEPP* and would not have an adverse effect in terms of water quality and quantity, aquatic ecology, flooding, or recreation and public access.

Inner West Local Environmental Plan 2022

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

Part 1 – Preliminary

Section	Proposed	Compliance
Section 1.2 Aims of Plan	<p>The proposal satisfies the section as follows:</p> <ul style="list-style-type: none"> • The proposal encourages development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles, • The proposal conserves and maintains the natural, built and cultural heritage of Inner West, • The proposal facilitates economic growth and employment opportunities within Inner West, • The proposal encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents, • The proposal creates a high quality urban place through the application of design excellence in all elements of the built environment and public domain 	Yes

Part 2 – Permitted or prohibited development

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table <i>E1 – Local Centre</i>	Refer to discussion below	No
<p>The proposed development is for mixed use development comprising of a commercial premises and a residential accommodation component which the application has characterised as a dwelling house.</p>		

Section	Proposed	Compliance
<p>The property is zoned E1 – Local Centre. The commercial premises is permitted with consent under the under the Land Use Table. However, within the E1 zone the umbrella term of residential accommodation is prohibited. The only type of residential accommodation permitted with consent in the zone are shop top housing, and additional provisions contained under Section 2.5 Additional permitted uses for particular land and Schedule 1(50) of the <i>IWLEP 2022</i> permitting development for the purposes of dwelling houses. These permissible residential uses are defined as follows:</p> <p style="padding-left: 40px;"><i>“dwelling house means a building containing only one dwelling”</i></p> <p style="padding-left: 40px;"><i>“shop top housing means one or more dwellings located above ground floor retail premises or business premises”</i></p> <p>The applicant has provided legal advice to support the characterisation of the residential component as a dwelling house. It is noted that the legal advice provided is based on the original scheme lodged which was subsequently superseded by amended plans which were lodged and accepted in the NSW Planning Portal, and publicly renotified, thereby the legal advice is based on incorrect information. Notwithstanding, key paragraphs (Paragraph 21 and 22) advice are reproduced below:</p> <p style="padding-left: 40px;"><i>In my opinion, the residential aspect of the Proposed Development satisfies the definition of “dwelling house” because the building will only contain one dwelling (ie it will not contain more than one dwelling). The word “building” in the definition of “dwelling house” (which is not defined in the LEP) will have the same meaning as in the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act): Interpretation Act 1987 (NSW). The expression “building” is defined in s 1.4(1) of the EPA Act as including “part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993”. In circumstances where the expression “building” includes part of a building, in my opinion, the residential aspect of the Proposed Development meets the definition of “dwelling house”. The fact that the building will also contain another commercial use does not mean that the residential aspect fails to meet the definition of “dwelling house”.</i></p> <p style="padding-left: 40px;"><i>In addition, under the National Construction Code, the commercial aspect of the building will be a Class 6 building and the residential aspect will be a Class 1 building. The Class 1 building will only be used for the purpose of a single dwelling.</i></p> <p>It is Councils’ opinion the development does not satisfy the definition of dwelling house as the residential component forms part of a mixed-use building which contains more than just ‘only’ one dwelling in the building, as it also contains a commercial premises at ground level. In this regard the building contains a residence and commercial tenancy, and thereby the residential component of the site cannot be considered a dwelling house as per the definition in <i>IWLEP 2011</i>.</p> <p>It is Councils’ opinion that building classification under the NCC does not determine permissibility. In this regard, a class 1 building does not equate to a dwelling house as defined in the LEP. There are several land uses (e.g. semi-detached dwellings) which are also class 1 buildings which are not permissible in the zone. Having regard to the NCC, Class 1 buildings <i>are houses. Typically, they are standalone single dwellings of a domestic or residential nature. These buildings can also be horizontally attached to other Class 1 buildings. When attached they are commonly referred to as duplexes, terrace houses, row houses and town houses. In these situations, they must be separated by a wall with fire-resisting and sound insulation properties....”</i></p> <p>The applicants’ legal advice incorrectly identifies the building classification as Class 1 for the dwelling. The National Construction Code recognises the proposed development as a building which is a Class 4 part and Class 6 part rather Class 1 and Class 6 as eluded by the applicant. In this regard it is noted that a Class 4 building part has different fire safety requirements and that</p>		

Section	Proposed	Compliance
	<p>Class 4 is not a dwelling house as follows <i>“Class 4 is a sole dwelling or residence within a building of a non-residential nature. A Class 4 building can only be located in a Class 5 to 9 building.”</i></p> <p>Further, the proposal in its current form does not satisfy the definition of shop top housing as residential components (with the exception of parking and entry) occupies the ground floor. To qualify as shop top housing the relevant part of the building must be truly “above” the relevant retail or commercial parts (in accordance with paragraph 56 <i>Hrsto v Canterbury City Council</i> (No 2) (2014) 204 LGERA 148). The dwelling is not wholly located above the ground floor. It is located on the ground floor and above the ground floor of the commercial premises. If the habitable residential components were removed from the ground floor, the proposal would satisfy the definition of shop top housing and be permissible in the zone which was communicated to the applicant during the assessment of the application.</p> <p>Further to the permissibility issue, the proposal is not considered consistent with the relevant objectives of the zone as discussed below.</p> <p>The E1 – Local Centre zone objectives include the following:</p> <ul style="list-style-type: none"> • <i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.</i> • <i>To encourage investment in local commercial development that generates employment opportunities and economic growth.</i> • <i>To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council’s strategic planning for residential development in the area.</i> • <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i> • <i>To provide employment opportunities and services in locations accessible by active transport.</i> • <i>To provide retail facilities and business services for the local community commensurate with the centre’s role in the local centres hierarchy.</i> • <i>To ensure Inner West local centres are the primary location for commercial and retail activities.</i> • <i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i> • <i>To enhance the unique sense of place offered by Inner West local centres by ensuring buildings display architectural and urban design quality and contributes to the desired character and cultural heritage of the locality.</i> <p>In accordance with the E1 Local Centre zone objectives, the commercial use is a key component of this development, and the core primary purpose of the zone. The proposed commercial premises is considered the minimum size and depth to enable functionality and flexibility to ongoing employment opportunities and economic growth.</p> <p>Notwithstanding, the zone anticipates that the entire ground floor (less services, car parking or access to shop top housing components of a development) in local centres are used for non-residential uses (as per zone objective 4). The proposal includes residential components on the ground level beyond services, car parking or access, and as such does not encourage non-residential land uses on the ground floor.</p> <p>Further, Councils’ strategic vision for residential development in the area anticipates shop top housing developments which would typically provide development at higher densities. It is Councils’ opinion that the strategic vision of this precinct anticipates that residential development will contribute to a vibrant and active local centre by up taking and providing higher densities and</p>	

Section	Proposed	Compliance
<p>therefore activity. The development for a single dwelling as proposed does not contribute to the local centre as per the strategic vision and objective 3 of the zone.</p> <p>Given the above inconsistencies with permissible land uses for residential accommodation and the objectives of the zone, it is recommended that the application be refused.</p> <p>Notwithstanding the matter of permissibility, the configuration and size of the ground floor of the proposed residential component could easily facilitate kitchen facilities being installed which would result in its conversion to a separate domicile and perhaps a second dwelling. As such, in the event of approval, a condition has been included in the recommendation that the ground floor is not permitted to be used or adapted to be used to accommodate a kitchen or kitchenette area or operate as a separate occupancy, without prior consent of Council.</p>		
<p>Section 2.5 Additional permitted uses for particular land</p>	<p>The subject site is identified as “50” on the <i>Additional Permitted Uses Map</i>. Schedule 1 of the <i>IWLEP 2022</i> states the following:</p> <p><i>50 Use of certain land for dwelling houses in Zone E1</i> <i>(1) This clause applies to land identified as “50” on the Additional Permitted Uses Map.</i> <i>(2) Development for the purposes of dwelling houses is permitted with development consent.</i></p> <p>As discussed above, the subject application does not meet the definition of dwelling house.</p> <p>This provision is to enable alterations and additions to existing dwelling house buildings that were designed and constructed for the purposes of a dwelling house within E1 zones, without requiring demonstration of existing use rights. This is not what is sought in this application.</p>	<p>No</p>
<p>Section 2.7 Demolition requires development consent</p>	<p>The proposal satisfies the section as follows:</p> <ul style="list-style-type: none"> • Demolition works are proposed, which are permissible with consent; and • In the event of approval, standard conditions are recommended to manage impacts which may arise during demolition. 	<p>Yes, subject to conditions</p>

Part 4 – Principal development standards

Control	Proposed		Compliance
<p>Section 4.3 Height of building</p>	<p>Maximum</p>	<p>17m</p>	<p>Yes</p>
	<p>Proposed</p>	<p>12.7m</p>	
<p>Section 4.4 Floor space ratio</p>	<p>Maximum</p>	<p>2.2:1 or 489sqm</p>	<p>Yes</p>
	<p>Proposed</p>	<p>1.95:1 or 433.5sqm</p>	
<p>Section 4.5 Calculation of floor space ratio and site area</p>	<p>The site area and floor space ratio for the proposal has been calculated in accordance with the section.</p>		<p>Yes</p>

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
<p>Section 5.10 Heritage conservation</p>	<p>The subject site is a contributory building within the Lewisham Estate Heritage Conservation Area (HCA)</p> <p>The proposal achieves the objectives of this section as follows:</p> <ul style="list-style-type: none"> • Whilst the proposal seeks the partial demolition of a contributory building and the overall scale of the proposal will change the setting of the pair of shops, the proposal is considered to achieve a balanced outcome when considering the desired future character of the area as outlined in the masterplan (precinct) controls. • The additions have been appropriately designed to contribute positively to the visual interest of the streetscape and allow for the interpretation the existing building which is an interesting and modest corner shop. • Subject to retaining and repairing the shop front led lights in the event of approval, the development has been designed to respond to the significance of the conservation area and preserve contributory elements and fabric of the existing building. <p>Given the above the proposal preserves the environmental heritage of the Inner West.</p>	<p>Yes</p>

Part 6 – Additional local provisions

Section	Proposed	Compliance
<p>Section 6.2 Earthworks</p>	<ul style="list-style-type: none"> • The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability. 	<p>Yes</p>
<p>Section 6.3 Stormwater Management</p>	<ul style="list-style-type: none"> • The development maximises the use of permeable surfaces, includes on site retention as an alternative supply and in the event of approval, subject to standard conditions would not result in any significant runoff to adjoining properties or the environment. 	<p>Yes, subject to conditions</p>
<p>Section 6.4 Terrestrial biodiversity</p>	<ul style="list-style-type: none"> • The subject site is identified as located within the 'Biodiversity' area on the Natural Resource – Biodiversity Map. The proposal does not involve any work that will disturb or reduce existing pervious surface area of the site by more than 25%, as such a test of significance is not required. 	<p>Yes</p>
<p>Section 6.8 Development in areas subject to aircraft noise</p>	<ul style="list-style-type: none"> • An Acoustic Report was prepared to ensure the development will comply with the required noise criteria. 	<p>Yes, subject to conditions</p>

Section	Proposed	Compliance
Section 6.13 Residential accommodation in Zones E1, E2 and MU1	<p>The proposed development satisfies this section as follows:</p> <ul style="list-style-type: none"> • Putting permissibility aside the proposal is a mixed-use development which integrates residential and non-residential uses. • The proposal has been designed to maintain the existing ground floor glazing and commercial use of a similar size, however the residential component at the rear fails to provide an active street frontage. • The buildings bulk, form, use, and scale are designed to balance the intended intensity of the area and heritage character which aligns with the desired character of the area. 	No

B. Development Control Plans

Summary

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

MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	Yes
Part 2.6 – Acoustic and Visual Privacy	Acceptable – see discussion
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Acceptable – see discussion
Part 2.11 – Fencing	Yes
Part 2.18 – Landscaping and Open Space	Acceptable – see discussion
Part 2.20 – Tree Management	Acceptable – see discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 5 – Commercial and Mixed Use Development	Acceptable – see discussion
Part 8 – Heritage	Acceptable – see discussion
Part 9 – Strategic Context	Acceptable – see discussion

The following provides discussion of the relevant issues:

Marrickville Development Control Plan 2011

The application was assessed against the following relevant parts of the Marrickville Development Control Plan 2011 (MDCP 2011).

Part 2 – Generic Provisions

Control	Assessment	Compliance
Part 2.1 Urban Design	The proposed development satisfies the relevant provisions of this Part as follows: <ul style="list-style-type: none"> • The proposal does not impact the definition between the public and private domain and is appropriate for the character of the locality given its form, massing, siting and detailing; and • The proposal preserves the existing character of the streetscape, as the proposed addition will complement the public domain and protects the existing shopfront. 	Yes
Part 2.5 Equity of Access and Mobility	The proposed development satisfies the relevant provisions of this Part as follows: <ul style="list-style-type: none"> • Appropriate access is provided for all persons through the principal entrance to the premises; • A Continuous Accessible Path of Travel (CAPT) to and within the subject premises is provide which allows a person with a disability to gain access to all areas within the shop; and • Suitable accessible sanitary facilities are provided. 	Yes
Part 2.6 Acoustic and Visual Privacy	Refer to discussion below.	Acceptable

The proposal will have a satisfactory impact on visual and acoustic levels of the surrounds as follows:

- The principal living area and the primary area of Private Open Space (POS) are located on level 2 of the building which could have privacy impacts on adjoining properties, and is contrary to C3 ii, being an elevated area of POS greater than 10sqm and has a depth greater than 1.5m. Given the dwelling is part of a mixed use development and the site is zoned E1 local centre (where shop top housing developments are permitted), the elevated principle living area and area of POS is to be anticipated within this setting, as opposed to a typical low density residential setting. However, the proposed splayed rear building alignment increases the field of vision of the large rear (west) elevation window (W25) towards the POS at no. 14 and 16 Victoria Street. Given the living area is also serviced by windows to the north (side) and east (front) elevations, it is recommended that the rear glazing be fixed obscured up to a height of 1.6m above the FFL to minimise opportunities for overlooking.
- The proposed design and location of the POS towards the front of the site, is considered to offer a reasonable level of privacy for their users and neighbouring properties given its perimeter planter box, relative height to neighbouring buildings and the separation provided by both Victoria Street and Jubilee Lane;
- The first-floor openings and Juliette balcony (W16) on the western (rear) elevation services the master bedroom. Whilst bedrooms are typically characterised as a ‘low activity’ rooms, because the rear (west) elevation is angled towards the POS at no. 14 and 16 Victoria Street, and due to the large size of the opening, concerns are raised with the privacy implications and perception of loss of privacy. As such a condition could be required to ensure that the balustrade have a height

Control	Assessment	Compliance
	<p>of 1.2m and have a block out density of at least 75% to limit the extent of glazing and depth of views.</p> <ul style="list-style-type: none"> The proposed windows on the southern elevation provides a nil setback to the boundary and are approximately 600mm from the side elevation of the dwelling at no. 14 Victoria Street. Whilst these windows are annotated '<i>obscure glazing to all non-operable fire rated windows on the south elevation</i>', these windows rely on 'borrowed' amenity from the neighbouring property and as such cannot be protected to provide amenity for the subject site, thereby creating a future planning conflict if no. 14 Victoria Street was to develop. There is not considered to be any site constraints which would require the reliance on southern windows to justify these windows, and reasonable amenity to the dwelling will still be achieved without the southern windows. As such, to ensure orderly future development, it is recommended to delete these windows from the proposal by way of design change condition. The proposed glazing and openings to the front (eastern) elevation are setback 18m from the first floor living rooms at no. 3 and 5 Victoria Street, and glazing and openings to the Jubilee Lane side (northern) elevation are setback 6m and adequately offset from 8A Victoria Street. The proposed building separation is considered to provide reasonable privacy to adjacent properties. Subject to a condition to delete the south facing glazing, the dwelling has been designed to face towards the street frontages to reduce adverse privacy impacts. <p>Subject to the above amendments in the event of approval, the dwelling can be appropriately designed and orientated to maximise visual privacy between the proposal and neighbouring buildings</p>	
Part 2.7 Solar Access and Overshadowing	Refer to discussion below.	Yes
	<p>Shadow diagrams illustrating the shadow cast by the existing structures and the proposed development for the winter solstice were submitted with the application.</p> <p>The submitted shadow diagrams demonstrate that additional overshadowing will occur to no. 14 Victoria Street and no. 3, 5 and 7 Victoria Street. A summary of the solar impacts are as follows:</p> <p><i>14 Victoria Street</i></p> <ul style="list-style-type: none"> The overshadowing to the private open space is as a result of a proposed 1.8m high fence. A fence height of 1.8m would typically be expected between two properties and generally permitted as 'exempt development'. Therefore, the additional impacts from a 1.8m fence are considered minor in nature and acceptable on merit. See further discission under the heading 'fences'. The west facing double bi-fold doors will not be impacted by the proposal and therefore retains a minimum of 2 hours direct solar access. <p><i>3 & 5 Victoria Street</i></p> <ul style="list-style-type: none"> Overshadowing to the first-floor north facing glazing will occur at 3pm. Nonetheless, these windows will retain a minimum of 2 hours direct solar access between 12pm and 2pm. Overshadowing to the ground floor north facing glazing will occur at 2pm and 3pm. However, a search of council records could not find an approval for residential use on the ground floor. In this regard, these buildings are of the form of shop top housing, thus would anticipate non-residential uses on the ground floor, which would also be consistent with the E1 Local Centre zone and objectives. Any private open space to the rear will not be impacted by the proposal and achieve a minimum of 2 hours direct solar access. 	

Control	Assessment	Compliance
	<p><i>7 Victoria Street</i></p> <ul style="list-style-type: none"> ○ Overshadowing to the ground-floor north facing glazing will occur at 3pm. Nonetheless, this window will retain a minimum of 2 hours direct solar access between 12pm and 2pm. ○ Private open space to the rear will not be impacted by the proposal and achieve a minimum of 2 hours direct solar access. <p><i>Overshadowing</i></p> <ul style="list-style-type: none"> • Given the above, a minimum of 2 hours direct solar access to windows of principal living areas and principal areas of open space of nearby residential properties between 9:00am and 3:00pm on 21 June is retained. • The development will not result in adverse amenity impacts as a result of overshadowing. <p><i>Solar Access</i></p> <ul style="list-style-type: none"> • At least one habitable room of the dwelling has a window having an area not less than 15% of the floor area of the room, positioned within 30 degrees east and 20 degrees west of true north and will allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9:00am and 3:00pm on 21 June; and • The rear yard private open space provided for the dwelling receives a minimum two hours of direct sunlight over 50% of its finished surface between 9.00am and 3.00pm on 21 June. It is noted that the balcony private open space has north facing openings which will provide good amenity to the dwelling. 	
<p>Part 2.9 Community Safety</p>	<p>The proposal satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • The building has been orientated to maximise surveillance of the street; • The dwelling entry is clearly visible from the street; 	<p>Yes</p>
<p>Part 2.10 Parking</p>	<p>The proposal is considered to satisfy the relevant provisions under this Part as follows:</p> <ul style="list-style-type: none"> • Dwelling houses incl. attached, semi-detached and secondary dwellings, requires the provision of 1 car parking space. • One car parking space and new vehicle crossing is proposed to service the dwelling. In the event of approval, standard conditions are recommended to comply with the design requirements contained within Part 2.10 of MDCP 2011. • The site is located in parking area 1 (most constrained) which requires 1 per 100sqm GFA for customers & staff for Business premises; retail premises; shops • No parking is proposed for the commercial premises. The proposal is considered acceptable in this instance as follows: <ul style="list-style-type: none"> ○ There is no change to the scale or intensity of the existing commercial premises. ○ No parking is an existing arrangement which is being maintained. ○ The site is in a highly accessible area and is located within 40m of Lewisham train station, 200m of Lewisham West light rail station, and within close 	<p>Acceptable, subject to conditions</p>

Control	Assessment	Compliance
	<p>proximity of bus stops along Railway Terrace. The constrained provision of parking encourages the use of active transport methods and therefore promotes sustainable transport.</p>	
<p>Part 2.11 Fences</p>	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • The northern side boundary fence measures 1.8m in height and will be of timber material consistent with the laneway. • The southern side boundary shared with no. 14 Victoria Street is annotated on the plans to be retained, and that this will be increased to 1.8m in height within the property boundary, with a new rendered portion to match existing where the building will be demolished. It is noted that due to the slope of the land, the subject fence appears to extend up to 2.3m high on the supplied 'south elevation'. To provide certainty, a condition could be imposed that the height of the fence not exceed 1.8m at any point. 	<p>Yes</p>
<p>Part 2.18 Landscaping and Open Spaces</p> <p><u>Private Open Space (POS)</u> Min: 45sqm</p> <p><u>Pervious Landscaping</u> Min: 50% of POS</p>	<p>The development is required to provide a minimum of 45sqm of POS for a dwelling house. The proposal results in an area of approximately 40.7sqm of POS no dimension being less than 3m spread across the ground level rear yard and the second floor roof garden. 35% (or 15.7sqm) comprising pervious landscaping.</p> <p>Whilst the proposal has 4.3sqm shortfall of POS, the non-compliance is considered to be acceptable for the following reasons:</p> <ul style="list-style-type: none"> • Given the site is zoned E1 local centre, the proposed POS complements the character of the individual building and the character of the area; • The proposed POS and landscaping is sufficient to allow for a replacement tree planting in deep soil; • The proposed POS and landscaping provide the dwelling with an area sufficient for outdoor recreation; • The proposed POS minimises the extent of hard paved areas and facilitate rainwater infiltration. • The proposed POS improves the appearance, amenity and energy efficiency of the development; • The areas of POS act as an extension of the living area of a dwelling and receives adequate sunlight; and • The areas of POS incorporates vegetation where possible. <p>Typically in a commercial area, applying controls for shop top housing means that the dwelling would only require the provision of an 8sqm terrace/balcony, however the proposal is not for such a purpose, notwithstanding having regard to context, the quantum of open space proposed is a better outcome for the site and neighbouring properties.</p>	<p>Acceptable</p>
<p>Part 2.20 Tree Management</p>	<p>Refer to discussion under SEPP.</p>	<p>Yes, subject to conditions</p>

Control	Assessment	Compliance
Part 2.21 Site Facilities and Waste Management	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The application was accompanied by a waste management plan in accordance with the Part; and Standard conditions are recommended to ensure the appropriate management of waste during the construction of the proposal. 	Yes, subject to conditions
Part 2.24 Contaminated Land	Refer to discussion under SEPP.	Yes, subject to conditions
Part 2.25 Stormwater Management	In the event of approval, standard conditions are recommended to ensure the appropriate management of stormwater.	Yes, subject to conditions

Part 5 – Commercial and Mixed Use Development

Control	Assessment	Compliance
Part 5.1.3 Building Form	<p>As the site is located within Lewisham South (Precinct 5), the controls contained within Part 9.5 take precedence over those in this Part of the DCP where there is an inconsistency. Notwithstanding, the proposal satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The proposal retains the existing contributory building; The overall density and height of the development are compatible with the desired future character of the commercial centre and is appropriate to the contextual constraints of the site; The proposal maintains the retail shop character and fine urban grain. The rear massing does not cause significant visual bulk or amenity impacts to neighbouring properties subject to conditions relating to privacy impacts; Setbacks, building mass and street wall heights are outlined in Part 9.5 of the DCP. No rooftop structures are proposed within the topmost 3m of the maximum height control; The proposal complies with the overall depth control as the internal floor plan of the residential dwelling is not greater than 18m; The proposal is scaled to support the desired future character with appropriate massing and spacing between buildings; and, Contrary to C18, the proposed glazing and openings to the Jubilee Lane side (northern) elevation are setback 6m from 8A Victoria Street. The proposed new glazing and openings are adequately offset from 8A existing windows which service a study, stairwell and bathroom. Further, both properties provide a nil setback to the laneway ensuring equitable separation. 	Yes

Control	Assessment	Compliance
	<ul style="list-style-type: none"> • It is noted that the proposed southern side elevation may remain highly visible from the public domain until such a time that re-development of the neighbouring sites occurs. As such it is recommended in the event of approval that a condition of consent requiring amended drawings incorporating a varied surface/material treatment to the southern (side) elevation that adequately visually breaks-up of the large expanse of blank wall when viewed from the public domain be imposed. 	
<p>Part 5.1.4 Building Detail</p>	<p>The proposal satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • The street front portion of the building mass is maintained as the continuous dominant element in the streetscape; • The proposed upper level additions are high quality contemporary architecture which will be complementary within the streetscape; • The proposed alterations and additions are not detrimental to the visual presentation of the contributory building and the streetscape; • The front portion of the existing contributory building is proposed to be retained; • Subject to condition regarding the original windows in the event of approval, the proposed restoration and reconstruction of the shopfront elements including awning of the building are consistent with the style of the building; • The active use component of the building provides a viable area to accommodate a variety of commercial premises and allows sufficient space for back-of-house activities (such as kitchens and goods storage); waste and recycling storage facilities; sanitary facilities with disabled access; and space for employee amenities • The shopfront maintains the width and height proportions of the existing shopfront and is consistent within the streetscape • The shopfront incorporates a window oriented towards Jubilee Lane to assist in providing a presence to the secondary frontage; and, • The residential entry is separate to the commercial entry and is appropriately designed and located. 	<p>Yes</p>
<p>Part 5.1.5 Building Use</p>	<p>The proposal satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • The ground floor level of the building that relates to the active street frontage is predominately used for commercial floor area; • The application proposes a mixture of land uses that are compatible and will result in a reasonable level of amenity; and, • Appropriate floor-to-ceiling heights are provided for commercial and residential uses being 3.3 metre minimum for ground floor and any other retail or commercial floors and 2.7m for residential floors. 	<p>Yes</p>

Control	Assessment	Compliance
Part 5.1.6 Vehicle Access, Parking and Loading Services	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • The vehicle access is located to the side of the site and is safely and conveniently located for use away from any active frontages; • The area dedicated for car parking on the ground floor level is limited to one space to maximise commercial floor area which can accommodate a variety of commercial uses. • The location of the driveway is suitable within the laneway and will not impact traffic or parking. 	Yes

Part 8 – Heritage

Control	Assessment	Compliance
Part 8.2.28 Lewisham Estate Heritage Conservation Area – HCA 26	<ul style="list-style-type: none"> • Situated on a prominent corner site, the building contributes positively to the character of the Heritage Conservation Area (HCA). • The proposal generally retains the existing building which is an interesting and modest corner shop that demonstrates the different phases of development in the area. 	Yes
Part 8.4.1.3 Building setbacks	<ul style="list-style-type: none"> • The development maintains existing building front and side setbacks. 	Yes
Part 8.4.1.4 Building heights	<ul style="list-style-type: none"> • Contrary to C8, the development does not retain a minimum of 6m of the front of the building. The proposed 3.8m for the upper levels are considered acceptable as the site is unique in that it is also located within a masterplan area with site specific controls and where additional density is anticipated beyond a typical high street. Notwithstanding, the upper levels are set back behind the parapet in a way that allows the interpretation of the old and new elements. 	Acceptable
Part 8.4.1.5 Building form	<ul style="list-style-type: none"> • The proposed additions retain the early shop front. • No signage is proposed. 	Yes
Part 8.4.1.7 Building facades	<ul style="list-style-type: none"> • The original surviving detailing to the shopfront include the decorative transoms, fanlights and lead lighting. These elements are described as being in a state of disrepair and proposed for removal. In response to Councils request for further information in relation to these features, no further information was submitted for assessment. It is considered that given the evidence to establish the original design and the high heritage and aesthetic value, a condition could ne included for the original lead lighting to be retained and restored. An example of this type of retention can be seen at 731-735 Darling Street, Rozelle. • The new windows match the size and location of existing windows • The tile cladding is annotated to be retained and restored. 	Yes, subject to condition

	<ul style="list-style-type: none"> The colour scheme is appropriate to the architectural style and period of the building. 	
Part 8.4.1.8 Car Parking	<ul style="list-style-type: none"> The access to the rear private open space via the existing laneway is retained, The driveway cross over is located in the side lane. 	Yes
Part 8.3.2.13 Car parking	<ul style="list-style-type: none"> The development provides driveway access from the rear lane and does not result in any car parking structure to the street frontage. 	Yes

Part 9 – Strategic Context

Control	Assessment	Compliance
Part 9.5 Lewisham South (Precinct 5)	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The proposal protects the existing period building on the site 	Yes
9.5.4 Precinct-specific planning controls	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> As mentioned under part 5, the proposed southern side elevation may remain highly visible from the public domain until such a time that re-development of the neighbouring sites occurs. As such the surface/material treatment of this wall requires greater attention than proposed. It is recommended in the event of approval that a condition of consent requiring amended drawings incorporating a varied surface/material treatment to the southern (side) elevation that adequately visually breaks-up of the large expanse of blank wall when viewed from the public domain. Subject to the condition in the event of approval, the new development does not adversely impact the green way corridor and provides opportunities for street activation. 	Yes
9.5.5 Site-specific planning controls	<p>The subject site is identified within the Masterplan Area (MA 5.2). The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The proposal is consistent with the amalgamated pattern. The proposal does not result in any of the adjoining site being isolated. The height of the proposed building in storeys does not exceed the 3 and 4 storey components shown on the master plan. The proposal provides for a 3.8m setback to Victoria Street in accordance with the 3m requirement and provides for includes an articulated ‘recessed’ northern portion of building. There is more limited articulation on the northern (Jubilee Lane) elevation. The proposed setbacks and articulation are considered acceptable, given this unique portion of the masterplan area being also a heritage conservation area, and the site being developed in isolation (consistent with the masterplan amalgamation pattern). Any further articulation would significantly 	Yes

	<p>constrain the buildings' floor plates which are already limited (particularly to the rear) due to the triangular 'tapered' shape of the block.</p> <ul style="list-style-type: none"> • The siting orientation, depth, separation of the proposed building generally conforms with the masterplan . • The upper dwelling floor levels and roof are set back from external walls of the floor below to the front of the site. The nil setback to Jubilee Lane is considered acceptable as it results in acceptable amenity impacts discussed earlier in this report. • The building envelope predominately expresses a street fronting building edge with articulation and variation to the built form adding visual richness. • The vehicle entry is generally consistent being accessed off Jubilee Lane and does not adversely impact on existing on street parking or activation of the secondary street frontage. • The proposal includes the reinstatement of the existing awning which is an important piece of public domain infrastructure. 	
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Figure 5.2a Location Diagram

Legend



Figure 5.2b Plan Diagram

Figure 5: Except from the of the masterplan diagram contained in Part 9.5 of the MDCP 2011.

C. The Likely Impacts

- These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

D. The Suitability of the Site for the Development

As demonstrated within this report, it is considered that the proposal is inconsistent with the zone, therefore it is considered that the site is unsuitable to accommodate the development.

E. Submissions

The application was notified in accordance with Council’s Community Engagement Strategy between 02 July 2024 to 24 July 2024.

A total of 31 submissions were received in response to the initial notification. 17 submissions were in support and 14 submissions were in opposition.

The application was re-notified in accordance with Council’s Community Engagement Strategy between 11 February 2025 and 11 March 2025.

A further 6 submissions (all in opposition) were received in response to the second notification.

The submissions received in opposition to the proposal, raised the following issues which have already been discussed in the body of the report:

- Height of Building
- Impact on the character of Heritage Conservation Area
- Tree removal
- Privacy
- Overshadowing
- Parking

Further issues raised in the submissions received are discussed below:

Concern	Comment
Overdevelopment	As detailed within this report, the size, height, and location of the additions is considered to satisfy the relevant provisions.
Site too small and oddly shaped	An assessment of the proposal against the relevant planning provisions have been discussed in the body of this report. In summary, the application has adequately demonstrated the site is suitable to accommodate the proposed development.
Impact on future solar panel effectiveness to 14 and 16 Victoria Street	These comments are noted; however, Council cannot assess the proposal against speculative developments.

Impact from future commercial use e.g. traffic, noise, parking	These comments are noted; however, Council cannot assess the proposal against speculative developments. Notwithstanding the shop is of a size that is unlikely to have adverse impact on the locality with regard to its operation.
Loss of existing public car parking spaces	Revised plans and calculations have been submitted which have demonstrated that the proposal will not reduce existing on street parking.
Reduced natural light to 16 Victoria Street	This has been taken into consideration. However as detailed in the report, the development is deemed to have a reasonable impact on the adjoining property located directly to the south of the subject site; relative to the additions proposed and the desired future character evident.
Commercial use impact on existing businesses	These comments are noted. However, the supply and demand of existing cafes within the surrounding locality is not a matter for consideration under Section 4.15 of the <i>EP & A Act 1979</i> .
Letter to residents sent out on 27.6.24 thus denying residents the opportunity to take photographs by the 21 June, the date for measuring overshadowing	Council cannot compel an applicant to lodge an application at specified times of the year. Nevertheless, the submitted shadow diagrams are sufficient to assess the proposal against the relevant planning controls/policies to be carried out.
Lack of community consultation	Whilst it is encouraged, there is no statutory requirement for applicants to engage with the local community. Council has notified the proposal in accordance with the Community engagement framework.
Part 2.8 social impact assessment - community resentment	The proposed uses being a commercial premises and a dwelling are not listed in table 1 under Part 2.8 Social Impact Assessment. Further, the proposed development is not likely to have a significant impact on the community and a SIC or SIS would not be warranted in this instance.
Construction impacts	Standard conditions regarding construction hours and noise levels, could be managed by way of conditions to mitigate any significant impacts.
Misrepresentation of the proposal in the documentation e.g., SEE states existing building is 2 storey and proposing 3 storeys + mezzanine, artist impression of the proposal	It is considered sufficient details and information have been submitted with the application to allow for a complete assessment. As detailed in this report, an independent assessment against the relevant planning controls/policies was carried out on the merits of the proposal.
Review of zoning and planning controls	These comments are noted, however not a matter for consideration under this application.
Council acquisition of the site and used in conjunction with future station upgrade	These comments are noted, however not a matter for consideration under this application.
Boundary definition	The survey prepared by True North Surveys dated 03 June 2021 submitted with the development application included a boundary survey and does not recommend a boundary redefinition.
Brick wall over boundary	The survey has identified the side rear brick fence between 10 & 14 to be over the boundary by 0.22 (i.e. within the property boundary of no 14 Victoria Street). The south elevation includes the

	following annotation in relation to this wall 'retain existing boundary wall, increase boundary wall height to 1.8m high within property boundary'.
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F. 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.

As detailed within this report, given the inconsistencies with permissible land uses for residential accommodation and the objectives of the zone, which results in adverse impacts on the surrounds, the proposal is not considered to be in the public interest

6. Section 7.11 / 7.12 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of **\$20,000** would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

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

7. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Heritage Specialist;
- Development Engineer;
- Urban Forest;
- Resource Recovery;
- Environmental Health; and
- Building Certification.

The following external referrals were made, and their comments have been considered as part of the above assessment:

- Ausgrid;

8. Conclusion

The proposed residential component has not satisfactorily demonstrated that it meets the definition of a permissible form of residential accommodation and the is consistent with the objectives of the E1 – Local Centre zone.

With the exception of the permissibility issue, the proposal, as amended (and conditioned in the event of approval), generally complies with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Inner West Local Environmental Plan 2022*, and Marrickville Development Control Plan 2011.

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

9. Recommendation

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/2024/0526 which seeks alterations and additions to an existing building, including retention of the building façade and construction of a mixed use building containing a single storey commercial premises and four storey residential dwelling with garage and removal of trees at 10 Victoria Street, Lewisham for the following reasons:

Attachment A – Reasons for refusal

1. The proposed development is inconsistent with, and has not demonstrated compliance with the *Inner West Local Environmental Plan 2022*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Section 2.3(2) - Zone objectives and Land Use Table, in that residential accommodation is prohibited within the zone, and the proposed residential component does not satisfy the definition of *dwelling house*.
 - b. Section 2.3(2) - Zone objectives and Land Use Table, in that proposed residential component is inconsistent with the following objectives of the E1 – Local Centre Zone:
 - Objective 3: *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area. (objective 3)*
 - Objective 4: *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
2. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
3. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B – Recommended conditions of consent in the event of approval

CONDITIONS OF CONSENT

GENERAL CONDITIONS

Condition	
1.	<p>Separation of Commercial and Residential Waste and Recycling</p> <p>The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.</p> <p>Reason: Commercial/retail premises and residential properties pay separate charges for waste and recycling collection.</p>
2.	<p>Bin Storage - Residential</p> <p>All bins are to be stored within the property. Bins are to be returned to the property within 12 hours of having been emptied.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
3.	<p>Tree Planting Plan</p> <p>1. A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate. The plan must include:</p> <ul style="list-style-type: none"> a. Location of existing and proposed structures on the site including, but not limited to: existing and proposed trees, paved areas and planted areas; b. Details of any earthworks, changes to existing grade and soil depths including mounding and retaining walls. c. Details of rooftop planting species and soil volumes. This shall include at least two (2) small trees that when mature will achieve a minimum height of five (5) metres. The minimum container size for the trees at the time of planting must be 45 litres. The minimum soil depths for rooftop planting must be 1000mm for trees, 450mm for shrubs and 200mm for groundcovers; d. Location, numbers, type and supply of trees, with reference to AS2303—<i>Tree stock for landscape use</i>; e. A minimum of one (1) new tree must be included in the rear yard. The trees species must attain a minimum mature height of 10 metres and canopy spread of four (4) metres. The minimum container size for the tree at the time of planting must be 100 litres. Trees listed as exempt species from Council's Tree Management Controls and species recognised to have a short life span are not acceptable in satisfaction of this condition; f. Structures such as OSD's, electrical kiosks, services etc. are not to be located within areas of deep soil or under the canopy of any existing trees; g. Details of planting specification and maintenance programme. <p>Reason: To ensure appropriate tree planting is undertaken.</p>

4.	<p>Consent of Adjoining property owners</p> <p>This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the <i>Access to Neighbouring Lands Act 2000</i> to seek access.</p> <p>Reason: To meet the requirements of the <i>Access to Neighbouring Lands Act 2000</i>.</p>
5.	<p>Tree Pruning or Removal (including root pruning/mapping)</p> <p>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 the approved Tree Protection Plan.</p> <p>Reason: To protect and retain trees.</p>
6.	<p>Asbestos Removal</p> <p>Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
7.	<p>Noise – Consultant's Recommendations</p> <p>All the recommendations contained in the acoustic report prepared by Pulse white Noise Acoustics, reference Revision: RO, Project Number: 240306 dated 5 June 2024 must be implemented.</p> <p>Reason: To protect the amenity of the neighbourhood and ensure that the development is carried out in accordance with the consent.</p>
8.	<p>Awnings with Lighting</p> <p>The proposed awning must be of cantilever type and be set back at least 600mm from the kerb line. The awning must include pedestrian lighting (Category P3-AS1158) and must be maintained and owned by the property owner(s). The proposed awning must be designed to be easily removed if required in future. The owner must maintain, modify or remove the structure at any time if given notification by Council to do so. The lighting must be not be obtrusive and should be designed so that it does not shine into any adjoining residences.</p> <p>Reason: Provide all weather protection to pedestrians.</p>
9.	<p>Permits</p> <p>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:</p>

	<ul style="list-style-type: none"> • 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; • A concrete pump across the roadway/footpath; • Mobile crane or any standing plant; • Skip Bins; • Scaffolding/Hoardings (fencing on public land); • Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.; • Awning or street veranda over the footpath; • Partial or full road closure; and • Installation or replacement of private stormwater drain, utility service or water supply. <p>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.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>
<p>10.</p>	<p>Insurances</p> <p>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.</p> <p>Reason: To ensure Council assets are protected.</p>
<p>11.</p>	<p>Boundary Alignment Levels</p> <p>Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary unless levels are otherwise approved by Council via a S138 approval.</p> <p>Reason: To allow for pedestrian and vehicular access.</p>
<p>12.</p>	<p>Contamination – Remedial Action Plan (No Site Auditor Engaged)</p> <p>The site is to be remediated and validated in accordance with all the recommendations set out in the Remedial Action Plan, prepared by Hayes Environmental Consulting, reference EP1731 AD dated 10 December 2024, the Contaminated Land Management Act 1997 and Chapter 4 - Remediation of Land of the State Environmental Planning Policy (Resilience and Hazards) 2021.</p> <p>Reason: To protect the amenity of the neighbourhood from contamination and ensure that the development is carried out in accordance with the consent.</p>

13.	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/Received	Prepared by
	DA02 rev B	Site + roof plan	7/11/2024	Luigi Rosselli
	DA03 rev D	Ground floor plan	29/11/2024	Luigi Rosselli
	DA04 rev C	First floor plan	29/11/2024	Luigi Rosselli
	DA05 rev B	Second floor plan	7/11/2024	Luigi Rosselli
	DA06 rev B	Mezzanine floor plan	7/11/2024	Luigi Rosselli
	DA07 rev C	East elevation	29/11/2024	Luigi Rosselli
	DA08 rev B	West elevation	7/11/2024	Luigi Rosselli
	DA09 rev C	North elevation	29/11/2024	Luigi Rosselli
	DA10 rev B	South elevation	7/11/2024	Luigi Rosselli
	DA11 rev D	Section aa	29/11/2024	Luigi Rosselli
	DA12 rev A	Section bb	17/06/2024	Luigi Rosselli
	DA19 rev A	Schedule of external finishes	17/06/2024	Luigi Rosselli
	DA21 rev A	Demolition Plan	19/06/2024	Luigi Rosselli
	A1751493	BASIX Certificate	13 June 2024	Luigi Rosselli
	240306 – 10 Victoria Street, Lewisham – Noise Impact Assessment – R0	Acoustic Report	28/05/2024	Pulse White Noise Acoustics
	P171331-DR-SW-000 - P171331-DR-SW-200 rev 1 (5 Sheets)	Stormwater Plan	11/06/2024	Stellen Consulting
	3155 – REV B	BCA Report	17/06/2024	J Squared Engineering Pty. Ltd
	EP1731 AD	REMEDIATION ACTION PLAN	10 December 2024	Hayes Environmental Consulting
	As amended by the conditions of consent.			
	Reason: To ensure development is carried out in accordance with the approved documents.			

14.	<p>Works Outside the Property Boundary</p> <p>This development consent does not authorise works outside the property boundaries on adjoining lands.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
15.	<p>Storage of materials on public property</p> <p>The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.</p> <p>Reason: To protect pedestrian safety.</p>
16.	<p>Other works</p> <p>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 <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
17.	<p>National Construction Code (Building Code of Australia)</p> <p>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.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
18.	<p>Notification of commencement of works</p> <p>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:</p> <ol style="list-style-type: none"> a. In the case of work for which a principal contractor is required to be appointed: <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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. <p>Reason: To ensure compliance with legislative requirements.</p>
19.	<p>Dividing Fences Act</p> <p>The person acting on this consent must comply with the requirements of the <i>Dividing Fences Act 1991</i> in respect to the alterations and additions to the boundary fences.</p> <p>Reason: To ensure compliance with legislative requirements.</p>

<p>20.</p>	<p>Construction of Vehicular Crossing</p> <p>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.</p> <p>Reason: To protect assets, infrastructure and pedestrian safety.</p>
<p>21.</p>	<p>Lead-based Paint</p> <p>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.</p> <p>Reason: To protect human health.</p>
<p>22.</p>	<p>Dial before you dig</p> <p>Contact "Dial Before You Dig" prior to commencing any building activity on the site.</p> <p>Reason: To protect assets and infrastructure.</p>
<p>23.</p>	<p>Ausgrid Overhead Powerlines are in the vicinity of the development</p> <p>The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.</p> <p>Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.</p> <p>The "as constructed" minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website at www.ausgrid.com.au.</p> <p>It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer's cost.</p> <p>Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website:</p>

	<p>www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries</p> <p>from the Ausgrid network, the proponent should engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable. Visit the Ausgrid website for further details: https://www.ausgrid.com.au/Connections/Get-connected</p> <p>Should you have any enquiries, please contact Ausgrid at development@ausgrid.com.au</p> <p>Reason: To confirm the terms of approval</p>
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BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
24.	<p>Resource Recovery and Waste Management Plan - Demolition and Construction</p> <p>Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a "Waste and Recycling Waste Management Plan - Demolition and Construction" in accordance with the relevant Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>
25.	<p>Bin Storage Area</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Waste and Recycling Management Plan.</p> <p>The submitted Waste and Recycling Management Plan must demonstrate that the bin storage area will accommodate the number of bins required for all waste and recycling generated by a development of this type and scale. The number of bins required must be calculated based on a fortnightly collection of garbage, a weekly collection of organics which includes food and garden organics (FOGO), and a fortnightly collection of mixed recycling.</p> <p>The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.</p> <p>The bin storage area is to meet the design requirements detailed in the Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected.</p>
26.	<p>Waste Transfer Route</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point has</p>

	<p>a minimum 1200mm wall-to-wall clearance, is slip-proof with a hard surface, free of obstructions and at no point has a gradient exceeding 1:14 for 240L bins , and 1:40 for 660L bins.</p> <p>Reason: To require details of measures that will protect residents and staff or tenants during the operational phase of the development.</p>				
27.	<p>Noise General – Acoustic Report</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the Protection of the Environment Operations Act 1997 and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.</p> <p><i>Note: In special entertainment precincts, this condition applies to noise and vibration from plant equipment and machinery only.</i></p> <p>Reason: To protect the amenity of the neighbourhood.</p>				
28.	<p>Design Change</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:</p> <ul style="list-style-type: none"> a. The retention and repair of the decorative transoms and fanlights to the shopfront including the mullions, the cast glass and leadlighting. b. The windows to the southern elevation are to be deleted. c. Showing the boundary fence along the southern (side) boundary adjacent to No. 14 Victoria Street is not higher than 1.8m at any point as measured from the subject site. <p>Reason: To ensure that the design changes protect the amenity of the neighbourhood and ensure orderly development.</p>				
29.	<p>Security Deposit</p> <p>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.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 30%;">Security Deposit:</td> <td>\$24640.00</td> </tr> <tr> <td>Inspection Fee:</td> <td>\$389.90</td> </tr> </table> <p>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.</p>	Security Deposit:	\$24640.00	Inspection Fee:	\$389.90
Security Deposit:	\$24640.00				
Inspection Fee:	\$389.90				

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Reason: To ensure required security deposits are paid.</p>
<p>30.</p>	<p>Stormwater Drainage System – Minor Developments (OSD is not required)</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:</p> <ol style="list-style-type: none"> a. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road. b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP. c. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes. d. A 150mm step up must be provided between the finished surface level of the external area and the finished floor level of the internal room unless a reduced step is permitted by Part 3.3.3. of the National Construction Code for Class 1 buildings. e. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. f. No nuisance or concentration of flows to other properties. g. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate

	<p>capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.</p> <ul style="list-style-type: none"> h. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets. i. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site. j. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm. k. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings. l. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated. <p>Reason: To ensure that the adequate provision of stormwater drainage is provided.</p>
<p>31.</p>	<p>Public Domain Works – Prior to Construction Certificate</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the Roads Act 1993 incorporating the following requirements:</p> <ul style="list-style-type: none"> a. The construction of a light duty vehicular crossing to the vehicular access location; and b. The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template for a B85 vehicle using dynamic ground clearance software. A long section, along both sides of the vehicular crossing and ramp, drawn at a 1:20 or 1:25 natural scale, shall be provided for review. The long section shall begin from the centreline of the adjacent road to a minimum of 3 metres into the property. The long section shall show both existing and proposed surface levels including information including chainages. <p>All works must be completed prior to the issue of an Occupation Certificate.</p> <p>Reason: To ensure public domain works are constructed to Council's standards</p>
<p>32.</p>	<p>Parking Facilities - Domestic</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans and certification by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:</p> <ul style="list-style-type: none"> a. The internal vehicle hardstand area must be redesigned such that the level at the boundary must match the invert level of the adjacent gutter plus 110mm

	<p>[rear lane only] at both sides of the vehicle entry. This will require the internal garage slab or hard stand area to be adjusted locally at the boundary to ensure that it matches the above-issued alignment levels.</p> <ul style="list-style-type: none"> b. The garage slab or driveway must then rise within the property to be a minimum of 170mm (as quickly as possible) above the adjacent road gutter level and/or higher than the street kerb and footpath across the full width of the vehicle crossing. c. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B85 vehicle. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements. d. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors. e. 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. f. 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 unless otherwise approved. g. The external form and height of the approved structures must not be altered from the approved plans. <p>Reason: To ensure parking facilities are designed in accordance with the Australian Standard and council's DCP.</p>
<p>33.</p>	<p>Hazardous Materials Survey</p> <p>Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.</p> <p>A copy of any SafeWork NSW approval documents is to be included as part of the documentation.</p> <p>Reason: To ensure compliance with the requirements of SafeWork NSW.</p>

34.	<p>Long Service Levy</p> <p>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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.</p> <p>Reason: To ensure the long service levy is paid.</p>
35.	<p>Structural Certificate for retained elements of the building</p> <p>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.</p> <p>Reason: To ensure the structural adequacy of the works.</p>
36.	<p>Sydney Water – Tap In</p> <p>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.</p> <p>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.</p> <p>Reason: To ensure relevant utility and service provides requirements are provided to the certifier.</p>
37.	<p>Acoustic Report – Rail and Aircraft Noise</p> <p>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 (Resilience and Hazards) 2021.</p> <p>Reason: To ensure all noise attenuation is in accordance with the Australian Standard.</p>
38.	<p>Section 7.11 Contribution</p> <p>In accordance with section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i> and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:</p>

Contribution Category	Amount
Open Space & Recreation	\$14,300.00
Community Facilities	\$2,650.00
Transport	\$1,880.00
Plan Administration	\$184.00
Drainage	\$986.00
TOTAL	\$20,000.00

At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$$C_{\text{payment}} = C_{\text{consent}} \times \left(\frac{CPI_{\text{payment}}}{CPI_{\text{consent}}} \right)$$

Where:

C_{payment} = is the contribution at time of payment

C_{consent} = is the contribution at the time of consent, as shown above

CPI_{consent} = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 139.8 for September 2024.

CPI_{payment} = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres at council@innerwest.nsw.gov.au or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by

	<p>mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).</p> <p>The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.</p> <p>Reason: To ensure payment of the required development contribution.</p>
39.	<p>Street Numbering</p> <p>If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to Street Numbering Application</p> <p>Reason: To ensure occupancies are appropriately numbered.</p>
40.	<p>Privacy</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating the following:</p> <ul style="list-style-type: none"> • The second floor window (W25) on the west elevation is to have fixed and obscure glazing to a minimum level of 1.6 metres above the floor level; • The first floor balustrade to the window (W16) on the west elevation is to have a height of 1.2m and have a minimum block out density of 75%; <p>Reason: To ensure that visual privacy treatment protects the amenity of the neighbourhood.</p>
41.	<p>Future Food Use - Mechanical Ventilation Provision</p> <p>Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of Mechanical Ventilation and Air-Conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings.</p> <p>Reason: To protect the amenity of the neighbourhood and to ensure all mechanical ventilation is in accordance with the relevant Australian Standards.</p>
42.	<p>Southern Elevation Treatment</p> <p>Prior to the issue of a Construction Certificate, Council's Manager Development Assessment is required to be provided with amended drawings that incorporate a varied surface/material treatment to the southern (side) elevation that adequately visually breaks-up of the large expanse of blank wall when viewed from the public domain.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>

BEFORE BUILDING WORK COMMENCES

Condition							
43.	<p>Tree Protection</p> <p>No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent. Prescribed trees protected by Council's Tree 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 5 metres of the development must be protected in accordance with AS4970—<i>Protection of trees on development sites</i> and Council's Development Fact Sheet—<i>Trees on Development Sites</i>. 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.</p> <p>The existing trees detailed below must be protected throughout construction and development in accordance with all relevant conditions of consent.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Tree Number</th> <th>Species</th> <th>Location</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Jacaranda mimosifolia</td> <td>Rear Yard of 14 Victoria Street</td> </tr> </tbody> </table> <p>Reason: To ensure that trees to be retained are protected.</p>	Tree Number	Species	Location	1	Jacaranda mimosifolia	Rear Yard of 14 Victoria Street
Tree Number	Species	Location					
1	Jacaranda mimosifolia	Rear Yard of 14 Victoria Street					
44.	<p>Project Arborist</p> <p>Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist (a person holding a minimum Australian Qualification Framework (AQF) Level 5, Diploma of Arboriculture), must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.</p> <p>Reason: To protect and retain trees.</p>						
45.	<p>Hoardings</p> <p>The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.</p> <p>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.</p>						

	<p>Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.</p> <p>Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.</p>
46.	<p>Waste Management Plan</p> <p>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.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
47.	<p>Erosion and Sediment Control</p> <p>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.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
48.	<p>Dilapidation Report</p> <p>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 identified property at 14 Victoria 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.</p> <p>Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
49.	<p>Construction Fencing</p> <p>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.</p> <p>Reason: To protect the built environment from construction works.</p>

DURING BUILDING WORK

Condition							
50.	<p>Tree Protection</p> <p>No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent. Prescribed trees protected by Council's Tree 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 5 metres of the development must be protected in accordance with AS4970—<i>Protection of trees on development sites</i> and Council's Development Fact Sheet—<i>Trees on Development Sites</i>. 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.</p> <p>The existing trees detailed below must be protected throughout construction and development in accordance with all relevant conditions of consent.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Tree Number</th> <th>Species</th> <th>Location</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Jacaranda mimosifolia</td> <td>Rear Yard of 14 Victoria Street</td> </tr> </tbody> </table> <p>Reason: To ensure that trees to be retained are protected.</p>	Tree Number	Species	Location	1	Jacaranda mimosifolia	Rear Yard of 14 Victoria Street
Tree Number	Species	Location					
1	Jacaranda mimosifolia	Rear Yard of 14 Victoria Street					
51.	<p>Inspections by Project Arborist</p> <p>The Project Arborist must oversee various stages of work within the Tree Protection Zone (TPZ) of any tree listed for retention including street trees. The Arborist must certify compliance with each key milestone detailed below:</p> <ol style="list-style-type: none"> a. The installation of tree protection measures prior to the commencement of any construction works; b. During demolition of any ground surface materials (pavers, concrete, grass etc.) within the Tree Protection Zone (TPZ) of any tree to be retained; c. During any excavation and trenching within the TPZ; d. During any Landscape works within the TPZ which has been approved by Council. <p>An Arboricultural Compliance Report which includes photographic evidence and provides details on the health and structure of tree/s must be submitted to and acknowledged by certifying authority at each hold-point listed below:</p> <ol style="list-style-type: none"> a. Certification that tree protection measures have been installed in accordance with these consent conditions b. Certification of compliance with each key milestone listed above within 48 hours of completion; 						

	<p>c. Details of any other works undertaken on any tree to be retained or any works within the TPZ which has been approved by Council.</p> <p>d. A final compliance report must be submitted to and approved by certifying authority prior to the issue of any Occupation Certificate.</p> <p>Reason: To protect and retain trees.</p>						
52.	<p>Limited Root Pruning</p> <p>No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s may be severed or injured in the process of any works during the construction period:</p> <table border="1" data-bbox="435 647 1197 734"> <thead> <tr> <th>Tree No</th> <th>Species</th> <th>Radius in metres</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Jacaranda mimosifolia</td> <td>7.7 metres</td> </tr> </tbody> </table> <p>All excavation within the specified radius of the trunk of the above tree must be hand dug to a depth of 1m under direct supervision of the Project Arborist and then by mechanical means as agreed by the Project Arborist. If tree roots less than 50mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and fit for purpose tool. The pruning must be undertaken by a practicing Arborist.</p> <p>Note – The installation of services must be undertaken using the same method.</p> <p>Reason: To protect and retain trees.</p>	Tree No	Species	Radius in metres	1	Jacaranda mimosifolia	7.7 metres
Tree No	Species	Radius in metres					
1	Jacaranda mimosifolia	7.7 metres					
53.	<p>Arborists standards</p> <p>All tree work must be undertaken by a person holding a minimum Australian Qualification Framework (AQF) Level 3, Certificate of Arboriculture, Arborist. The work must be undertaken in accordance with AS4373—<i>Pruning of amenity trees</i> and the Safe Work Australia Code of Practice—Guide to Managing Risks of Tree Trimming and Removal Work. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved network service provider contractor for the management of vegetation conflicting with such services. Contact the relevant network service provider for further advice in this regard.</p> <p>Reason: To ensure compliance with legislative requirements.</p>						
54.	<p>Tree Protection Works</p> <p>All tree protection for the site must be undertaken in accordance with Council's Development Fact Sheet—<i>Trees on Development Sites</i> and AS4970—<i>Protection of trees on development sites</i>.</p> <p>Reason: To protect and retain trees.</p>						

55.	<p>Works to Trees</p> <p>Approval is given for the following tree/s to be removed:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Tree No.</th> <th style="text-align: left;">Species</th> <th style="text-align: left;">Location</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Morus alba</td> <td>Rear Yard</td> </tr> <tr> <td>2</td> <td>Eucalyptus spp (dead tree)</td> <td>Side yard</td> </tr> </tbody> </table> <p>All tree works shall be undertaken by an arborist with minimum Australian Qualification Framework (AQF) Level 3, Certificate of Arboriculture, as defined by the Australian Qualification Framework and in compliance with Australian Standard AS 4373—<i>Pruning of amenity trees</i> and Safe Work Australia’s Guide to Managing Risks of Tree Trimming and Removal Work.</p> <p>Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) shall be undertaken by an approved network service provider contractor for the management of vegetation conflicting with such services. Contact the relevant network service provider for further advice in this regard.</p> <p>The trees to be removed must be included on all Construction Certificate plans shown in red.</p> <p>Reason: To identify trees permitted to be removed.</p>	Tree No.	Species	Location	1	Morus alba	Rear Yard	2	Eucalyptus spp (dead tree)	Side yard
Tree No.	Species	Location								
1	Morus alba	Rear Yard								
2	Eucalyptus spp (dead tree)	Side yard								
56.	<p>Contamination – New Evidence</p> <p>Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.</p> <p>Reason: To protect the amenity of the neighbourhood from contamination.</p>									
57.	<p>Imported Fill Materials</p> <p>All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, ‘Consultants Reporting on Contaminated Sites’ (August 2011) to ensure the imported fill is suitable for the proposed land use.</p> <p>All fill imported onto the site shall be validated by either one or both of the following methods:</p> <p>Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or</p>									

	<p>Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).</p> <p>Reason: To protect the amenity of the neighbourhood from contamination.</p>
58.	<p>Advising Neighbours Prior to Excavation</p> <p>At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, reasonable notice must be provided to the owner of the adjoining allotment of land including particulars of the excavation.</p> <p>Reason: To ensure surrounding properties are adequately notified of the proposed works.</p>
59.	<p>Survey Prior to Footings</p> <p>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.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
60.	<p>Construction Hours – Class 2-9</p> <p>Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:</p> <p>7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm); 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and at no time on Sundays or public holidays.</p> <p>Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.</p> <p>In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.</p> <p>This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.</p> <p>Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to 8:00am to 12:00pm, Monday to Saturday; and 2:00pm to 5:00pm Monday to Friday.</p> <p>The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works. "Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
61.	<p>Notice to Council to deliver Residential Bins</p> <p>Council is to be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
62.	<p>Certification of Tree Planting</p> <p>Prior to the issue of any Occupation Certificate a Final Landscape Inspection must be carried out and a certificate issued by Council's Tree Assessment Officer. This certificate is required to ensure that all landscaping works, replacement tree planting and rooftop planting have been carried out in accordance with the conditions of this consent and the approved Landscape Plan.</p> <p>To arrange a Final Landscape Inspection please phone 9392-5000 a minimum of 48 hours prior to the required inspection date. An inspection fee will be charged in accordance with the current schedule of rates listed on Council's website. Any secondary inspections will incur a reinspection fee.</p> <p>Trees required by this condition must be maintained and protected until they are protected by Council's Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.</p> <p>Reason: To ensure appropriate landscaping is undertaken.</p>
63.	<p>Project Arborist Certification</p> <p>Prior to the issue of an Occupation Certificate, the Certifying Authority is to be provided with certification from the Project Arborist that the requirements of the conditions of consent related to the landscape plan/approved tree planting plan and the role of the project arborist have been complied with.</p> <p>Reason: To ensure the protection and ongoing health of trees to be retained.</p>
64.	<p>Noise – Acoustic Report</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the Protection of the Environment Operations Act 1997 and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.</p>

	<p><i>Note: In special entertainment precincts, this condition applies to noise and vibration from plant equipment and machinery only.</i></p> <p>Reason: To ensure compliance with the relevant Australian Standard.</p>
65.	<p>Contamination – Disposal of Soil</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the Protection of the Environmental Operations Act 1997.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
66.	<p>Contamination – Validation (No Site Audit Statement Required)</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier and Council must be provided with a Site Validation Report prepared by a suitably qualified environmental consultant with experience in land contamination.</p> <p>The Validation report must be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines Consultants Reporting on Contaminated Sites and must confirm that the site has been remediated in accordance with the Remedial Action Plan and clearly state that the site is suitable for the proposed use.</p> <p>Reason: To protect the amenity of the neighbourhood from contamination.</p>
67.	<p>Public Domain Works</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the Roads Act 1993 including:</p> <ol style="list-style-type: none"> a. Light duty concrete vehicle crossing at the vehicular access location; and b. Other works subject to the Roads Act 1993 approval. <p>All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".</p> <p>Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.</p>
68.	<p>No Encroachments</p> <p>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.</p> <p>Reason: To maintain and promote vehicular and pedestrian safety.</p>

69.	<p>Protect Sandstone Kerb</p> <p>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.</p> <p>Reason: To ensure Council assets are protected.</p>
70.	<p>Parking Signoff – Minor Developments</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.</p> <p>Reason: To ensure parking facilities are designed in accordance with the Australian Standard and council's specifications.</p>
71.	<p>Dilapidation Report</p> <p>Prior to the issue of an Occupation Certificate, the Certifying Authority and owners of identified properties must be provided with a second colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of the identified property at 14 Victoria 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.</p> <p>Reason: To determine potential construction impacts.</p>

OCCUPATION AND ONGOING USE

Condition	
72.	<p>Tree Establishment</p> <p>If the tree planted as a part of this consent is found dead or dying before it reaches dimensions where it is subject to the Tree Management DCP it must be replaced in accordance with the relevant conditions.</p> <p>Reason: To protect and retain trees.</p>
73.	<p>Noise General</p> <p>The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>
74.	<p>Use of the ground floor</p> <p>The ground floor of the dwelling house is not to be used as a separate domicile without separate development consent from Council and is to be utilised in conjunction with the approved dwelling house. No kitchen, kitchenette, cooking facilities or the like are to be installed within the structure.</p> <p>Reason: To ensure the use of the structure is commensurate with its approval.</p>

Attachment C – Plans of proposed development

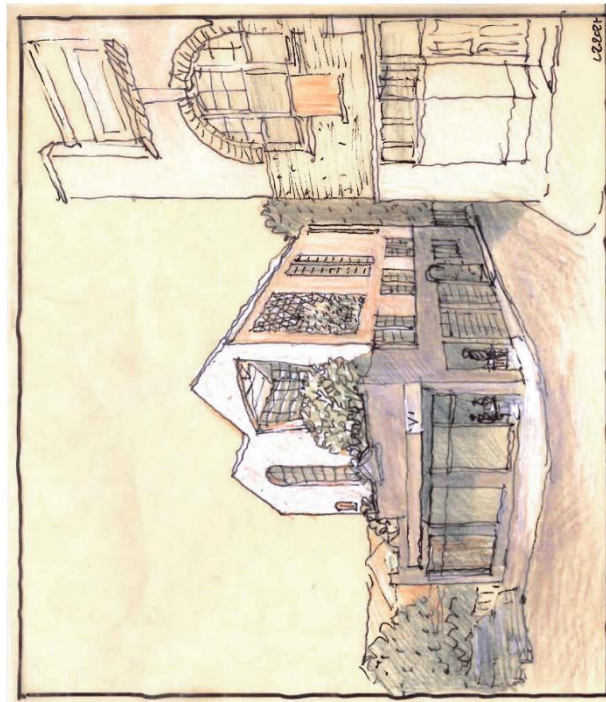
10 VICTORIA STREET, LEWISHAM

- ALTERATIONS AND ADDITIONS TO EXISTING DWELLING

DEVELOPMENT APPLICATION

ref: 2349

November 2024



note: images are for illustrative purposes only

BASIX certificate requirements - Certificate number: A1751493

Hot Water
The applicant must install the following hot water system in the development: solar (gas boosted) system that is eligible to create Renewable Energy Certificates under the Renewable Energy Regulations 2001.

Lighting & Fixtures
The applicant must ensure a minimum of 40% of new or altered light fixtures are filled with fluorescent, compact fluorescent, or light-emitting diode (LED) lamps. New or altered fluorescent, halos and spot lights must have a minimum 3 star rating.

Insulation Requirements
The applicant must ensure construction (walls, roofs and eaves/verandahs) in accordance with the specifications listed in the table in the BASIX certificate.

Windows, glazed doors and skylights
The applicant must ensure windows and skylights details described in the table in the BASIX certificate. In accordance with the specifications listed in the table. Relevant overhauling specifications must be satisfied for each window and glazed door.

Amendments dated 20.08.2024
DA03 + DA11 show generic commercial premises
demolition plan added

Amendments dated 07.11.2024
larger commercial premises + back of house (B.O.H.) with updated RL and bin area to replace previously proposed garage / paint area. updated 305 vehicle swept path, changes to rear southern boundary wall.

DA04 + DA05 obscure glazing to southern windows, landscape schedule
DA06 rear setback to follow grid to allow for CLT construction
DA07 - DA10 facade restoration details, demolition lines, 3D street view perspective, changes to rear southern boundary wall, changes to rear southern boundary wall, changes to rear wall and door, obscure glazing to operable fire rated windows
DA11 updated garage and commercial RL on Ground Floor
DA13 updated FSR calculations
DA14 - DA18 amendments to shadow diagrams

Amendments dated 28.11.2024
DA03 retain full length of on street parking by pushing back garage wall to allow for swept path
DA04 playroom area to be given over to commercial space to accommodate a 3.3m floor to ceiling height. Playroom area to become high level storage
DA07 annotation on original windows to the front facade
DA09 removal of 2 windows to account for the 3.3m floor to ceiling height in the commercial space
DA11 updated floor to ceiling height in the commercial area

Site details
address : 10 Victoria Street, Lewisham, 2049
property : 2/0P228318
council zoning : E1 Local Centre
site area : 222.3 m²
FSR 2.2 ZAF
proposed GFA : 417.8m²

drawing list	drawing list
DA00	cover
DA01	site analysis plan
DA02	site & roof plan
DA03	ground floor plan
DA04	first floor plan
DA05	second floor plan
DA06	mazzarina floor plan
DA07	east elevation
DA08	west elevation
DA09	north elevation
DA10	south elevation
DA11	section AA
DA12	section BB
DA13	sections & 4dr controls
DA14	shadow diagrams 12pm
DA15	shadow diagrams 3pm
DA16	shadow diagrams 12pm
DA17	shadow diagrams 3pm
DA18	shadow diagrams 3pm
DA19	shadow diagrams 3pm
DA20	street view
DA21	demolition plan

finishes & notations legend

al	aluminum
ap	aluminum
dp	downpipe
cr	concrete render/painted
g	existing ground level
EG	existing ground level
FLL	finished floor level
FSR	floor space ratio
frtz	fridge/freezer
HWU	hot water unit
J	joinery
metal roofing	metal roofing
ml	metal
RL	relative level
rwh	rainwater head
SK	sky light

materials legend

glass	stone
timber	metal
concrete	existing walls to be retained
brick	existing walls to be demolished
roof tiles	roof tiles

date	description
A 17.06.24	da
C 07.11.24	council RFI
D 28.11.24	council RFI

The Contractor shall verify all dimensions & levels on the site.
Within dimensions to take preference over the Architect's drawings.
Documents & design remain the copyright of the Architect & cannot be reproduced without written consent.

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AWR 2349
NSW REG NO. 6885

cover page
alterations + additions
10 victoria street, lewisham

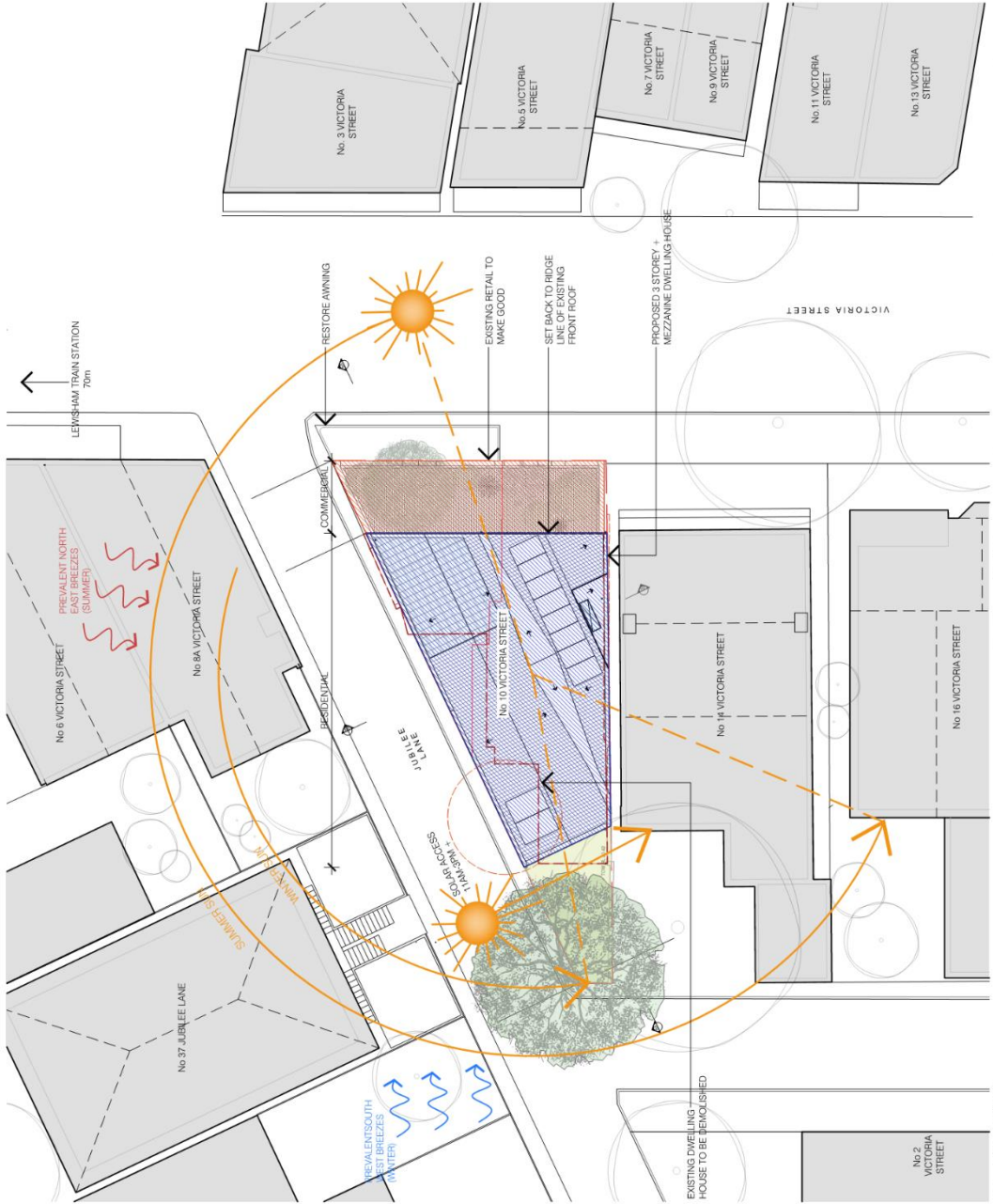


DA00
scale 1:200
project 11/20/2024 2:10 PM
sheet 01/01 cover.dwg
2349



02 site photo
nts

- LEGEND
- - - To be removed/demolished
 - Existing building footprint
 - Proposed building footprint
 - Proposed landscaped area



01 site analysis
1:200



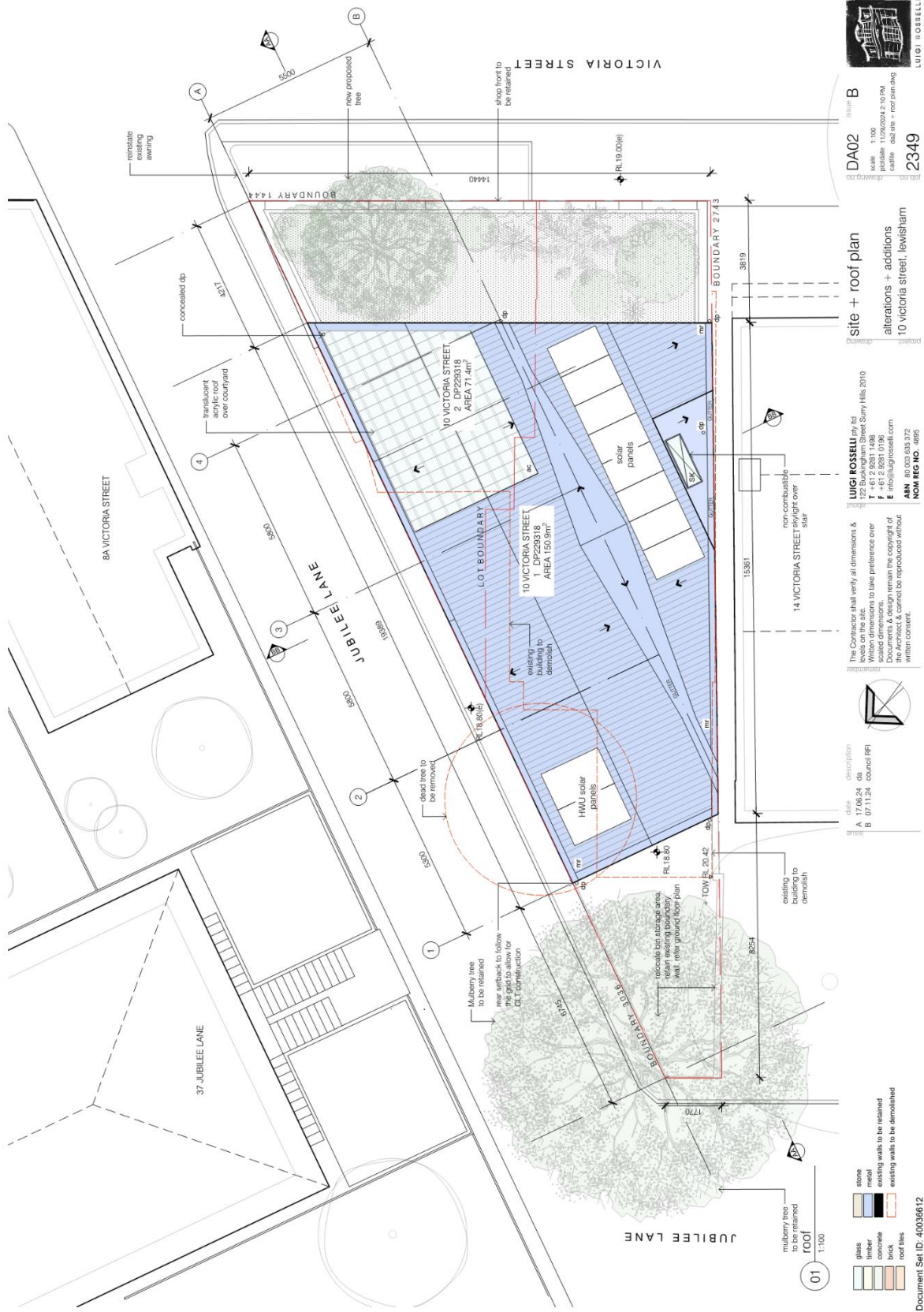
DA01
1:200
11/20/2024 2:10 PM
2349

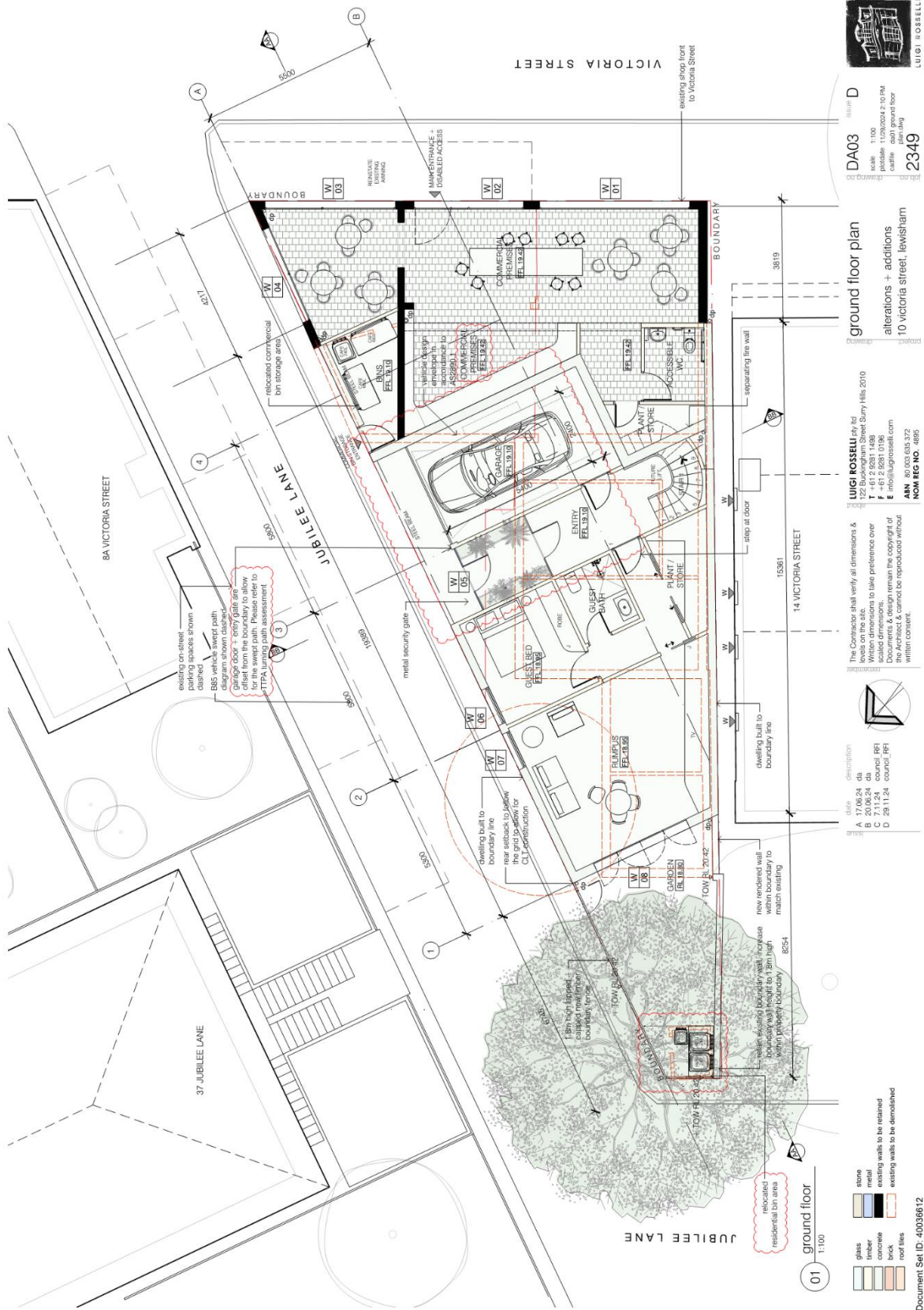
site analysis
alterations + additions
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NCA REG NO: 4895

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date	description
A 17/06/24	da





DA03
 scale: 1:100
 project: 1/20/2024 2:10 PM
 sheet: ground floor
 plan key
2349

ground floor plan
 alterations + additions
 10 victoria street, lewisham

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 NSW REG NO. 392
 NCM REG NO. 4895

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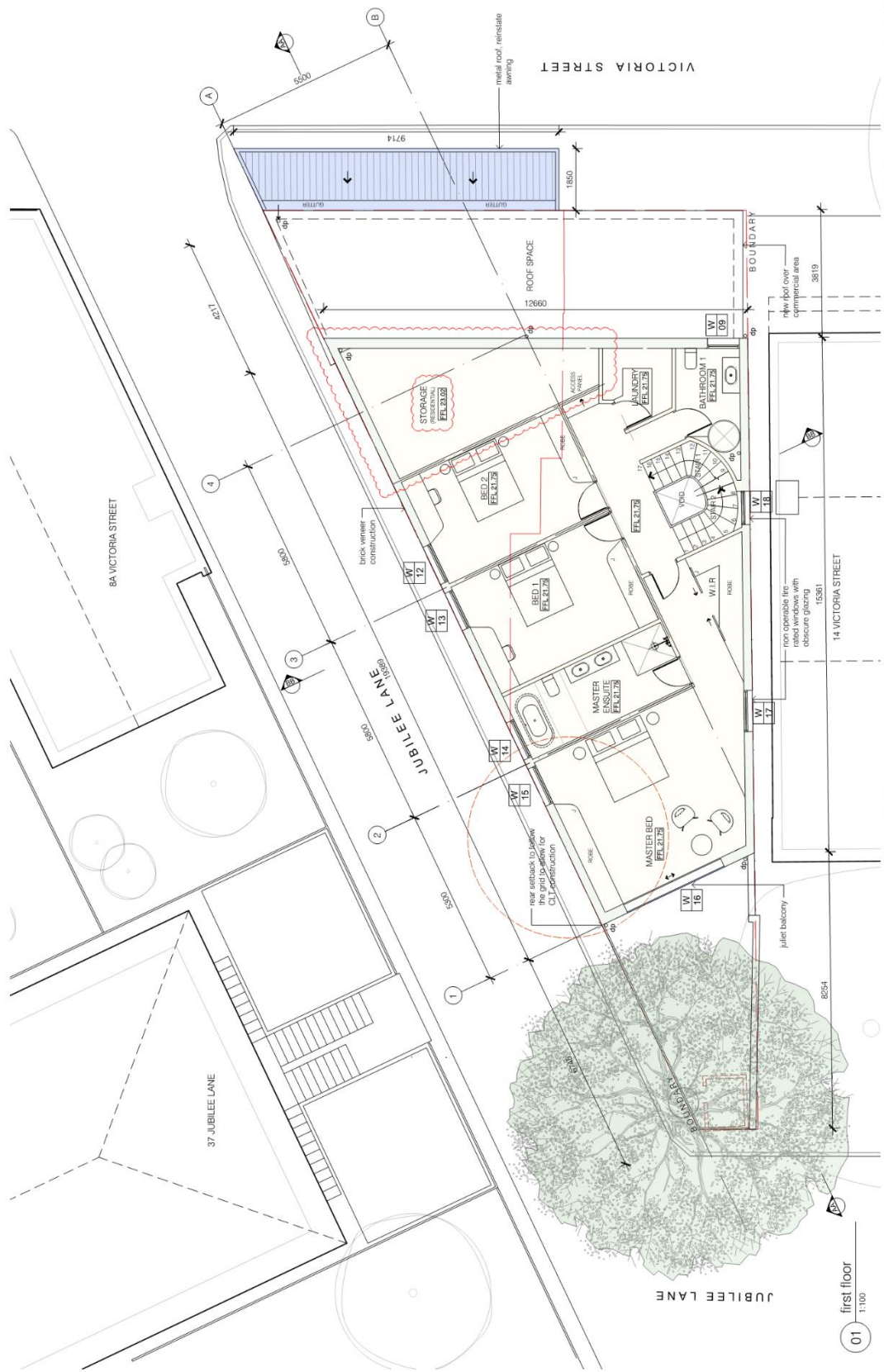


date	description
A 17/06/24	da
C 7/11/24	council RFI
D 29/11/24	council RFI

01 ground floor
 1:100

	stone
	metal
	existing walls to be retained
	existing walls to be demolished
	glass
	timber
	stone
	brick
	roof tiles

Document Set ID: 40038612
 Version: 1, Version Date: 17/01/2025



DA04
 Scale: 1:100
 Plot Date: 11/20/2024 2:10 PM
 Author: luigi.rosselli@ipm.com.au
2349

first floor plan
 alterations + additions
 10 victoria street, lewisham

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 E info@luigirosselli.com
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 NCM REG NO. 4895

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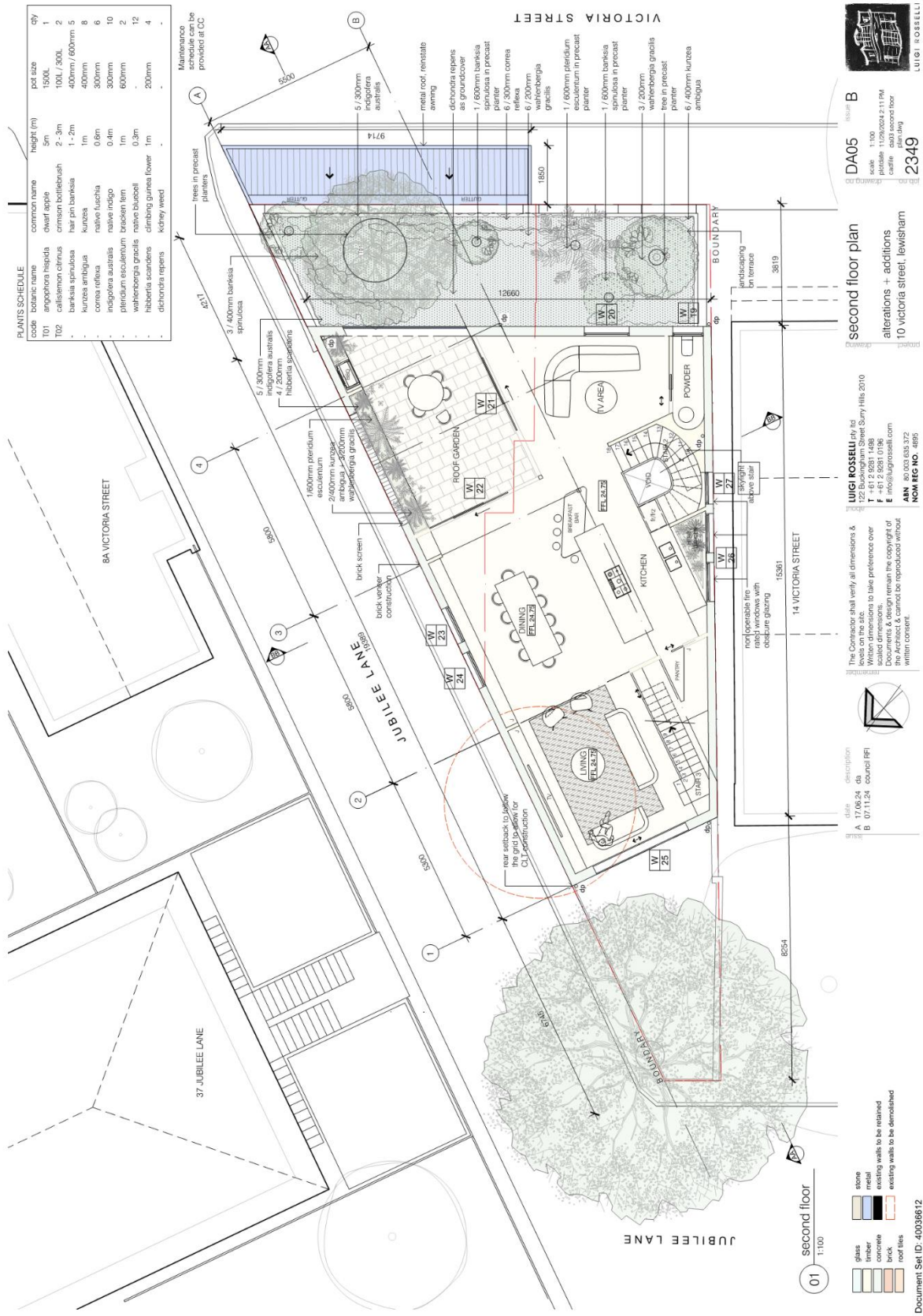


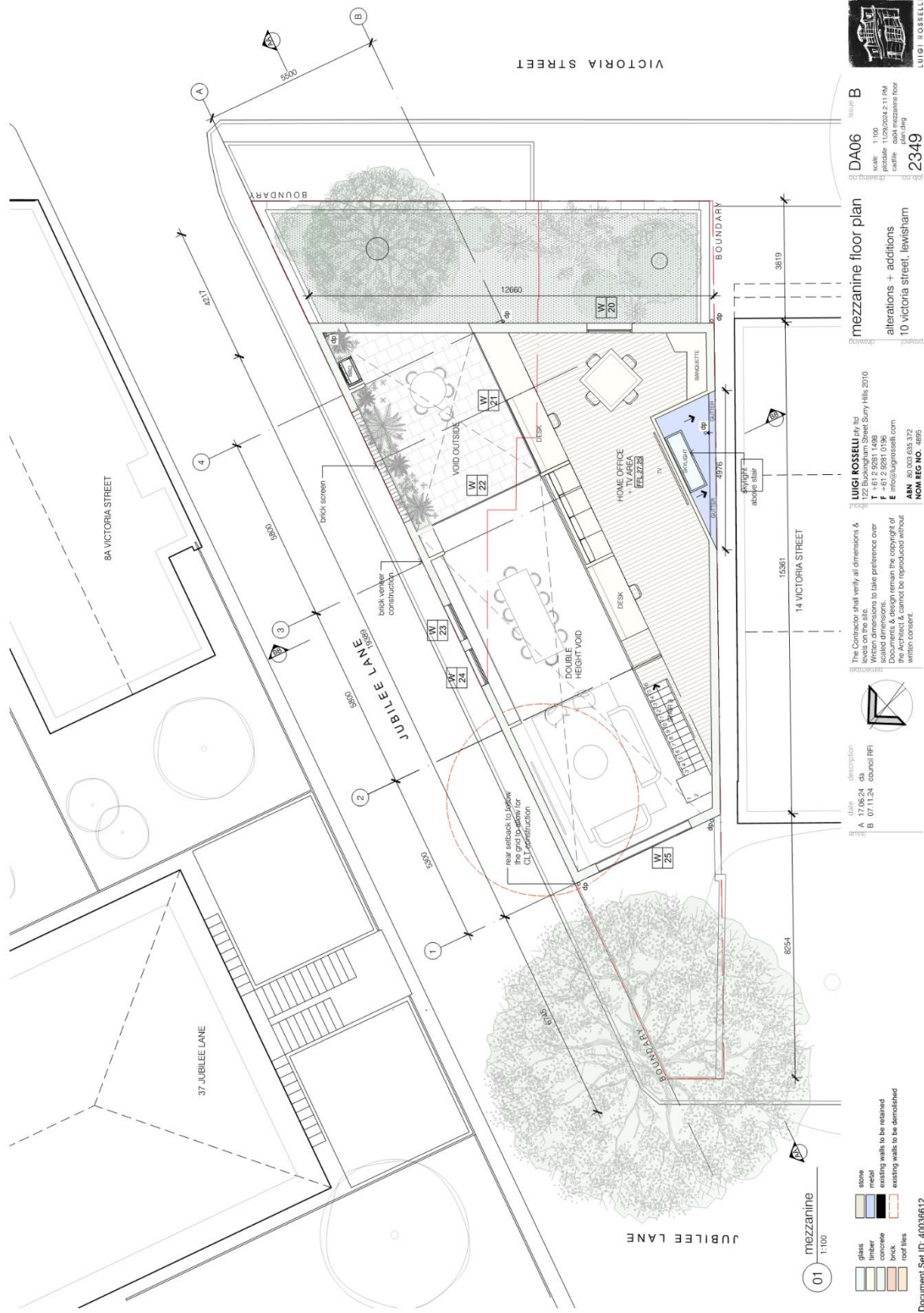
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A 17/02/24	drawn (RFI)
B 20/11/24	checked (RFI)
C 20/11/24	checked (RFI)

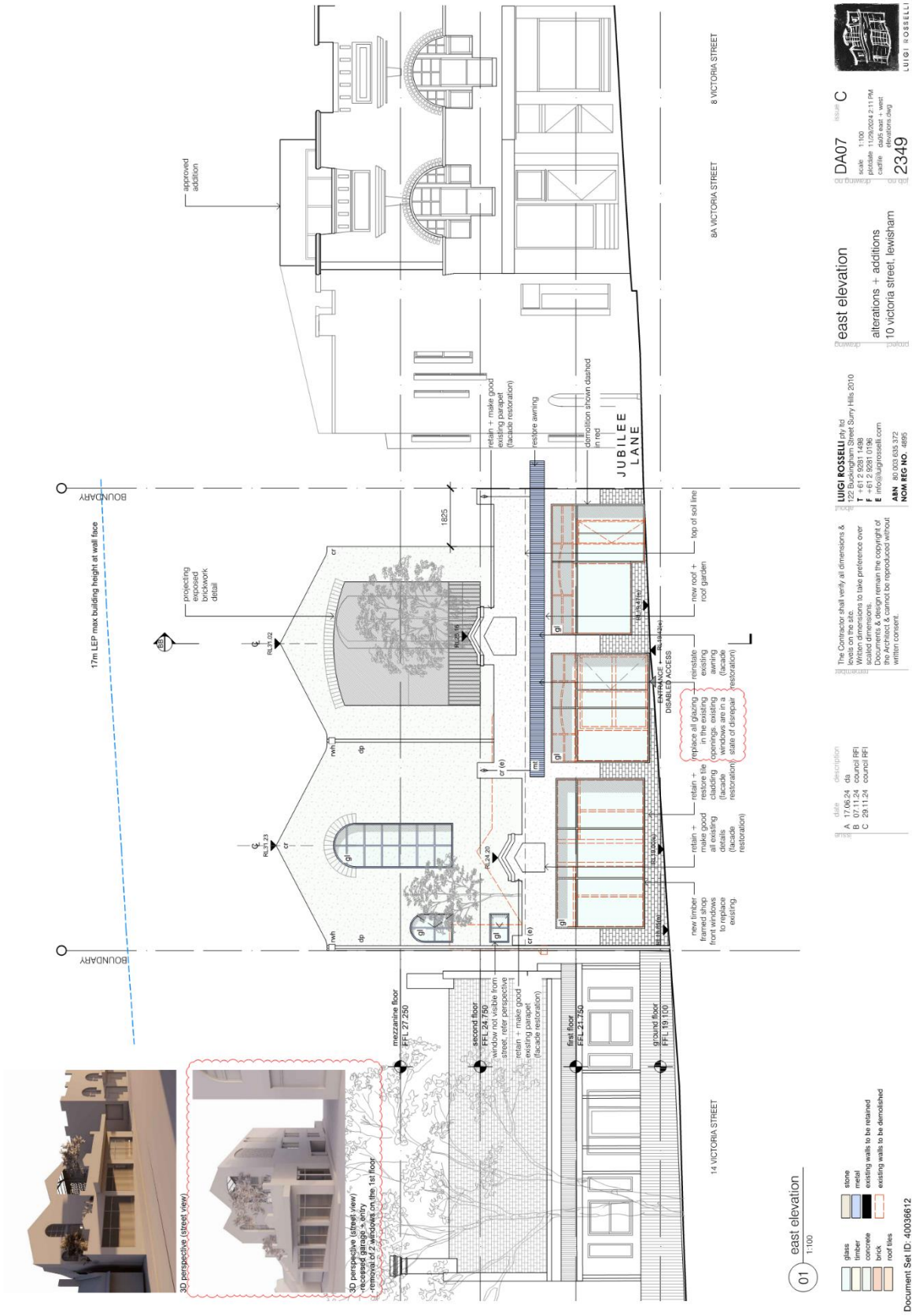
01 first floor
 1:100

	stone
	metal
	concrete
	existing walls to be retained
	new walls to be retained
	existing walls to be demolished
	glass
	timber
	stone
	brick
	roof tiles

Document Set ID: 40038612
 Version: 1, Version Date: 17/01/2025







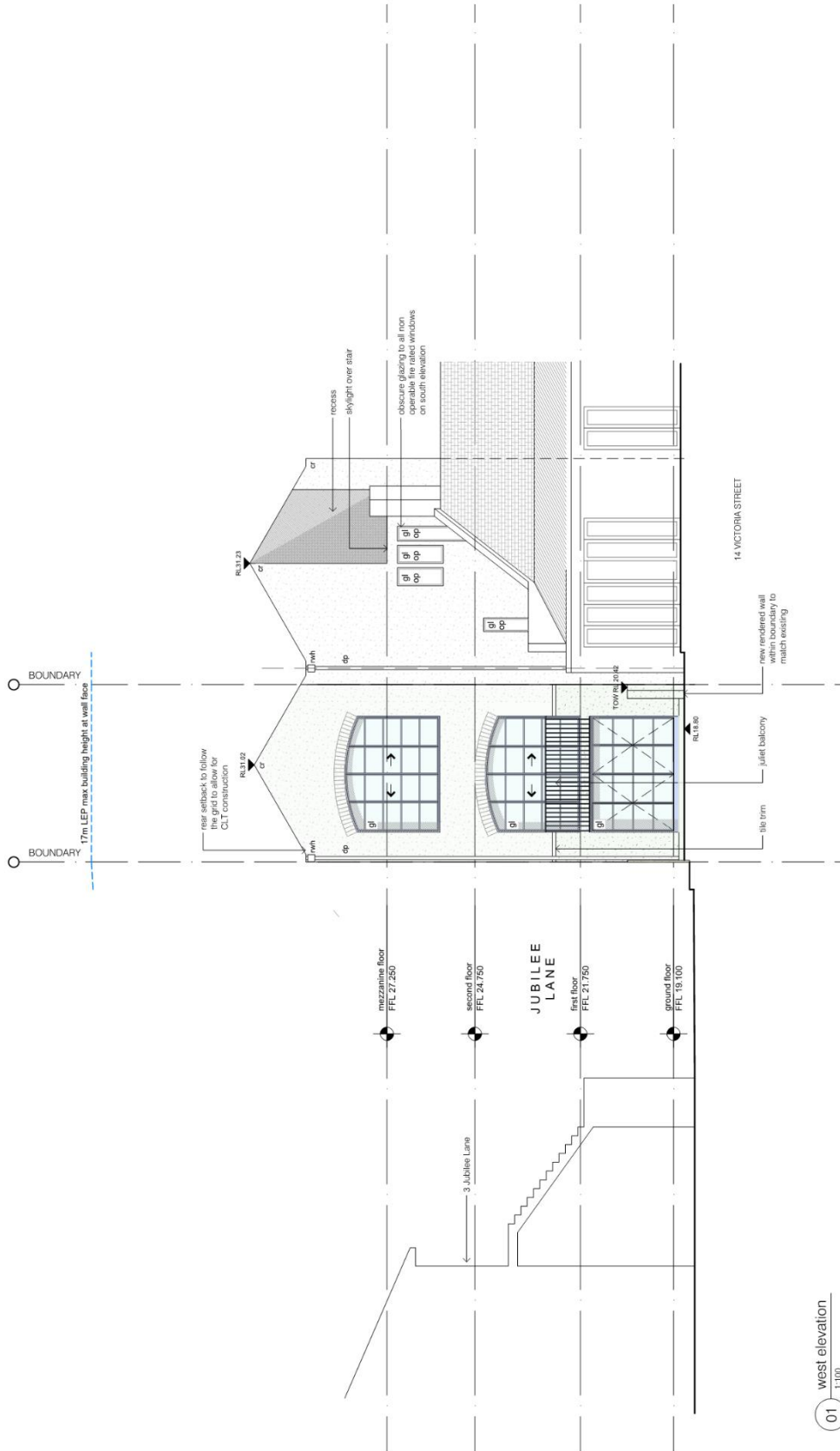
DA07
scale: 1:100
project: 11/20/2024 2:11 PM
author: luigi.rosselli
file: elevations.dwg
2349

east elevation
alterations + additions
10 victoria street, lewisham

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ACA REG NO: 4895

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date description
A 17.06.24 da
B 17.06.24 da
C 20.11.24 ca
C 20.11.24 ca



01 west elevation
1:100

- glass
- timber
- stone
- brick
- roof tiles
- stone
- metal
- existing walls to be retained
- existing walls to be demolished

Document Set ID: 40038612
Version: 1, Version Date: 17/01/2025

date	description
A 17/06/24	ds
B 07/11/24	coordinal RFI

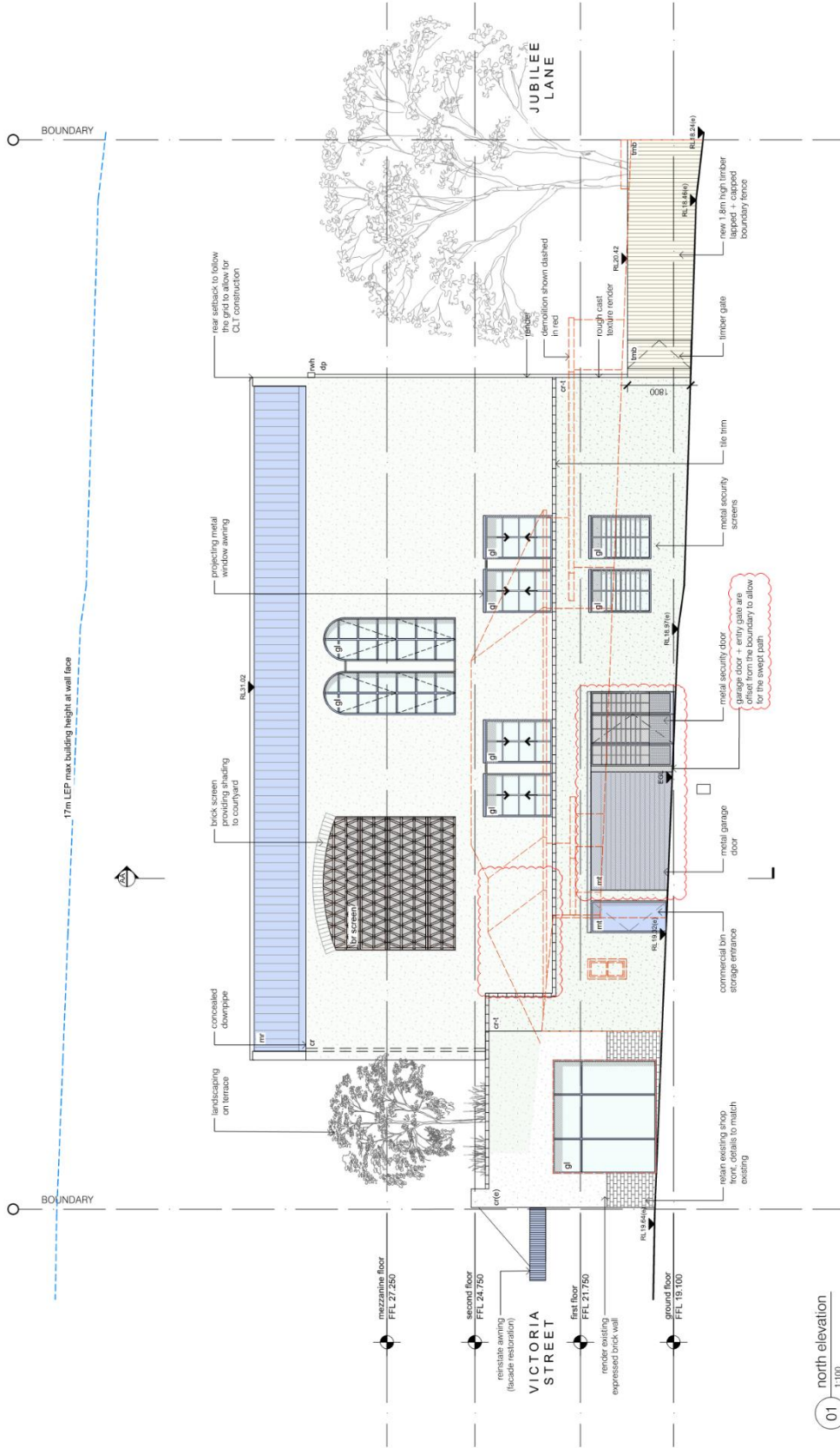
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NSW REG NO. 4895

west elevation
alterations + additions
10 Victoria Street, lewissham

DA08 RSH B
scale: 1:100
project: 1/20/2024-2:11 PM
client: ioh west elevation.dwg
2349





DA09
 scale: 1:100
 project: 1/20/2024-2:11 PM
 date: 1/20/2024
 north elevation only

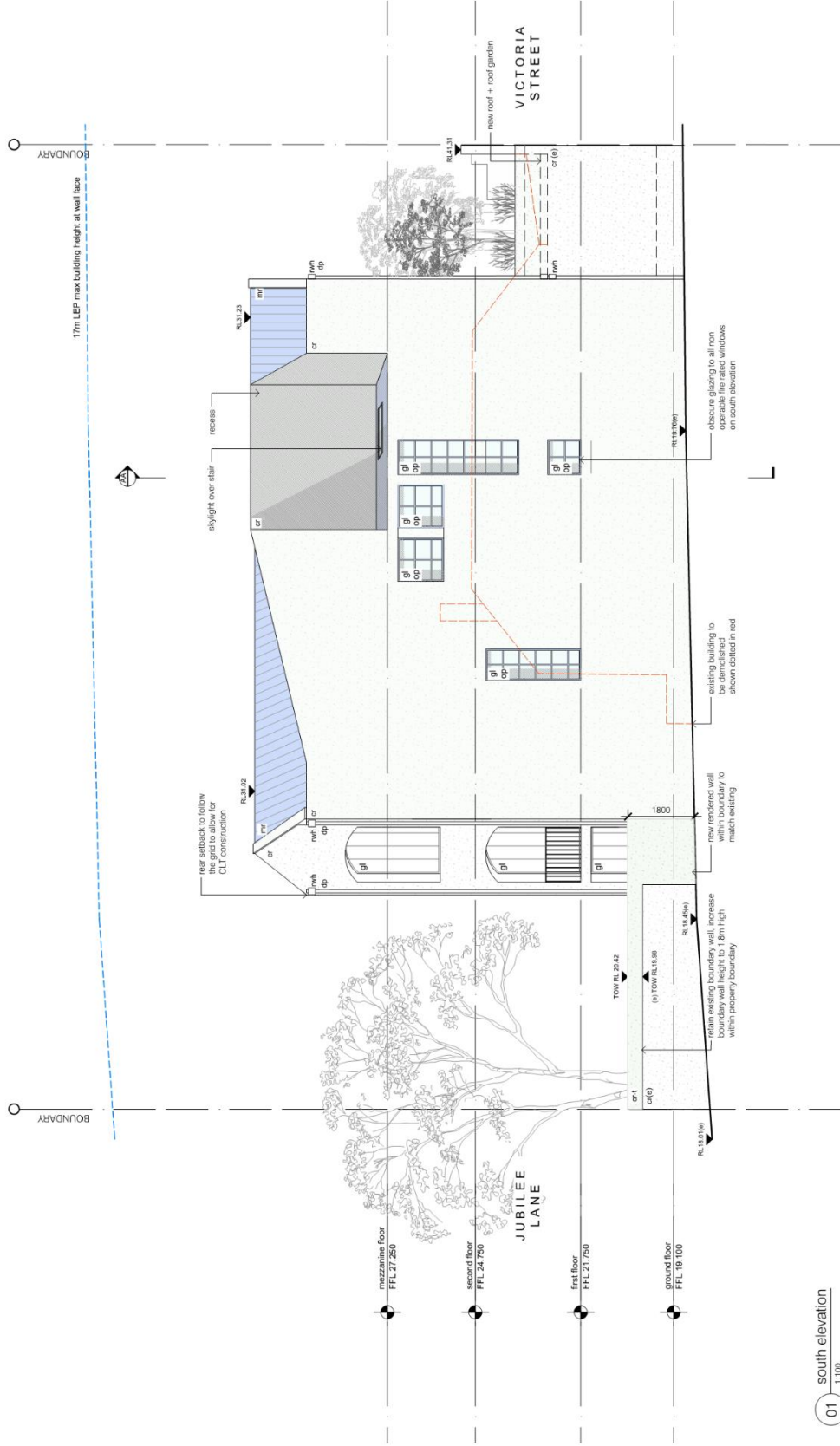
north elevation
 alterations + additions
 10 victoria street, lewisham

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date	description
A 17/06/24	initial RFI
B 18/06/24	initial RFI
C 20/11/24	initial RFI

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 E info@luigirossetti.com
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 NCM REG NO. 4895

Document Set ID: 40038612
 Version: 1, Version Date: 17/01/2025



01 south elevation
1:100

- glass
- timber
- existing walls to be retained
- stone
- brick
- roof tiles
- stone
- metal
- existing walls to be retained
- brick
- roof tiles

Document Set ID: 40036612
Version: 1, Version Date: 17/01/2025



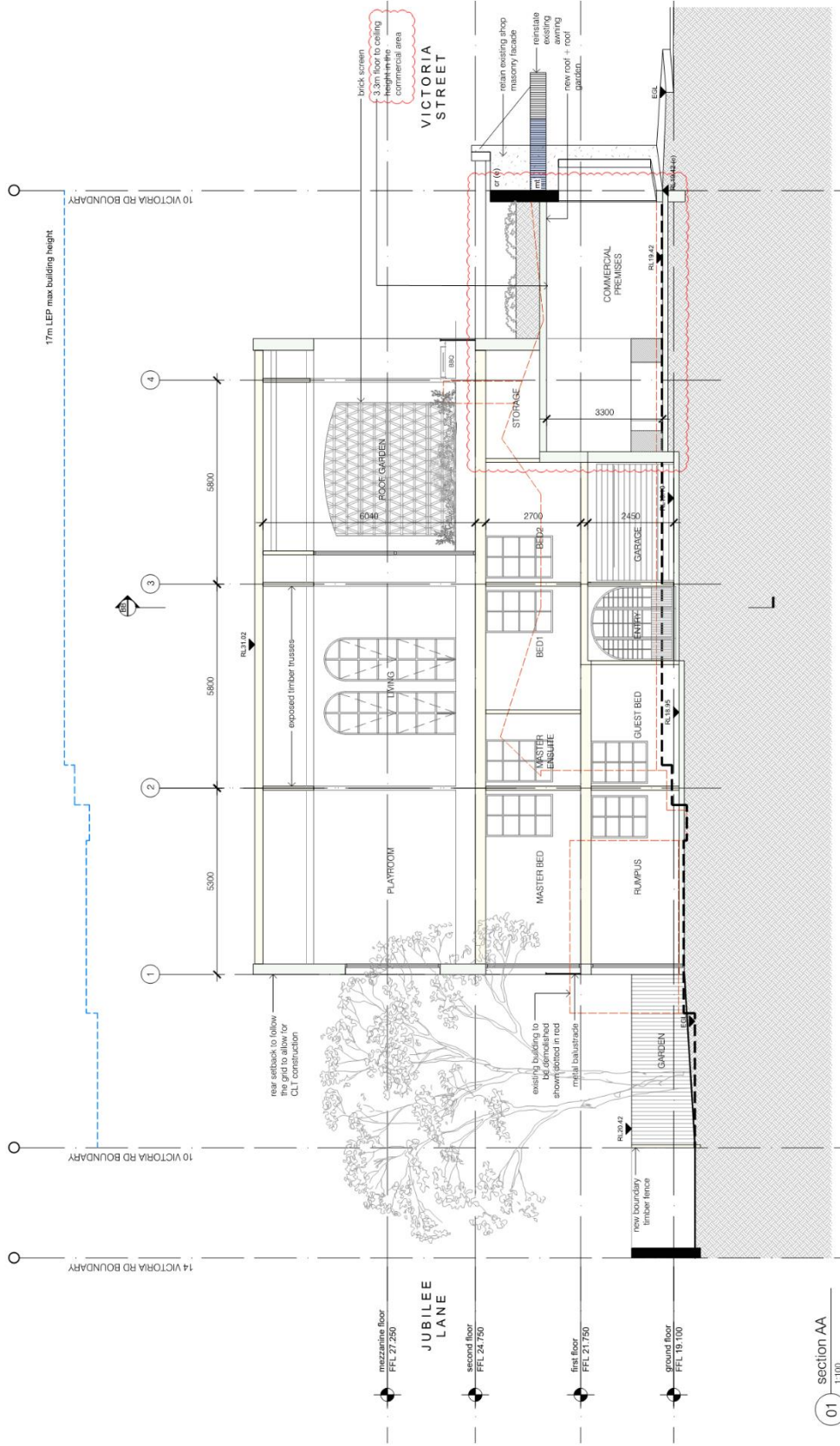
DA10 RSH B
scale: 1:100
project: 17/01/2025 2:12 PM
client: LUIGI ROSSELLI

2349
south elevation
alterations + additions
10 victoria street, lewisham

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date	description
A 17/06/24	db
B 07/11/24	coordinal RFI



DA11 DA11
 scale: 1:100
 project: 11/20/2024 2:13 PM
 date: 11/01/2025

section aa
 alterations + additions
 10 victoria street, lewisham

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 E info@luigirosselli.com
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 NCM REG NO. 4895

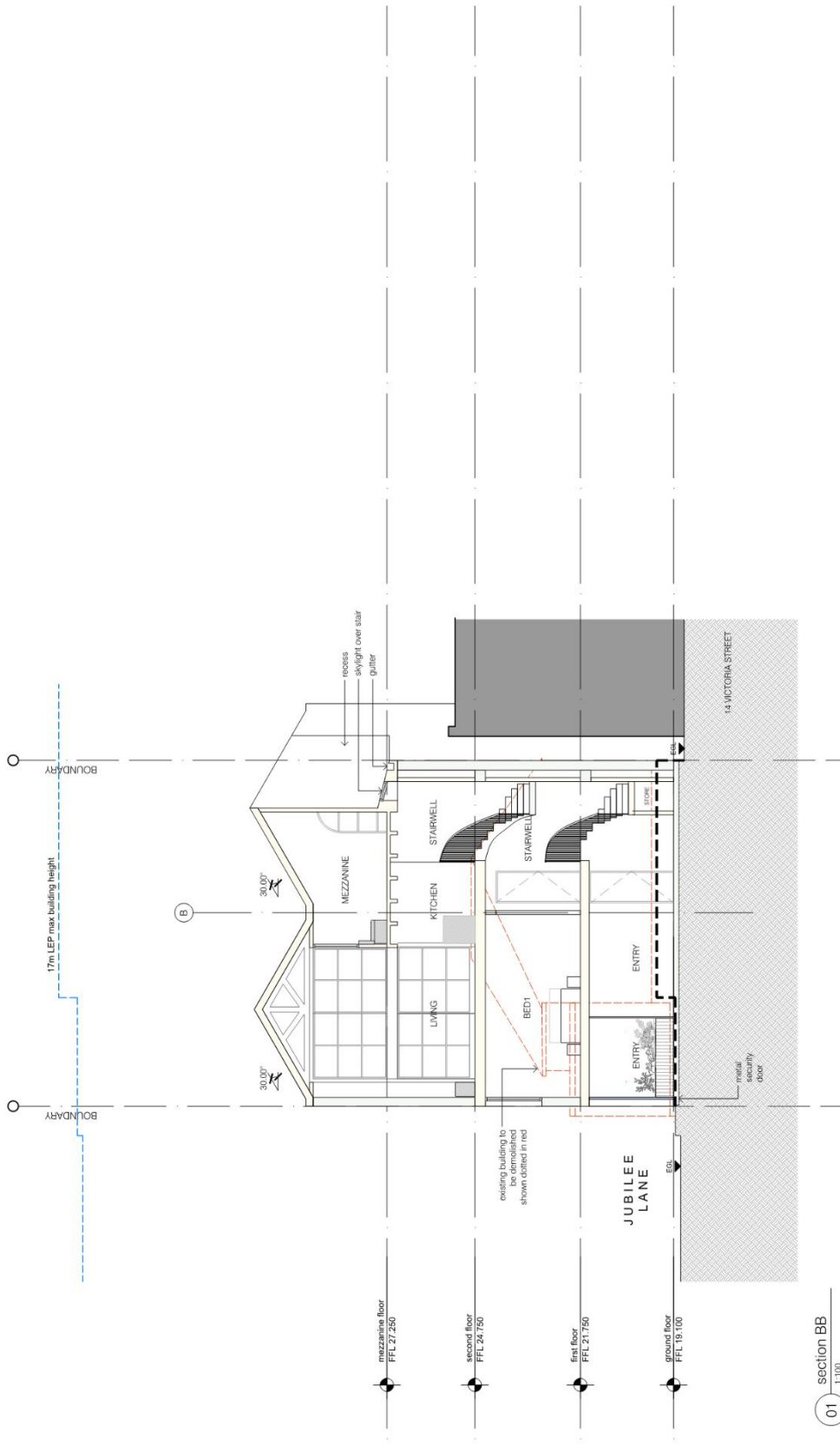
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date	description
A 17/06/24	da
B 17/06/24	da
C 07/11/24	council RFI
D 29/11/24	council RFI

Document Set ID: 40038612
 Version: 1, Version Date: 17/01/2025

01 section AA 1:100

- stone
- metal
- brick
- roof tiles
- glass
- timber
- existing walls to be retained
- new walls to be retained
- existing walls to be demolished
- new roof
- existing roof to be demolished



LUIGI POSSELLI

DA12 DA12
 scale: 1:100
 created: 11/20/2024 2:12 PM
 author: da12 section bb.dwg
 2349

section bb
 alterations + additions
 10 victoria street, lewisham

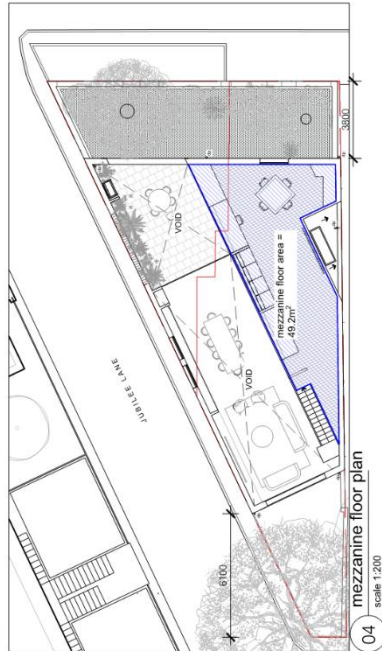
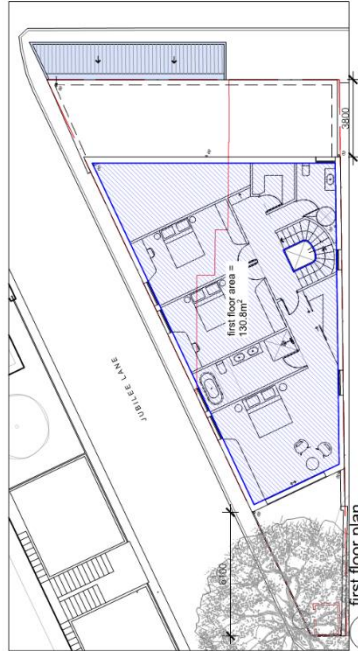
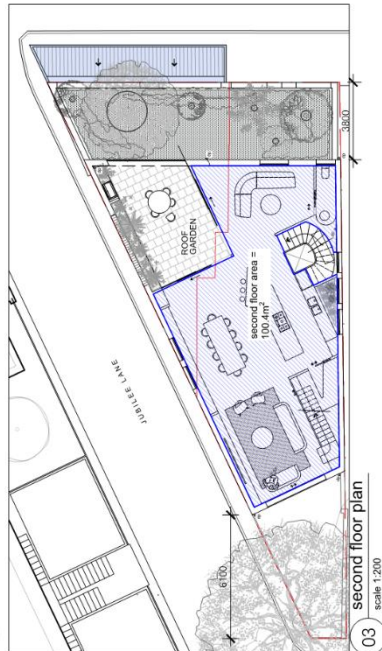
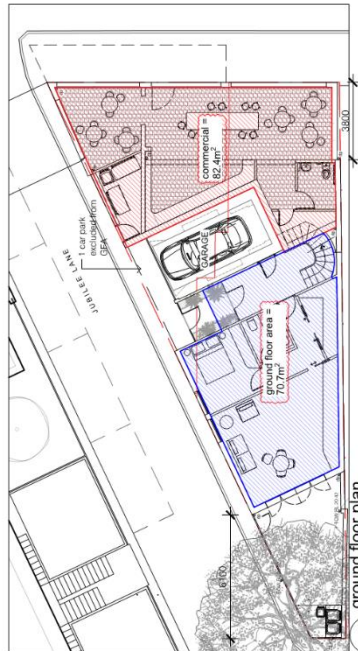
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date	description
A 17/06/24	da

01 section BB
 1:100
 Document Set ID: 40038612
 Version: 1, Version Date: 17/01/2025

COMPLIANCE TABLE				
LEP	CONTROL	EXISTING	PROPOSED	COMPLIANCE
Building height:	17m	6.05m	12.05m	complies
FSR (Zone TS 2.2.1)	488m ² GFA	144.2m ² GFA	433.5m ² GFA	complies
DCP	CONTROL	EXISTING	PROPOSED	COMPLIANCE
Front setback (upper fl):	3m	n/a	3.6m	complies
Rear setback:	6.3m	6.3m	6.1m	complies
LEGEND		COMMERCIAL GFA		
		GFA		



date	description
A 17.06.24	da
B 07.11.24	control PFI

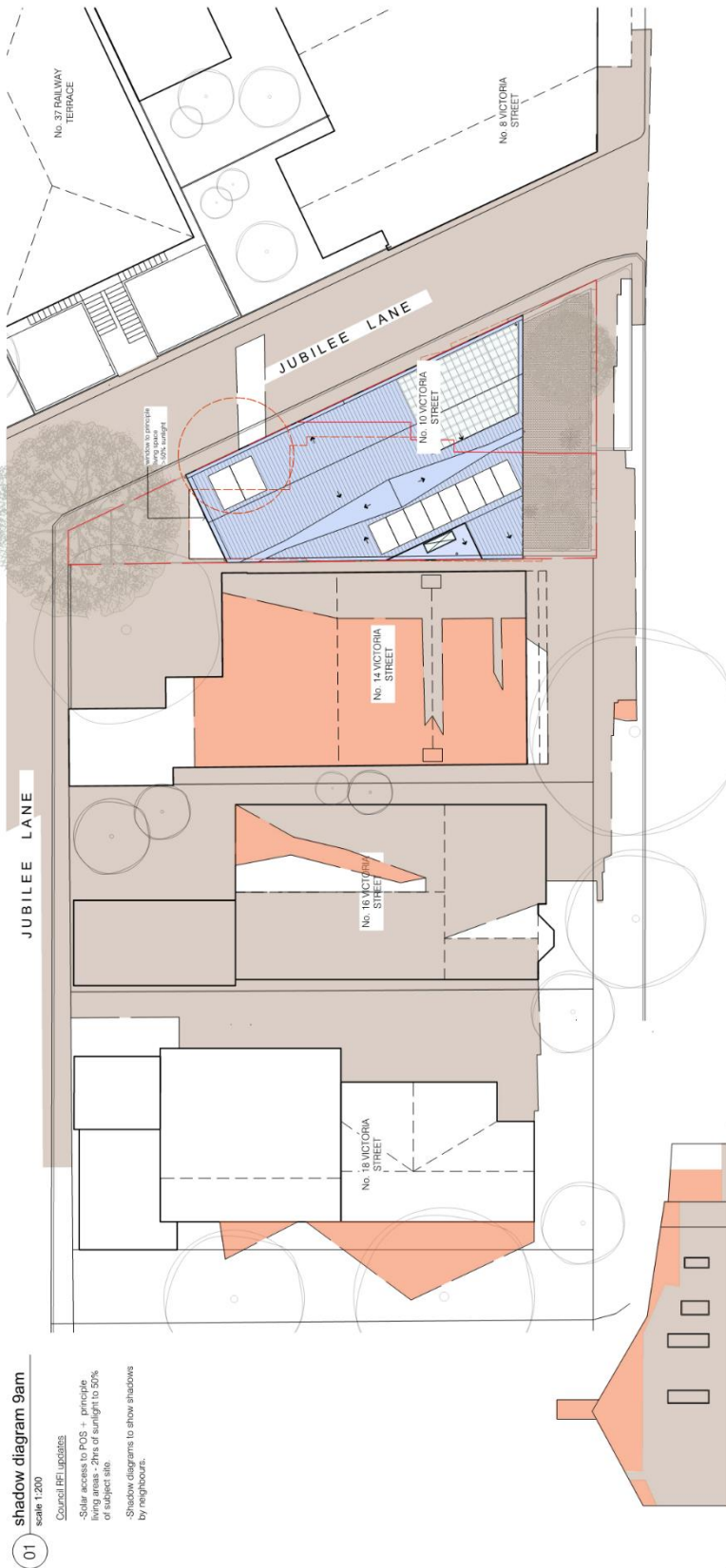
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DA13
scale 1:200
prodate 11/20/2024 2:12 PM
author calculations.dwg
2349



area calculations
alterations + additions
10 victoria street, lewisham

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AWA 10/10/2024 3:32
NCA REG NO. 4895



01 shadow diagram 9am
 scale 1:200
 Council IBEI updates
 -Solar access to POS + principle living areas - 2hrs of sunlight to 50% of subject site.
 -Shadow diagrams to show shadows by neighbours.

02 No. 14 Victoria Street - june elevational shadow 9am
 scale 1:200

shadows projected by existing context

shadows projected by proposed building

deleted shadows

NOTE:
 drawing based on site survey and where unavailable, estimates from aerial photos, DCP/LEP maps and department of land maps

scale 1:200
 Document Set ID: 40036612
 Version: 1, Version Date: 17/01/2025



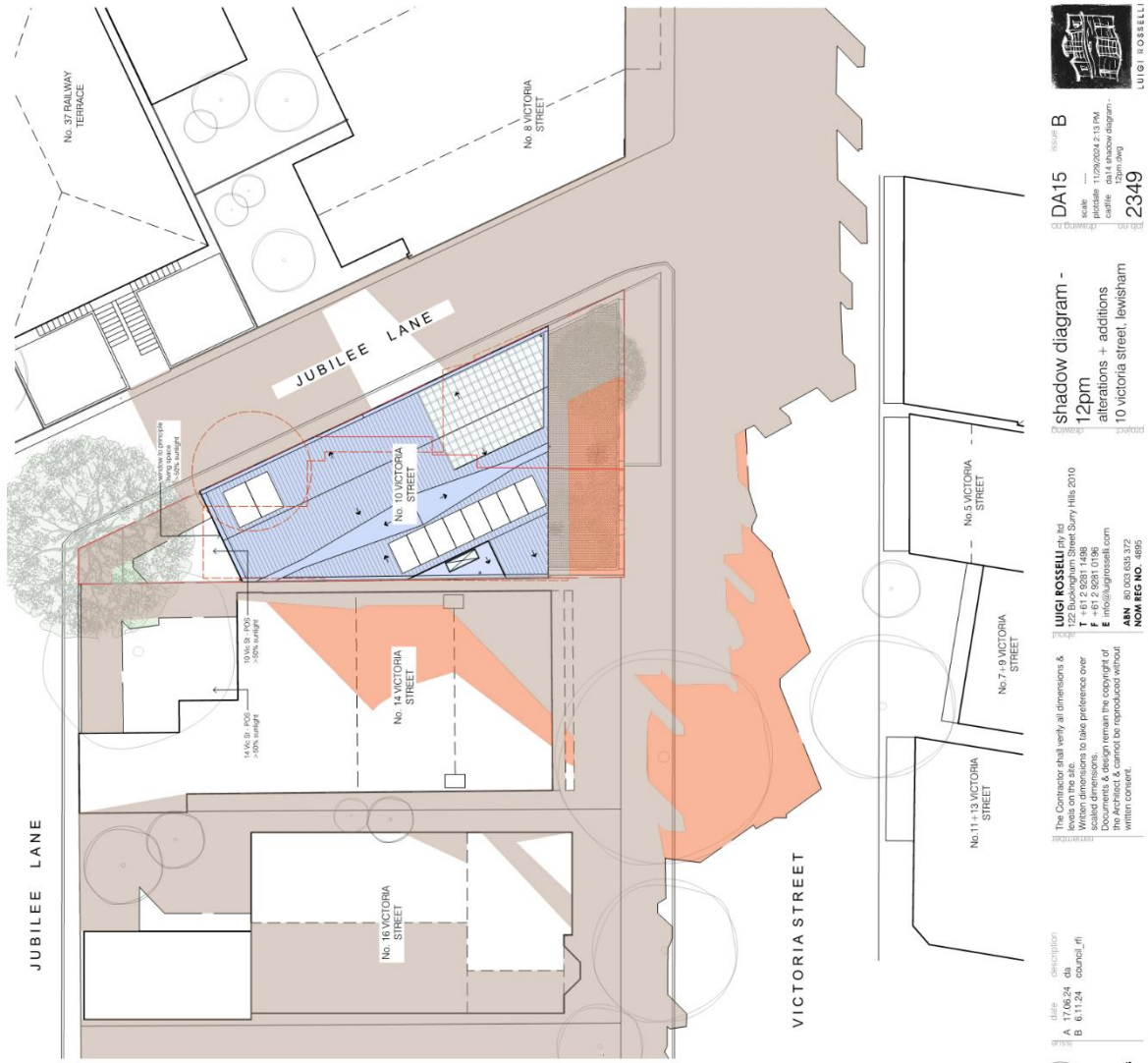
DA14 RSH B
 scale 1:200/200A 2:13 PM
 date 17/01/2025
 author luigi fosselli
 title shadow diagrams - 9am day
2349

shadow diagram - 9am
 alterations + additions
 10 victoria street, lewisham

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date	description
A 17/06/24	da
B 07/11/24	coord_rn

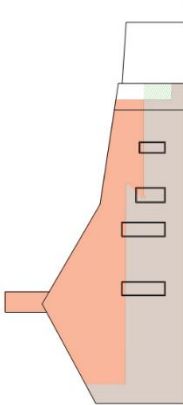


01 shadow diagram 12pm

scale 1:200

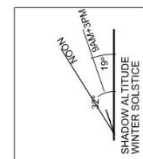
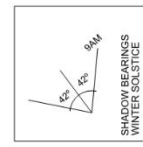
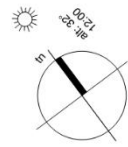
Council BEI updates

- Solar access to POS in principle living areas - 2hrs of sunlight to 50% of subject site.
- Shadow diagrams to show shadows by neighbours.

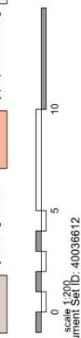


02 No. 14 Victoria Street - June elevational shadow 12pm

scale 1:200



NOTE:
drawing based on site survey and where unavailable, estimates from aerial photos, DCP/LEP maps and department of land maps



scale 1:200 - 40036612
Version: 1, Version Date: 17/01/2025



date	description
A 17.06.24	da
B 6.11.24	da

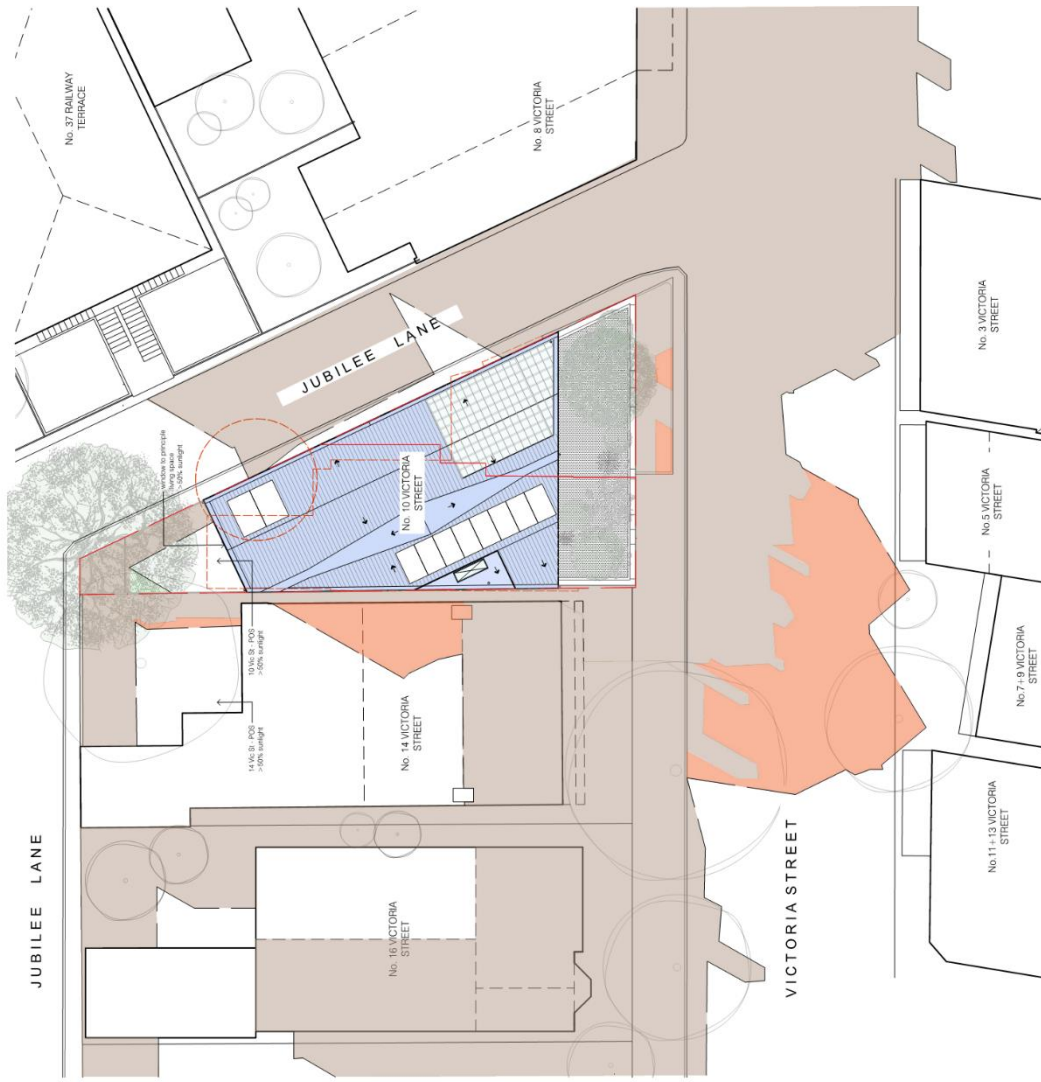
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NSW REG NO. 4895

shadow diagram -
12pm
alterations + additions
10 victoria street, lewisham

DA15
RSH B
scale 1:100/200/2:13 PM
12pm.dwg
2349

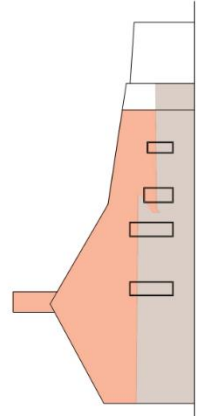




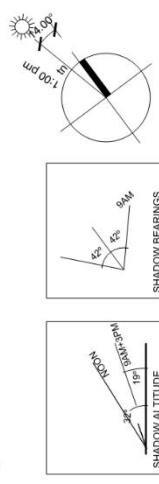
01 shadow diagram 1pm
 scale 1:200

Council BEI updates

- Solar access to POS + principle living areas - 2hrs of sunlight to 50% of subject site.
- Shadow diagrams to show shadows by neighbours.



02 No. 14 Victoria Street - june elevational shadow 1pm
 scale 1:200



shadows projected by existing context

shadows projected by proposed building

deleted shadows

NOTE:
 drawing based on site survey and where unavailable, estimates from aerial photos, DCP/LEP maps and department of land maps

scale 1:200 - 40038612

Version: 1, Version Date: 17/01/2025

date	description
A 17.06.24	da
B 6.11.24	coord_rn

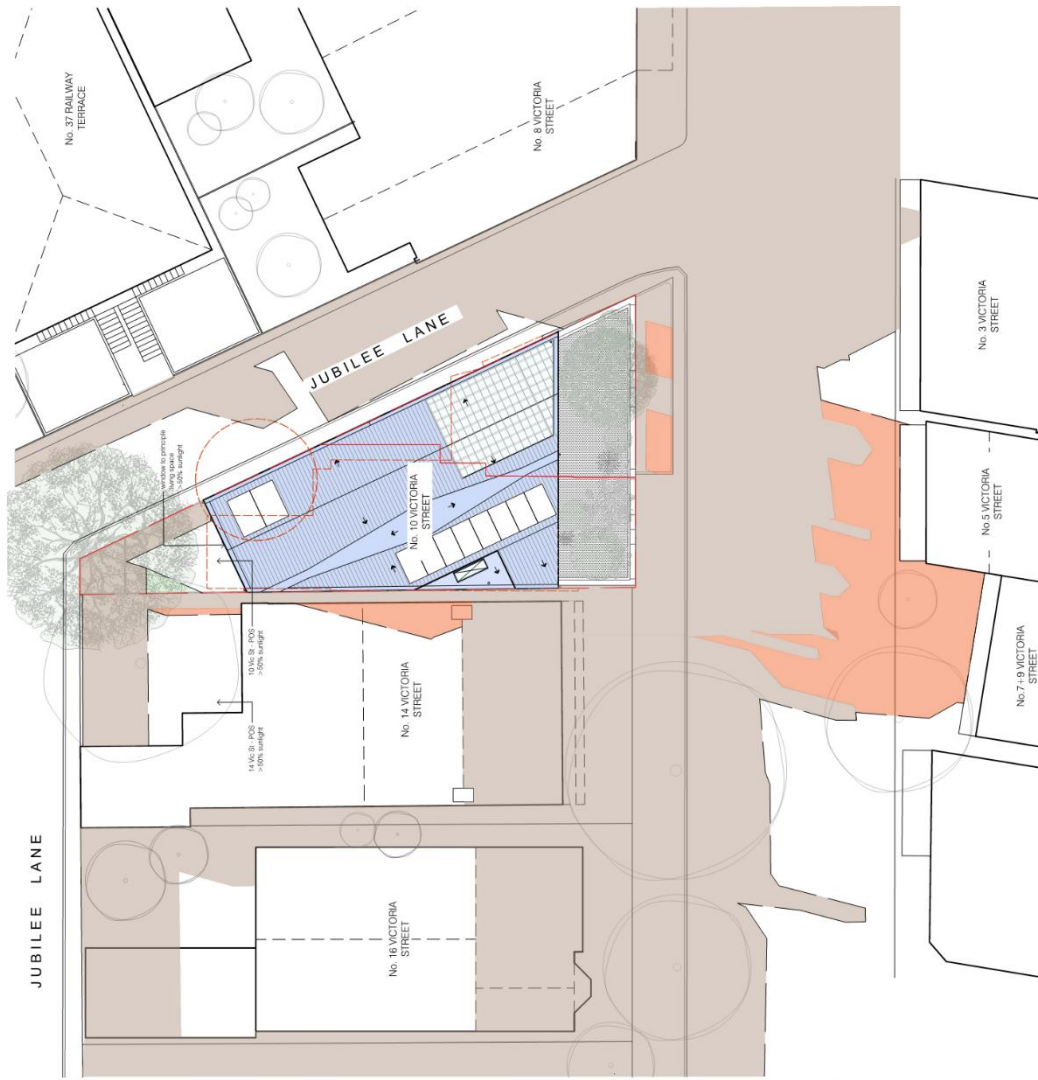
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shadow diagram - 1pm
 alterations + additions
 10 victoria street, lewisham

DA16
 scale 1:200/200A 2:13 PM
 title shadow diagram - 1pm.dwg
2349

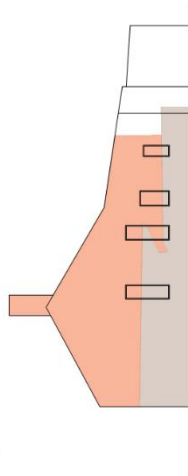




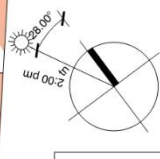
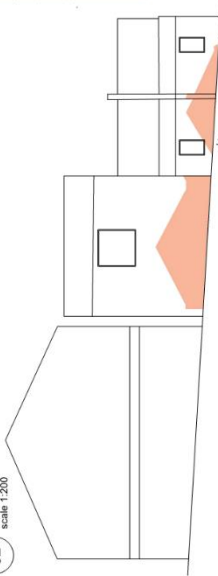
01 shadow diagram 2pm
scale 1:200

- Council BEI updates
- Solar access to POS = principle living areas - 2hrs of sunlight to 50% of subject site.
- Shadow diagrams to show shadows by neighbours.

03 No. 14 Victoria Street - june elevational shadow 2pm
scale 1:200



02 No. 3/5/7/9 Victoria Street - june elevational shadow 2pm
scale 1:200



shadows projected by existing context

shadows projected by proposed building

deleted shadows

NOTE:
drawing based on site survey and where unavailable, estimates from aerial photos, DCP/LEP maps and department of land maps

scale 1:200
Document Set ID: 40036612
Version: 1, Version Date: 17/01/2025

date	description
A 17.06.24	da
B 6.11.24	coord_rn

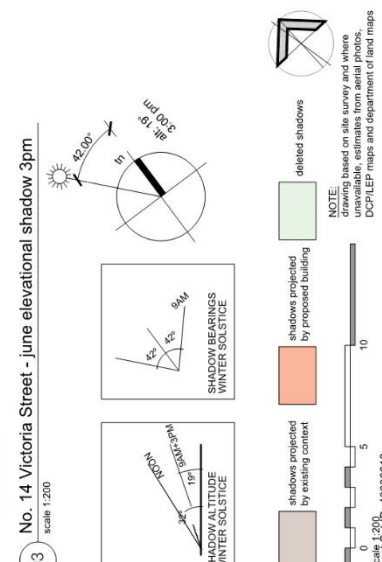
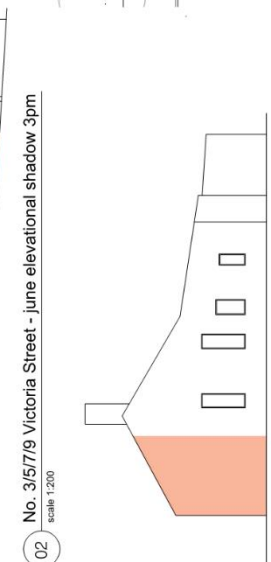
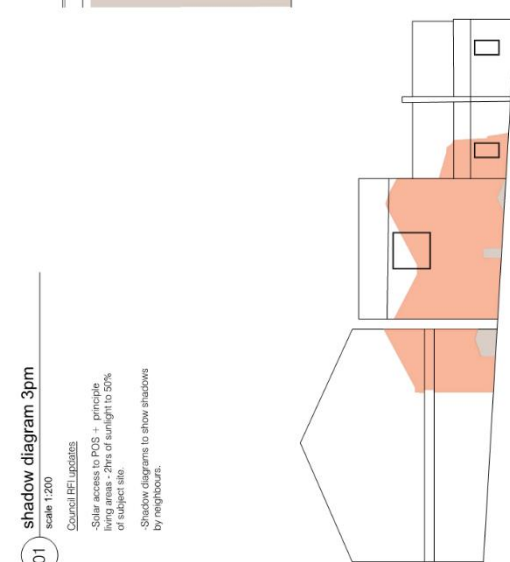
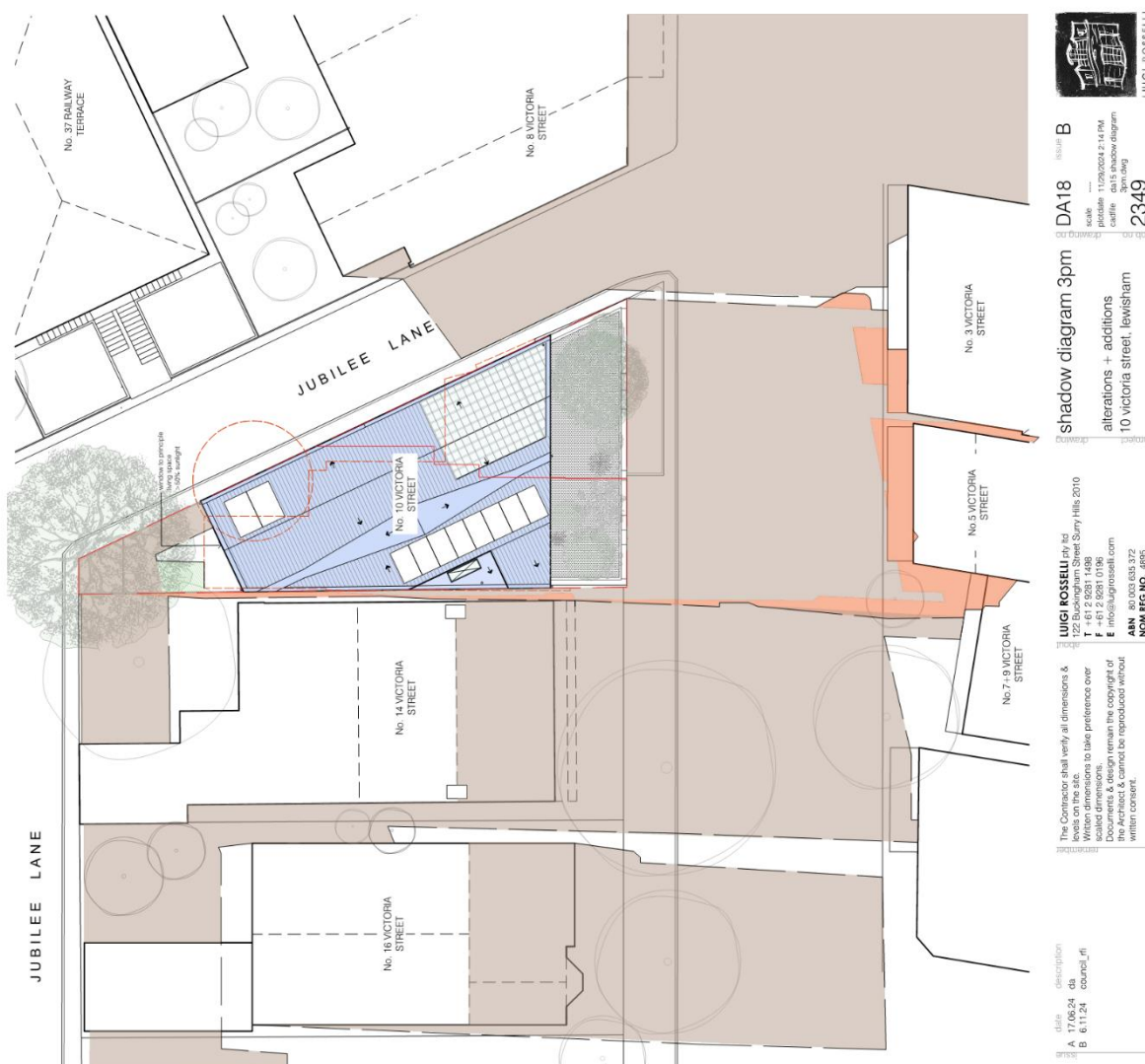
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shadow diagram - alterations + additions
2pm
10 victoria street, lewisham

DA17
scale 1:200
proposed 1:200
2pm
2349





DA18
scale 1:200
provisional 1:200/200A 2:14 PM
date 17/01/2025
2349

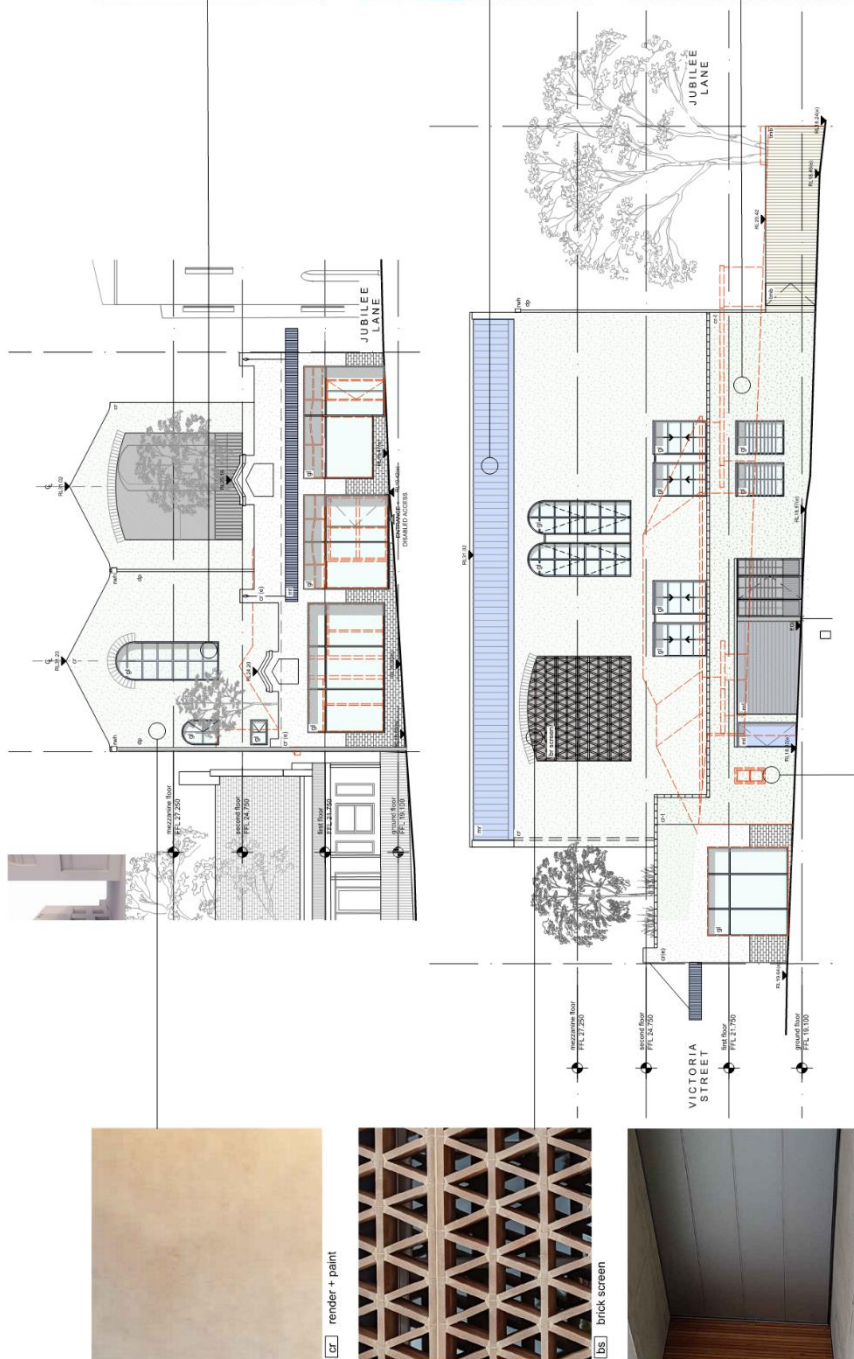
shadow diagram 3pm
alterations + additions
10 victoria street, lewissham

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NCA REG NO. 4895

date	description
A 17.06.24	drawn
B 6.11.24	colour in

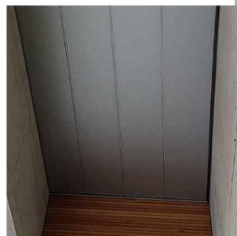
CODE	COMPONENT	MATERIAL	FINISH	COLOUR
bs	brick screen	brick	no finish	light
cr	concrete render	ironment render	no finish	light
w	windows	metal framed windows	powdercoated / anodised	black
tmb	garden fence	timber	paint	light
mt	garage doors + awning	metal	powdercoat	dark



render + paint



brick screen



horizontal panel lift doors



metal windows



metal roof, light colour, colorbond/corrugated iron



texture render



LUIGI ROSSELLI

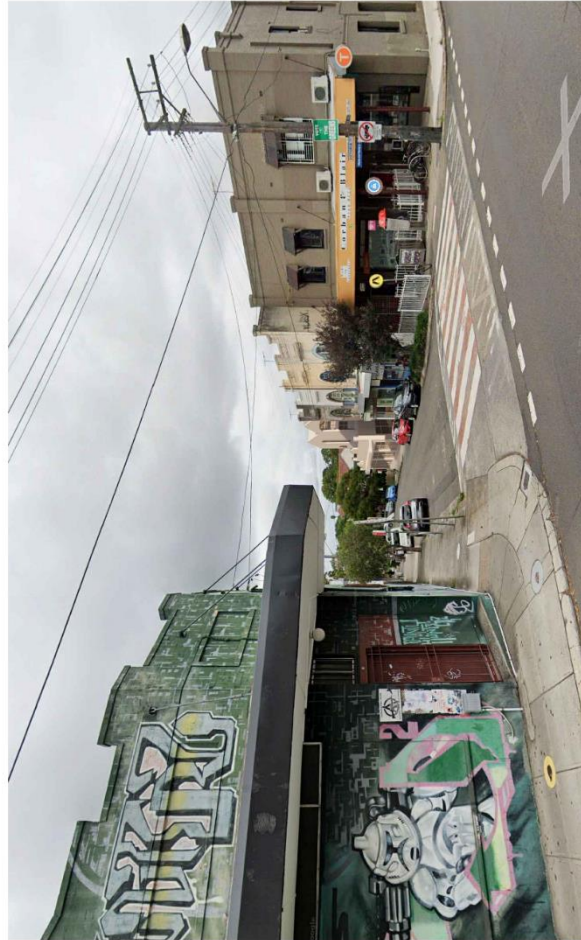
DA19
 scale: 1:100/200/2:14 PM
 date: 17/06/24
 author: luigi rosselli
 2349

schedule of external finishes + alterations
 10 victoria street, lewisham

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date: 17/06/24
 description: da



01 street view from Railway Terrace



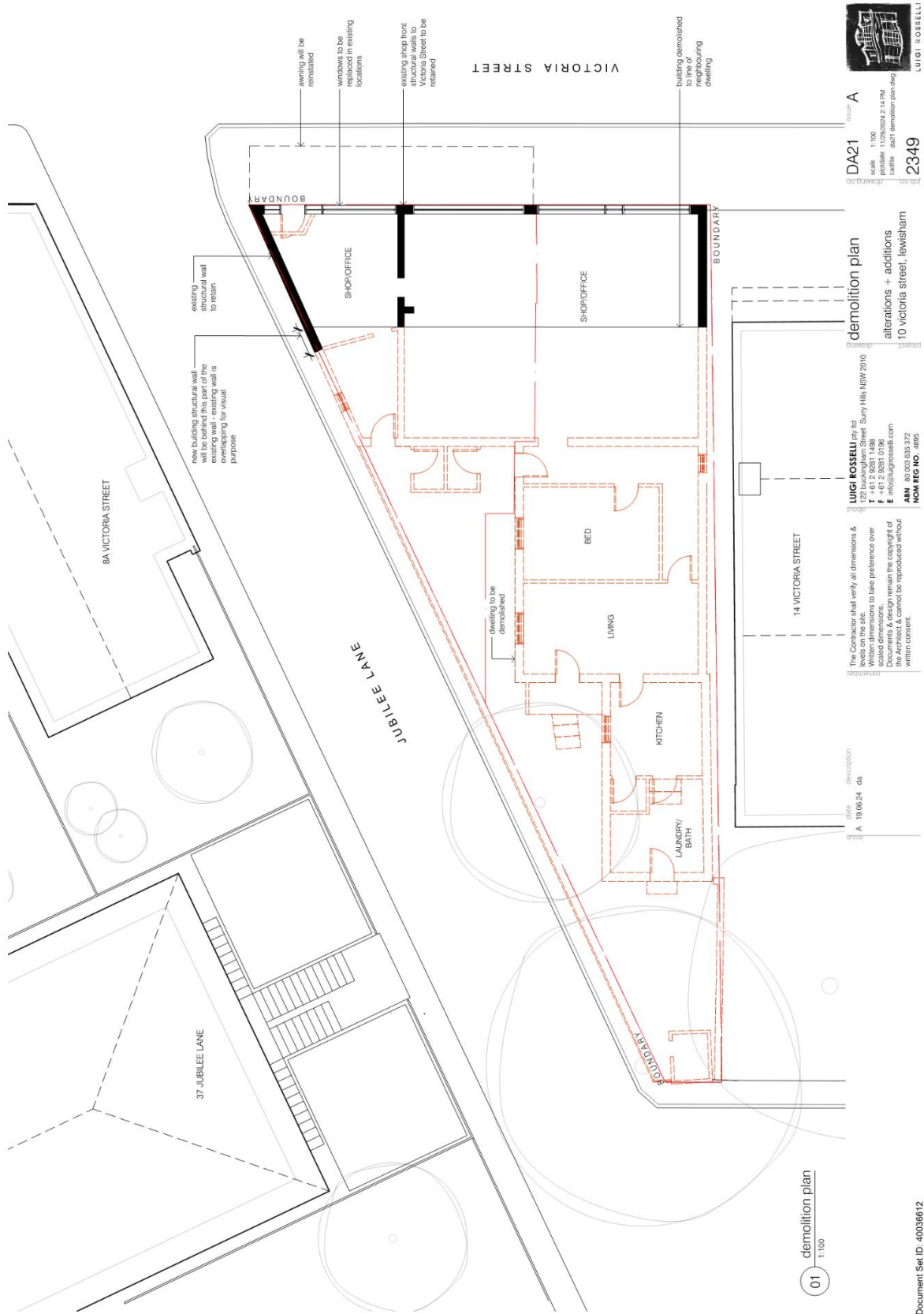
DA20 DA20
 scale 1:100/200/2:14 PM
 date 17/06/24
 2349

street view
 alterations + additions
 10 victoria street, lewisham

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date	description
A, 17/06/24	da



01 demolition plan
1:100



DA21 1834 A
scale: 1:100
project: 1/20/2024 2:14 PM
client: Inner West Local Planning Panel
2349

demolition plan
alterations + additions
10 Victoria Street, Lewisham

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Version: 1, Version Date: 17/01/2025

Attachment D – Statement of Heritage Significance

STATEMENT OF HERITAGE IMPACT



Development Application
No. 10 Victoria Street, Lewisham
June 2024 | J5718_02

**Weir
Phillips**
Heritage
and Planning

Level 19, 100 William Street Woolloomooloo NSW 2011
Phone: (02) 8076 5317

Document Set ID: 40036610
Version: 1, Version Date: 17/01/2025

Report Preparation	
Principal	James Phillips BSc(Arch), BArch, MHeritCons(Hons)
Associate	Elliot Nolan B.A. (Anc.Hist.Hons.), M.Mus.Herit.Stud., Grad.Dip.Herit.Cons.

Report Details	
Statement of heritage impact for:	The retention of an existing shop, removal of the dwelling behind and construction of a new four-storey dwelling.

Prepared For Susan Yap.

Revisions			
Revision	Date	Prepared by	Reviewed by
Draft 1	18.04.2024	EN	JP
Draft 2	15.05.24	EN	JP
Final	13.06.24	EN	JP

We acknowledge that the land on which we live, learn and work as the traditional country of the Gadigal people of the Eora Nation. We acknowledge these traditional owners of this land and acknowledge their living cultures and the unique roles they have played in maintaining life, language, and culture in this region. We pay respect to their Elders past, present and emerging and all aboriginal people.

Cover photo: No. 10 Victoria Street, Lewisham (July 2022)
Weir Phillips Heritage and Planning

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WEIR PHILLIPS HERITAGE AND PLANNING | SoHI | No. 10 Victoria Street, Lewisham | June 2024

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1 INTRODUCTION	1
1.1 PREAMBLE	1
1.2 AUTHORSHIP AND ACKNOWLEDGEMENTS	1
1.3 LIMITATIONS	1
1.4 METHODOLOGY	1
1.5 PHYSICAL EVIDENCE	2
1.6 SITE LOCATION	2
2 BRIEF OUTLINE OF THE HISTORICAL DEVELOPMENT	2
2.1 ABORIGINAL HISTORY	2
2.2 EARLY EUROPEAN HISTORY	2
2.3 DEVELOPMENT OF THE WARDELL ESTATE	3
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WEIR PHILLIPS HERITAGE AND PLANNING | SoHI | No. 10 Victoria Street, Lewisham | June 2024

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1 INTRODUCTION

1.1 Preamble

This Statement of Heritage Impact (SoHI) has been prepared in conjunction with a Development Application (DA) for alterations and additions to an existing building at No. 10 Victoria Street, Lewisham, New South Wales.

The site is located within the Inner West Council area. The principal environmental planning instrument for the site is the *Inner West Local Environmental Plan 2022 (LEP 2022)*. The site is not listed as a heritage item but is located within the Lewisham Estate Heritage Conservation Area as defined by Schedule 5 Part 2 of the *LEP 2022*.

Under Part 5.10 of the *LEP 2022*:

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

This statement has been prepared at the request of the owner of the site and accompanies plans prepared by Luigi Rosselli Architects.

1.2 Authorship and Acknowledgements

This SoHI was prepared by Elliot Nolan, B.A. (Anc.Hist.Hons), M. Mus.Herit.Stud., Grad.Dip.Herit.Cons., and James Phillips, B.Sc. (Arch.), B.Arch., M.Herit.Cons. (Hons), of Weir Phillips Heritage and Planning.

1.3 Limitations

The history contained in this statement was prepared using the readily available resources listed under Section 1.6 below.

No Aboriginal or historical archaeology was carried out on the site.

1.4 Methodology

This assessment has been prepared with reference to the *NSW Heritage Manual* update *Statements of Heritage Impact* (2023) and with reference to the Council planning controls listed under Section 1.6.

1.5 Physical Evidence

A site visit was carried out by the authors in July 2022. Unless otherwise stated, the photographs contained in this statement were taken at this time.

1.6 Site Location

No. 10 Victoria Street, Lewisham is located on the west side of Victoria Street and has frontage to Jubilee Lane and Victoria Lane (Figure 1). The site is identified as Lot 1, D.P. 229318.

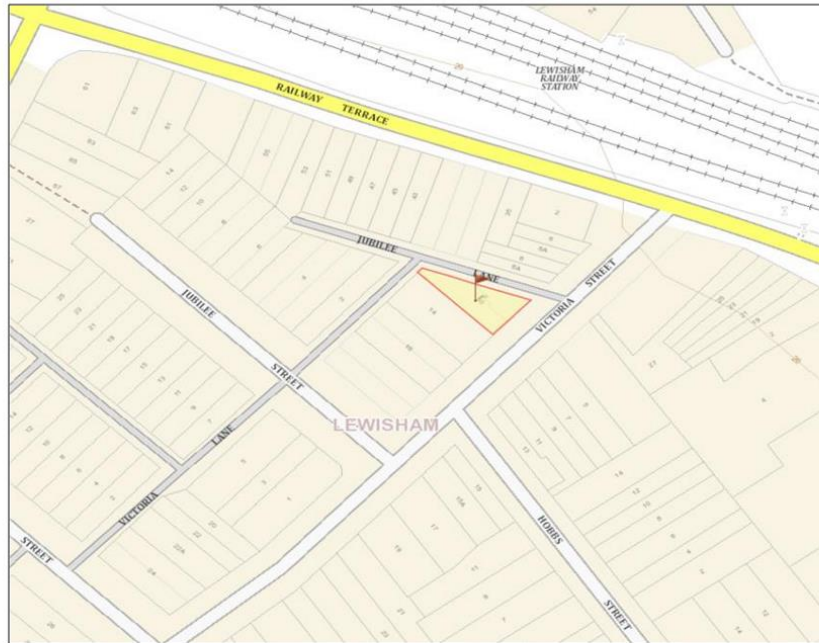


Figure 1: Map of No. 10 Victoria Street. The subject site is outlined in red.
SIX Maps, 2024.

2 BRIEF OUTLINE OF THE HISTORICAL DEVELOPMENT

2.1 Aboriginal History

While an Aboriginal history is not provided, it is acknowledged that the traditional custodians of the Inner West Council area are the Gadigal peoples of the Eora nation.

2.2 Early European History

The British Colony of New South Wales was established at Sydney Cove on 26 January 1788. Ignoring the presence of the Aboriginal people, all land was declared to be Crown Land.

The vast expanses of the eastern most region of the Cumberland Plains were known to the early European settlers as the Kangaroo Grounds or Bulananming. The New South Wales Corps and the wealthy citizens of early Sydney hunted game on the plains, as had the Aborigines before them.

This otherwise isolated area was linked to the major early settlements of the Colony through the exploitation of its natural resources and the presence of important transport routes. The Aboriginal shell middens that dotted the banks of the Cooks River and the shores of Botany Bay were processed to provide lime for mortar. The Wianamatta shales of region supported valuable timbers used for building and charcoal burning. Clearing in turn would eventually provide land suitable for grazing and crop raising. Important transport routes by land and river, linking Sydney with Botany Bay and Parramatta, passed through the area to the east and south of Sydney from an early date.

The first land grant within this part of the Inner West Council area was made on 20 August 1789, when 1,000 acres were set aside as Church, School and Crown Reserves. From 16 January 1793, successive colonial governors granted land outside the declared boundaries of the township of Sydney in order to further the purposes of settlement. Present-day Lewisham was located well outside of these boundaries. Until the 1850s, the areas now Petersham, Lewisham, Dulwich Hill, Marrickville and Stanmore were often referred to as 'Petersham', one of the earliest European names associated with the area.¹

A search of NSW LPI records reveals that the site stands on a 60-acre grant made to Neil McKellar on 3 October 1794. McKellar was an ensign in the New South Wales Corps who had arrived in the Colony in February 1792 and later rose to the local rank of Captain. Unlike many officers of the NSW Corp, he appears to have the confidence of the Colony's governors. He left the Colony in 1802, leaving behind his convict common law wife and five children.²

Although many grants were made in this part of the current Council area, by 1830, the land had generally been consolidated into several large estates, including the estate of Robert Wardell. At an unknown time, the subject site became part of Wardell's Estate.

Robert Wardell was a gentleman and newspaper proprietor.³ He built the villa *Sara Dell* on his Petersham Estate, which he stocked with deer for his hunting parties. Present-day Lewisham is said to lie at the heart of the hunt. When Wardell was murdered on his estate in 1834, his land was divided among his sisters, who subdivided it in the late 1840s.

2.3 Development of the Wardell Estate

Wardell's land was offered for subdivision at a fortuitous time. By the close of the 1830s, the settlement centred on Sydney had reached out to Woolloomooloo Hill, Darlinghurst, the Glebe and New Town. The end of transportation to New South Wales, the growth of a free-market economy and the rapid expansion of the population, increased the value of land within reach of Sydney township.

In 1848, the whole of the Parish of Petersham in 1848 was described as containing 1,284 houses and 5,433 inhabitants. Access into the area, which had been notoriously poor in the past, was gradually improved with the opening of several important roads, including what is now Old Canterbury Road, which was marked and laid out in the 1850s. This road was first referred to as High Canterbury Road or Canterbury Road.

¹ Additional information added by WP Heritage and Planning.

² For further information see: Australian Dictionary of Biography, 'MacKellar, Neil (1769-1802)', <https://adb.anu.edu.au/biography/mackellar-neil-2405>, accessed 1 August 2022.

³ For further information see: Australian Dictionary of Biography, 'Wardell, Robert (1893-1834)', <https://adb.anu.edu.au/biography/wardell-robert-2773>, accessed 1 August 2022.

Among the early purchasers of land on the former Wardell Estate in the 1830s was J.F. Josephson, businessman, politician, and judge. Josephson called his estate 'Lewisham', after the London Borough of the same name. The name means 'Leofsa's village' or 'manor' and later gave its name to the suburb. The subject site lies upon this estate.

A second wave of subdivision occurred from the mid 1850s as improved access and continued population growth created a demand for smaller allotments. Advertisements for subdivisions of this period extolled the virtues of an area that offered relative seclusion within close reach of Sydney via the newly constructed Sydney to Parramatta railway. It would be a further thirty years, however, before a railway station was built at Lewisham. Lewisham was also the site of the only substantial engineering structure to be constructed on the original 1855 Sydney to Parramatta railway line: the Long Cove Creek Viaduct. The viaduct, originally constructed in stone, extended over Long Cove Creek (now Hawthorn Canal) and was in a deteriorative state by the 1880s when it was replaced by three pairs of Whipple Trusses.⁴ Refer to Figure 2.



Figure 2: Long Cove Creek Viaduct Whipple Truss under construction (c. 1886).
State Archives NSW

As the population continued to increase during the 1860s to 1880s, the present-day Inner West Council area was incorporated into several separate boroughs. The subject property lay within the Borough of Petersham, which was proclaimed on 14 December 1871, following a petition seeking incorporation signed by 146 people. The Borough of Petersham was centered around the suburbs of Lewisham, Petersham and Stanmore and was bounded by Parramatta Road in the north, Cardigan and Liberty Streets in the east, Stanmore, and New Canterbury Roads in the south, and Old Canterbury Road in the west. At the time of incorporation, there were 153 dwelling and 750 residents within this area.

⁴ Australian Railway Historical Society, 'The Eleven Bridges of Long Cove' (2018).

Petersham remained a separate borough (later municipality) until 1948, when it became part of the Municipality of Marrickville.

The incorporation of the area projected an image of growth and future suburbanisation that was exploited by a third, more intensive, wave of subdivisions in the late nineteenth century. The Municipality of Petersham experienced considerable growth during the period 1880 to 1900, a pattern that was repeated in many areas across Sydney. The gradual improvement of roads and, perhaps more importantly, the introduction of subsidised tickets for public transport (railways 1881; tramways 1887) enabled working families to join the mass exodus out of the older inner-city suburbs. The population of Petersham increased from 750 in 1871 to 3,413 in 1881 and 10,369 in 1891. Important community amenities began to appear in the 1880s, including a town hall (1882) and churches, for example, the new St. Thomas' Church (1888).

Social segregation within Petersham in the nineteenth century was geographically pronounced. The villas of the wealthy lay along the ridges of the Parramatta Railway, while the low-lying areas along the Illawarra Railway were more intensely developed into small lot subdivisions for working men and their families.

The last of the large Victorian period villa estates were subdivided in the early twentieth century. The population of the area continued to increase; between 1901 and 1921, the combined populations of the Municipalities of Marrickville, Petersham and St. Peters increased by 182%. The establishment of industries in the area, together with the growing strength of the Garden Suburb movement, which made the new outer suburban suburbs more attractive, led to the departure of many of the wealthy residents of the area.⁵

2.4 No. 10 Victoria Street

It was during this period of growth that Lewisham was subdivided in successive stages. This part of Lewisham formed part of the Virginia Water Estate, offered for sale in 1882 and included Victoria Street. This area had previously been in the ownership of William Davis, whose villa, 'Brook Cottage', still stands at No. 174 Denison Road. Section 1 of this estate was bought by William Hedge at this time.⁶

It is unclear what Hedge did with this land prior to its c. 1886 subdivision into the existing allotments. The existing building, however, appears to have originally been constructed no later than c. 1890, as evidenced by a Water Board Map of Petersham from this year which clearly shows the building. Refer to Figure 3.

⁵ Information added by WP Heritage and Planning from other reports prepared by the company.

⁶ NSW LPI, Certificate of Title, Volume 494-Folio 150.

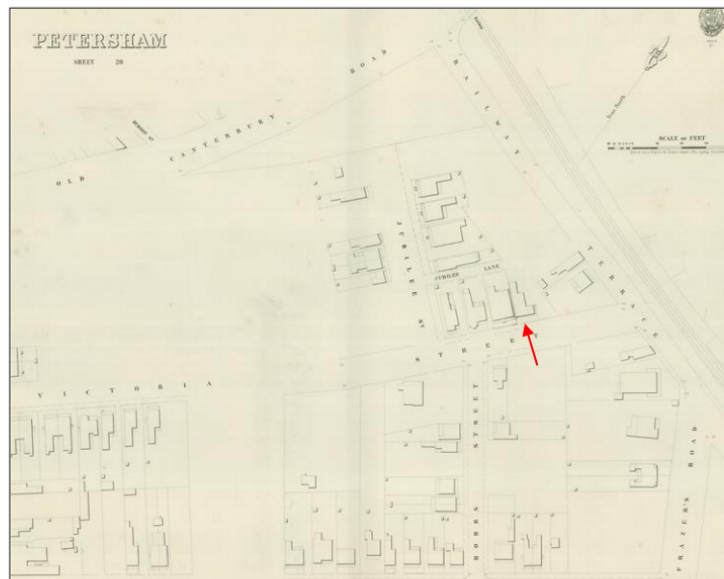


Figure 3: Detail, Sydney Metropolitan Detail Series, Sheet 28, Water Board Map of Petersham (c. 1890). The red arrow indicates the site.

State Library of New South Wales

Based on the evidence presented by Figure 4, only the footprint of the dwelling is visible c. 1890. This suggests it may originally have been constructed as just a dwelling, with the existing shop and parapet added later. This is consistent with the form and style of the parapet, which has more of a Federation character to it.

The site lies on Lot 18, Section 1 of the c. 1886 subdivision.⁷ A search of the land title record shows William Courtney, an auctioneer, purchased the whole lot on 12 November 1890.⁸ It was shortly thereafter, transferred to Emily, wife of Alfred Bull in 1891. Emily Bull retained ownership until 1899 when it was sold to Frederick Reed, a commercial traveller. Reed then sold it to Frances Hanly, a greengrocer, in 1902.

The Certificate of Title shows Hanly took out a mortgage in 1904 which may have been used to construct the shop extensions. Hanly is listed in this part of Victoria Street in the *John Sands' Sydney and Suburban Directories* for this year, and it is the first time the building can be confidently identified. Due to the absence of street numbering and changes in occupancy, it is difficult to confidently identify the building prior to this year.

The following year, ownership was transferred to Annie Monk, listed as an occupant in the table below. The last known owners of the site were Fred Jobson (1913-1954); Aubrey Jobson (1954-1965); and Kob-Sal Pty Limited (1965-?). Fred Jobson was a local real estate agent who may have operated from one of the shops. A search of Trove shows he sold many

⁷ NSW LPI, Certificate of Title, Volume 812-Folio 223.

⁸ NSW LPI, Certificate of Title, Volume 990-Folio 49.

houses in the Inner West throughout the 1920s.⁹ Later advertisements after 1945 list the Lewisham Property Exchange at No. 10 Victoria Street.

From 1908, No. 12 Victoria Street is also listed and later, from 1923 onwards, No. 12A Victoria Street also appears. All three listings had commercial occupants throughout their history, through to the last edition of the *Sands' Directories* in 1932/33. The *Sands' Directories* do not delineate between listings, so it is unclear who exactly occupied the dwelling and the shop at any time.

The following table lists known occupants.

Table 1: List of occupants.

Year	Occupants of No. 10 Victoria Street
1906-1913	Annie Monk, fruiterer
1914	Miss Trahan, fruiterer
1915-1917	B. Burne, fruiterer
1918	James Somers, fruiterer
1919-1920	Walter Rose, greengrocer
1921	Frank Hakenson
1922	Walter Puckett
1923-1932/33	Fred Jobson, estate agent
Year	Occupants of No. 12 Victoria Street
1908-1917	Mary Scott, dressmaker
1918	K. Brenthwaite, dressmaker
1919	Stella May
1920-1922	I. Craik, draper
1923-1925	E. Wilds, confectioner
1926	M. McDonald, confectioner
1927	J. Torris, confectioner

⁹ *Sydney Morning Herald*, 'Advertising', 29 June 1923; *Sydney Morning Herald*, 'Advertising', 29 August 1923; *Sydney Morning Herald*, 'Advertising', 25 February 1924.

1928	Not listed
1929	G.E. Berry, small goods
1930-1931	A. Grant, fruiterer
1932/33	C. Brown, draper
Year	Occupants of No. 12A Victoria Street
1923-1929	A. Grear, draper
1930-1931	Baxter and Wood, dressmakers
1932/33	Macintyre and Southwall, fruiterers

Refer to Figure 4, an aerial photograph over the site c. 1943.



Figure 4: Aerial photograph over Lewisham (c. 1943). The site is outlined in red.
SIX Maps

Based on Figure 5, the overall envelope and form of the building is generally unchanged since at least 1943. No historic photographs of the building at street level have been located.

3 SITE ASSESSMENT

3.1 The Site

For the following, refer to Figure 5, an aerial photograph over the site, and to Figure 6 which is a current survey of the site.

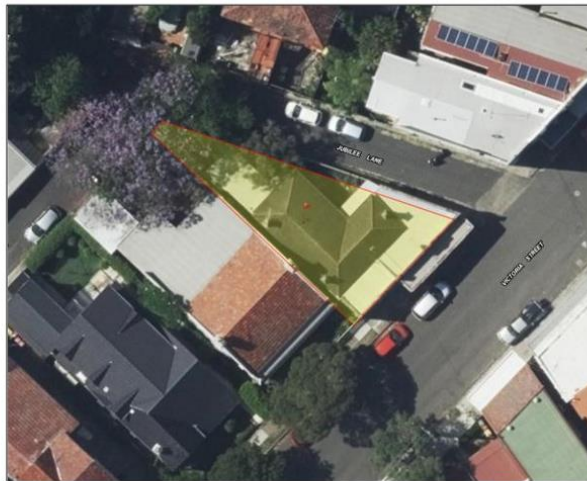


Figure 5: Aerial photograph of No. 10 Victoria Street. The subject site is outlined in red.
SIX Maps, 2024

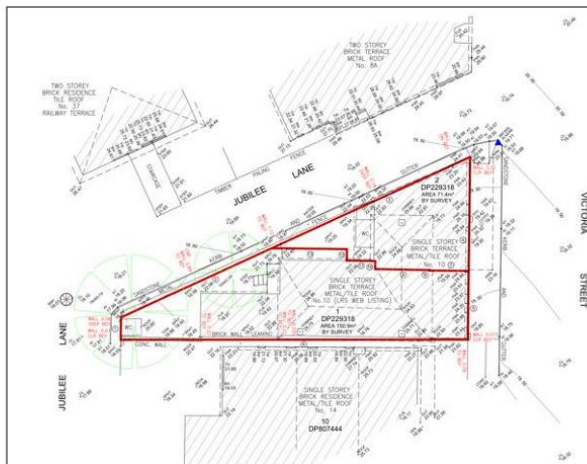


Figure 6: Detail, survey of No. 10 Victoria Street.
True North Surveys, 2021

For the purposes of the following description, Victoria Street is considered the eastern boundary.

The site is irregular in shape and comprises two allotments and contains a single-storey building, described separately below, oriented to Victoria Street and with frontage to Jubilee Lane and Victoria Lane. The site boundaries are approximately as follows: north, 2m; south, 14m; east, 30m; and west, 28m. The total site area is 222.3m². The site is bound to the east by a metal panel fence and to the west by a concrete block fence.

The building on the site occupies the majority of the allotment with a small rear yard on the north side of the site, containing lawn, remnant sandstone paving, low-lying plantings and established trees. There is an outhouse with a toilet on the far end of the rear yard. It is constructed of painted brick and has a corrugated metal roof. Refer to Figures 7 to 9 which illustrate the site.



Figure 7: Rear yard, showing remnant sandstone paving.



Figure 8: The brick outhouse and vegetation patterns to the rear yard.



Figure 9: The fit-out to the outhouse.

3.2 The Building

3.2.1 Exterior

No. 10 Victoria Street presents as a single-storey Victorian period dwelling with a Federation period shopfront and parapet.

The front elevation of the principal building is concealed from view by the shopfront and parapet. The parapet, which is stepped in form, extends across the front elevation and wraps around part of the eastern elevation. The parapet is constructed of rendered and painted masonry and has a roof behind it clad in corrugated metal. There is a suspended steel awning at the eastern end of the parapet, which separates it from the ground-floor front elevation that comprises three shopfronts. The awning is currently supported on temporary props, which are severely rusted and the masonry to which they are attached is unstable.

The shopfronts are largely contemporary; however, the eastern and middle shopfronts have patterned glass top lights. The shopfronts are currently boarded up. It is noted that the parapet is fractured in several places and is otherwise in a state of disrepair due to graffiti and vegetation.

Behind the parapet is the principal building, which is constructed of brick (painted and unpainted) and has a hipped roof clad in concrete tiles. The principal building shows evidence of eroded mortar and cracked brickwork. The west roof plane has two masonry chimneys, and the east roof plane has one masonry chimney. The northern elevation has a small verandah with a timber floor and a skillion roof clad in corrugated metal supported by timber posts. Doors are timber panelled and window openings are timber-framed double hung sash windows with metal security bars. The joinery and frames to the windows are in disrepair, showing evidence of timber rot.

The rear wing is constructed of painted brick and has a skillion roof clad in corrugated metal. Window openings are timber-framed double hung sash windows with metal security bars. There is a metal door with timber architraves that leads from the rear elevation to the yard area. As above, the joinery and frames to the windows are in disrepair.

Refer to Figures 10 to 18 which illustrate the exterior of the building.



Figure 10: Front of the building showing shopfront and parapet which are currently boarded up.



Figure 11: Close-up of the parapet showing cracks and vegetation.



Figure 12: The fractured parapet wall on the eastern elevation.



Figure 13: Middle shopfront showing patterned glass.



Figure 14: End of the parapet wall as viewed from Jubilee Lane. Note the cracked brickwork.



Figure 15: Eastern elevation of the principal building showing non-original concrete tiles.



Figure 16: Unpainted brick wall to the western elevation of the principal building.



Figure 17: The eastern elevation of the rear wing as it extends from the principal building.



Figure 18: The rear elevation of the rear wing, showing a later metal door.

3.2.2 Interior

For the following, refer to Figure 19, which shows the existing layout of the building.



Figure 19: Current internal layout.

Commercial Real Estate

Entry and Shop Area

The building is primarily accessed via the middle front door off Victoria Street and opens into the retail area, which based on the ceilings and remaining wall nibs, appears to have originally been up to four individual rooms but is now one large space. The finishes in this part of the building vary: the walls are typically rendered and painted masonry, however, the plaster has peeled off in sections, and the floors, skirting boards and archives are timber. The front of the shop has a timber lined ceiling, except where it is missing altogether to expose the timber rafters and metal roof above. The rear of the shop has two ceilings: one plasterboard and the other a decorative plaster ceiling with ornate cornices. The eastern end of the shop has a chimneypiece with a remnant brick hearth and the western end has a chimneypiece with no hearth or fireplace.

To the west is a second, smaller shop accessed via an opening sans door. It is divided into two parts by an internal timber wall with top lights and a door opening. The ceiling to both parts of this room is lined with timber; the floors are timber, and the walls are brick (painted and unpainted).

Refer to Figures 20 to 25 which illustrate the entry and shop areas.



Figure 20: The main shop area, looking east towards the brick hearth. Note the difference in the ceilings, indicating it was likely originally two rooms.



Figure 21: Close-up view of the remnant brick hearth with the mantelpiece and insert removed.



Figure 22: Looking towards the remnant chimneypiece on the west end of the shop. Note the cracked and peeling plasterwork to the walls and the missing ceiling to the front.



Figure 23: Close-up view of a section of missing ceiling.



Figure 24: The second, smaller shop showing internal dividing wall.



Figure 25: Looking towards the front of the small shop area.

Principal Building

To the north of the main shop is an opening which leads into an L-shaped hallway providing access to a bedroom and living room, contained within the principal building. The hallway has rendered and painted masonry walls, a plasterboard ceiling, timber floor, skirting board and architraves. There is a bedroom accessed from the hallway which has a plain plaster ceiling with a decorative rose, rendered and painted masonry walls, timber floor, skirting board and architrave and a timber panelled door.

The end of the hallway opens via a timber panelled door opening into a living room which is similarly finished to the bedroom, however, has profiled cornices but no ceiling rose, and the walls have timber picture rails. The western end of this room has a fireplace with a marble mantelpiece and cast-iron coal insert.

Refer to Figures 26 to 31 which illustrate the interior of the principal building.



Figure 26: Hallway, looking towards a blocked entry.



Figure 27: Hallway ceiling, showing non-original plasterboard.



Figure 28: Ceiling to the bedroom.



Figure 29: The bedroom showing a timber floor, with sections missing.



Figure 30: Living room, looking towards a blocked window opening.



Figure 31: Living room, looking towards the only intact fireplace in the building.

Rear Wing

The rear wing contains a kitchen and a bathroom/laundry. The kitchen is finished with a plasterboard ceiling, painted brick walls, timber floor and has a brick hearth, as well as a small, separate pantry accessed by a timber panelled door. A second door opening leads, via a step down, into the bathroom/laundry which is similarly finished with respect to walls and ceiling. The floor is tiled and the overall fit-out is contemporary.

Refer to Figures 32 to 36 which illustrate the rear wing.



Figure 32: Kitchen, looking towards pantry and the bathroom/laundry.



Figure 33: Close-up view of the kitchen ceiling showing mould damage.



Figure 34: The remnant brick hearth to the kitchen.



Figure 35: A contemporary fit-out to the bathroom/laundry.



Figure 36: The tiled floor finish to the bathroom/laundry.

3.3 The Surrounding Area

3.3.1 The General Area

For the following, refer to Figure 37, an aerial photograph of the site and its surrounds.

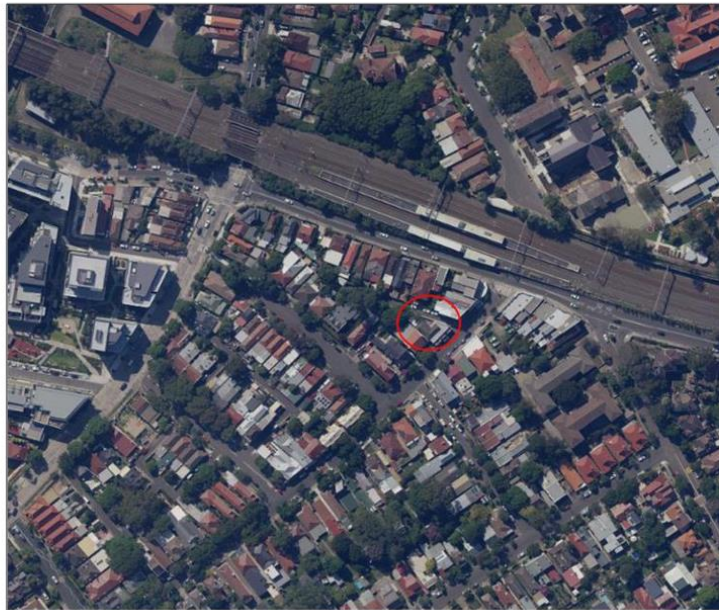


Figure 37: Aerial photograph of surrounding area. The site is outlined in red.
SIX Maps, 2024

The State Heritage Inventory provides the following description for the Lewisham Estate Heritage Conservation Area, of which the site forms part:

The Lewisham Estate contains some of the finest buildings and streetscapes in the Marrickville area. It was first released for subdivision in the 1880s when Lewisham Station was opened and soon proved popular with the upper middle class commuters who constructed substantial homes throughout the area. It was developed in sections after 1882, with the final major release made in 1898, although development continued until the Inter-war period on undeveloped lots.

The area is predominantly residential in its character, with retail uses being located at the northern end of the precinct near the railway station. The small group of local shops in Victoria Street includes a some substantially intact examples of Federation shops, including shopfronts and joinery to the arched window/doors on the upper level, although signs of deterioration to the fabric could be seen. The upper level verandahs have been replaced by a suspended awning. Other shops in the extended group demonstrate significant layering and have lost their stylistic integrity.

Community facilities representative of the community who established the area include the imposing Baptist Church and Hall at the northern end of The Boulevard, and the 1921-1923 Arts and Crafts Memorial Scout Hall at the southern tip of the Area.

Both single and two-storey forms are distributed throughout the area, with little consistency in their location evident when analysed at the precinct level. There is little evidence of 'runs' of cottages being built as a speculative venture by a builder, other than the group of single storey Victorian Villa cottages in Victoria Street. The prevailing character of the area is that of an established and high quality of substantial detached houses in a garden setting. The primary streets are The Boulevard and Victoria Street, with the other streets acting as cross-streets. The building typologies reinforce this pattern, with most of the grand houses in either Victoria Street or The Boulevard, and the most modest in the lower areas to the south-west.

The area contains a variety of built forms, including a range of finely crafted Victorian Italianate, Rustic Gothic, Filigree and Regency houses, terraces and villas and later Federation examples of the same typologies, including good examples of Federation cottages, terraces and substantial Queen Anne houses, including in Hunter Street at the northern end of the precinct and Toothill Street. Several good examples of houses and residential flat buildings from the Inter-War period can also be found. Many of these substantial properties have retained their original garden setting as a planted area that enhances the aesthetic qualities of the property and the streetscape. Few of these substantial properties show evidence of being re-subdivided to allow infill development; unlike other parts of Marrickville.

The area also contains modest dwellings, including the very good group of gable-roofed single-fronted cottages in Fred Street, and the many examples of vernacular cottages and bungalows found throughout the precinct.

Streetscapes are unified by the contribution of private gardens as well as by the good quality and mature street planting, particularly the Brush Box and other species in the northern half of the precinct. Planting in the southern part of Victoria Street (south of Summer Hill Street) is not as consistent although some good individual specimens can be found.

The area also includes the northern end of The Boulevard and its termination, Hunter Street which demonstrates a Federation character rather than the late Victorian that dominates elsewhere. Hunter Street includes several very imposing and contributory Federation houses.

The evidence of the surviving fabric suggests that many early fences were of iron palisade construction. Many have survived and continue to contribute highly to the integrity and quality of the streetscapes and the area. They are particularly prominent elements when viewed on an angle from the footpath; when their strong rhythms yet transparent quality is highlighted. Some of the fences to houses on The Boulevard exhibit fine iron posts, although most in the area are representative of the 'Marrickville Fence'. Some original fences have

been replaced by a variety of styles, materials and heights. These fences are however potentially replaceable and although impossible to replace the original fabric, the opportunity exists to construct a new fence that fits more gently within the streetscape.

Many of the properties have undergone considerable layering over the years since original construction, including infill development of various degrees of contributory value and a range of cosmetic and structural additions to individual dwellings. Although some of these alterations have affected the individual heritage value of the property, the cohesiveness of the scale, form and patterns of the streetscapes together with their ability to demonstrate Lewisham's patterns of late 19th- and early 20th Century urban settlement remains substantially intact. Major layering is not common.

Existing heritage items are located at 40 Hunter Street (large house with timber detailing) the Baptist Church and Hall at 13-15 The Bouevarde and the two storey (former) corner shop at 4 Summer Hill Street. The Victorian Filigree terrace adjacent to the shop has been assessed as part of the Heritage Items review and is recommended for listing as an individual item. Each of these existing and potential individual heritage items contributes to the variety and quality of their immediate streetscapes and the heritage significance of the Lewisham Area as a heritage conservation area.¹⁰

3.3.2 Victoria Street

Victoria Street runs east-west between Davis Street and Railway Terrace. The road carries two-way traffic with street parking to either side. Concrete footpaths line both sides of the road, with established street trees mainly concentrated to the south of the site. The section of Victoria Street in which the site is located is mixed commercial and residential. The northern side has one to two-storey Victorian and Federation period commercial buildings, showing a varying degree of integrity. The southern side has Inter-War and later 20th century period commercial buildings. To the west of the site are one and two-storey Victorian period dwellings, as well as later two-storey infill. It is noted that an additional storey and other alterations and additions were recently approved for No. 8A Victoria Street (DA/2021/1341). Refer to Figures 38 to 41 which illustrate the character of the streetscape and the approved works to No. 8A Victoria Street.

¹⁰ 'Lewisham Estate Heritage Conservation Area', Heritage NSW State Heritage Inventory ID No. 2030486.



Figure 38: Nos. 4-8 Victoria Street to the east of the site, a group of Federation period commercial buildings.



Figure 39: Plan showing approved front elevation to No. 8A Victoria Street. Smith and Carmody, 2021



Figure 40: Nos. 14 and 16 Victoria Street to the west of the site, both single-storey Victorian period dwellings.



Figure 41: No. 5 Victoria Street to the south of the site, a two-storey 20th century period commercial building.

3.3.3 Jubilee Lane

Jubilee Lane runs north off Victoria Street to terminate in a cul-de-sac after Victoria Lane. It carries two-way traffic with limited provision for street parking. It is essentially a service corridor that provides rear access to buildings on Railway Terrace.

Refer to Figure 42 which illustrates the character of the laneway.



Figure 42: Looking north on Jubilee Lane towards rear driveway entries to buildings on Railway Terrace.

3.3.4 Victoria Lane

Victoria Lane runs west off Jubilee Lane until it connects with Henry Street. It carries two-way traffic with limited provision for street parking. Like Jubilee Lane, it is not a main road and is only meant to provide rear access to buildings on Victoria Street.

Refer to Figure 43 which illustrates the character of the laneway.



Figure 43: Looking west on Victoria Lane, showing the general character of the laneway.

4 ASSESSMENT OF SIGNIFICANCE

4.1 Summary of Statutory Heritage Listings for the Site

No. 10 Victoria Street, Lewisham:

- Is is located within the Lewisham Estate Heritage Conservation Area by Schedule 5, Part 1 of the *Inner West LEP 2022*.
- Is not listed as a local heritage item by Schedule 5, Part 1 of the *Inner West LEP 2022*.
- Is not listed as an item on the State Heritage Register under the *NSW Heritage Act 1977*.

The State Heritage Inventory provides the following Statement of Significance for the Lewisham Estate Heritage Conservation Area:

The Lewisham Estate Heritage Conservation Area is of historical significance as an area developed from a series of subdivisions from the early 1880s to 1898, beginning with the "Lewisham Estate" subdivision prior to 1882.

The Lewisham Estate Heritage Conservation Area is of aesthetic significance because it contains a wide range of housing typologies (late 19th - early 20th Century) including a range of finely crafted Victorian Italianate, Rustic Gothic, Filigree and Regency houses, terraces and villas and later Federation examples of the same typologies, including good examples of Federation cottages, terraces and substantial Queen Anne houses in Hunter Street at the northern end of the precinct and Toothill Street. Several good examples of

houses and residential flat buildings from the Inter-War period can also be found.

The Lewisham Estate Conservation Area is socially significant for providing physical evidence of the late 19th Century community demonstrated through the prominent location of community facilities at the northern end of the area close to New Canterbury Road including the Baptist Church (The Boulevarde) and Memorial Scout Hall (The Boulevarde - South end) and 20th Century Great Depression Relief Work Programs (the stone wall to Old Canterbury Road).

The Area is representative of the range of building types and forms available to the community in the late 19th to early 20th Centuries, including the detached villa, mansion and cottage, semi-detached and terrace house.¹¹

This Statement is adopted for the purposes of this assessment.

4.2 Heritage Items within the Vicinity of the Site

For the following, 'within the vicinity' has been determined with reference to physical proximity, existing and potential view corridors and the nature of the proposed works.

4.2.1 NSW Heritage Act 1977

There are no items listed on the State Heritage Register under the *NSW Heritage Act 1977* within the vicinity of the site.

4.2.2 Inner West LEP 2022

Refer to Figure 44, which shows heritage items and conservation areas within the vicinity of the site. In this plan, heritage items listed by Schedule 5 Part 1 of the *Inner West LEP 2022* are coloured brown and numbered and Conservation Areas listed by Schedule 5 Part 2 of this plan are hatched red and numbered. The subject site is indicated by the red arrow.

¹¹ 'Lewisham Estate Heritage Conservation Area', Heritage NSW State Heritage Inventory ID No. 2030486.

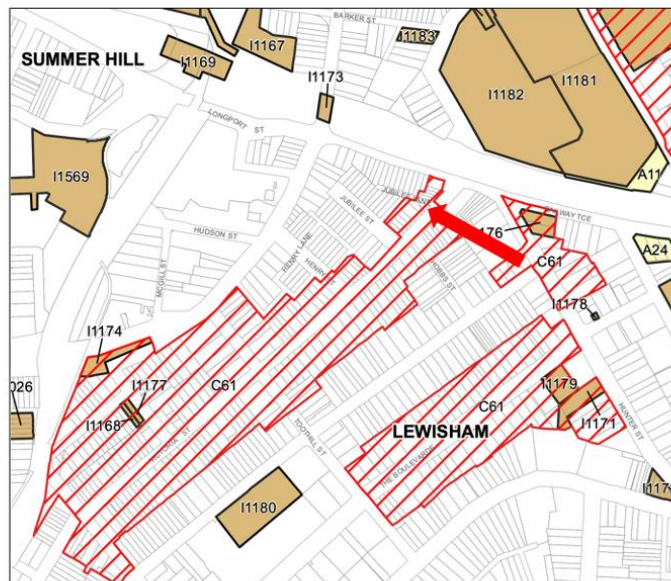


Figure 44: Detail, map showing heritage items and Conservation Areas in relation to the subject site.
Inner West LEP 2022

There are no heritage items listed by Schedule 5 Part 1 of the *Inner West LEP 2022* within the vicinity of the site.

4.3 Integrity

No. 10 Victoria Street demonstrates a mixed degree of integrity. It appears originally to have been constructed as a dwelling no later than c. 1890 and had a later Federation period shopfront and parapet added c. 1904. The following is noted:

Site

- The brick outhouse in the rear yard is of some age, although it is noted that it does not appear in the c. 1890 Water Board plan.
- The boundary fences are all contemporary.
- There is no significant vegetation on site. The existing trees are not visible in the 1943 aerial photograph.

Exterior

- The roof cladding to the principal building has been replaced with the existing concrete tiles. It would likely originally have been slate.
- The masonry walls to both the parapet, principal building and rear wing are fractured and cracked in several places.
- The mortar to the brickwork is severely eroded.
- The southern shopfront is contemporary. All three shopfronts show evidence of modification.
- The suspended steel awning is contemporary. It is currently supported by temporary props which are rusted and the masonry to which are attached is unstable.

-
- The door to the rear elevation of the rear wing is contemporary.
 - The gutters and downpipes have all been replaced and are missing sections or are broken.
 - The joinery to the doors and windows is heavily decayed, showing evidence of timber rot. The lintels are also rusted.

Interior

- The main shop appears to have originally been three or four individual rooms, as demonstrated by the difference in ceiling finishes.
- There are few original ceilings remaining; most have been replaced with plasterboard or are missing sections.
- Most of the fireplaces have been removed. The only intact fireplace is to the living room, which has its original mantelpiece and cast-iron insert.
- The walls, which are either painted brick or rendered and painted, are in varying states of decay. Many of the walls are missing sections of plaster which has exposed the underlying brickwork to further decay.
- The timber floors are missing sections or have been replaced. The remaining timber floors show significant evidence of termite damage.
- Most of the internal openings are missing their doors, which had been removed by a previous owner.
- The bathroom/laundry has a contemporary fit-out and finishes.

4.4 View Corridors

The principal view corridors towards No. 10 Victoria Street are from directly outside on Victoria Street where the shopfront and parapet are highly visible. The building is generally visible on approach from the east and west on Victoria Street and from the intersection at Jubilee Lane. The dwelling behind has little or no visibility from Victoria Street, except where the chimneys appear over the parapet. The main view corridors towards the dwelling are either from Jubilee Lane or Victoria Lane.

Refer to Figures 45 to 47 which illustrate view corridors.



Figure 45: Looking east towards the site from Victoria Street.

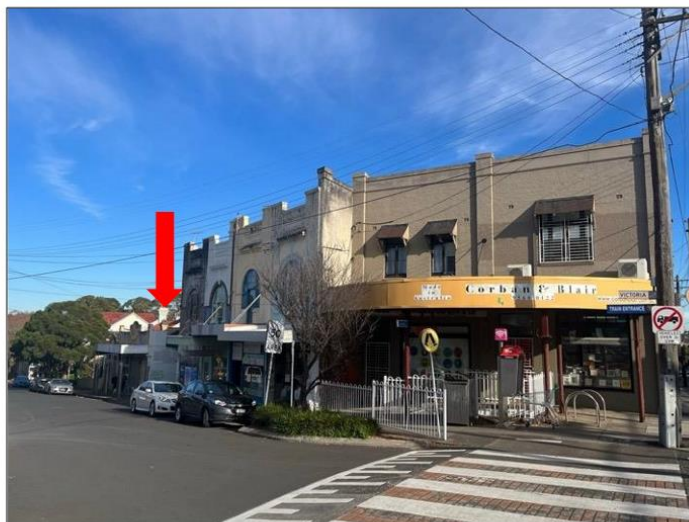


Figure 46: Looking west towards the site from Victoria Street and Railway Terrace.



Figure 47: Looking east towards the site from Victoria Lane, where the chimney is partially visible.

5 THE PROPOSAL

The following should be read in conjunction with the plans prepared by Luigi Rosselli Architects.

It is proposed to:

- Retain the existing Federation period shop building restore the front elevation and reinstate sympathetic awning.
- Remove all existing structures behind including the Victorian period dwelling and construct a new four-storey dwelling with garage off Jubilee Lane.
- Materiality includes:
 - Rendered masonry façade in light terracotta colour.
 - Metal multi-paned window.
 - Terracotta brick screen.
 - Metal Colourbond/corrugated iron roof.

6 EFFECT OF WORK

6.1 Methods of Assessment

The following is a merit-based assessment. It does not consider compliance or otherwise with Council's numerical controls except where non-compliance would result in a heritage impact. Refer to the Statement of Environmental Effects that accompanies this application. The following assessment is made with an understanding of the objectives and controls provided by the *Inner West LEP 2022* and the *Marrickville DCP 2011*.

6.2 Effect of Work on Conservation Area

The alterations and additions to the existing building will have an acceptable impact on the Lewisham Estate Heritage Conservation Area for the following reasons:

- The building is a modest example of a shop and dwelling. The front elevation has been significantly altered through variation alterations and additions over time. The primary contributory aspect to the HCA is the c.1904 shopfront, which forms part of a Lewisham commercial precinct adjoining the railway station. The proposal will retain and conserve the presentation of shopfront with the new residence behind thus preserving the contribution of the site to the HCA.
- The demolition of the residence behind will have an acceptable impact as this section of the building was constructed in the late Victorian period and was extended in the Federation period. The Statement of Significance for the Conservation Area considers it to form part of a group of local shops and so make a positive contribution to the streetscape. The Statement of Significance, however, states that some of the shops 'demonstrate significant layering and have lost their stylistic integrity'. It is our contention that this applies to the rear of No. 10 Victoria Street in both respects. The two construction periods have resulted in a confusion of the fabric record, while later modifications have severely diminished its stylistic integrity as a Victorian era shop.
- The proposed development will restore the masonry façade of the shopfronts as the podium for the residence behind to enhance their contribution to the HCA. The restoration will include new sympathetic shopfronts which are partitioned to appear as a homage to traditional shopfronts, a new slender awning and re-tiling of the front elevation.
- The proposed restoration of the shopfront and reintroduction of a commercial use will have a beneficial impact on the HCA. It will restore the primary and best use of the site as a mixed use building which is consistent with the historic development of Lewisham commercial precinct.

The proposed new additions will have an acceptable impact on the Lewisham Estate Heritage Conservation Area for the following reasons:

- No subdivision is proposed. The existing small lot subdivision pattern of the Conservation Area will be retained.
- The proposed building will be mixed-use which is consistent with its historic use as a shop and dwelling.
- The proposed building is well-designed and adopts a contemporary form with traditional detailing including a rendered masonry façade, gabled roof form, and multi-paned fenestration. The building will thus be clearly contemporary, while at the same time taking its architectural cues from the heritage of the area.
- The proposed building will be four-storeys, however, will present as three-storeys to Victoria Street, with a recessive fourth-floor.
- The design has attempted to mitigate the impact of this by maintaining similar front and rear setbacks to the mixed-use opposite. The zero setback of the residence to the rear follows the alignment of the shopfront and assists in defining the entrance to the service lane.

- The proposed roof terrace will have an acceptable impact because it is well recessed and will have little or no visibility at street level.

The proposed works will, overall, replace the existing modest modified building with a new building that better complements the Conservation Area.

6.3 Assessment against the Marrickville DCP 2011

The following sections assesses the proposal against the relevant controls provided by the *Marrickville DCP 2011*.

Part 5: Commercial and Mixed Use Development	Response
Control	
<p>5.1.2.1 Contributory buildings are buildings, not listed as heritage items, that are located within a heritage conservation area that make an important and significant contribution to the character and significance of that heritage conservation area. They are buildings that have a reasonable to high degree of integrity and date from a key development period of significance of the heritage conservation area. Contributory buildings are buildings from a key period of development that are either:</p> <ul style="list-style-type: none"> • highly or substantially intact; or • altered, yet recognisable. <p>Development involving contributory buildings must, at a minimum, retain the front portion of the building with any substantial new building being constructed to the rear. See Section 8.4.2 of this DCP for maps identifying contributory buildings within commercial centres.</p>	<p>The building was constructed in the late Victorian period as a modest dwelling and had a later Federation period shop and parapet added. The fabric from these two construction periods has been highly altered with the removal or replacement of internal and external finishes. What remains of the building is a modest and not particularly good example of a shop and dwelling of this period. While identified by the DCP 2011 as contributory, it makes little actual contribution to the Conservation Area as a result of these changes and its overall condition.</p> <p>The contributory items within this area re not mapped by the DCP. The proposal will retain and conserve the c.1904 shopfront portion of the shop and construct the new sympathetic dwelling behind.</p> <p>The rear addition which has a significant setback is a well-designed structure that uses high-quality materials and is respectful and sympathetic to its surrounding context.</p>
<p>5.1.3.4 Infill development within an existing urban context should be unambiguously identifiable as new development. This usually means the development can be clearly recognisable as contemporary in design to the time it is built and not a replication of buildings of earlier periods and styles. It should, however, complement the surrounding buildings and the predominant character of the particular commercial centre</p>	<p>The proposed building is well-designed and clearly contemporary in form and materiality. While of a greater massing and scale than other buildings to the south of the site, the design has successfully mitigated the visual impact by introducing a setback from Victorian era shopfront and a recessive fourth level so that it sits comfortably in the streetscape.</p>

<p>context such that it integrates with and makes a positive contribution to the broader commercial centre streetscape.</p>	
<p>Part 8: Heritage</p>	<p>Response</p>
<p>8.2.28.6 The core period of heritage significance is 1880-1940. Any buildings or significant elements of the fabric from this or any earlier period must be retained and maintained.</p>	<p>As set out in this SoHI, the existing building is a modest and not particularly good example of the type. This has resulted in the convergence of two construction periods and later alterations and additions, which has resulted in a confusion of the fabric record.</p> <p>The heritage listing sheet for the Conservation Area notes several non-contributory elements which apply to the existing building. These include the following:</p> <ul style="list-style-type: none"> • Removal of original detailing. • Painting rendering etc (including to unpainted face brick in Federation-period buildings). • Alteration to fenestration patterns (including reconfiguration/re-orientation of vertical openings to horizontal). • Visually intrusive security measures (eg security bars painted a light colour, roller shutters to windows and enclosing grilles to verandahs). • Replacement fences of type or form inappropriate to building typology and/or intrusive on aesthetic value of streetscape. • High/solid front fences and walls. <p>Taken together as a whole, these elements have resulted in a building with a considerably diminished contribution to the Conservation Area. The proposed scheme to enhance the contribution of the site by removing the intrusive elements, restoring the shopfront to commercial use and constructing a sympathetic style residence to the rear will have a positive impact on the HCA.</p>
<p>Part 9.5 Strategic Context: Lewisham South</p>	<p>Response</p>

9.5.2 Desired Future Character	
The desired future character of the area is:	
1. To protect and preserve contributory and period buildings within the precinct and require their sympathetic alteration or restoration.	The building is a modest example of a shop and dwelling. The front elevation has been significantly altered through variation alterations and additions over time. The primary contributory aspect to the HCA is the c.1904 shopfront, which forms part of a Lewisham commercial precinct adjoining the railway station. The proposal will retain and conserve the presentation of shopfront with the new residence behind thus preserving the contribution of the site to the HCA.
2. To protect the identified Heritage Items within the precinct.	The proposal will not impact on any heritage items within the precinct.
3. To maintain distinctly single storey streetscapes within the precinct.	The section of precinct in which the site is located is mixed and varies between one and two-storeys, although a recent approval for a third floor was given for No. 8A Victoria Street. The proposal will present as three-storeys to the streetscape, with a recessive fourth floor incorporated into the roof form. It will act as an appropriate transition between the low-scale residential streetscape to the south and the taller commercial buildings to the north.
4. To protect significant streetscape and/or public domain elements within the precinct including landscaping, fencing, open space, sandstone kerbing and guttering, views and vistas and prevailing subdivision patterns.	The proposal will not impact on any of these streetscape elements. The protection of views and vistas and the prevailing subdivision patterns has been achieved by maintaining the existing subdivision layout and the front, side and rear setbacks. Similarly, no parking is proposed which will enable the retention of the sandstone kerbing and guttering.
5. To preserve the predominantly medium density residential character comprising terrace/row housing on individual allotments within the precinct.	The medium density character of the streetscape will be unaffected by the proposal. The building is medium-density in character, while no amalgamation of lots is proposed.
6. To ensure the provision and location of off-street car parking does not adversely impact the amenity of the precinct.	There will be off-street car parking accessible via Jubilee Lane. The parking will

	be incorporated into the new building and will not be readily visible.
7. To protect the identified values of the Lewisham Estate Heritage Conservation Area.	The identified values of the Lewisham Estate Heritage Conservation Area predominantly involve intact contributory buildings. Despite the limited contribution of the c.1904 shopfront, the proposal includes conservation works to enhance its contribution to the conservation area. Additionally, a well-designed and sympathetic residence will be constructed at the rear, ensuring the protection of the identified values of the Lewisham Estate Heritage Conservation Area.
8. To ensure orderly development on masterplan sites in accordance with the principles of the masterplan vision, including allotment amalgamations, where required, that are not detrimental to achieving the overall masterplan structure and achieve an efficient and high quality built outcome.	The proposal is consistent with the principles expressed by the masterplan vision. The result will be a high-quality building that sits comfortably in its built heritage context.
9. To ensure that new development located on the GreenWay and Light Rail Corridor acknowledges and respects its environmental and social values; and adheres to the design principles and planning considerations for development fronting the GreenWay Corridor as detailed within 9.5.4 Precinct-specific planning controls.	The proposal complies.
10. To ensure that new development considers all potential impacts to biodiversity.	The proposal has considered all potential impacts to biodiversity, although it is noted that the site is located in a built-up area with little vegetation.
11. To ensure that higher density development demonstrates good urban design and environmental sustainability and provides suitable amenity for occupants of those developments.	This does not apply to the proposal, which is medium-density.
12. To ensure that the design of higher density development protects the	See above.

residential amenity of adjoining and surrounding properties.	
9.5.5 Site-specific planning controls	
9.5.5.1 Masterplan Area (MA 5.2)	

Refer to Figures 49 to 51 which reproduce Figures 5.2a-c as referenced in Section 9.5.5.1 of the DCP 2011.





Figure 49: Plan Diagram (Figure 5.2b). The site is outlined in green.
Marrickville DCP 2011



Figure 50: Section Diagrams (Figure 5.2c).
Marrickville DCP 2011

As set out below, the proposed development is consistent with the Masterplan for the Lewisham South precinct.

Control	Response
C20 The redevelopment of allotments shaded in Figure (5.2a) must wherever possible conform to the amalgamation	No amalgamation of lots is proposed as part of this development.

pattern in the control diagram in Figure (5.2b).	
C21 Amalgamation of allotments must not result in any adjoining sites being isolated to the extent that it is not possible for development to occur in accordance with the urban design vision for the Masterplan Area.	See above.
C22 The height of proposed buildings on the land shaded in Figure (5.2a) must conform to the control diagram(s) in Figures (5.2b) and (5.2c). The height is expressed in number of storeys.	The proposal complies. The building will be three storeys with a recessive fourth floor incorporated into the roof form.
C23 The boundary setbacks of proposed buildings on the land shaded in Figure (5.2a) must conform to the control diagram(s) in Figures (5.2b) and (5.2c). The setbacks are expressed in metres.	The proposal complies with the setback controls.
C24 The siting, orientation, depth and separation of proposed buildings on the land shaded in Figure (5.2a) must conform to the control diagram(s) in Figures (5.2b) and (5.2c). The dimensions are expressed in metres.	The proposal complies. The new building will maintain the existing siting, depth and orientation as the existing.
C25 The upper dwelling floor level(s) and roof (including any open pergolas) of proposed buildings on the land shaded in Figure (5.2a) must be set back from the external wall of the floor level below in accordance with the control diagram(s) in Figures (5.2b) and (5.2c). The setbacks are expressed in metres.	The proposed building will be three-storeys with a fourth-floor that is set well back from the external wall of the floor level below, as expressed in the diagram.
C26 The envelope of buildings on the land shaded in Figure (5.2a), where indicated as a street/shallow articulation zone within the control diagram(s) in Figures (5.2b) and (5.2c), must predominantly express a street fronting building edge with articulations to the building edge adding visual richness.	The proposed will retain the articulated c.1904 shopfront which retains the architectural richness of the area. The elevations of the new residence behind are well modulated and will provide visual interest to the wider HCA.
C27 The envelope of buildings on the land shaded in Figure (5.2a), where indicated as courtyard/deep articulation zone within the control diagram(s) in Figures (5.2b) and (5.2c), may include deep	The proposed envelope complies with these controls. The elevations are well articulated, including the terracotta screen and regular fenestration patterns.

articulations to the building form to break up the massing.	
C28 The redevelopment of the land shaded in Figure (5.2a) must conform to the control diagram in Figure (5.2b) in regards to: i. The location of active land uses and frontages at ground level; ii. The location of vehicular entries; iii. The location of publicly accessible and dedicated pedestrian links; and iv. The location and extent of public domain infrastructure.	The proposal will provide an active street front for retail shops with residential uses above. The location is well optimised for its vehicle access and proximity to pedestrian links, as well as public infrastructure.
C29 The redevelopment of the land shaded in Figure (5.2a) must incorporate landmark features on the corner of Old Canterbury Road and Railway Terrace.	n/a the site is not part of the area.

7 CONCLUSION

This SoHI has been prepared in conjunction with a Development Application for the removal of existing structures and the construction of a new mixed-use building at No. 10 Victoria Street, Lewisham, New South Wales. The site is not listed as a heritage item but is located within the Lewisham Estate Heritage Conservation Area as defined by Schedule 5 Part 2 of the *Inner West LEP 2022*.

The proposed works will have an acceptable impact on the Conservation Area because the proposal will retain and conserve the presentation of the c.1904 shopfront with the new residence behind thus preserving the contribution of the site to the HCA. The proposed building will make a positive contribution to the streetscape as it is well-designed and has carefully considered the significant history of the Conservation Area. It will be clearly contemporary while making subtle reference in design and form to the heritage character of the area. The proposed building will have a setback from Victoria Street to maintain the lower scale rhythm of the streetscape and to ensure view lines are uninterrupted.

The proposed works fulfil the aims and objectives of the *Inner West LEP 2022* and the *Marrickville DCP 2011* by improving the quality and diversity of mixed-use options while respecting the heritage significance of the area in which it lies.

8 Documentary Evidence

8.1 General References

- Australian Dictionary of Biography, 'Mackellar, Neil (1769-1802)', <https://adb.anu.edu.au/biography/mackellar-neil-2405>, accessed 1 August 2022.
- Australian Dictionary of Biography, 'Wardell, Robert (1793-1834)', <https://adb.anu.edu.au/biography/wardell-robert-2773>, accessed 1 August 2022.
- Australian Railway Historical Society, 'The Eleven Bridges of Long Cove' (2018).
- *Sydney Morning Herald*, 'Advertising', 29 June 1923.
- *Sydney Morning Herald*, 'Advertising', 29 August 1923.
- *Sydney Morning Herald*, 'Advertising', 25 February 1924.

8.2 Historic Plans and Photographs

- Aerial Photograph over Lewisham (c. 1943). SIX Maps.
- Photograph of Long Cove Creek Viaduct Whipple Truss (c. 1886). New South Wales State Archives.
- Sydney Metropolitan Detail Series, Sheet 28, Water Board Map of Petersham (c. 1890). State Library of New South Wales.

8.3 NSW LPI

- Certificate of Title, Volume 494-Folio 105.
- Certificate of Title, Volume 812-Folio 223.
- Certificate of Title, Volume 990-Folio 49.

8.4 Planning Documents

- *Inner West Local Environmental Plan 2022*.
- *Marrickville Development Control Plan 2011*.

Attachment E Applicant's Legal Advice

MEMORANDUM OF OPINION

**Advice on characterisation of proposed development
10 Victoria Street, Lewisham**

Prepared for:

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INTRODUCTION

1. My instructing solicitors act for Susan Yap, the registered proprietor of land identified as Lots 1 and 2 in DP 229318 and known as 10 Victoria Street, Lewisham (**Site**).
2. Ms Yap seeks development consent for alterations and additions to the existing dwelling house and commercial premises on the Site.
3. You seek my opinion as to whether the proposed development is characterised as a “dwelling house”.

BACKGROUND

4. I am instructed that the relevant background facts are as follows:
 - (a) The Site is zoned E1 – Local Centre under the *Inner West Local Environmental Plan 2022 (LEP)*.
 - (b) The Site is identified as “50” on the Additional Permitted Uses Map and, therefore, development for the purposes of dwelling houses is permitted with development consent on the Site: LEP, cl 2.5 and cl 50 of Sch 1.
 - (c) On 27 June 2024, Ms Yap lodged development application DA/2024/0526 (**DA**) seeking consent for alterations and additions to an existing dwelling house and commercial premises located on the Site (**Proposed Development**) comprising:
 - (i) retention and restoration of the existing ground floor shopfront with a new replacement awning and demolition of remaining structures; and
 - (ii) alterations and additions comprising a new three storey wing with mezzanine comprising a ground floor commercial premises (46m² of gross floor area (**GFA**)) with dwelling house (371.8m²) behind and above.
 - (d) The DA is accompanied by a Statement of Environmental Effects dated 17 June 2024 prepared by Robinson Urban Planning which describes the proposed alterations and additions as follows (p 8):
 - (i) ground floor:
 - (A) commercial premises with frontage to Victoria Street, includes accessible bathroom;

- (B) dwelling house behind, with two car garage accessed off Jubilee Land, new residential entry and storage area, plus guest bedroom with rumpus room and amenities;
- (ii) first floor: main bedroom with ensuite, plus bedroom 1 & 2, play room and laundry;
- (iii) second floor: living, dining/kitchen, tv room and outdoor terrace; and
- (iv) mezzanine: home office.
- (e) On 2 July 2024, the Inner West Council (**Council**) accepted the DA for lodgment.
- (f) The Council has indicated that it is not satisfied that the Proposed Development meets the definition of "dwelling house" because the building does not contain only one dwelling but rather contains one dwelling and one commercial premises.
5. If any of this information is incorrect, incomplete or has changed, please urgently let me know as it may significantly affect or change the conclusions reached in this opinion.

PRINCIPLES ON CHARACTERISATION

6. The principles of characterisation are well known and were reviewed by Preston CJ in *Chamwell Pty Ltd v Strathfield Council* (2007) 151 LGERA 400; [2007] NSWLEC 114 at [27]-[28], [34], [36] and [45]. Those principles may be summarised as follows:
- (a) In planning law, use must be for a purpose. The purpose is the end to which the land is seen to serve. It describes the character which is imparted to the land on which the use is pursued: at [27].
- (b) In determining whether land is used for a particular purpose, an enquiry into how that purpose can be achieved is necessary. The use of land involves no more than the "physical acts by which the land is made to serve some *purpose*": at [28].
7. In *Pet Carriers Botany Bay City Council v Pet Carriers International Pty Limited* [2013] NSWLEC 147, Preston CJ made a number of further observations with respect to characterisation, including:

2

Liability limited by a scheme approved under Professional Standards Legislation

- (a) Commonly, the environmental planning instrument (**EPI**) containing the land use table with the threefold classification of developments describes each purpose, either directly in a definitions clause or indirectly by incorporating definitions in other statutory instruments. Each purpose is indicated in the instruments by means of a description of a character which the purpose imparts to land or buildings on land in which it is pursued: at [26].
- (b) A use of land can be for two or more purposes. It may be necessary to ascertain, having regard to the character, extent and other features of the uses, whether the prohibited purpose can be regarded as subsumed in the permissible purpose and treat the permissible purpose as that for which the land is used, or whether they are independent of each other so that the land is being used for both prohibited and permissible purposes: at [28].
- (c) There are two means by which the EPI and land use table for each zone may identify the purpose of a development falling in each of the three classifications, namely identification as either a nominate purpose or an innominate purpose. A nominate purpose is one that the EPI expressly nominates as being within one of the three classifications. An innominate purpose falls within a particular classification by reason of it not being expressly nominated in other classifications: at [29]-[30].
8. The inquiry is whether the development can be characterised as being for a purpose that the EPI identifies as being permissible with consent and not for a purpose that the EPI identifies as being permissible without consent or as being prohibited. The focus of the inquiry is whether the development is within a nominate or innominate purpose: at [32].
9. In *Jojeni Investments v Mosman Municipal Council* [2015] NSWCA 147; (2015) 89 NSWLR 760, Leeming JA summarised the principles that guide the task of characterisation as follows:
- 74 I return to the question of characterisation, which is not free from difficulty. As Professors Twining and Miers have said in a different context, "There are no categorical rules to direct judges about the selection of appropriate levels of generality": W Twining and D Miers, *How to Do Things with Rules* (5th ed, 2010, Cambridge University Press) at 309. The same is true here.

75 However, there are well-established principles to guide the exercise of judgment. The question is the appropriate characterisation of the purpose of the use: *O'Keefe* at 535. That question is not answered through a meticulous examination of the details of the activities undertaken on the land: *O'Keefe* at 535. It is necessary to have regard to the purpose served by those activities: *Abret v Wingecarribee Shire Council* at [51]. That use is characterised liberally, having regard to the principle that provisions designed to protect and preserve existing use rights should be as liberally construed as the statutory language in its context allows: *Dorrestijn v South Australian Planning Commission* (1984) 59 ALJR 105 at 108.

76 In *Royal Agricultural Society of New South Wales v Sydney City Council* at 310, McHugh JA (with whom Hope and Samuels JJA agreed) stated that the level of generality was "not so general that the characterisation can embrace activities, transactions or processes which differ in kind from the use which the activities etc as a class have made of the land". In determining the appropriate genus, "attention should be focused on the [town-planning] purpose for which the determination is being made ... because the regulation of the use within the neighbourhood is the general purpose for which planning law is provided": *Boys* at 59; *Grace v Thomas Street Café Pty Ltd* [2007] NSWCA 359; 159 LGERA 57 at [69].

10. Further, in the task of identification of the end to which the use is served there may be more than one purpose to which the activities are directed, the consequence of such a situation is described by McHugh JA in *Royal Agricultural Society of New South Wales v Sydney City Council* (1987) 61 LGERA 305 at 311 as:

The foregoing cases were concerned with the activities of a particular business or industry or with activities of a common kind. But I see no reason why the principle upon which those decisions were based is not also applicable to a case where land is used for activities, processes or transactions of widely differing kinds. If the activities, processes or transactions are capable of being treated as all or the majority of the species of a genus, then that genus may properly be regarded as describing the purpose of the use of the land. If they are not, then it may be that the only conclusion is that the land has been used for more than one purpose. If that conclusion is drawn, then each purpose is to be characterised in accordance with the principles set out earlier in this judgment.

11. For planning purposes, a use that is ancillary to a dominant purpose is to be disregarded and treated as part of the dominant purpose. This determination of whether a particular use is ancillary to another use was established in *Foodbarn Pty Ltd v Solicitor-General* (1975) 32 LGERA 157 where it was stated at 161:

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...It may be deduced that where a part of the premises is used for a purpose which is subordinate to the purpose which inspires the use of another part, it is legitimate to disregard the former and to treat the dominant purpose as that for which the whole is being used. Doubtless the same principle would apply where the dominant and servient purposes both relate to the whole and not to separate parts. But the trial judge specifically found that sales by retail were not ancillary to other purposes of the defendants and no attempt has been made to subvert that conclusion. Where the whole of the premises is used for two or more purposes none of which subserves the others, it is, in my opinion, irrelevant to inquire which of the multiple purposes is dominant. If any one purpose operating in a way which is independent and not merely incidental to other purposes is prohibited, it is immaterial that it may be overshadowed by the others whether in terms of income generated, space occupied or ratio of staff engaged. The ordinance is nonetheless being disobeyed.

12. Further explanation of the principles relevant for consideration of the issue of characterising an ancillary use was outlined in *Baulkham Hills Shire Council v O'Donnell* (1990) 69 LGRA 404 at 409-410:

...Notwithstanding the principles laid down in *Foodbarn*, it does not follow that a use which can be said to be ancillary to another use is thereby automatically precluded from being an independent use of the land. It is question of fact and degree in all the circumstances of the case whether such a result ensues or not. When a resident uses his land to park his motor car at his house, he is no doubt not conducting an independent use of car parking; when an employer installs at his factory a canteen for his workers, no doubt he is not conducting an independent use of running a restaurant; when the Clarks grew vegetables for their table they were not conducting an independent use of vegetable growing. But when one use of the land is by reason of its nature and extent capable of being an independent use it is not deprived of that quality because it is "ancillary to", or related to, or interdependent with, another use. If a book publisher opens a sales room at his publishing house to sell his products, the selling of books is an independent use although ancillary to the use of publishing. The series of cases dealing with dual uses (of which the decision of this Court in *Warringah Shire Council v Caltex Oil (Australia) Pty Ltd* (1989) 68 LGRA 206 is an example) illustrate the point: they show that a "convenience store" and a petrol station are two independent uses, although the former is clearly ancillary to the latter. This is a fortiori the case where the "ancillary" use has predated the use to which it is said to become ancillary and when it has done so in circumstances where it was initially not "ancillary" to any other use.

OPINION

13. Clause 2.3 of the LEP relevantly provides:

2.3 Zone objectives and Land Use Table

- (1) The Land Use Table at the end of this Part specifies for each zone—
- (a) the objectives for development, and
 - (b) development that may be carried out without development consent, and
 - (c) development that may be carried out only with development consent, and
 - (d) development that is prohibited.
- (2) ...
- (4) This clause is subject to the other provisions of this Plan.

14. For the purpose of cl 2.3(1) of the LEP, the Land Use Table for the E1 zone provides as follows (omitting the zone objectives):

Zone E1 Local Centre**2 Permitted without consent**

Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Light industries; Local distribution premises; Medical centres; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation facilities (indoor); Respite day care centres; Service stations; Shop top housing; Tank-based aquaculture; Veterinary hospitals; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Camping grounds; Caravan parks; Cemeteries; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial training facilities; Industries; Marinas; Mortuaries; Open cut mining; Recreation facilities (major); Registered clubs; **Residential accommodation**; Restricted premises; Rural industries; Sewage treatment plants; Sex services premises; Signage; Storage

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premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste disposal facilities; Waste or resource transfer stations; Water storage facilities; Water treatment facilities; Wholesale supplies

[emphasis added].

15. Pausing here, the mechanism by which the innominate purposes of development are permitted with consent is by the inclusion of “*Any other development not specified in item 2 or 4*” at the end of the nominate purposes permitted with consent.
16. The expression “food and drink premises” (being a innominate permitted with consent purpose) and “residential accommodation” (being an innominate prohibited purpose) are defined in the Dictionary to the LEP as follows:

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following—

- (a) attached dwellings,
- (b) boarding houses,
- (baa) co-living housing,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (faa) (Repealed)
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers’ dwellings,
- (j) secondary dwellings,

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- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

17. For the purpose of the definition of “food and drink premises”, the expression “restaurant or café” is defined as follows:

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

18. I am instructed that the commercial aspect of the Proposed Development is a café, which is a “food and drink premises” that is permitted with consent in the E1 zone pursuant to the Land Use Table.

19. For completeness, I note that there is nothing to suggest that the commercial aspect of the Proposed Development is ancillary to or dependent on the residential aspect. I note that the Courts have previously rejected an argument that caretaker accommodation was ancillary to a commercial use (*Lismore City Council v Dajoco Investments Pty Ltd* [2021] NSWLEC 59) or a sporting / club use (*Capital Club v Cmr of State Revenue* [2007] VSC 108; (2007) 17 VR 357 at [58]; *Double Bay Bowling Club v Council of the Municipality of Woollahra* [2020] NSWSC 1861 at [57]-[67]). As such, any argument to the effect that the proposed café and residential uses are ancillary is unlikely to succeed given the separate and independent nature of those uses.

20. For the purpose of the definition of “residential accommodation”, the expressions “dwelling” and “dwelling house” are defined as follows:

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

dwelling house means a building containing only one dwelling.

21. In my opinion, the residential aspect of the Proposed Development satisfies the definition of “dwelling house” because the building will only contain one dwelling

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(ie it will not contain more than one dwelling). The word “building” in the definition of “dwelling house” (which is not defined in the LEP) will have the same meaning as in the *Environmental Planning and Assessment Act 1979 (NSW) (EPA Act)*; *Interpretation Act 1987 (NSW)*. The expression “building” is defined in s 1.4(1) of the EPA Act as including “*part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993*”. In circumstances where the expression “building” includes part of a building, in my opinion, the residential aspect of the Proposed Development meets the definition of “dwelling house”. The fact that the building will also contain another commercial use does not mean that the residential aspect fails to meet the definition of “dwelling house”.

22. In addition, under the National Construction Code, the commercial aspect of the building will be a Class 6 building and the residential aspect will be a Class 1 building. The Class 1 building will only be used for the purpose of a single dwelling.
23. In the Land Use Table for the E1 zone, “dwelling houses” (being a type of “residential accommodation”) are a nominate prohibited purpose.
24. Despite the prohibition on “residential accommodation” in the E1 zone, a dwelling house is permitted with consent on the Site by operation of cl 2.5 of and cl 50 of Sch 1 to the LEP. However, before granting development consent to any such use, the consent authority must be satisfied of all of the matters set out in cl 6.13(3) of the LEP. In this regard, it is relevant to note that if the proposed building only contained one dwelling, it would be contrary to the requirements of cl 6.13 of the LEP because it would not be a mixed use development and would not have an active street frontage.
25. For the foregoing reasons, it is my opinion that the Proposed Development is permitted with consent because the commercial aspect meets the definition of “commercial premises” (noting the assumption that I have made in this respect) and the residential aspect meets the definition of “dwelling house”, both of which are permitted with consent on the Site.
26. For completeness, it is my opinion that the Proposed Development is properly characterised as a “mixed use development”, being an innominate permissible purpose. The expression “mixed use development” is defined in the Dictionary to the LEP as follows:

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mixed use development means a building or place comprising 2 or more different land uses.

27. Given that the two land uses are proposed on the Site (namely, commercial premises and a dwelling house), plainly the definition of “mixed use development” is satisfied. It follows that the Proposed Development is characterised as a “mixed use development”.

CONCLUSION

28. For the foregoing reasons, it is my opinion that:

- (a) the residential aspect of the Proposed Development satisfies the definition of “dwelling house” because the building (or part of the building) will only contain one dwelling (ie no more than one dwelling is proposed).
- (b) the commercial aspect of the Proposed Development satisfies the definition of a “food and drink premises” (being a café); and
- (c) the Proposed Development is properly characterised as a “mixed use development” which is permitted with consent on the Site.

Please let me know if you wish to discuss any aspect of this opinion.



Tim Poisel

University Chambers

25 February 2025