





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2021/0228
Address	40 Milton Street ASHFIELD NSW 2131
Proposal	Demolition of existing building. Construction of a boarding house containing basement car parking, landscaping and associated works.
Date of Lodgement	31 March 2021
Applicant	SNP Equities
Owner	Appwam Pty Ltd
Number of Submissions	Initial: 4
Value of works	\$6,311,441.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Non-compliance with maximum building height and floor space ratio; overshadowing impacts
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standard (Clause 4.3 Height of buildings)
Attachment D	Clause 4.6 Exception to Development Standard (Clause 4.4 Floor space ratio)
Attachment E	Plan of Management



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area				

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of existing building, construction of a boarding house containing basement car parking, landscaping and associated works at 40 Milton Street, Ashfield NSW 2131. The application was notified to surrounding properties and four (4) submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Non-compliance with maximum building height and floor space ratio development standards under *Ashfield Local Environmental Plan 2013*;
- Non-compliance with maximum floor space ratio for boarding house developments under *State Environmental Planning Policy (Affordable Rental Housing) 2009*; and
- Overshadowing impacts to neighbouring development at no. 44-48 Milton Street.

Despite the items noted above, the proposal generally complies with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Ashfield Local Environmental Plan 2013*, and the Inner West Comprehensive Development Control Plan 2016.

2. Proposal

The application seeks development consent for the demolition of all existing structures on the site and the construction of a boarding house. Specifically, the following is proposed:

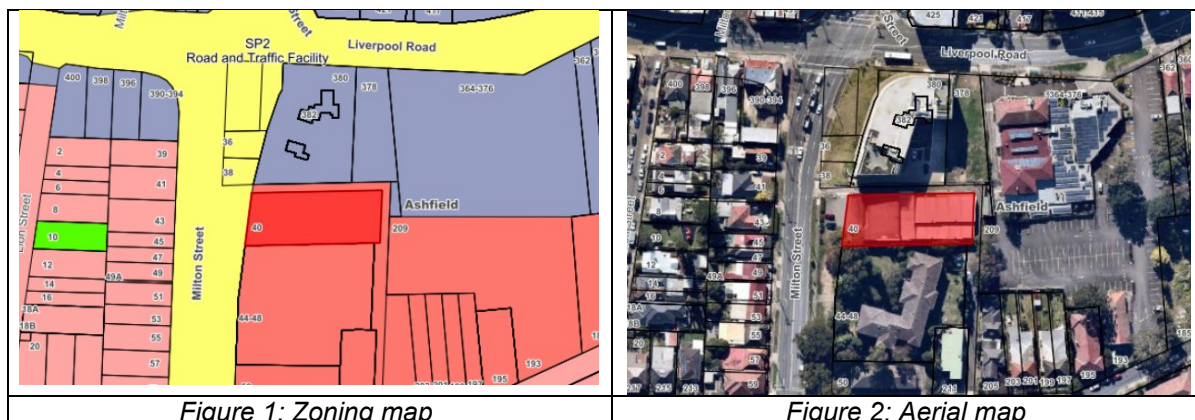
- Demolition of all existing structures;
- Construction of a five storey boarding house, comprising 62 boarding rooms with a maximum capacity of 116 boarders (excluding manager's rooms). The room configurations are as follows;
 - 55 x dual-boarder rooms;
 - 6 x single-boarder rooms;
 - 1 x manager's room;
- Two levels of basement parking, comprising 32 car parking spaces (including 6 accessible spaces), 13 motorcycle parking spaces, and 20 bicycle spaces;
- Landscaping and associated works;
- Dedication of part of the eastern rear of the site to Council for the widening of Milton Lane; and,
- A new pedestrian footpath along the northern boundary.

3. Site Description

The subject site is located on the eastern side of Milton Street, between Liverpool Road and Norton Street, Ashfield. The site consists of one allotment and is generally rectangular in shape with a total area of approximately 1,602.6sqm.

The site has a 23.2m wide primary frontage to Milton Street, a 56.9m wide secondary frontage to Milton Lane, and a 22.9m wide rear frontage to Milton Lane. The front portion of the site is equal to 274.062sqm adjacent to Milton Street and is subject to land acquisition by Transport for NSW for the purposes of expanding Milton Street. The site is also affected by an easement for a Sydney Water Sewer pipe that traverses the width of the site.

The site is currently occupied by a two storey commercial building. The adjoining sites to the north and south are occupied by a seven (7) storey mixed use development and a three (3) storey residential flat building, respectively.



4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision
DA/2020/0139	Construction of a 6 storey residential flat building of 37 units, 50 car parking spaces including affordable housing units and strata subdivision.	Refused by IWLPP 13 October 2020
REV/2020/0035	Section 8.2 review of residential flat building	Approved by IWLPP 12 October 2021

Surrounding properties

Property	Application	Proposal	Decision
378 Liverpool Road	DA/2021/0928	Demolition of existing structures, and construction of a mixed-use development comprising 1 retail unit, 40 boarding rooms, 1 boarding house communal room and 3 apartments across 6 above-ground storeys	Currently under assessment
380 Liverpool Road	10.2012.269	Mixed use development	Approved

4(b) Application history

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

Date	Discussion / Letter / Additional Information
31 March 2021	Application lodged.
27 April to 18 May 2021	Application notified.
9 September 2021	Council requested that additional information and/or amended plans be submitted to address the following matters: <ul style="list-style-type: none"> • Voluntary Planning Agreement; • Building envelope and scale;

	<ul style="list-style-type: none"> • Building design and amenity; • Engineering matters; • Plan of Management; • Remediation; • Architectural Excellence Panel; and • Solar access and overshadowing.
15 and 27 October 2021	<p>Amended plans and additional information were submitted by the applicant.</p> <p><u>Note:</u> this information forms the basis of the following assessment.</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)*.

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*;
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*;
- *State Environmental Planning Policy (Affordable Rental Housing) 2009*;
- *State Environmental Planning Policy (Infrastructure) 2007*; and
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Inner West Comprehensive Development Control Plan 2016 (IWCDCP 2016) provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has been used in the past for activities which could have potentially contaminated the site. It is considered that the site will require remediation in accordance with *SEPP 55*.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the management of contaminated groundwater onsite and the treatment and/or disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the RAP. To ensure that these works are undertaken, it is recommended that conditions are included in the recommendation in accordance with Clause 7 of *SEPP 55*.

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

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

5(a)(iii) State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) provides controls relating to various matters including height, floor space ratio, landscaped area, solar access, and private open space requirements for various types of affordable rental housing, including in-fill affordable housing.

The following is an assessment of the proposed development against the relevant provisions of the abovementioned:

Part 2 New affordable rental housing

Division 3 of ARH SEPP stipulates the following standards for boarding houses:

Standard	Proposed	Compliance
Clause 29 Standards that cannot be used to refuse consent		
<p>(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</p> <p>(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</p> <p>(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or</p> <p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>	<p>(a) N/A.</p> <p>(b) N/A.</p> <p>(c) The site is subject to a maximum FSR of 0.7:1 pursuant to Clause 4.4 of ALEP 2013. Therefore, under subclause (i), a maximum FSR of 1.2:1 (1,594.8sqm) is permitted. The application proposes a FSR of 1.59:1 (2,116sqm).</p>	<p>No</p>
<p>(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(a) building height if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,</p> <p>(b) landscaped area if the landscape treatment of the front setback area is</p>	<p>(a) The proposed development exceeds the 12.5m maximum building height permitted under Clause 4.3 of ALEP 2013.</p> <p>(b) The application provides an appropriate landscape treatment along the eastern primary frontage and northern secondary frontage.</p>	<p>No</p>

<p><i>compatible with the streetscape in which the building is located,</i></p> <p>(c) <i>solar access where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</i></p> <p>(d) <i>private open space if at least the following private open space areas are provided (other than the front setback area):</i></p> <p>(i) <i>one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,</i></p> <p>(ii) <i>if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,</i></p> <p>(e) <i>parking if:</i></p> <p>(i) <i>in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</i></p> <p>(ii) <i>in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</i></p> <p>(iia) <i>in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</i></p> <p>(iii) <i>in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</i></p> <p>(f) <i>accommodation size if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</i></p> <p>(i) <i>12 square metres in the case of a boarding room intended to be used by a single lodger, or</i></p> <p>(ii) <i>16 square metres in any other case.</i></p>	<p>(c) The proposed ground floor communal living room will receive adequate solar access.</p> <p>(d) A communal open space with a minimum area of 20sqm and minimum dimension of 3m is provided. Additionally, a private open space with a minimum area of 8sqm and minimum dimension of 2.5m is provided for the on-site manager.</p> <p>(e) Subclause (iia) requires a minimum of 31 car parking spaces to be provided. Additionally, subclause (iii) requires a maximum of 1 car parking space to be provided for an on-site manager. The application provides 32 on-site car parking spaces, of which one is proposed for the use of the manager.</p> <p>(f) Each single-lodger room has a minimum gross floor area of 12sqm, while each dual-lodger room and the on-site manager's room have a minimum gross floor area of 16sqm.</p>	
<p>(3) <i>A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.</i></p>	<p>Each boarding room is provided with private kitchen and bathroom facilities.</p>	<p>Yes</p>

<p>(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).</p>	<p>The proposed development does not comply with the standards set out in subclauses (1) and (2). Notwithstanding, the proposed development is considered to generally satisfy the relevant planning provisions and consent is recommended.</p>	<p>Noted</p>
<p>Clause 30 Standards for boarding houses</p>		
<p>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:</p> <ul style="list-style-type: none"> (a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided, (b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres, (c) no boarding room will be occupied by more than 2 adult lodgers, (d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger, (e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager, (f) (Repealed) (g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use, (h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms. 	<ul style="list-style-type: none"> (a) One communal living room is provided at the ground floor. (b) The proposed boarding rooms do not exceed a gross floor area of 25sqm. (c) A maximum of 2 lodgers is proposed per boarding room. (d) Each boarding room is provided with private kitchen and bathroom facilities. Communal kitchen and bathroom facilities are also provided in the communal living room. (e) One boarding room is provided for an on-site manager. (f) N/A. (g) N/A. (h) A minimum of 1 bicycle and 12 motorcycle parking spaces are required. The application proposes 20 bicycle and 12 motorcycle parking spaces. 	<p>Yes</p>
<p>(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.</p>	<p>N/A.</p>	<p>N/A</p>
<p>Clause 30A Character of local area</p>		
<p>A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</p>	<p>As noted throughout this report, the overall form and character of the proposed development is considered to be compatible with the existing and desired future character of the local area. The development has been sited and designed with suitable setbacks that are consistent with those of adjoining developments and which allow for appropriate landscaping to be provided to compliment the development and the streetscape.</p>	<p>Yes</p>

Clause 52 No subdivision of boarding houses		
A consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.	The application does not propose the subdivision of the development. Notwithstanding, a condition prohibiting subdivision in perpetuity has been included in the recommendation.	Yes

5(a)(iv) State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)

Clause 101 Development with frontage to classified road

The site has a frontage to Milton Street, which is a classified road. Under Clause 101(2) of *SEPP Infrastructure*, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

The application was referred to Transport for NSW (TfNSW) for comment. TfNSW provided the following comments with respect to the original set of amended plans submitted with this application:

“TfNSW has reviewed the submission and notes the previous request to widen Milton Lane has been included in the revised plans, however TfNSW previously advised TfNSW that access to Milton Lane from Milton Street should be restricted to left-in and left-out (LILO) arrangement. It has been identified that the LILO arrangement is not proposed as part of the revised design.”

The application was amended and, subject to the recommended conditions of consent, a left-in and left-out arrangement for access to Milton Lane from Milton Street can be provided.

Given the above, ingress and egress to the site is considered to remain adequate to support the intended vehicle movements and the application is considered acceptable with regard to Clause 101 of *SEPP Infrastructure*.

Clause 102 Impact of road noise or vibration on non-road development

Clause 102 of *SEPP Infrastructure* relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 20,000 vehicle. Under that clause, a development for the purpose of a building for residential use requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

Milton Street has an annual average daily traffic volume of more than 20,000 vehicles. A Noise Assessment Report was submitted with the application that demonstrates that the development will comply with the LAeq levels stipulated in Clause 102 of *SEPP Infrastructure*. Conditions are included in the recommendation.

5(a)(v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

Vegetation SEPP concerns the protection and removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council’s DCP.

The application does not seek the removal of any vegetation from within the site or on Council land; however, there is one existing tree on the site located within proximity of the works that is proposed to be retained.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and *IWCDP 2016* subject to the imposition of conditions to ensure the tree is appropriately protected and retained.

5(a)(vi) Ashfield Local Environment Plan 2013 (ALEP 2013)

The application was assessed against the following relevant clauses of *Ashfield Local Environmental Plan 2011 (ALEP 2013)*:

Control	Proposed	Compliance
Clause 1.2 Aims of Plan	The proposal is consistent with the relevant aims of the plan as follows: <ul style="list-style-type: none"> The proposed development provides housing in an accessible location; and, The design of the proposal is considered to be of a high standard and has a satisfactory impact on the private and public domain. 	Yes
Clause 2.3 Zone objectives and Land Use Table	The proposal satisfies the clause as follows: <ul style="list-style-type: none"> The application proposes a boarding house, which is permissible with consent in the R3 Medium Density Residential zone; and, The proposal is consistent with the relevant objectives of the zone, as it will assist to provide a variety of housing types for the needs of the community. 	Yes
Clause 2.7 Demolition requires development consent	The proposal satisfies the clause as follows: <ul style="list-style-type: none"> Demolition works are proposed, which are permissible with consent; and, Standard conditions are recommended to manage impacts which may arise during demolition. 	Yes – subject to conditions
Clause 4.3 Height of building M – 12.5m	The application proposes a building height of 17.4m, which is a 39.2% variation (4.9m over).	No – see Section 5(a)(vii)(i) below
Clause 4.4 Floor space ratio H – 0.7:1 (929.95sqm)	The application proposes a floor space ratio of 1.59:1 (2,116sqm), which is a 127.5% variation (1,186sqm over).	No – see Section 5(a)(vii)(i) below
Clause 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the clause.	Yes
Clause 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Clause 4.6 to vary Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio.	See Section 5(a)(vii)(i) below
Clause 5.1 Relevant acquisition authority	A portion of the front of the site adjacent to Milton Street is subject to acquisition by Roads and Maritime Services for widening of Milton Street. The application does not propose any works to this portion of the site.	Yes

Clause 6.1 Earthworks	The proposed earthworks are considered unlikely to result in any detrimental effect on drainage patterns and soil stability in the locality of the development or on the amenity of adjoining properties.	Yes – subject to conditions
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(i) Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3 Height of buildings
- Clause 4.4 Floor space ratio

Clause 4.3 Height of buildings

The applicant seeks to vary the building height development standard under Clause 4.3 of *ALEP 2013* by 39.2%, which is equal to 4.9m over the maximum permitted.

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

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

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of *ALEP 2013* justifying the proposed contravention of the development standard, which is summarised as follows:

- *The visual fit of the building in this particular instance having regard to the variation sought is addressed by Smith & Tzannes in the UDR submitted with the DA documentation (see relevant extracts below). It concludes that in this case the buildings 'fit' is acceptable and appropriate for this site. It follows that the revised design with its lower height and very similar form would equally satisfy the relevant urban design principles established by the original UDR. The site sits within a landuse zone with a 12.5m height limit, immediately south of a zone with a 23m height limit. There is no provision within the ALEP 2013 for any transition between the two controls, notwithstanding that the LEP mapping includes a number of possible height limits which could have been adopted for this site (see below). As shown in the elevations the proposed scale of the proposal is appropriate to the adjoining development. The proposal provides a stepped building that offers an sound urban design outcome notwithstanding the height variation. The height is appropriate for the site having regard to the sites juxtaposition to the Ashfield West Precinct (AWP). The proposal maintains appropriate visual separation between the buildings so that the required extent of permeability is provided between the buildings when viewed from the opposite side of Milton Street.*
- *The study identifies the fact that the sites to the east have a 15m transitional height between the 23m and the 12.5m which provides opportunities to achieve a transitional form given that additional FSR can be achieved under the Affordable Housing SEPP (i.e. due to sites proximity to public transport and the fact that boarding houses are permissible in the zone). The additional affordable housing FSR enables the heights to be achieved given that the affordable housing is added to the 0.7:1 base FSR.*
- *The architectural design, layout and street presentation of the proposal achieves a high quality development adjacent the AWP which is experiencing a high level of redevelopment, particularly along Liverpool Road. The proposal emulates contemporary building materials and finishes, with a change of materials for the upper level which breaks up the additional height of the building above 12.5m. The upper*

level will not read as a full level due to the setback and the reduced floor plate when compared to the level below. When viewed in the context of the 7- storeys to the north and 3- storeys to the south the proposed built form is appropriate and fits with the streetscape and overall built form outcomes contemplated by the AWP. The site is intrinsically linked with the outcomes of the AWP in that the site provides for a two-way vehicle access solution in Milton Lane. Easements are proposed to facilitate improved access.

- The proposed height maintains acceptable sky exposure to existing buildings adjoining or adjacent to the site. Shadow diagrams are submitted with the revised plan set demonstrate adequate daylight is maintained to the units to the south. Shadow diagrams demonstrate that the proposed development, including the additional height, provides for a compliant solar access assessment of the adjoining residential flat building. The northern rooms in the adjoining building are at ground floor, Level 1 and Level 2. When compared to a compliant proposal the application provides improved solar to the bedroom window on the ground floor. The proposal maintains 2 hours solar to the two units facing north (see Annexure A).
- In considering the height interface the ALEP currently provides for N (13m) with I (8.5m) to the west of the site resulting in a transitional height difference of 4.5m. The difference between the site to the north and the subject site is S (23+m) v M (12.5m) representing a change of 10.5m and therefore a transition is appropriate on this site in this particular location. The subject proposal offers transitional form provided by the proposal offers an acceptable urban design outcome and one which is supported by the original design analysis conducted by Smith Tzannes architects who prepared the UDR.
- The site has been the subject of mandatory road widening by the RMS (Milton Street frontage) and by Council via the provisions of the Ashfield DCP (Milton Lane). There are no planning incentives to achieve the widening of the rear Lane. It is common for areas affected by public burden and urban design studies to receive incentives to increase the likelihood of redevelopment so that the overall strategic planning imperatives can be achieved. In this case the height has not been altered from the base 12.5m unlike sites to the north which have seen a significant change to height and FSR. The increased height significantly increases the likelihood of the strategic planning objectives being achieved.
- The site is suitable for the development as shown in the revised plans based on its location and neighbourhood context as a transitional site. The site's capacity to support the additional height as assessed by Smith & Tzannes is appropriate based on the transition it provides between the 23m height to the north and 12.5m height to the south. The height variations elsewhere in the locality are not as significant with 4 – 5m being the difference between height interface sites as opposed to the current 10.5m difference between the site and the southern neighbour. The proposed transition between the 23m and the 12.5m is an appropriate urban design outcome for the precinct.

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

It is considered the development is in the public interest because it is consistent with the objectives of the R3 Medium Density Residential, in accordance with Clause 4.6(4)(a)(ii) of ALEP 2013, which read:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is considered to be consistent with the relevant zone objectives for the following reasons:

- The proposed development is considered to have an overall height and form as viewed from the public domain that can be reasonably expected within a medium density residential environment.
- The proposal provides affordable housing in the form of a boarding house, which is considered to provide a different form of housing to meet the needs of the community within a medium density residential environment. The development includes both single- and dual-boarder room options, with a range of room layouts to cater to different occupants. The development also provides accessible rooms, which provides further housing diversity.
- The proposal does not inhibit the ability of other land uses that provide facilities or services to meet the day to day needs of residents.

It is considered the development is in the public interest because it is consistent with the objectives of the building height development standard, in accordance with Clause 4.6(4)(a)(ii) of *ALEP 2013*, which read:

- (a) to achieve high quality built form for all buildings,*
- (b) to maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes,*
- (c) to provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings,*
- (d) to maintain satisfactory solar access to existing buildings and public areas.*

The proposal is considered to be consistent with the relevant objectives of the development standard for the following reasons:

- The proposal is considered to result in a high quality built form. The overall massing and building setbacks are considered appropriate for the site and do not result in adverse visual bulk, overshadowing, or privacy impacts to adjoining properties. Additionally, the façade treatment and proposed materials and finishes are considered to be compatible with and complimentary to the streetscape.
- The proposal retains adequate sky exposure, access to daylight, and direct solar access to both the proposed development and the adjoining properties.
- The five (5) storey building form and overall building height is considered to provide an appropriate transition between the existing seven (7) storey development at no. 380 Liverpool Road (B4 Mixed Use zone) and the existing three (3) storey development at no. 44-48 Milton Street (R3 Medium Density Residential zone). The fifth storey is appropriately massed away from the Milton Street frontage to present as a four (4) storey building. The four (4) storey building form fronting Milton Street is largely contained within the maximum building height plane (excluding the roof terrace) and provides an appropriate transition for a compliant building height and form to be achieved on the neighbouring property at no. 44-48 Milton Street.

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

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

Clause 4.4 Floor space ratio

The applicant seeks to vary the floor space ratio development standard under Clause 4.4 of *ALEP 2013* by 127.5%, which is equal to 1,186sqm over the maximum permitted.

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

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

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of *ALEP 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposal seeks to vary the FSR development standard due to the site-specific circumstances of this case. These circumstances are established by the lack of transitional height and density provisions between the Liverpool Road properties immediately north of the site and the medium density residential development south of the site. The bulk and scale of the new development at the corner of Liverpool Road and Milton Street is quite substantial when considered against the 12.5m height and 0.7:1 FSR to the south. Properties fronting Liverpool Road to the south could have a theoretical height of 23m and FSR of 2.5:1 if adopting the affordable housing component. On this basis the subject site is capable of supporting additional density and acts as a transitional site mediating bulk and scale from 23m and 2.5:1 to 12.5m and 1.2:1 (includes 0.5:1 bonus for affordable). The proposed FSR at 1.59:1 FSR offers a mediating scale and form.*
- *The submitted plans, supported by the original UDR, demonstrates that the proposed development has an acceptable 'fit' for the site. The proposals overall bulk and scale is consistent and compatible with the surrounding development both now and in the future (increased future development likely to 23m and 2.5:1 FSR to the north – north – east). The proposed FSR offers a mediating transitional form from the 2:1 plus FSR to the north and the existing development to the south. In dealing with compatibility it is appropriate to adopt the relevant principles established in *Project Ventures v Pittwater Council*. The principles establish that in order to be compatible the development does not necessarily need to be the same. As depicted in the elevations and 3D images forming part of this variation request the proposal is said to be compatible with the existing built form.*
- *The site has been the subject of mandatory road widening by TfNSW (Milton Street frontage) and by Council - via the provisions of the Ashfield DCP (Milton Lane) even though the site is outside the nominated ADCP precinct area. There are no planning incentives for the subject site (unlike other sites in the precinct) to achieve the strategic planning outcomes for the area. The additional FSR is justified on first principles (urban design justification) but secondly can be justified because it provides a greater likelihood that the vehicle and pedestrian access can be improved within the precinct.*

The additional 0.39:1 FSR provides an incentive for the land owner to redevelop the site.

- ALEP 2013 does not provide a transition between the denser development permitted along Liverpool Road, immediately north of the site and the subject site. The FSR drops from 2.0:1 at the corner of Liverpool Road and Milton Street down to 0.7:1 on the subject site. The ALEP 2013 contains three (3) other FSR limits that could have been adopted for this site to achieve a transition such as “S1” – 1.5:1 or “S2” – 1.8:1. The proposed FSR of 1.59:1 is therefore acceptable for a transitional site under the provisions of ALEP 2013. The transitional site justification is supported by the original UDR prepared by Smith & Tzannes demonstrating that the site functions as a transitional site based on the immediate FSR controls afforded to neighbouring sites.*
- Due to its attributes the site is suitable for development of a building with greater bulk and scale than contemplated by the 0.7:1 FSR. The frontage is 23.25m and side boundaries of 57 - 58m with total site area of 1,328.5sqm (taking into account the loss of area for the road widening of 274sqm). There are no specific site constraints that would seek to limit the overall potential of the site. The northern boundary is the side boundary fronting Milton Lane which offers opportunities for natural light and outlook.*
- The proposal does not result in undue adverse amenity impacts on existing development to the south of the site. We accept that the neighbour would be exposed to a 4 storey building however a 5 storey building is proposed. We note that the upper level is not a full level and has significant setbacks appearing more like a roof element. The upper level also has a reduced floor when compared to the level below which minimises the perceived bulk and scale.*
- The proposal has been designed to account for this site features/characteristics/opportunities and constraints. The design provides increased side setbacks to the upper floor level; communal areas to the north (where possible); and communal open space at ground level having direct solar access. The site is capable of supporting greater FSR without any significant adverse impacts on its neighbours. Whilst some additional overshadowing occurs it is not causing significant adverse impact and units have orientation to the north, west and east (refer to analysis in Annexure A). The additional FSR offers a mediating and transitional form stepping down from the 2:1 FSR plus to the north and 0.7:1 FSR to the south.*
- The additional FSR of 0.39:1 FSR is to be used as boarding house accommodation which is in the public interest. The provision of affordable housing is in line with the SEPP 70 initiatives of the State Government – notwithstanding that Inner West is yet to complete amendments to the ALEP 2013 to achieve SEPP 70 provisions. The Inner West RLS seeks to increase affordable housing across the LGA and this proposal will provide an additional GFA that would not otherwise be provided as part of a development proposal seeking additional GFA above the 0.7:1 standard.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R3 Medium Density Residential, in accordance with Clause 4.6(4)(a)(ii) of ALEP 2013, which read:

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is considered to be consistent with the relevant zone objectives for the following reasons:

- The proposed development is considered to have an overall form and scale as viewed from the public domain that can be reasonably expected within a medium density residential environment.
- The proposal provides affordable housing in the form of a boarding house, which is considered to provide a different form of housing to meet the needs of the community within a medium density residential environment. The development includes both single- and dual-boarder room options, with a range of room layouts to cater to different occupants. The development also provides accessible rooms, which provides further housing diversity.
- The proposal does not inhibit the ability of other land uses that provide facilities or services to meet the day to day needs of residents.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of *ALEP 2013*, which read:

- (a) to establish standards for development density and intensity of land use,*
- (b) to provide consistency in the bulk and scale of new development with existing development,*
- (c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
- (d) to protect the use or enjoyment of adjoining properties and the public domain,*
- (e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.*

The proposal is considered to be consistent with the relevant objectives of the development standard for the following reasons:

- The proposed building form and scale is considered appropriate in this case given the context of the site on the edge of the R3 Medium Density Residential zone adjoining the B4 Mixed Use zone. The proposal provides an appropriate visual transition between the existing seven (7) storey development at no. 380 Liverpool Road and the existing three (3) storey development at no. 44-48 Milton Street while maintaining an overall form that is considered appropriate and reasonable for the R3 Medium Density Residential zone.
- As noted throughout this report, the proposed development has been appropriately designed to minimise adverse environmental impacts, particularly with regard to impacts on existing vegetation, earthworks due to excavation, and the need for remediation of the land. Furthermore, the site is not located within or adjacent to a Heritage Conservation Area or Heritage Item.
- The proposed development is considered unlikely to result in any impacts that would adversely affect or inhibit the use or enjoyment of adjoining properties and the public domain. Additionally, the proposal includes the provision of a public pedestrian

footpath along the northern side and eastern rear boundaries that will enhance the amenity and use of these spaces in the public domain.

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

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

5(b) Draft Environmental Planning Instruments

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

(ii) Draft Inner West Local Environmental Plan 2020

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

Draft IWLEP 2020 contains provisions for amendments to the aims of Clause 1.2 Aims of Plan and objectives for the R3 Medium Density Residential zone. The development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

(iii) Draft State Environmental Planning Policy (Housing 2021) (Housing SEPP 2021)

Draft Housing SEPP 2021 was placed on public exhibition commencing on 2 August 2021 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the *EP&A 1979*.

The Draft Housing SEPP 2021 contains the following draft provisions that are relevant to the proposal and that differ from current provisions under *ARH SEPP*:

Draft provision	Comment
Division 2 Boarding houses	
<i>23 Non-discretionary development standards – the Act, s 4.15</i>	
(2) <i>The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—</i>	
(a) <i>for development on non-heritage land in a zone in which residential flat buildings are permitted—a floor space ratio not exceeding—</i>	
(i) <i>the maximum permissible floor space ratio for residential accommodation on the land, and</i>	Residential flat buildings are permissible with development consent in the R3 Medium Density Residential zone. Therefore, under the draft provisions, the site is entitled to a maximum FSR of 0.95:1. As noted above, the application proposes a FSR of 1.59:1, which exceeds the draft provisions. Notwithstanding, the overall form and scale of the proposed development is considered acceptable in this case.

<p>(ii) <i>an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the boarding house,</i></p>	
<p>(c) <i>for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,</i></p>	<p>IWCDCP 2016 requires a minimum landscape area equal to 35% of the site area with a minimum dimension of 2m. The application proposes a combined landscaped area at the ground floor equal to approximately 20% (260sqm) of the site area.</p> <p>In this case, the required land acquisition at the eastern rear of the site limits the ability of the development to provide a greater level of landscaped area. Notwithstanding the numerical non-compliance, the proposed landscaping is considered acceptable as it receives adequate solar access and enhances residential amenity. Additional areas of landscaping are also provided on Level 4 in the communal terrace areas.</p>
<p>(g) <i>for a boarding house containing more than 6 boarding rooms—</i> (i) <i>a total of at least 30m² of communal living area plus at least a further 2m² for each boarding room in excess of 6 boarding rooms, and</i> (ii) <i>minimum dimensions of 3m for each communal living area,</i> (h) <i>communal open spaces—</i> (i) <i>with a total area of at least 20% of the site area, and</i> (ii) <i>each with minimum dimensions of 3m,</i></p>	<p>Draft subclause (g) requires a minimum communal living area equal to 140sqm with a minimum dimension of 3m. Additionally, draft subclause (h) requires a minimum communal open space of 267sqm (20% of the site area) with a minimum dimension of 3m.</p> <p>The application provides a communal living room with an area of 45sqm at the ground floor adjacent to a communal open space with an area of 130sqm (10% of the site area), both of which have a minimum dimension of 3m.</p>
<p>24 Standards for boarding houses</p>	
<p>(1) <i>Development consent must not be granted under this Division unless the consent authority is satisfied that—</i> (h) <i>the minimum lot size for the development is not less than—</i> (ii) <i>for development on land in Zone R3 Medium Density Residential—the minimum lot size requirements for multi dwelling housing under a relevant planning instrument,</i></p>	<p>ALEP 2013 and IWCDCP 2016 do not specify a minimum lot size for multi-dwelling developments. Additionally, the relevant planning provisions do not specify minimum numerical setback requirements.</p> <p>With respect to draft subclause (j), the proposed development results in minor numerical non-compliances with the ADG setback requirements.</p> <p>Notwithstanding, as noted throughout this report, the proposal is considered to be well-integrated into the character of the streetscape and provides adequate setbacks to reduce adverse amenity, privacy, and overshadowing impacts to adjoining properties.</p>

<p>(i) <i>the front, side and rear setbacks for the development are not less than—</i></p> <p>(i) <i>for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument,</i></p> <p>(j) <i>if the boarding house exceeds 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide,</i></p>	
<p>25 Must be used for affordable housing in perpetuity</p>	
<p>(1) <i>Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity—</i></p> <p>(a) <i>the boarding house will be used for affordable housing, and</i></p> <p>(b) <i>the boarding house will be managed by a registered community housing provider.</i></p> <p>(2) <i>Subsection (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by a public authority.</i></p>	<p>Draft Clause 25(1) empowers the consent authority to impose conditions of consent requiring rental income to be within the definition of affordable housing under the EP&A Act 1979 and requires the premises to be operated by a community housing provider. It is acknowledged that this amendment would not alter the form or scale of the development if it were in operation.</p>

Overall, in considering the weight of this instrument it should be noted that this is a draft SEPP that has been exhibited but not made. In this case, the drafting of the final instrument is not available as it otherwise would be in the case of a draft LEP amendment awaiting ministerial consideration. The certainty of the amendment is therefore lessened as the final form is not available and in consideration of submissions received during the exhibition period, the Minister may make the instrument in a form that differs to the requirements under the draft instrument.

In considering the case law in *Terrace Tower Holdings Pty Limited v Sutherland Shire Council* [2003] NSWCA 289, it should be noted that the application does not undermine the intent of the instrument in a substantial way (as in *Lizard Apple Pty Ltd v Inner West Council* [2019] NSWLEC 1146). As a result, it is not considered that the Draft Housing SEPP presents an impediment to the granting of a consent of the subject proposal.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill (IWCDPC 2016).

Control	Proposed	Compliance
Section 2 – General Guidelines		
A – Miscellaneous		
1 – Site and Context Analysis	The applicant submitted an acceptable site and context analysis as part of the application.	Yes
2 – Good Design	The development satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> • The proposed development is of a scale, form, and density that provides an appropriate transition between adjoining development and which is compatible with surrounding buildings. • The proposal has been designed to retain adequate amenity to the proposed boarding rooms and neighbouring properties in terms of solar access and privacy. • The development contributes positively to the context of the site and retains and reinforces desirable elements of the street. 	Yes
4 – Solar Access and Overshadowing	See Section 5(d)(i) below.	Yes
5 – Landscaping	The development satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> • The proposed landscaping is consistent with the landscaping character of the street and provides appropriate planting species for the site that will provide enhanced amenity for the residents. 	Yes
6 – Safety by Design	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> • The development has been appropriately designed having consideration of the CPTED principles. • The development provides passive surveillance of the street and communal open spaces. • The primary building entrance and individual entries to ground floor rooms are visible within the street. 	Yes
7 – Access and Mobility	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> • The application provides suitable levels of accessibility to meet the requirements of the Building Code of Australia. 	Yes
8 – Parking	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> • The development requires two (2) accessible car parking spaces. The application proposes six (6) accessible car parking spaces. • The development requires 31 car parking spaces for the proposed boarding rooms and one (1) car parking space for the 	Yes

	<p>resident employee (on-site manager). The application proposes 32 car parking spaces.</p> <ul style="list-style-type: none"> • The development requires four (4) bicycle parking spaces for the proposed boarding rooms and no bicycle parking spaces per resident employees. The application proposes 20 bicycle parking spaces. • The development requires one (1) motorcycle parking space. The application proposes 13 motorcycle parking spaces. 	
14 – Contaminated Land	See Section 5(a)(i) above.	Yes – subject to conditions
15 – Stormwater Management	The proposed development is capable of satisfying the relevant requirements of this part subject to suitable conditions of consent, which have been included in the recommendation.	Yes – subject to conditions
C – Sustainability		
3 – Waste and Recycling Design & Management Standards	<p>The proposal satisfies the relevant performance criteria as follows:</p> <ul style="list-style-type: none"> • An appropriately sized and located waste storage area is provided is accessible to all residents. • The nominated waste collection point and the submitted Waste Management Plan is considered acceptable. 	Yes – subject to conditions
4 – Tree Preservation and Management	See Section 5(a)(iii) above.	Yes – subject to conditions
Chapter D – Precinct Guidelines		
3 – Ashfield West	<p>The proposal satisfies the relevant performance criteria as follows:</p> <ul style="list-style-type: none"> • The application proposes to dedicate a portion of the rear of the site along the existing eastern rear boundary to enable widening of Milton Lane. • The application provides the required pedestrian footpath along the northern and eastern boundaries fronting Milton Lane. • The proposed development is considered unlikely to adversely impact the amenity of residential apartments at no. 380 Liverpool Road. 	Yes – subject to conditions
Chapter F – Development Category Guidelines		
Part 6 – Boarding Houses and Student Accommodation		
PC1 Context	<p>The proposal satisfies the relevant performance criteria as follows:</p> <ul style="list-style-type: none"> • An appropriate site and context analysis plan was submitted with the application. 	Yes
PC2 Good design	<p>The proposal satisfies the relevant performance criteria as follows:</p> <ul style="list-style-type: none"> • The development adequately addressed Part A2 – Good Design of this DCP. 	Yes

PC3 Room sizes, indoor recreation areas & facilities	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> The application achieves compliance with <i>ARH SEPP</i> with respect to room sizes, indoor recreation areas and facilities. 	Yes
PC4 Universal access	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> The application provides access for people with disabilities as required under the Building Code of Australia. 	Yes
PC5 Car parking	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> The application achieves compliance with <i>ARH SEPP</i> with respect to the parking provisions. 	Yes
PC6 Plan of Management	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> An adequate Plan of Management (POM) was submitted with the application. A condition of consent has been included in the recommendation to ensure the operation of the boarding house complies with the POM at all times. 	Yes
PC7 Registration	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> A condition of consent has been included in the recommendation requiring the registration of the boarding house with Council 	Yes – subject to condition
PC8 On-site management	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> The application provides a room for one on-site live-in manager. 	Yes
PC9 Waste	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> Appropriate waste facilities are proposed to meet the requirements of C3 Waste Management of this DCP. 	Yes
PC10 Fire safety	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> The proposed development is capable of satisfying the relevant performance criteria subject to conditions of consent, which have been included in the recommendation. 	Yes – subject to conditions
PC11 Additional safety measures	The proposal satisfies the relevant performance criteria as follows: <ul style="list-style-type: none"> The submitted POM provides adequate safety measures for residents. 	Yes

(iv) Part 4 Solar Access and Overshadowing

IWDPCP 2016 does not contain any solar access provisions with respect to boarding house developments. In the absence of controls, the requirements for residential flat buildings (RFB)

are used for the purpose of considering an acceptable impact as the proposed boarding house takes the general form of an RFB.

Performance Criteria (PC) 1 of this Part requires developments to be designed to optimise solar access to living rooms and principal private open space of neighbouring properties. Additionally, Design Solution (DS) 1.1 specifies the following:

DS1.1 Whichever is the lesser, development:

- *maintain existing levels of solar access to adjoining properties*

Or

- *ensures living rooms and principal private open space of adjoining properties receive a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June*

The subject site has an east-west orientation, and as such any development on the site would likely result in overshadowing of the neighbouring development at no. 44-48 Milton Street, which is located directly south of the site.

No. 44-48 Milton Street is occupied by a three storey RFB comprising 18 apartments. The northeast elevation of the building comprises 12 windows that service the kitchen, bedroom, bathroom, and laundry of three apartments (one apartment per level). The principal living room of these units is serviced by a west-facing window/door that opens onto a balcony, being the principal private open space, while the eastern elevation comprises a window that services a second bedroom.



Figure 3: Subject site (highlighted blue) and adjacent three storey RFB at no. 44-48 Milton Street to the south.

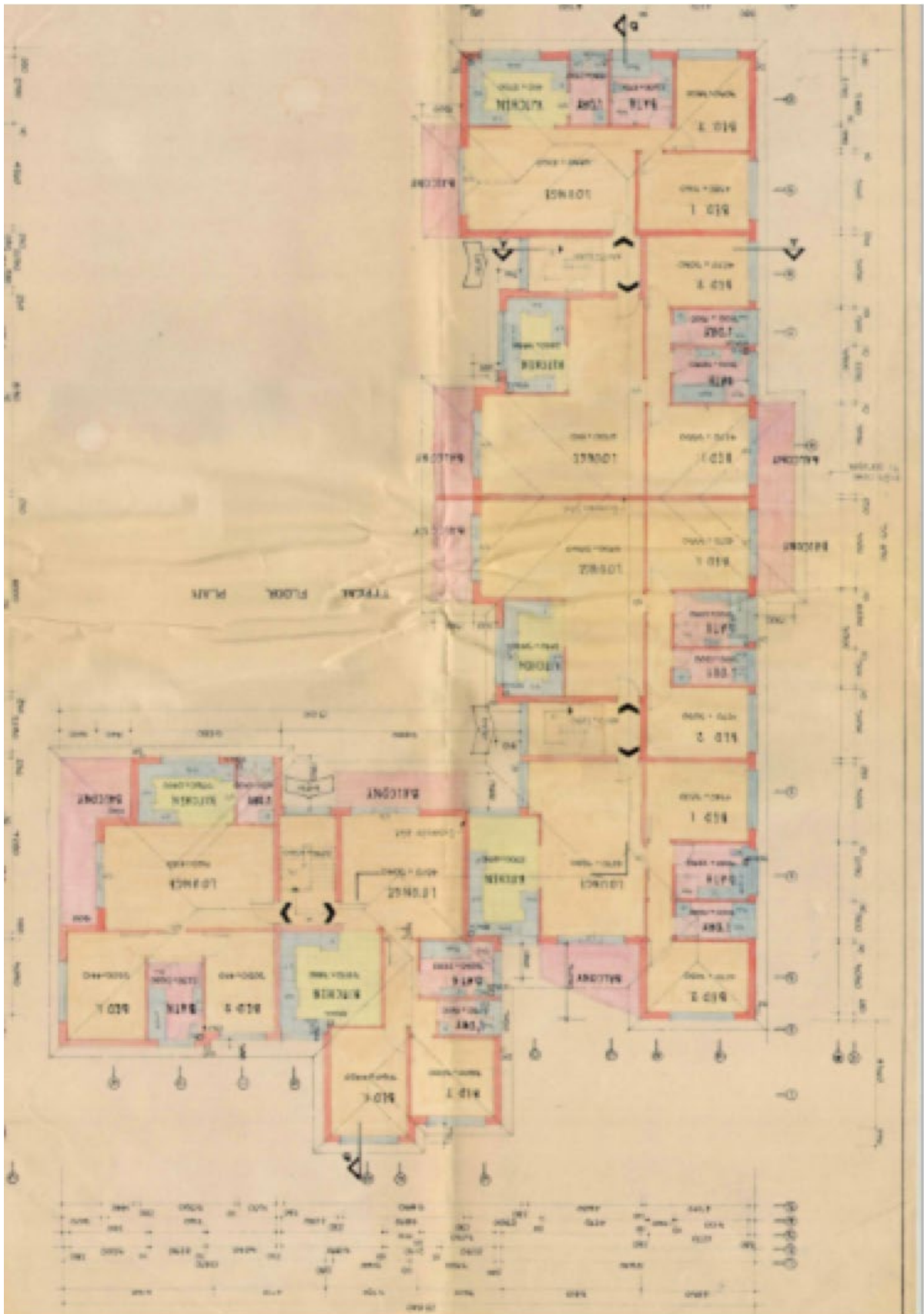


Figure 4: Floor plan of residential flat building at no. 44-48 Milton Street.

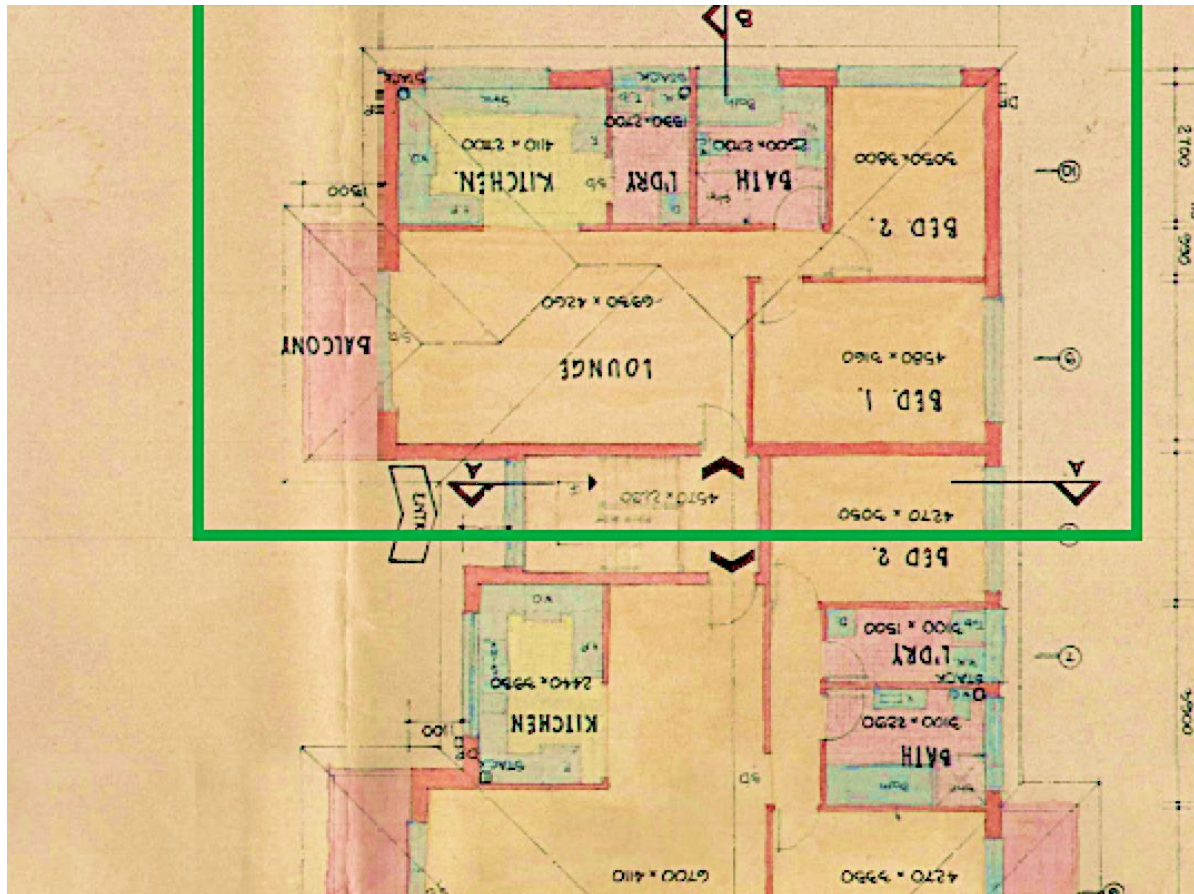


Figure 5: Floor plan of northern-most apartments at no. 44-48 Milton Street.

Plan view and eye of the sun diagrams were submitted by the applicant demonstrating the impact of the proposed development on no. 44-48 Milton Street. These diagrams indicate the following:

- The north-facing kitchen window, west-facing living room window/door, and balcony of each apartment currently receives greater than 2 hours of direct solar access between 9.00am-3.00pm on June 21st.
- The windows and west-facing living room window/door and balcony of the third floor apartment maintain greater than 2 hours of direct solar access between 9.00am-3.00pm on June 21st.
- The proposed development results in additional overshadowing of the north- and west-facing windows and balcony of the second floor apartment. However, 2 hours of direct solar access to the balcony is maintained between 12.00pm-2.00pm on June 21st.
- The proposed development results in total overshadowing of the north- and west-facing windows and balcony of the ground floor apartment between 9.00am-3.00pm on June 21st.

Due to the orientation of the allotments and the location of the neighbouring ground floor unit, it is likely that any redevelopment of the subject site would result in overshadowing impacts to no. 44-48 Milton Street. The proposed development is considered to have been appropriately designed to limit adverse overshadowing impacts while providing adequate amenity to the proposed boarding rooms. As such, the development is considered to result in a reasonable impact on the adjoining development located directly south of the subject site and the proposal is considered to satisfy PC1 of Part 4 of IWCDCP 2016.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The application was notified in accordance with the Inner West Council *Community Engagement Framework* for a period of 28 days to surrounding properties. Four (4) submissions were received in response to the initial notification.

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

- Height, bulk, and scale;
- Traffic and parking;
- Visual and acoustic privacy;
- Overshadowing and solar access; and
- Out of character.

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

In addition to the above issues, the submissions raised the following concerns which are discussed in the table below:

Concern	Comment
Air pollution	Concern was raised with regard to air pollution to the neighbouring development at no. 44-48 Milton Street from the increase in cars accessing the site. The proposed basement is located on the site to reduce adverse amenity impacts to the neighbouring development from cars entering and exiting the basement. The anticipated volume of cars using the basement is considered unlikely to result in significant adverse air pollution.
Structural impacts to neighbouring properties	A condition has been included in the recommendation that a dilapidation report be prepared for the neighbouring properties prior to any demolition works on the site.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Architectural Excellence Panel;
- Building Certification;
- Development Engineer;
- Environmental Health;
- Traffic Services;
- Urban Forest; and
- Waste.

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid;
- Transport for NSW;
- Sydney Water

7. Section 7.11 Contributions/7.12 Levy

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 \$584,575.73 would be required for the development under Ashfield Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.3 of *Ashfield Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. The applicant has made a written request pursuant to Clause 4.4 of *Ashfield Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- C. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2021/0228 for demolition of existing building. Construction of a boarding house containing with basement car parking, landscaping and associated works at 40 Milton Street ASHFIELD NSW 2131 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
18 095 B102 Rev B	BASIX Certificate	14/10/2021	Habitation Design + Interiors
18 095 B105 Rev B	Site Plan	14/10/2021	Habitation Design + Interiors
18 095 B106 Rev B	Basement - 2	14/10/2021	Habitation Design + Interiors
18 095 B107 Rev B	Basement - 1	14/10/2021	Habitation Design + Interiors
18 095 B108 Rev B	Ground Floor Plan	14/10/2021	Habitation Design + Interiors
18 095 B109 Rev B	Level 1.2.3	14/10/2021	Habitation Design + Interiors
18 095 B110 Rev B	Level 4	14/10/2021	Habitation Design + Interiors
18 095 B111 Rev B	Roof Plan	14/10/2021	Habitation Design + Interiors
18 095 B113 Rev B	Elevations	14/10/2021	Habitation Design + Interiors
18 095 B114 Rev B	Elevations	14/10/2021	Habitation Design + Interiors

18 095 B115 Rev B	Section	14/10/2021	Habitation Design + Interiors
18 095 B116 Rev B	Section & Details	14/10/2021	Habitation Design + Interiors
18 095 B117 Rev B	Driveway Detail	14/10/2021	Habitation Design + Interiors
18 095 B119 Rev B	Demolition Plan	14/10/2021	Habitation Design + Interiors
18 095 B120 Rev B	Materials and Finishes	14/10/2021	Habitation Design + Interiors
18 095 B121 Rev B	Fence Detail	14/10/2021	Habitation Design + Interiors
DA-L101 Rev C	Landscape Plan: Ground Fr	15/10/2021	Canvas Landscape Architects
DA-L102 Rev C	Landscape Plan: Ground Fr	15/10/2021	Canvas Landscape Architects
DA-L103 Rev C	Landscape Typical Details	15/10/2021	Canvas Landscape Architects
1072835M_02	BASIX Certificate	23/09/2021	EPS
19MB8208/D01 - D07 Sheets 1 to 7 Issue B	Concept Stormwater Drainage Plan	23/03/2021	United Consulting Engineers P/L
SRE/612/AF/19/STG1	Stage 1 - Preliminary Site Investigation	26/03/2021	Soilsrock Engineering P/L
SRE/612/AF/20/STG2	Stage 2 - Detailed Site	26/03/2021	Soilsrock Engineering P/L

	Investigation		
SRE/612/AF/21/RAP	RAP - Remediation Action Plan	24/09/2021	Soilsrock Engineering P/L
SRE/612/AF/19/GEO	Geotechnical Site Investigation Report	26/03/2021	Soilsrock Engineering P/L
	Plan of Management	October 2021	
	Arboricultural Impact Assessment, Tree Survey, and Tree Management Plan	24/03/2021	Tree Technics
3998R20200130mfc40MiltonStAshfield_DA.docx	Acoustical Report	30/01/2020	Koikas Acoustic P/L

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

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

Security Deposit:	\$108,540.00
Inspection Fee:	\$241.50

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

3. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate written evidence must be provided to the Certifying Authority that a monetary contribution of \$584,575.73 indexed in accordance with Ashfield Development Contributions Plan ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 28 October 2021.

NB Contribution rates under Ashfield Development Contributions Plan are indexed quarterly (for the method of indexation refer to Section 2.6 of the Plan).

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Community Infrastructure Type:	Contribution \$
Local Roads	22,818.36
Local Public Transport Facilities	29,971.89
Local Open Space and Recreation	482,435.16
Local Community Facilities	25,402.53
Plan Preparation and Administration	23,947.78
TOTAL	584,575.73

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment methods:

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

*NB A 0.75% credit card transaction fee applies to all credit card transactions.

4. Long Service Levy

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

GENERAL CONDITIONS

5. Tree Protection

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

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

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

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

6. Project Arborist

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist 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.

7. Works to Trees

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

Tree/location	Approved works
<i>Chamaecyparis obtusa</i> (Hinoki Cypress) Front	Remove tree
<i>Chamaecyparis obtusa</i> (Hinoki Cypress) Front	Remove tree
<i>Chamaecyparis obtusa</i> (Hinoki Cypress) Front	Remove tree
<i>Cinnamomum camphora</i> (Camphor Laurel) Rear	Remove tree

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

8. Dry-weather Flows

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be "tanked" preventing the ingress of seepage or groundwater.

9. Rock Anchors

This consent does not grant consent for any rock anchors on the road reserve or Council land.

10. Public Domain Maintenance

The applicant shall, within fourteen (14) days of notification of Council, execute any and all maintenance works required by Council. In the event that the applicant fails to undertake such work, Council may undertake the required maintenance works, utilising part or all of the maintenance security and Council may recover any costs in excess of the security from the applicant.

11. Noise – Consultant's Recommendations

The recommendations contained in the acoustic report prepared by Koikas Acoustics Pty Ltd, reference: 3998R20200130mfc40MiltonStAshfield_DA.docx dated 30 January 2020. must be implemented, including the following:

- a. Contents 7.0 - Conclusion.

12. Contamination – Remedial Action Plan (No Site Auditor Engaged)

The site is to be remediated and validated in accordance with the recommendations set out in the Remedial Action Plan, prepared by Soilsrock Engineering Pty Ltd, reference: Project No: SRE/612/AF/21/RAP dated 24/09/2021, the *Contaminated Land Management Act 1997* and the *State Environmental Planning Policy No 55*.

13. Hazardous Materials Survey

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.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

14. No Subdivision

No subdivision of the approved boarding house is permitted.

PRIOR TO ANY DEMOLITION

15. Resource Recovery and Waste Management Plan - Demolition and Construction

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

16. Hoardings

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

17. Construction Traffic Management Plan – Detailed

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with Transport for NSW accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;

- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

PRIOR TO CONSTRUCTION CERTIFICATE**18. Bin Storage Area - Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. 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.

The bin storage area is to meet the design requirements detailed in the Inner West Comprehensive Development Control Plan (DCP) 2016 and must include doorways/entrance points of 1200mm.

The bin storage area is to be built according to the approved plans which show space for 28 x 240L mobile garbage bins.

19. Bulky Waste Storage Area – Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Inner West Comprehensive Development Control Plan (DCP) 2016 and have minimum doorways of 1200mm wide to accommodate large items. The bulky waste storage area must be built according to the approved plans.

20. Waste Transfer Route

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.

21. Each Residential Level is to have Access to a Disposal Point for All Waste Streams

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

22. Paving/Decking Within the Vicinity of Trees

Prior to the issue of the Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the pavement works/decking within the specified radius of the trunk(s) of the following tree/s are constructed in a way so as to ensure that existing moisture infiltration and gaseous exchange are maintained or improved. When preparing an area for paving with the specified radius, the soil surface must not be skimmed or excavated. The new surface and subgrade must be established at grade.

Tree No.	Botanical/Common Name/Location	Radius in Metres
1	<i>Eucalyptus scoparia</i> (Wallangarra White Gum) Front, 44 - 48 Milton Street	5.5 metres

23. Stormwater Drainage System – Major Developments

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that the design of the site drainage system complies with the following specific requirements:

- a. The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. D01 to D07 Rev B (Dated 31/3/21) prepared by United Consulting Engineers and as amended to comply with the following;
- b. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity directly to Council’s piped drainage system via the OSD/OSR tanks;
- c. Comply with Council’s Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 ‘Stormwater Drainage’ and Council’s DCP.

- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of subsurface flows and surface flows from the driveway from the basement;
- e. The on-site detention system must be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event, with discharge to a Council controlled storm water system limited to pre-development conditions with the maximum allowable discharge to Council's street gutter limited to 25 litres/second (20 years ARI/100years ARI);
- f. Connection to Council's system must be directed in the downstream direction;
- g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- h. OSD may be reduced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- i. Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- j. A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:
 - 1. Comply with all relevant Australian Standards;
 - 2. An overflow, flashing light and audible alarm is to be provided to warn of pump failure;
 - 3. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months;
 - 4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event;

5. Where OSD facilities are required by this consent, the pump system must be discharged to the OSD storage tank;
 6. Subsurface flows must be collected at the point of ingress to the basement i.e. at the basement walls;
 7. The subsurface drainage system must have sufficient capacity to collect and convey all surface flows to the pump out system; and
 8. Inlet pits and drains for subsurface drainage must be designed to minimise potential for pollutants from cars or other sources to enter the subsurface drainage system. e.g.. isolate any subsurface drains at boundary walls, inspection pits with solid covers, etc.
- k. No nuisance or concentration of flows to other properties;
 - l. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
 - m. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken.
 - n. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system.

24. Structural and Geotechnical Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The report and plans must be prepared/ amended to make provision for the following:

- a. The basement must be fully tanked to prevent the ingress of subsurface flows;
- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;
- c. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years;

- d. All components of the basement, including footings, must be located entirely within the property boundary;
- e. No adverse impact on surrounding properties including Council's footpath and road;
- f. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;
- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

25. Public Domain Works – Prior to Construction Certificate

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

- a. The public domain along all frontages of the site inclusive of footpath kerb and gutter and landscaping must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme for the area;
- b. The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site. The vehicle crossing shall be designed so that the level at the back of the new footpath line is 170 mm above the adjacent invert level of the gutter at both sides of the vehicle entry;
- c. The upgrade of the intersection to left in/left out including any road widening and central median to enforce the left in/left out restriction. Concurrence from Transport for NSW must be obtained for the proposed left in/left out intersection treatment. Details of the approved TfNSW treatment to the intersection shall be provided on plan together with TfNSW approval prior to the issue of a Construction Certificate.
- d. New concrete footpath 1.5m wide and kerb & gutter must be constructed for the full length of Milton Lane. The footpath must continue along the northern frontage to Milton Street within the TfNSW land for road widening. The developer is to liaise with TfNSW for future footpath levels and landscaped treatment of this area. The kerb and gutter shall be constructed wholly within the road reserve and be controlled by Council. The footpath along the property in Milton Lane shall be constructed within the property and shall be a public right of way.

- e. The inside corner of the kerb line to the rear of the development must be designed with a curve to sufficiently allow the passing of a small size truck and car aside of each other. Plans must be submitted with turning template movements for a small truck (size of a small private waste collection vehicle) heading north and car aside of it heading south at the corner of the lane. In addition swept paths template movements shall also be provided to show opposing vehicle movements around the standing waste truck.
- f. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.
- g. No Stopping' restrictions shall extend at least 10 metres south of the **inner** corner of the lane, and at least 20 metres west of the corner of the lane, to abide by the Australian road rules and allow for clear and unobtrusive movement and safe sight view of traffic. No parking' is to be erected on the southern side of Milton Lane, 20m west of the laneway corner and extend thereof to a point approximately 20 metres east of Milton Street. 'No Stopping' is thereafter be erected to Milton Street. 'No Stopping' restrictions shall be erected by the developer on the **outside** corner of Milton Lane opposite the rear frontage of the site to the side boundary of No 380 to 378 Liverpool Road. In addition, appropriate measures (signs, markings etc) are to be installed to warn and give-way to traffic approaching from both ends at the bend in Milton Lane.
- h. Detailed (signs and line marking) plans must be provided, but not limited, to showing the specific distances above for the proposed 'No Stopping' and 'No Parking' restrictions within the lane. The plans must also show further proposed widening and improved traffic and pedestrian safety treatment at the intersection of Milton Lane and Milton Street, and similarly warning and give-way measures around the bend of Milton Lane. The applicant must consult with the affected residents on the detailed plans. Any feedback from the community will be reported to the Local Traffic Committee with its recommendation to Council for approval prior to the issue of a construction certificate;
- i. The proposed road widening area to the rear must be suitably transitioned into the driveway ramp of no. 44 Milton Street. Any required level corrections must conform to Australian Standards in ramp grade to prevent vehicular scraping atop of the ramp. A plan of the proposed modification/transitions along the rear boundary and ramp at no. 44 Milton Street must be submitted for approval. Agreement must be obtained from the owner/s of no. 44 Milton Street for any works in modifying the ramp or adjustments to the private property of 44 Milton Street;
- j. Appropriate guard fencing may also need to be provided on the southern side of the driveway ramp of No.44 to safeguard against drop off unless alternative arrangements or adjustments to the ramp to No.44 can be agreed upon to set back and merge or align with the concrete level parking area to the south of the ramp. This will need to be detailed in the plans and agreement must be obtained from the owner of No. 44 Milton

Street for the removal of the side wall barrier in continuation of footpath along the north-south section of Milton Lane for any future development.

- k. The existing Council drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 3m lintel) must be installed. The pipeline must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. Pipes must be Class 4 Steel Reinforced Concrete Pipe or approved equivalent and Pits must be cast in-situ. Plans, long sections and details must be provided including location of utility services;

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

26. Parking Facilities – Major (including basement)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) demonstrating that the design of the vehicular access, off-street parking facilities and associated vehicle standing areas comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, Australian Standard AS 2890.2-2018 Parking Facilities: Commercial vehicle facilities, AS/NZS 2890.3-2015 Parking facilities: Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities and the following specific requirements:

- a. The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with the Alignment Levels issued with future public domain plans to be approved by Council;
- b. 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;
- c. The plans must be amended and accepted by Council to identify a service vehicle facility within site with minimum dimension for a B99 vehicle such as a large transit van. Swept paths must be submitted demonstrating forward entry and exit. In addition longitudinal sections must be provided along both sides of the vehicular access ramp(s) and throughout the path of travel for a B99 utilising the loading bay to demonstrate that a minimum headroom of 2500 is provided;
- d. Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of AS/NZS 2890.1-2004;
- e. Minimum headroom of 2500mm must be provided above any disabled parking space(s);

- f. The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that:
 - i. Car spaces adjacent to walls or fences are increased in width by an additional 300mm; End spaces are provided with an additional 1m aisle extension;
 - ii. End spaces are provided with an additional 1m aisle extension; and
 - iii. The location of columns within the carpark complies with figure 5.1 of AS/NZS 2890.1-2004.
- g. At the property boundary the access from the road to a standing area is (as near as practicable) perpendicular to the line of the adjacent road;
- h. The relative surface levels of the internal access from the road being controlled so that:
 - 1. The surface levels at the property boundary match "alignment levels"
 - 2. The change in grade for any 2m length of access way does not exceed 1 in 8 (12.5%) unless suitable transitions are provided in accordance with AS2890.1;
 - 3. The maximum grade at any point does not exceed 1 in 5 (20%) or in the case of ramps greater than 20m in length 1 in 6 (16.7%); and
 - 4. The maximum grade within the property must not exceed 1 in 20 (5%) within 6m of the back of the new 1.5m footpath to be constructed in Milton Lane. The design must be accepted by Council.
- i. The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles;
- j. The entry security door must be set back a minimum of 5500mm from the property boundary;
- k. Loading / unloading facilities must be provided on-site in accordance with the requirements of AS2890.2 – 2002.

27. Driveway Long Section - Dwelling

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

28. Waste collection

Waste collection vehicles shall be limited to SRV trucks of Australian Standard maximum length of 6.4m. The applicant must provide information to the satisfaction of Council on location the vehicle will stand for the collection of waste, clear of 'No Stopping' restrictions required at the corners of Milton Lane (prohibiting the standing of any vehicles at the corner). In addition, all waste bins must be planned and moved directly onto the waste vehicle and moved back on site. No bins shall be placed on the footpath awaiting collection or movement back on site. In addition, swept paths shall be provided for a small waste collection vehicle turning into Milton Lane from Norton Street on a street aerial view to confirm access.

29. Sightlines

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with a plan that ensures that at least 8m of the rear northern line of the development has been setback at least 3 metre in width to allow safe and un-obstructed view of traffic coming from either ends of Milton Lane. This area (apart from the 1.5m footpath) shall only include low planting or structures of a maximum height 500mm. Any fencing within the 3 metres set-back area must be open type or see-through fencing. No trees will permitted within the setback area. A cross-section of this setback area is to be provided for Council.

In addition clear sightlines must be provided to pedestrians at the access driveway exit in accordance to AS 2809.1 Section 3.2.4. No trees are to be planted within the triangular sight line area.

30. Dilapidation Report – Pre-Development – Major

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report on the visible and structural condition of the following public infrastructure:

- a. Full width of Milton Lane, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath, between Norton Street and Milton Street;
- b. Half-width of Milton Street adjacent the site, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath, from the northern side of Milton Lane to 10m past the property to the south;
- c. Council drainage pipe within Milton Lane including CCTV inspection in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia; and
- d. The dilapidation report is to be prepared by a practising Civil/Structural Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers

Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng).

31. Noise General – Acoustic Report

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.

32. Shared Accommodation / Boarding House – Plan Of Management

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Plan of Management demonstrating compliance with operation and maintenance standards set out in the *Local Government (General) Regulation 2005*.

33. Car Wash Bay / Waste Bins Storage Room – Design

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with certification confirming that all wastewater generated from the waste bins storage room including any car wash bay will be discharged to the sewerage systems in accordance with the requirements of Sydney Water.

34. Waste management - bin storage

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with architectural plans showing that the bin storage room has been included as per the submitted architectural plan - Ground Floor Plan, Sheet No B108, dated 14/10/2021.

DURING DEMOLITION AND CONSTRUCTION

35. Documentation of Demolition and Construction Waste

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

36. Tree Protection

To protect the following tree ground, trunk and branch protection must be installed prior to any works commencing in accordance with Council's *Development Fact Sheet—Trees on Development Sites*:

Retain existing bitumen ground cover until commencement of landscape works, 6 metres radius from trunk. Protect lowest branches.

Tree No.	Botanical/Common Name/Location
1	<i>Eucalyptus scoparia</i> (Wallangarra White Gum) Front, 44 - 48 Milton Street.

37. Inspections by Project Arborist

The trees to be retained must be inspected, monitored and treated by the Project Arborist during and after completion of development works to ensure their long-term survival. Regular inspections and documentation from the Project Arborist to the Certifying Authority are required at the following times or phases of work:

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
1. <i>Eucalyptus scoparia</i> (Wallangarra White Gum) Front, 44 - 48 Milton Street	Prior to commencement of works	<ul style="list-style-type: none"> • Inspection and sign off installation of tree protection measures.
	During Works	<ul style="list-style-type: none"> • Supervise all site preparation and demolition works within the TPZ; • Supervise all excavation, trenching works within the TPZ; • Supervise all tree work.

Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

38. Canopy and Root Pruning

Canopy pruning of the following tree which is necessary to accommodate the approved building works must be undertaken by, or directly supervised by, the Project Arborist.

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Eucalyptus scoparia</i> (Wallangarra White Gum)	Crown lift to 5 metres.

The person acting on this consent has approval under Council's Tree Management Controls to; crown lift Tree 1, to prevent damage to lower, overhanging limbs during construction works. Pruning is limited to those branches that will come into direct contact with works and where branch diameter (at its point of attachment) does not exceed 80 mm.

39. Limited Root Pruning

No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s must be severed or injured in the process of any works during the construction period:

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Eucalyptus scoparia</i> (Wallangarra White Gum)	2.6 metres

All excavation within the specified radius of the trunk of the following tree being hand dug to a depth of one (1) metre under direct supervision of the Project Arborist and then by mechanical means as agreed by the Project Arborist. If tree roots less than 30mm 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.

40. Contamination – New Evidence

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

41. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection

Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

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

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

PRIOR TO OCCUPATION CERTIFICATE

42. Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist that the requirements of the conditions of consent related to the Landscape Plan, prepared by CANVAS landscape architects, dated 29/03/2021 and the role of the project arborist have been complied with.

The tree stock is to conform to AS2303—*Tree stock for landscape use*.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

43. Road Widening/Splay

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence which establishes that a plan of subdivision has been registered with NSW Land and Registry Services which results in the following road widening:

- a) Widening of Milton Lane and provision of a splay at the 90 degree bend in Milton Lane as detailed on Ground Floor Plan B108 (Rev B) dated 14/10/21.

44. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The concrete footpath across the frontage of the site;
- d. Road widening, drainage works, left in/left out intersection works subject to the *Roads Act 1993* approval; and
- e. Works required by TFNSW.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications"

45. No Encroachments

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

46. Parking Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a. The car park has been completed, line marked and all signage relating to car parking erected;
- b. A notice has been clearly displayed at the frontage to indicate that visitor parking is available within the property;
- c. Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

47. Public Domain - Major Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

48. Dilapidation Report – Post-Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

49. Stormwater Drainage and Road Works – Certification

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

- a. All works required to be undertaken on public roads must be designed and constructed in accordance with Council's approved plans;
- b. Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia has been carried out of completed stormwater drainage works that are to revert to Council by an accredited operator;
- c. Full works-as-executed plans in PDF and CAD format (dwg or dxf files), prepared and signed by a Registered Surveyor have been submitted to Council; and
- d. Certification by a Registered Surveyor that the as-built Council Stormwater pipeline is located totally within the drainage easement.

50. Works as Executed – Site Stormwater Drainage System

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

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system

commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

51. Operation and Management Plan

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

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

52. Easements, Restrictions on the Use of Land and Positive Covenants

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a. Public right of way being created over the footpath along Milton Lane;
- b. Restrictions on the Use of Land to maintain open type fencing at the bend in Milton Lane;
- c. Restrictions on the Use of Land related to on Site Stormwater Detention System or stormwater quality improvement devices;
- d. Positive Covenant related to on-site stormwater detention and/or retention system;
- e. Positive Covenant related to stormwater quality improvement devices; and
- f. Positive Covenant related to Maintenance of the footpath in Milton Lane which is subject to the public right of way

The wording in the Instrument must be in accordance with Councils Standard wording.

53. Basement/Retaining Wall Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards and that the basement is fully tanked construction such that pump-out of subsurface flows is not required.

54. Heavy Duty Vehicle Crossing

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that heavy duty concrete vehicle crossing/s, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" has been constructed at the vehicular access locations.

55. Redundant Vehicle Crossing

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that all redundant vehicular crossings to the site have been removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominantly stone the replacement kerb must also be in stone.

56. Not Eligible for Resident Parking Scheme

Prior the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that measures have been put in place to advise future owners and occupants/tenants of the proposed building that they are not eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this consent shall advise any purchaser or prospective tenant of this condition.

57. Public Domain Maintenance Bond

The applicant shall provide security, in a manner satisfactory to Council, for the proper maintenance of the Road and Footpath works in an amount of \$12,000.00 for a period of twelve (12) months from the date of completion of the public domain works as surety for the proper maintenance of the public domain works.

58. Noise – Acoustic Report

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*, NSW Environment Protection Authority's Noise Policy for Industry and Noise Control Manual 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.

59. Noise From Road, Rail & Aircraft – Compliance

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. *State Environmental Planning Policy (Infrastructure) 2007*;
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of Koikas Acoustics Pty Ltd, Reference: 3998R20200130mfc40MiltonStAshfield_DA.docx dated 30 January 2020.

60. Contamination – Disposal of Soil

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

61. Contamination – Validation (No Site Audit Statement Required)

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.

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.

ON-GOING**62. Bin Storage**

All bins are to be stored within the site. Bins are to be returned to the storage area within 12 hours of having been emptied.

63. Resource Recovery - ongoing waste management**Annual Domestic Waste Charge**

In the event that the property owner chooses to contract a private waste service, the property owner will be charged an annual domestic waste charge as per Sect 496 of the LG Act.

64. Tree Establishment

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

65. Operation and Management Plan

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use and/or stormwater quality improvement devices and/or Pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

66. Vehicles Leaving the Site

All vehicles must enter and exit the site in a forward direction.

67. Loading/unloading on site

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

68. Noise General

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

Boarding Hous

The use of the premises as a boarding house must comply at all times with the following:

- a. The use must comply at all times with the Plan of Management referred to in condition 70 and as amended by the conditions in this Determination;
- b. A copy of the Plan of Management and House Rules must be annexed to each and every tenancy/occupation agreement for a room;
- c. A copy of the approved Plan of Management and House Rules must be clearly displayed within every common room in the building at all times;
- d. The Plan of Management must not be amended without the prior consent of Council and must be made available to Council officers and the Police upon request;
- e. All tenancy/occupation agreements for rooms within the premises must be for a minimum period of three (3) months;
- f. The premises must be used exclusively as a boarding house containing a maximum total of 61 lodger's rooms and 1 on-site manager's room with not more than 2 adult lodgers and 1 adult on-site manager residing in the premises at any one time;
- g. Not more than 2 lodgers must occupy each boarding room, except in single rooms where a maximum of 1 lodger is allowed;
- h. The premises must not be adapted for use as backpacker's accommodation, serviced apartments or a residential flat building;
- i. All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and
- j. Each self-contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.

Plan of Management

The operation of the premises complying at all times with the approved Plan of Management. The Plan of Management is not to be amended without the prior written approval of Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency.

ADVISORY NOTES**Notice to Council to deliver Residential Bins**

Should the property owner decide to contract Council to provide waste services, Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

Recycling / Garbage / Organics Service Information and Education

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

Consent of Adjoining property owners

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 *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* 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.

Tree Protection Works

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

Tree Pruning or Removal (including root pruning/mapping)

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

Rock Anchors

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a. Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b. Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

Electrical Substations

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

Permits

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

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

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

Easement and Covenant Process

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

a. Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

b. Engineer's Certificate

A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:

- c. The soundness of the storage structure;
- d. The capacity of the detention storage;
- e. The emergency overflow system being in place;
- f. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
- g. The freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
- h. Basement car park pumps are class one zone two; and
- i. OSR pumps and SQIDS have been installed and commissioned.

c. Restriction-As-To-User

A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the detention area and stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, must not be carried out without the prior consent in writing of the Council.

Such restrictions must not be released, varied or modified without the consent of the Council.

A typical document is available from Council's Development Assessment Engineer.

d. A Maintenance Schedule.

Insurances

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

Public Domain and Vehicular Crossings

The vehicular crossing and/or footpath works are required to be constructed by your contractor. You or your contractor must complete an application for *Design of Vehicle Crossing and Public Domain Works – Step 1* form and *Construction of Vehicle Crossing and Public Domain Works – Step 2* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

Health Premises Registration – Generic

The premises are required to be registered with Council's Environment Health Team in accordance with the following relevant legislation:

- a. Boarding House / Shared Accommodation - *Boarding Houses Act 2012* and the *Local Government (General) Regulation 2005*.

Mechanical Ventilation System Certification

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:

- a. Australian Standard AS 1668 Part 1 – 1998;
- b. Australian Standard AS 1668 Part 2 – 2012;
- c. Australian Standard 3666.1 – 2011;
- d. Australian Standard 3666.2 – 2011; and
- e. Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

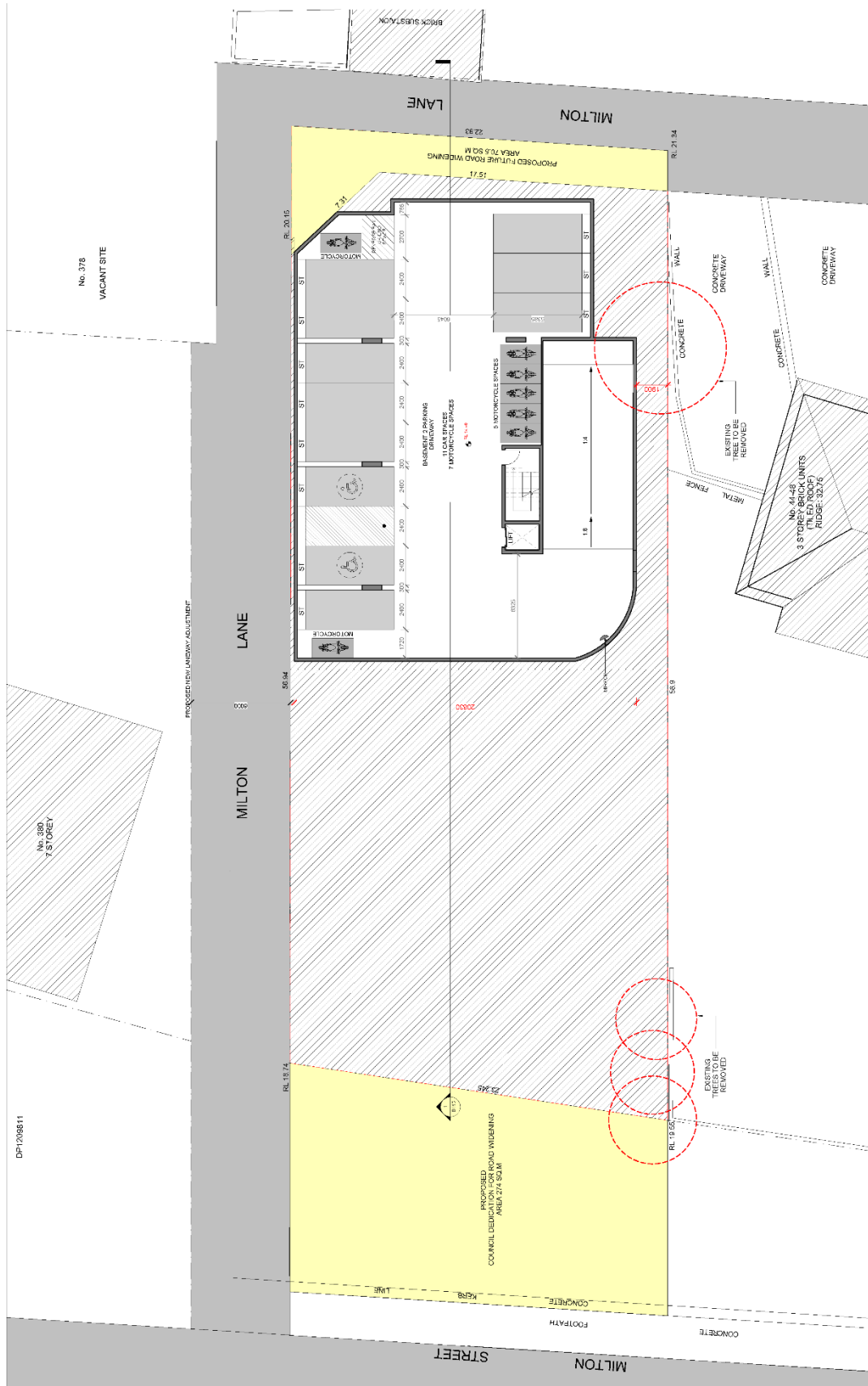
Asbestos Removal

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

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

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

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



SCALE @ A1 1:100
 SCALE @ A3
 DRAWN BY N.V.M / JB
 DATE 14/10/2021
 SHEET NUMBER
 CHECKED BY J.P
 PROJECT NUMBER
 PROJECT NAME 18 095
 B106

DEVELOPMENT APPLICATION
 NEW GENERATION BOARDING HOUSE
 CLIENT: SNP EQUITIES PTY LTD
 ADDRESS: 40 MILTON STREET, ASHFIELD

N

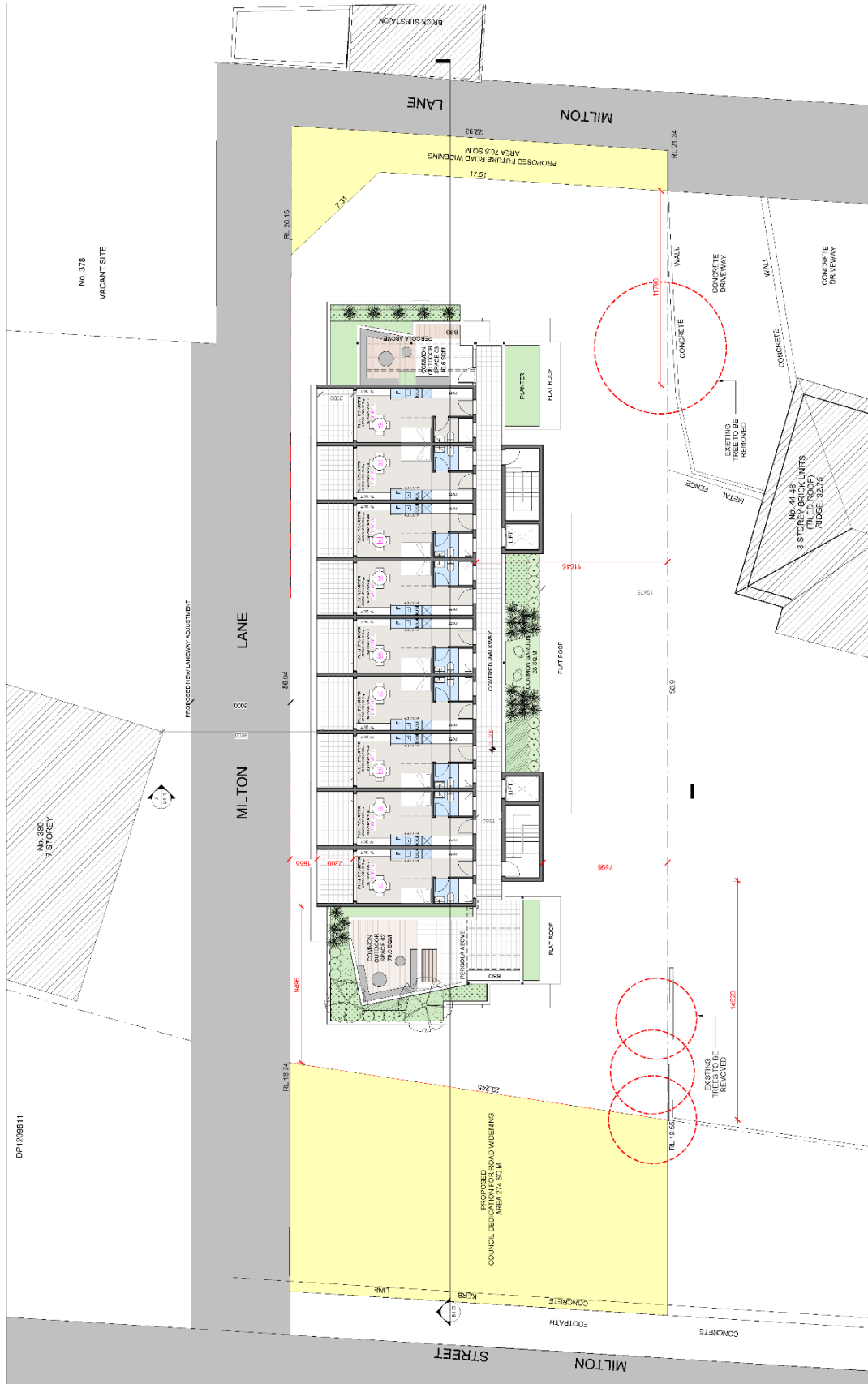
BASEMENT -2
PRELIMINARY
 NOT FOR CONSTRUCTION

NOTES:
 1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
 2. ALL SETBACKS ARE TO FACE UNLESS OTHERWISE STATED.
 3. ALL CONCRETE WORK IS TO BE FINISHED TO A FINISH OF 20MPa.
 4. ALL CONCRETE WORK IS TO BE FINISHED TO A FINISH OF 20MPa.
 5. ALL CONCRETE WORK IS TO BE FINISHED TO A FINISH OF 20MPa.
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 10. ALL CONCRETE WORK IS TO BE FINISHED TO A FINISH OF 20MPa.

REVISION	DATE	BY	CHECKED
B	14/10/2021	N.V.M	J.P
A	14/10/2021	N.V.M	J.P

habitation
 Design + Interiors
 10/10/2021
 www.habitation.com.au

Member
 of
 Architects
 NSW
 10/10/2021
 www.habitation.com.au



SCALE @ A1 1:100
SCALE @ A3 1:200
DRAWN BY N.V.M / JB
DATE 14/10/2021
SHEET NUMBER
PROJECT NUMBER
PROJECT NAME

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE
CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

PROJECT NUMBER: 18 095
B110

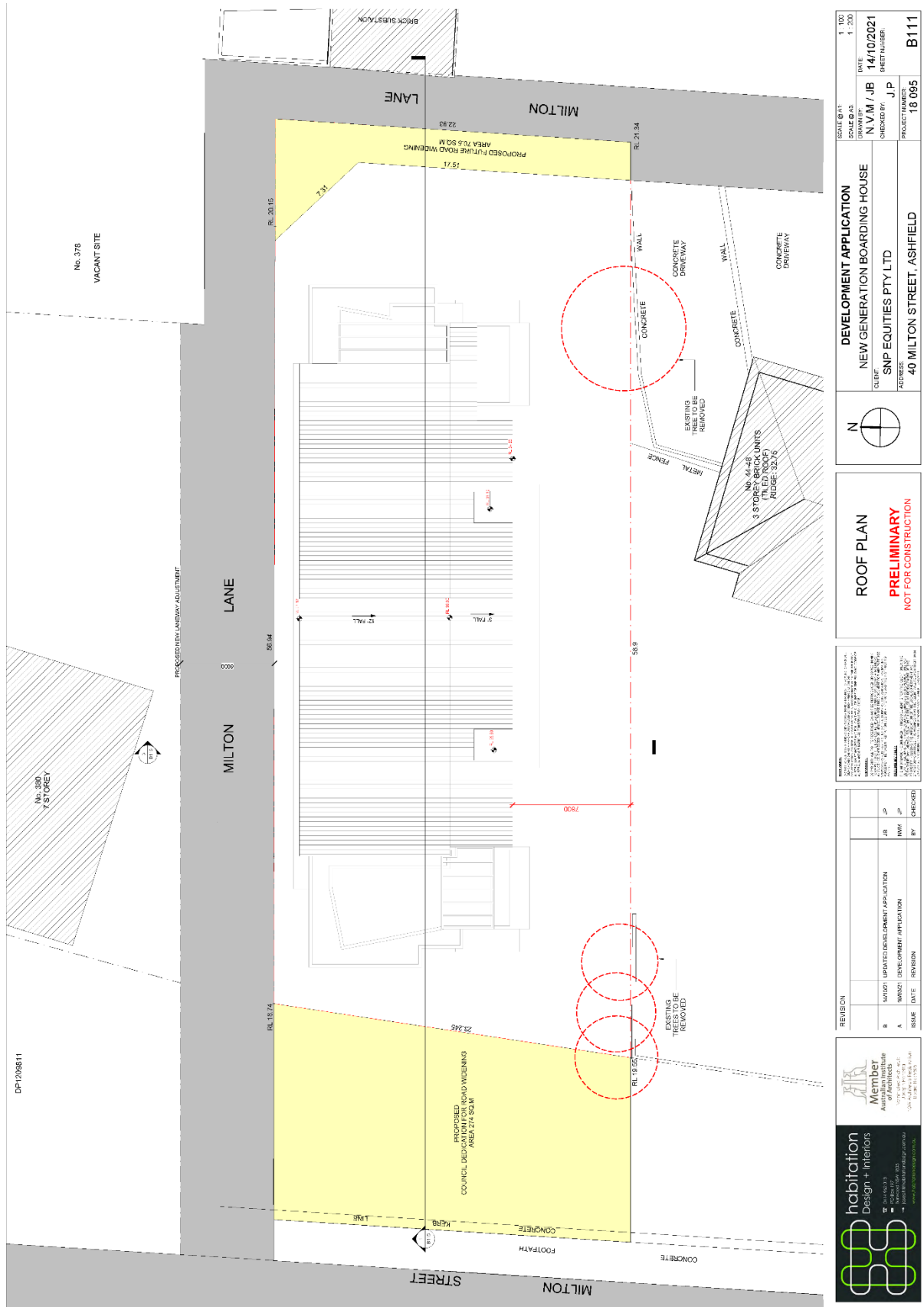
LEVEL 4
PRELIMINARY
NOT FOR CONSTRUCTION

NOTES:
1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE STATED.
3. ALL DIMENSIONS ARE TO BE TAKEN FROM THE CENTRELINE OF THE ROAD UNLESS OTHERWISE STATED.
4. ALL DIMENSIONS ARE TO BE TAKEN FROM THE EXISTING SURFACE UNLESS OTHERWISE STATED.
5. ALL DIMENSIONS ARE TO BE TAKEN FROM THE EXISTING SURFACE UNLESS OTHERWISE STATED.
6. ALL DIMENSIONS ARE TO BE TAKEN FROM THE EXISTING SURFACE UNLESS OTHERWISE STATED.
7. ALL DIMENSIONS ARE TO BE TAKEN FROM THE EXISTING SURFACE UNLESS OTHERWISE STATED.
8. ALL DIMENSIONS ARE TO BE TAKEN FROM THE EXISTING SURFACE UNLESS OTHERWISE STATED.
9. ALL DIMENSIONS ARE TO BE TAKEN FROM THE EXISTING SURFACE UNLESS OTHERWISE STATED.
10. ALL DIMENSIONS ARE TO BE TAKEN FROM THE EXISTING SURFACE UNLESS OTHERWISE STATED.

REVISION	DATE	BY	CHECKED
A			
B			
C			

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DEVELOPMENT APPLICATION
 NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
 ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: 1:100
 SCALE @ A2: 1:200
 DRAWN BY: N.V.M / JB
 DATE: 14/10/2021
 SHEET NUMBER: B111

CHECKED BY: J.P.
 PROJECT NUMBER: 18 095

ROOF PLAN
PRELIMINARY
 NOT FOR CONSTRUCTION

NOTES:

1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
2. ALL WALLS AND ROOFS ARE TO BE CONCRETE UNLESS OTHERWISE STATED.
3. ALL ROOFS ARE TO BE TILED UNLESS OTHERWISE STATED.
4. ALL ROOFS ARE TO BE 12% FALL UNLESS OTHERWISE STATED.
5. ALL ROOFS ARE TO BE 2% FALL UNLESS OTHERWISE STATED.
6. ALL ROOFS ARE TO BE 5.20% FALL UNLESS OTHERWISE STATED.
7. ALL ROOFS ARE TO BE 10% FALL UNLESS OTHERWISE STATED.
8. ALL ROOFS ARE TO BE 15% FALL UNLESS OTHERWISE STATED.
9. ALL ROOFS ARE TO BE 20% FALL UNLESS OTHERWISE STATED.
10. ALL ROOFS ARE TO BE 25% FALL UNLESS OTHERWISE STATED.
11. ALL ROOFS ARE TO BE 30% FALL UNLESS OTHERWISE STATED.
12. ALL ROOFS ARE TO BE 35% FALL UNLESS OTHERWISE STATED.
13. ALL ROOFS ARE TO BE 40% FALL UNLESS OTHERWISE STATED.
14. ALL ROOFS ARE TO BE 45% FALL UNLESS OTHERWISE STATED.
15. ALL ROOFS ARE TO BE 50% FALL UNLESS OTHERWISE STATED.
16. ALL ROOFS ARE TO BE 55% FALL UNLESS OTHERWISE STATED.
17. ALL ROOFS ARE TO BE 60% FALL UNLESS OTHERWISE STATED.
18. ALL ROOFS ARE TO BE 65% FALL UNLESS OTHERWISE STATED.
19. ALL ROOFS ARE TO BE 70% FALL UNLESS OTHERWISE STATED.
20. ALL ROOFS ARE TO BE 75% FALL UNLESS OTHERWISE STATED.
21. ALL ROOFS ARE TO BE 80% FALL UNLESS OTHERWISE STATED.
22. ALL ROOFS ARE TO BE 85% FALL UNLESS OTHERWISE STATED.
23. ALL ROOFS ARE TO BE 90% FALL UNLESS OTHERWISE STATED.
24. ALL ROOFS ARE TO BE 95% FALL UNLESS OTHERWISE STATED.
25. ALL ROOFS ARE TO BE 100% FALL UNLESS OTHERWISE STATED.

REVISION	DATE	BY	CHECKED
B			
A			

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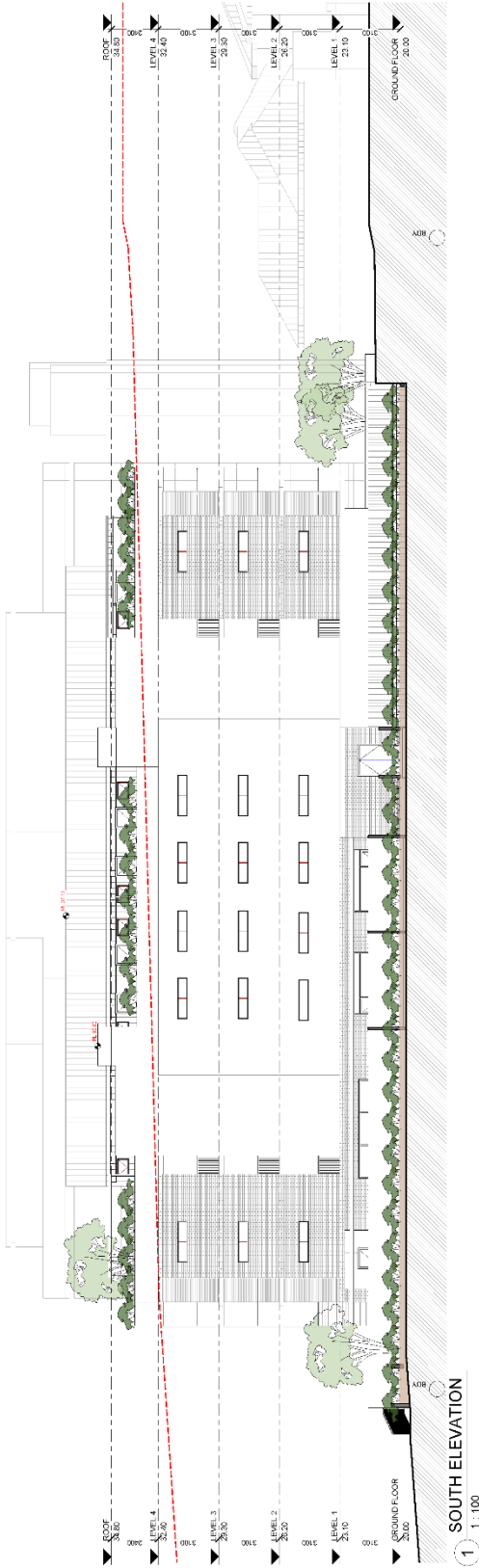


1 EAST ELEVATION
1:100

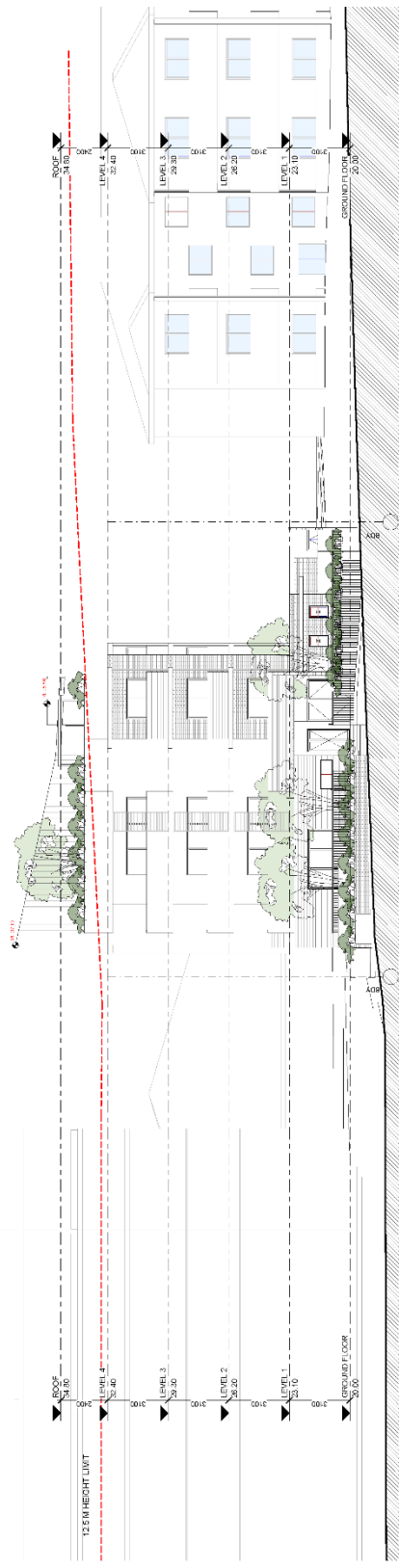


2 NORTH ELEVATION
1:100

								<p>ELEVATIONS PRELIMINARY NOT FOR CONSTRUCTION</p>		<p>DEVELOPMENT APPLICATION NEW GENERATION BOARDING HOUSE CLIENT: SNP EQUITIES PTY LTD ADDRESS: 40 MILTON STREET, ASHFIELD</p>		<p>SCALE @ A1: 1:100 SCALE @ A3: 1:400 DRAWN BY: N.V.M / JB DATE: 14/10/2021 SHEET NUMBER: J.P PROJECT NUMBER: 18 095 B113</p>	
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1 SOUTH ELEVATION
1:100



2 WEST ELEVATION
1:100

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REVISION

NO	DESCRIPTION	DATE	BY	CHECKED
B	UNDO1: UPDATED DEVELOPMENT APPLICATION		JB	JP
A	UNDO2: DEVELOPMENT APPLICATION		NMM	JP

DEVELOPMENT APPLICATION

NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD

ADDRESS: 40 MILTON STREET, ASHFIELD

ELEVATIONS

PRELIMINARY

NOT FOR CONSTRUCTION

SCALE @ A1: 1:100

SCALE @ A3: 1:400

DRAWN BY: N.V.M / JB

DATE: 14/10/2021

CHECKED BY: J.P

SHEET NUMBER: B1114

PROJECT NUMBER: 18 095



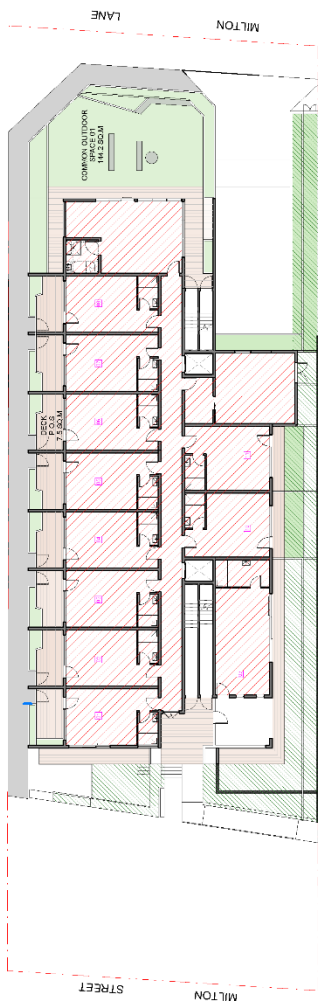
SECTION 1
1:100

				<p>REVISION</p> <table border="1"> <thead> <tr> <th>NO</th> <th>DATE</th> <th>REVISION</th> <th>BY</th> <th>CHECKED</th> </tr> </thead> <tbody> <tr> <td>B</td> <td>14/10/21</td> <td>UPDATED DEVELOPMENT APPLICATION</td> <td>NVM</td> <td>JP</td> </tr> <tr> <td>A</td> <td>14/10/21</td> <td>DEVELOPMENT APPLICATION</td> <td>NVM</td> <td>JP</td> </tr> </tbody> </table>		NO	DATE	REVISION	BY	CHECKED	B	14/10/21	UPDATED DEVELOPMENT APPLICATION	NVM	JP	A	14/10/21	DEVELOPMENT APPLICATION	NVM	JP	<p>SECTION PRELIMINARY NOT FOR CONSTRUCTION</p>		<p>DEVELOPMENT APPLICATION NEW GENERATION BOARDING HOUSE</p> <p>CLIENT: SNP EQUITIES PTY LTD ADDRESS: 40 MILTON STREET, ASHFIELD</p>		<p>SCALE @ A1: 1:100 SCALE @ A3: 1:200 DRAWN BY: N.V.M / J.B DATE: 14/10/2021 SHEET NUMBER: J.P PROJECT NUMBER: 18 095 B115</p>	
NO	DATE	REVISION	BY	CHECKED																						
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A	14/10/21	DEVELOPMENT APPLICATION	NVM	JP																						

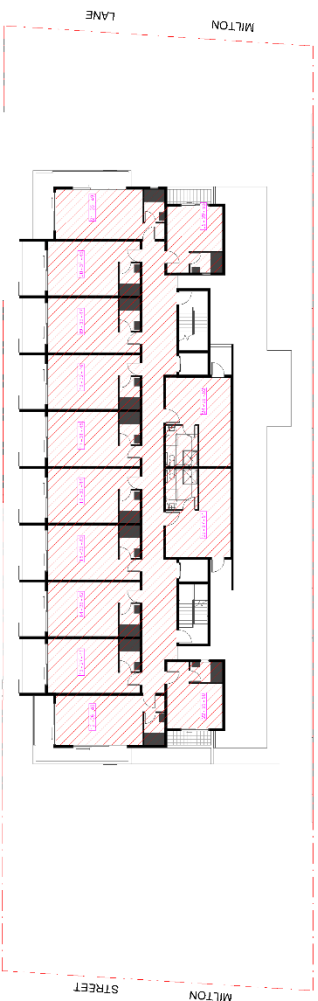
CALCULATIONS:
 TOTAL ORIGINAL SITE AREA: 1602.5 m²
 LESS LAND RESUMPTION: 274.0 m²
 TOTAL PROPOSED SITE AREA: 1328.5 m²

GROUND FLOOR:
 LEVEL 1: 484.5 m²
 LEVEL 2: 471.7 m²
 LEVEL 3: 471.7 m²
 LEVEL 4: 221.0 m²

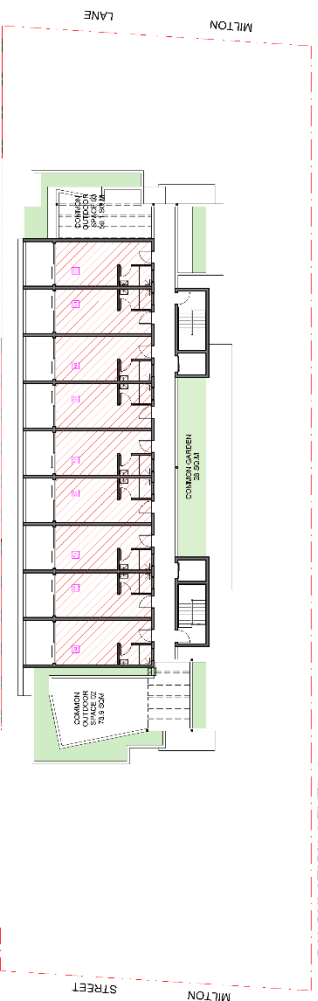
TOTAL GFA: 2128.6 m²
 TOTAL FSR BASED ON ORIGINAL SITE AREA: 132.1
 TOTAL FSR BASED ON PROPOSED SITE AREA: 132.1
 TOTAL FSR BASED ON LAND RESUMPTION AREA: 132.1
 61 BOARDING ROOMS + 1 MANAGERS ROOM: 62 ROOMS



1 CALCULATION_GROUND FLOOR
1:150



2 CALCULATION_LEVEL 1,2,3
1:150



3 CALCULATION_LEVEL 4
1:150

DEVELOPMENT APPLICATION
 NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
 ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: As indicated
 SCALE @ A3: 1:300
 DRAWN BY: N.V.M./J.B.
 SHEET NUMBER: 14/10/2021
 CHECKED BY: J.P.
 PROJECT NUMBER: 18 095
 B118

CALCULATION PLAN
PRELIMINARY
 NOT FOR CONSTRUCTION

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REVISION	ISSUE DATE	REVISION	BY	CHECKED
B		ISSUED DEVELOPMENT APPLICATION	J.B.	J.P.
A		ISSUED DEVELOPMENT APPLICATION	N.V.M.	J.P.

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1 EAST ELEVATION
1:200

2 NORTH ELEVATION
1:200

3 SOUTH ELEVATION
1:200

4 WEST ELEVATION
1:200

1
AREA: FEATURE WALLS
FINISH: FACE BRICK
DETAIL: AUSTRAL METALUX
"BLACK STONE" OR SIMILAR

2
AREA: BASE WALLS
FINISH: MASONRY TO BE RENDERED
DETAIL: PAINTED "DULUX LEXICON"

3
AREA: BASE WALLS
FINISH: MASONRY TO BE RENDERED
DETAIL: "NIGHT SKY"

4
AREA: DOOR + WINDOW FRAMES + ROOF SHEETING + FEATURE CLADDING
FINISH: POWDERCOATED ALUMINIUM
DETAIL: COLORBOND "WOODLAND GREY" (MATT FINISH) WIDE PAN METAL SHEETING

5
AREA: BASE WALLS
FINISH: MASONRY TO BE RENDERED
DETAIL: "DULUX DOMINO"

6
AREA: FACADE PANELLING
FINISH: POWDERCOATED ALUMINIUM
DETAIL: CEDAR (ALUMINIUM CLADDING OR SIMILAR)

7
AREA: FACADE PANELS
FINISH: PRE CAST CONCRETE
DETAIL: (NATURAL FINISH WITH FILLET GROOVES)

MATERIALS AND FINISHES
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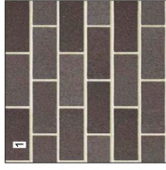
REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/02/21	14/02/21	14/02/21	JP	JP
A	14/02/21	14/02/21	14/02/21	NJM	JP

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

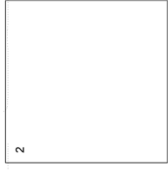
CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: 1:200
SCALE @ A3: 1:400
DRAWN BY: N.V.M./J.B.
DATE: 14/10/2021
CHECKED BY: J.P.
SHEET NUMBER: B120
PROJECT NUMBER: 18 095

MATERIALS + FINISHES



1) FACE BRICK
AUSTRAL METALLIX "BLACK
STONE" OR SIMILAR



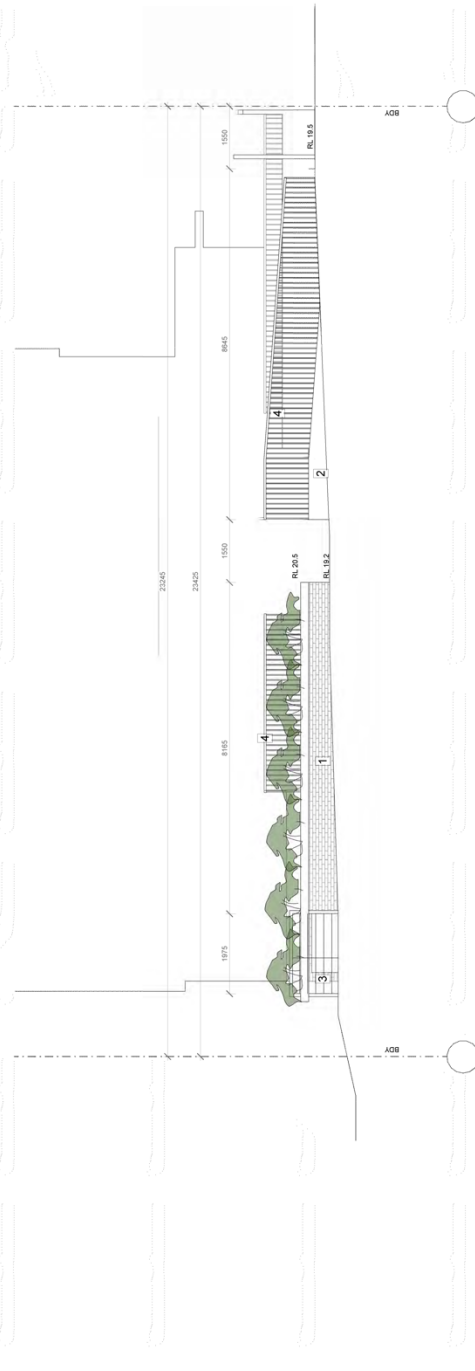
2) RENDERED MASONRY
DULUX "LEXICON"



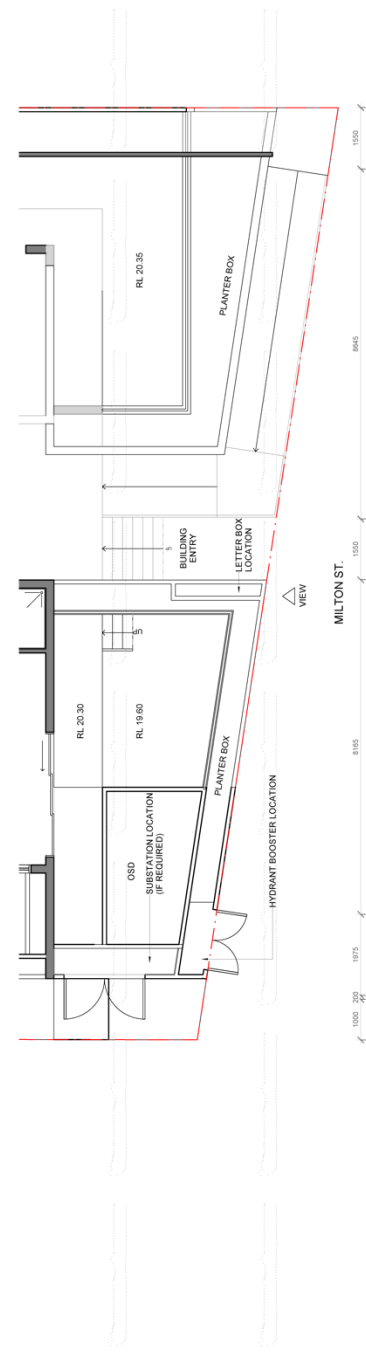
3) ALUMINIUM CLADDING
"TIMBER FINISH"



4) POWDERCOATED ALUMINIUM
PAINTED DULUX "DOMINO"



2 FRONT FENCE VIEW
1:50



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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
A	14/10/21	UPDATED DEVELOPMENT APPLICATION		J.P.	J.P.
B	18/03/21	DEVELOPMENT APPLICATION		N.M.I.	J.P.

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FENCE DETAIL
PRELIMINARY
NOT FOR CONSTRUCTION

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE
CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1
SCALE @ A2
DRAWN BY: N.V.M / J.B.
DATE: 14/10/2021
CHECKED BY: J.P.
PROJECT NUMBER: 18 095
SHEET NUMBER: B121



SHADOW LEGEND:
 ■ PROPOSED BUILDING
 ■ EXISTING BUILDING (PROPOSED SITE)
 ■ EXISTING NEIGHBOURS BUILDINGS

1 SHADOW DIAGRAM JUNE 21ST 9 AM
 1:250

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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/10/21	UPDATED DEVELOPMENT APPLICATION		JP	
A	18/03/21	DEVELOPMENT APPLICATION		NMI	JP

DEVELOPMENT APPLICATION
 NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
 ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: 1:250
 SCALE @ A2: 1:500

DATE: 14/10/2021
 DRAWN BY: N.V.M / J.B
 CHECKED BY: J.P
 PROJECT NUMBER: 18 095
 SHEET NUMBER: B123

WINTER SHADOW DIAGRAM
PRELIMINARY
 NOT FOR CONSTRUCTION

DISCLAIMER: THIS SHADOW DIAGRAM IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES. THE SHADOWS SHOWN ARE BASED ON A WINTER SUN POSITION AT 9 AM ON JUNE 21ST. THE SHADOWS MAY VARY SLIGHTLY FROM THE ACTUAL SHADOWS DUE TO VARIATIONS IN THE SUN'S POSITION AND THE BUILDING'S ORIENTATION. THE SHADOWS SHOWN ARE NOT TO BE USED FOR ANY OTHER PURPOSES.



1 SHADOW DIAGRAM JUNE 21ST 10 AM
1:250

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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/10/21	UPDATED DEVELOPMENT APPLICATION		J.P.	
A	18/03/21	DEVELOPMENT APPLICATION		N.M.I.	J.P.

WINTER SHADOW DIAGRAM
PRELIMINARY
NOT FOR CONSTRUCTION

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE
CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

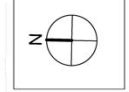
SCALE @ A1: 1:250
SCALE @ A2: 1:500
DRAWN BY: N.V.M / J.B.
DATE: 14/10/2021
CHECKED BY: J.P.
PROJECT NUMBER: 18 095
SHEET NUMBER: B124



SHADOW LEGEND:
 ■ PROPOSED BUILDING
 ■ EXISTING BUILDING (PROPOSED SITE)
 ■ EXISTING NEIGHBOURS BUILDINGS

1 SHADOW DIAGRAM JUNE 21ST 11 AM
 1: 250

SCALE @ A1	1: 250
SCALE @ A2	1: 500
DRAWN BY	N.V.M / J.B
DATE	14/10/2021
CHECKED BY	J.P
SHEET NUMBER	
PROJECT NUMBER	18 095
	B125



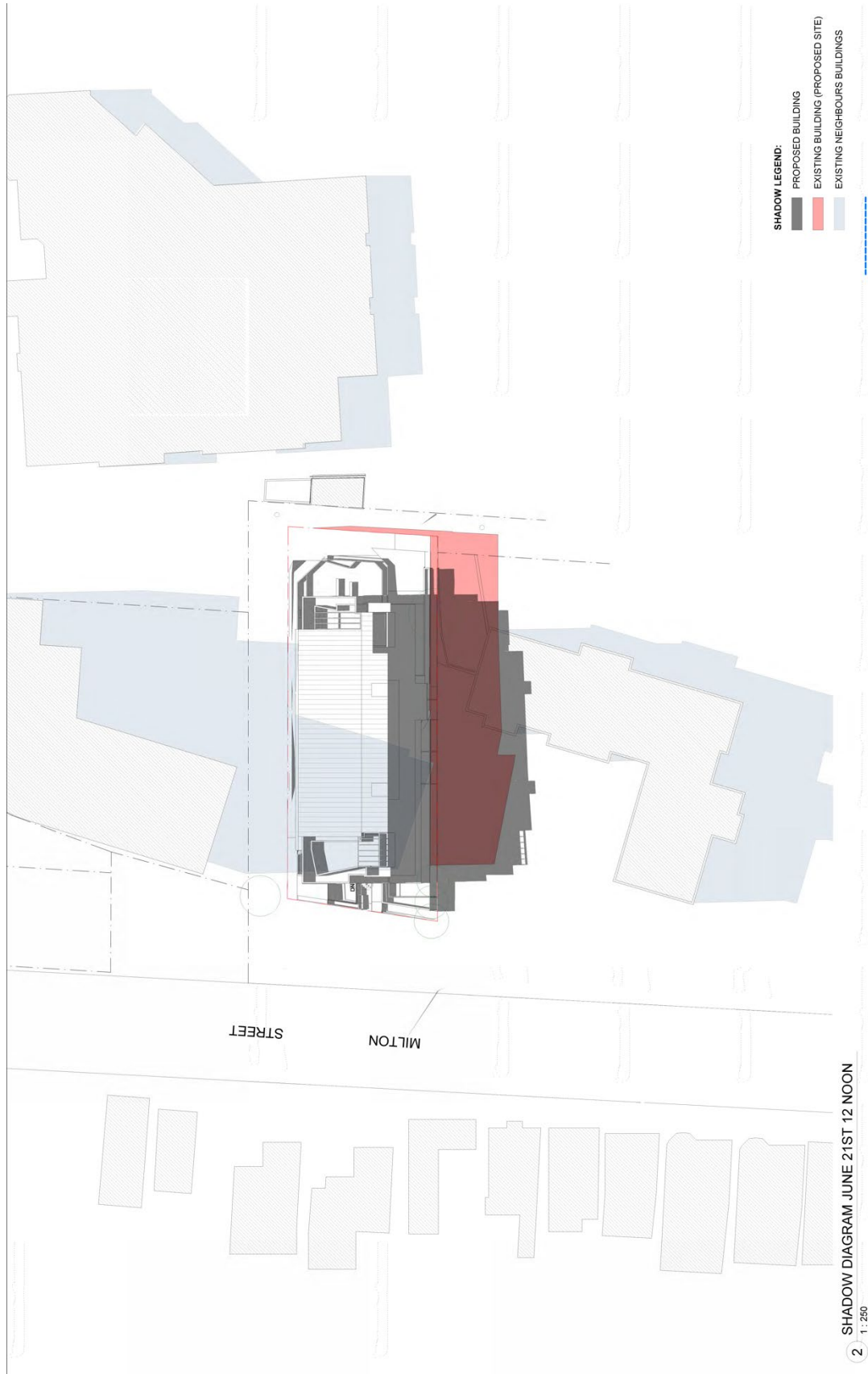
WINTER SHADOW DIAGRAM
PRELIMINARY
 NOT FOR CONSTRUCTION

DISCLAIMER: THIS SHADOW DIAGRAM IS A VISUAL REPRESENTATION OF THE SHADOWS CAST BY THE PROPOSED DEVELOPMENT AT THE SPECIFIED DATE AND TIME. IT IS NOT A GUARANTEE OF THE ACCURACY OF THE SHADOWS CAST. THE SHADOWS CAST BY THE PROPOSED DEVELOPMENT WILL BE DEPENDENT ON THE ACTUAL WEATHER CONDITIONS ON THE DAY OF CONSTRUCTION. THE SHADOWS CAST BY THE PROPOSED DEVELOPMENT WILL BE DEPENDENT ON THE ACTUAL WEATHER CONDITIONS ON THE DAY OF CONSTRUCTION. THE SHADOWS CAST BY THE PROPOSED DEVELOPMENT WILL BE DEPENDENT ON THE ACTUAL WEATHER CONDITIONS ON THE DAY OF CONSTRUCTION.

REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/10/21	UPDATED DEVELOPMENT APPLICATION		J.B	J.P
A	10/02/21	DEVELOPMENT APPLICATION		N.M.I	J.P



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DEVELOPMENT APPLICATION

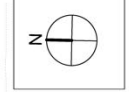
NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: 1: 250
SCALE @ A2: 1: 500

DRAWN BY: N.V.M / J.B
DATE: 14/10/2021

CHECKED BY: J.P
PROJECT NUMBER: 18 095
SHEET NUMBER: B126



WINTER SHADOW DIAGRAM

PRELIMINARY

NOT FOR CONSTRUCTION

DISCLAIMER: THIS SHADOW DIAGRAM IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION. THE SHADOWS SHOWN ARE BASED ON THE ASSUMPTIONS STATED ABOVE AND MAY VARY FROM THE ACTUAL SHADOWS. THE SHADOWS SHOWN ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE SHADOWS SHOWN ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE SHADOWS SHOWN ARE NOT TO BE USED FOR ANY OTHER PURPOSES.

REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/10/21	UPDATED DEVELOPMENT APPLICATION		N.V.M	J.P
A	10/02/21	DEVELOPMENT APPLICATION		N.V.M	J.P

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1 SHADOW DIAGRAM JUNE 21ST 1 PM
1:250

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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/10/21	UPDATED DEVELOPMENT APPLICATION		JP	
A	18/03/21	DEVELOPMENT APPLICATION		JP	

WINTER SHADOW DIAGRAM
PRELIMINARY
NOT FOR CONSTRUCTION

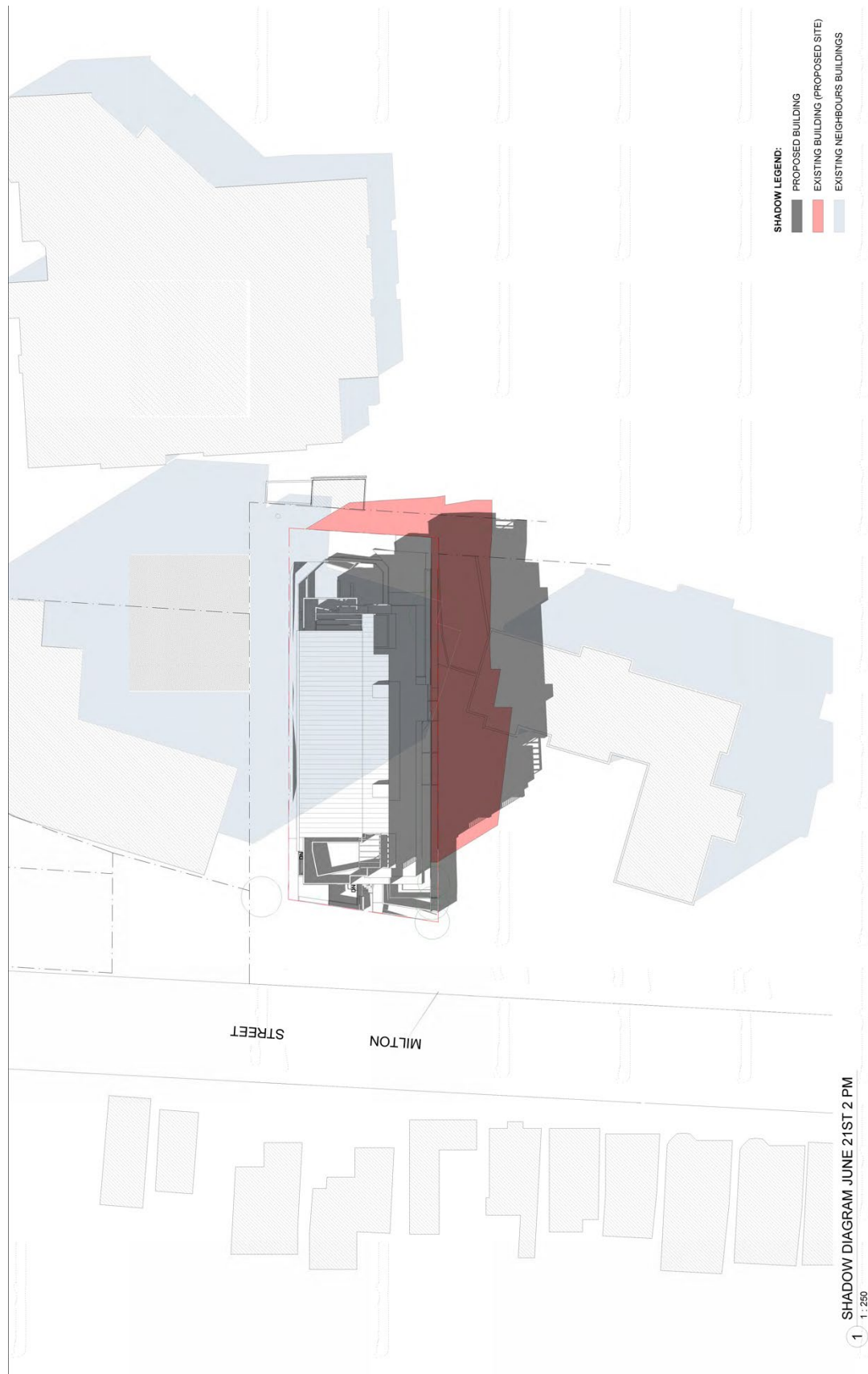
DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: 1:250
SCALE @ A2: 1:500

DRAWN BY: N.V.M / J.B
DATE: 14/10/2021

CHECKED BY: J.P
PROJECT NUMBER: 18 095
SHEET NUMBER: B127



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B	14/10/21	UPDATED DEVELOPMENT APPLICATION		NMI	JP
A	10/02/21	DEVELOPMENT APPLICATION		NMI	JP

WINTER SHADOW DIAGRAM
PRELIMINARY
NOT FOR CONSTRUCTION

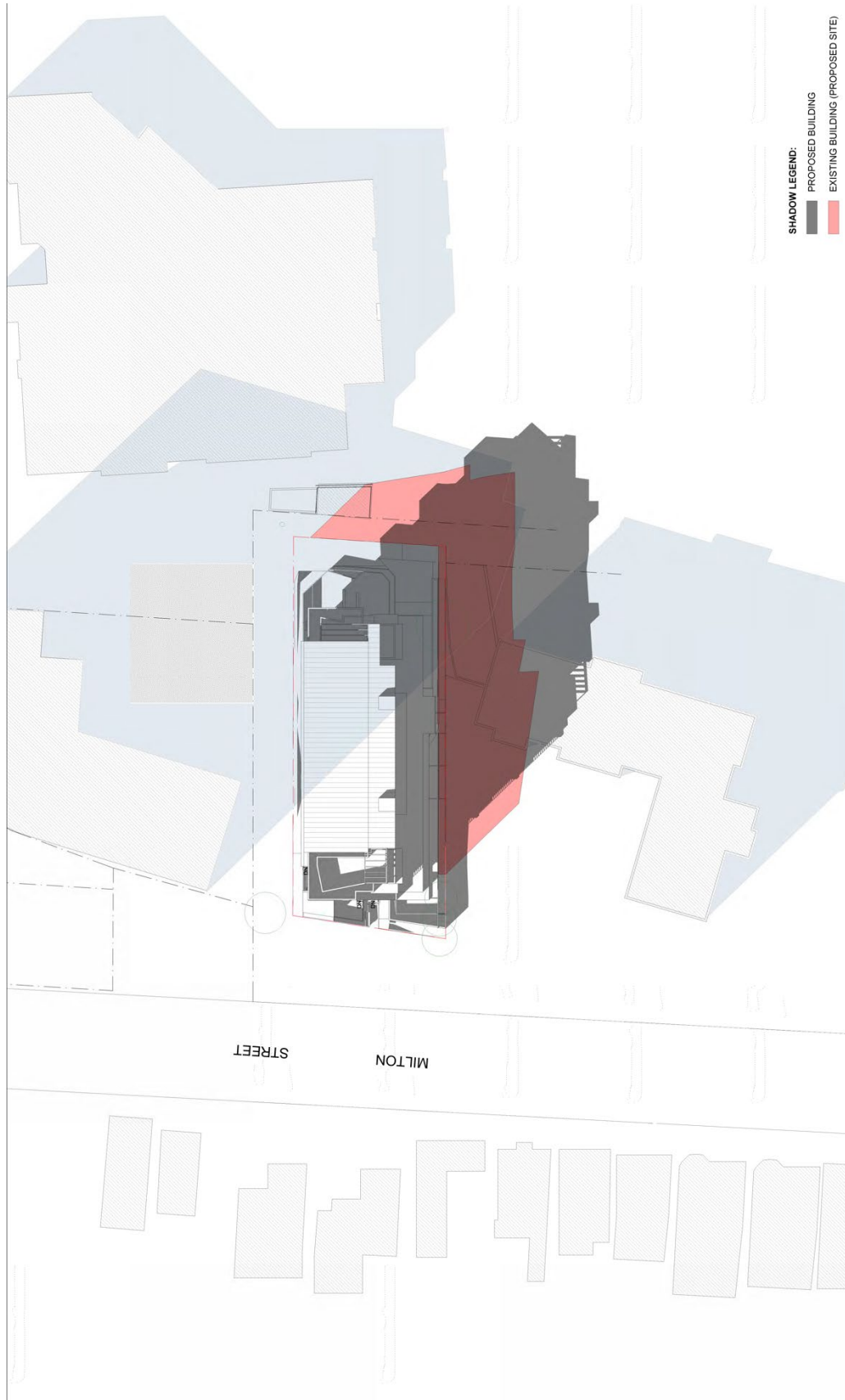
DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: 1:250
SCALE @ A2: 1:500

DRAWN BY: N.V.M / J.B
DATE: 14/10/2021

CHECKED BY: J.P
PROJECT NUMBER: 18 095
SHEET NUMBER: B128



1 SHADOW DIAGRAM JUNE 21ST 3 PM
1: 250

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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/10/21	UPDATED DEVELOPMENT APPLICATION		NMI	JP
A	18/03/21	DEVELOPMENT APPLICATION		NMI	JP

WINTER SHADOW DIAGRAM
PRELIMINARY
NOT FOR CONSTRUCTION

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

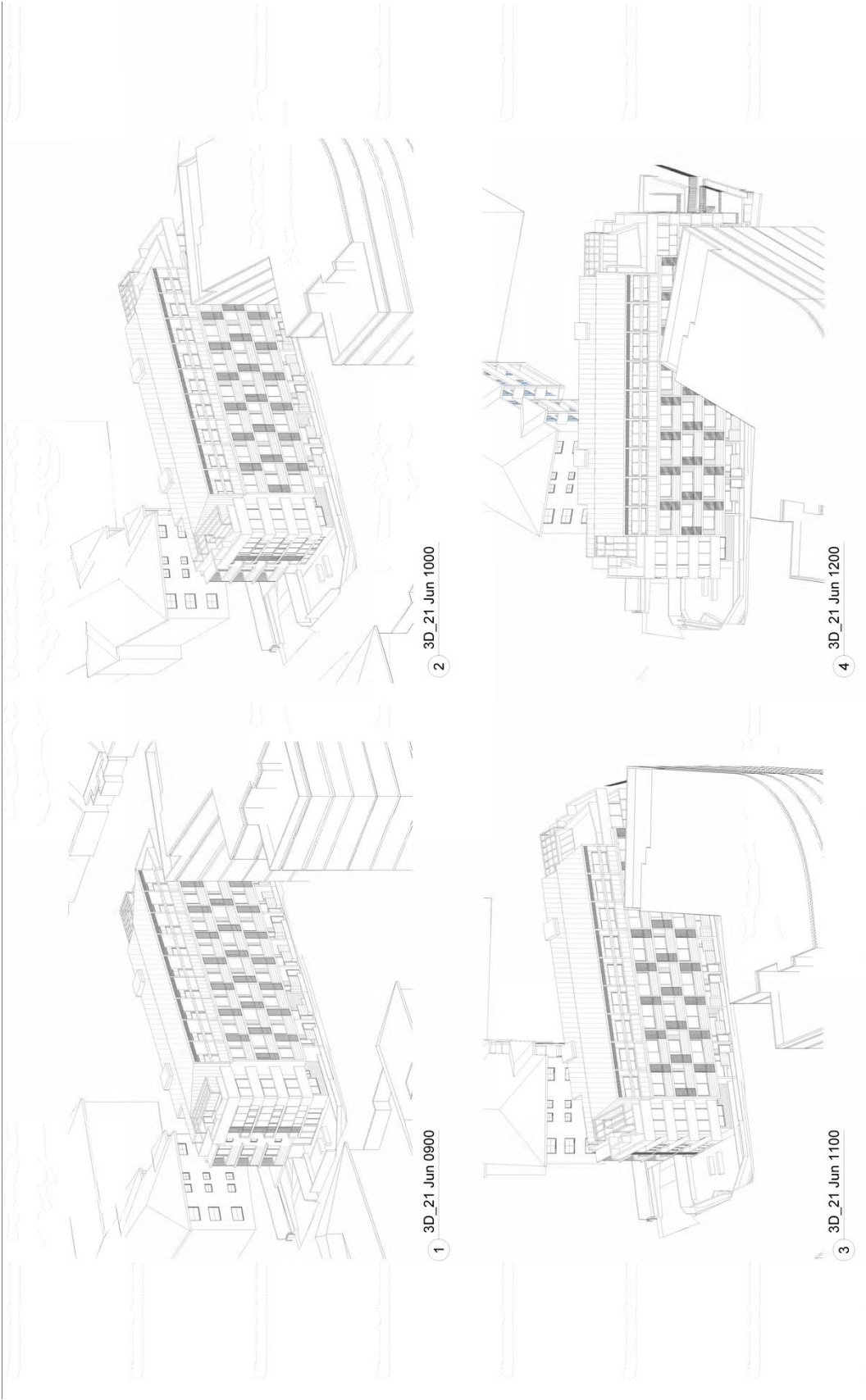
CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1: 1: 250
SCALE @ A2: 1: 500

DRAWN BY: N.V.M / J.B
DATE: 14/10/2021

CHECKED BY: J.P
SHEET NUMBER: B129

PROJECT NUMBER: 18 095



2 3D_21 Jun 1000

4 3D_21 Jun 1200

1 3D_21 Jun 0900

3 3D_21 Jun 1100



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REVISION	DATE	REVISION	BY	CHECKED
A	14/10/21	UPDATED DEVELOPMENT APPLICATION	NMI	J.P.
B	18/03/21	DEVELOPMENT APPLICATION	NMI	J.P.

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DEVELOPMENT APPLICATION	SCALE @ A1	DATE	B130
NEW GENERATION BOARDING HOUSE	SCALE @ A2	14/10/2021	
CLIENT: SNP EQUITIES PTY LTD	DRAWN BY: N.V.M / J.B	CHECKED BY: J.P	SHEET NUMBER:
ADDRESS: 40 MILTON STREET, ASHFIELD	PROJECT NUMBER: 18 095		

SUN EYE VIEWS
PRELIMINARY
NOT FOR CONSTRUCTION

1 3D_21 Jun 1300

2 3D_21 Jun 1400

3 3D_21 Jun 1500

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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	14/10/21	UPDATED DEVELOPMENT APPLICATION		NMI	JP
A	18/03/21	DEVELOPMENT APPLICATION		NMI	JP

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SUN EYE VIEWS
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DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1
DRAWN BY: N.V.M / J.B
DATE: 14/10/2021
CHECKED BY: J.P
PROJECT NUMBER: 18 095
SHEET NUMBER: B131



REVISION	ISSUE	DATE	REVISION	BY	CHECKED
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A	18/03/21	DEVELOPMENT APPLICATION		NWM	JP

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3D PERSPECTIVE
PRELIMINARY
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DEVELOPMENT APPLICATION
 NEW GENERATION BOARDING HOUSE
 CLIENT: SNP EQUITIES PTY LTD
 ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1
 DRAWN BY: N.V.M / JB
 DATE: 14/10/2021
 SHEET NUMBER: J.P
 PROJECT NUMBER: 18 095
 B132



SCALE @ A1
SCALE @ A2
DRAWN BY: N.V.M / J.B
DATE: 14/10/2021
SHEET NUMBER: B133
CHECKED BY: J.P
PROJECT NUMBER: 18 095

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE
CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

3D PERSPECTIVE
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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
B	180201	UPDATED DEVELOPMENT APPLICATION	J.B	J.P	
A	180201	DEVELOPMENT APPLICATION	N.V.M	J.P	

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REVISION	ISSUE	DATE	REVISION	BY	CHECKED
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A	18/09/21		DEVELOPMENT APPLICATION	NVM	JP

3D PERSPECTIVE
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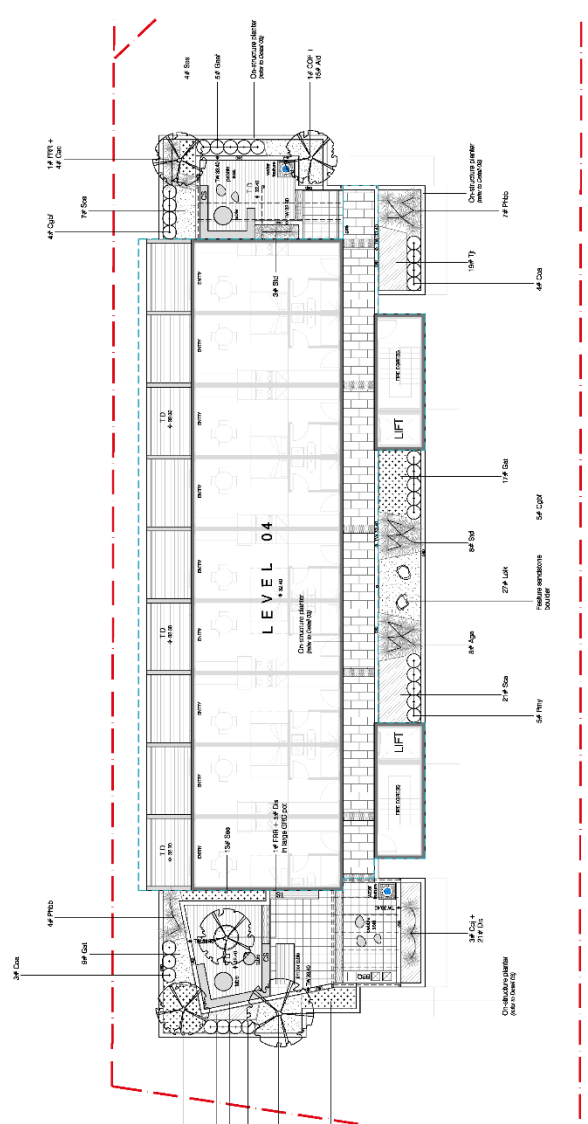
DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

CLIENT: SNP EQUITIES PTY LTD
ADDRESS: 40 MILTON STREET, ASHFIELD

SCALE @ A1
SCALE @ A2
DRAWN BY: N.V.M / J.B
DATE: 14/10/2021
CHECKED BY: J.P
SHEET NUMBER:
PROJECT NUMBER: 18 095
B134

PROPOSED PLANT SCHEDULE

CODE	BOTANICAL NAME	COMMON NAME	POT SIZE	ML U/L	REMARKS
001	ACACIA SP.	WATTLE	75L	0.75	
002	ADONIS SP.	ORCHID	75L	0.75	
003	ADONIS SP.	ORCHID	75L	0.75	
004	ADONIS SP.	ORCHID	75L	0.75	
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100	ADONIS SP.	ORCHID	75L	0.75	



LANDSCAPE PLAN: level 04 scale: 1:100

- LEGEND
- Existing trees to be protected & retained (see to Architects report)
 - Proposed trees to be removed (see to Architects report)
 - Proposed trees to be retained (see to Architects report)
 - Proposed groundcover planting (see to Architects report)
 - Proposed accent planting (see to Architects report)
 - Proposed turf lawn (see to Architects report)
 - Proposed timber deck
 - Proposed feature electronic paving banking
 - Proposed wettable paving to wettable detail
 - Proposed pedestrian walkways/parking
 - Proposed concrete paving
 - Proposed cast-in-situ concrete seat
 - Proposed sandstone log seat
 - Proposed timber seat
 - Proposed pebble seat
 - Proposed water feature
 - Proposed metal edging
 - Proposed pebble mulch
 - Proposed ground destination for road marking
 - Proposed on-structure planter
 - Proposed retaining wall
 - Proposed feature sandstone boulders
 - Proposed Fibre BRQ
 - Proposed above ground (DSD) turn to hydraulic edge detail
 - Proposed SW pile to hydraulic edge detail
 - Design levels
 - Existing walls
 - Site boundary

40 Milton Street, ASHFIELD NSW



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Scale: 1:100 @A1
 Drawing: DA-L102
 Client: SNP EQUITIES PTY LTD
 Drawing title: landscape plan: ground fr

REVISION	DATE	DESCRIPTION	DRIB
A	23/03/21	via submission	23/03/21
B	23/09/21	via amendments	23/09/21
C	15/11/21	via amendments	15/11/21

**Attachment C – Clause 4.6 Exception to Development Standards
(Clause 4.3 Height of buildings)**



CLAUSE 4.6 REQUEST FOR VARIATION TO

CLAUSE 4.3 (2) (HEIGHT OF BUILDING) OF ASHFIELD

LOCAL ENVIRONMENTAL PLAN 2013 (ALEP)

40 MILTON STREET

ASHFIELD

Proposed Boarding House

OCTOBER 2021

1.0 Background

- This updated written variation is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Ashfield Local Environmental Plan 2013 (ALEP 2013), the relevant clause being Clause 4.3(2) (Height of Building).
- The relevant maximum height of building control is **12.5m**.
- The proposed height variation is **4.455m** being a reduction to the extent of the variation when compared to the original scheme and responds to Council's recent RFI.

2.0 Introduction

- The 12.5m Height of Building control is a *development standard* for the purposes of the *EP & A Act 1979*. This request to vary the height development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action"). *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112* (SJD DB2).
- The objectives of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- The relevant plans relied upon are those identified as the plans prepared by Habitation Design + Interiors Architecture **Revision B dated 14.10.21**. The original Urban Design Report, prepared by Smith Tzannes (UDR) is relied upon in relation to the locational context of the site and its role as a transitional site. The UDR concluded that the original scheme (of greater height and FSR) had an acceptable visual fit and that a sound urban design rationale exists for a scheme sitting outside the numerical controls. It follows that a reduced height and FSR scheme with no increase in the building footprint satisfies the established urban design principles. Vehicle access is to improve by dedicated easements in favour of council facilitating two-way access in Milton Lane.
- The original DA demonstrated the development, as one being outside the height controls, offers suitable solar access to the site and the adjoining sites particularly 44 – 48 Milton Street. Solar access issues were previously assessed as part of the planning panel report prior to the recent refusal document and were found to be acceptable. Annexure A provides updated solar access assessment confirming adequate solar access is provided to apartments at 44 – 48 Milton Street.

3.0 Development Standard to be Varied – Height

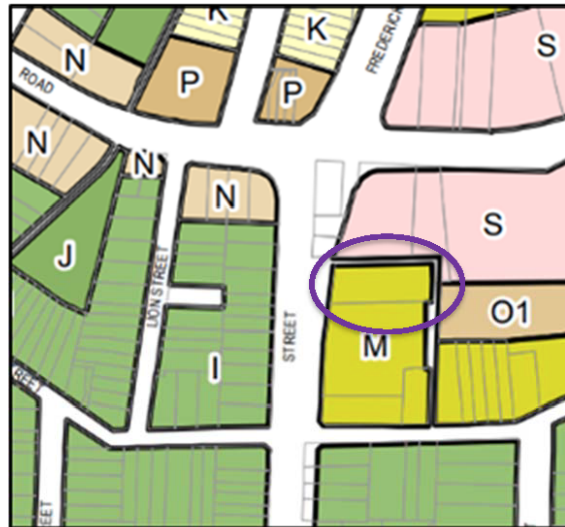
The relevant *development standard* to be varied is the **12.5m** height control under Clause 4.3(2). Clause 4.3 of ALEP relevantly provides:

4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
- (a) *to achieve high quality built form for all buildings,*
 - (b) *to maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and Lanes,*
 - (c) *to provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings,*
 - (d) *to maintain satisfactory solar access to existing buildings and public areas.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *If a building is located on land in Zone B4 Mixed Use, any part of the building that is within 3 metres of the height limit set by subclause (2) must not include any area that forms part of the gross floor area of the building and must not be reasonably capable of modification to include such an area.*

(2B) Subclause (2A) does not apply to development on land identified as "Area 3" on the Key Sites Map if the consent authority is satisfied that the development achieves the objectives of this clause.

The relevant height of buildings map is identified below:



Map 1- Height Map ALEP

The subject site is mapped "M" – 12.5m (max)

4.0 Nature of Variation Sought

The requested variation is as follows:

Height of the upper roof is 4.455m above the 12.5m height control at a maximum (see plan B116)

The following section of the proposed building show the 12.5m height limit prescribed under clause 4.3(2) of ALEP 2013 (red dotted line).

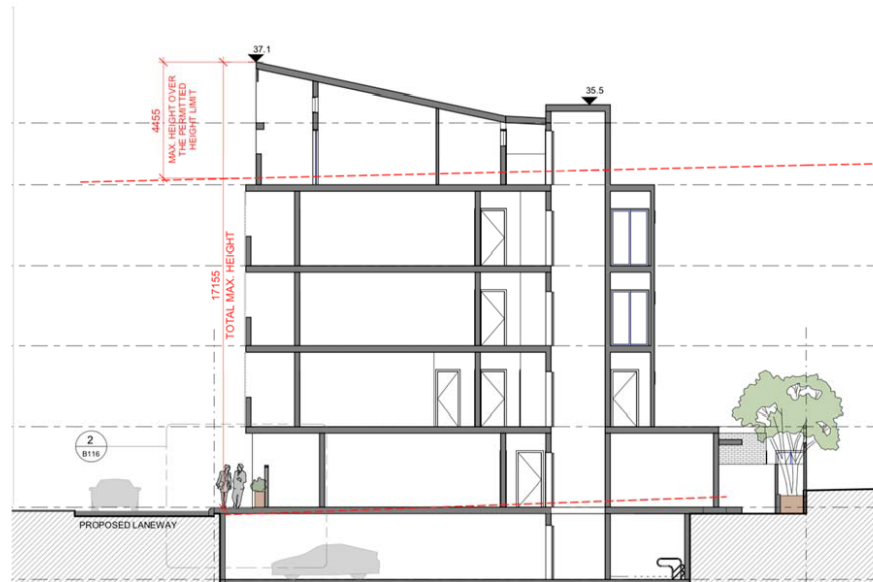


Fig A: Section 1 of the proposed building showing the 12.5m height limit as red dotted line

5.0 Height – Development Standard

A development standard is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* (“EPA Act”) to mean:

“provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.”*

The 12.5m maximum height standard is a *development standard* as defined under the EP&A Act 1979.

6.0 Clause 4.6 of Ashfield Local Environmental Plan 2013

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

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

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (4) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (5) *that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)*

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the ALEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (6) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the ALEP 2013 and cl4.6(4)(b).

Clause 4.6(5) provides that:

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

Sections below of this written request addresses the matters required under cl4.6(5) of the ALEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

7.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. There is no provision in ALEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (**the DA**). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (**FSR**) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the

Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

Big Property Pty Ltd v Randwick

The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council* [2021] (herein '*Big Property*'). This decision was also followed by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] (herein '*HPG*').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by Big Property against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced SJD, and went on to hold that:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realization of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPs that realisation of particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at44]

Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments, such as that for Affordable Rental Housing, 'incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site'. This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

8.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

In dealing with the “unreasonable and unnecessary” Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under **Cl. 4.6(3)(a)**.

Preston CJ at states as follows:

“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Based on the above the following identifies the first method identified in *Wehbe*:

“Ways of establishing that compliance is unreasonable or unnecessary

42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.” (our emphasis)

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the control it is necessary to identify the purpose of the height control and then progress to dealing with the consistency or otherwise with the height objectives. The first consideration relates to overall scale of a building given that both height and FSR determines the scale of a building to another building or natural feature.

The visual fit of the building in this particular instance having regard to the variation sought is addressed by Smith & Tzannes in the UDR submitted with the DA documentation (see relevant extracts below). It concludes that in this case the buildings ‘fit’ is acceptable and appropriate for this site. It follows that the revised design with its lower height and very similar form would equally satisfy the relevant urban design principles established by the original UDR.

The site sits within a landuse zone with a 12.5m height limit, immediately south of a zone with a 23m height limit. There is no provision within the ALEP 2013 for any transition between the two controls, notwithstanding that the LEP mapping includes a number of possible height limits which could have been adopted for this site (see below). As shown in the elevations the proposed scale of the proposal is appropriate to the adjoining

development. The proposal provides a stepped building that offers an sound urban design outcome notwithstanding the height variation. The height is appropriate for the site having regard to the sites juxtaposition to the Ashfield West Precinct (AWP). The proposal maintains appropriate visual separation between the buildings so that the required extent of permeability is provided between the buildings when viewed from the opposite side of Milton Street.



Fig 1. Elevation view from Milton Street (Source: Habitation, 14.10.2021). The proposal provides an appropriate urban design response for the site.

The 3D model images in Figures D - F below depicts the anticipated built form within the immediate surrounds of the site. A vacant site to the north fronting Liverpool Road is yet to be developed which will provide greater height, bulk and scale along with the future redevelopment of the Club site. As indicated in the study the sites to the south fronting Milton Street are not afforded a transition site like that provided to the east.

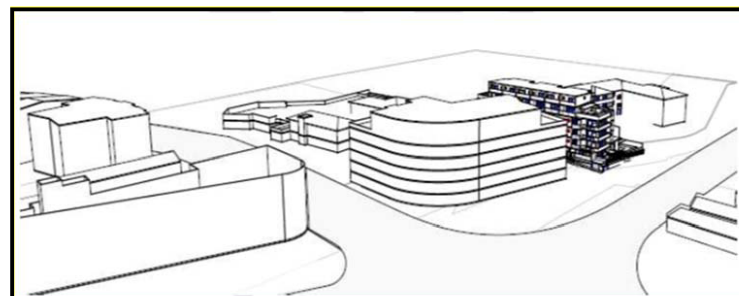


Fig D. Context massing model show study (original DA for context assessment purposes)

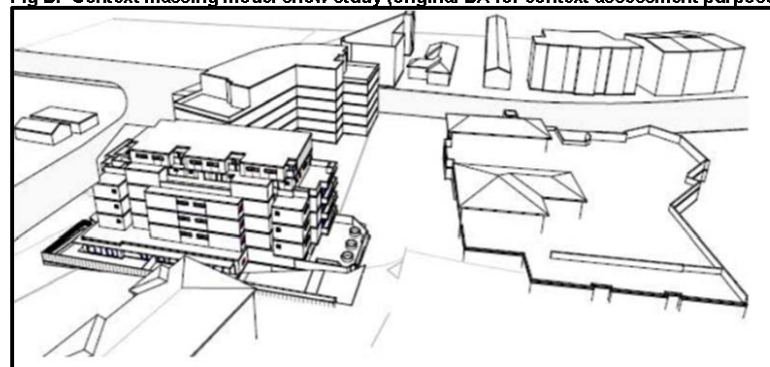


Fig E – View from the south east. Significant additional built form anticipated on the vacant site and Club site to the north and north east due to the height and FSR controls. Site will provide a transition both from Milton Lane and Milton Street

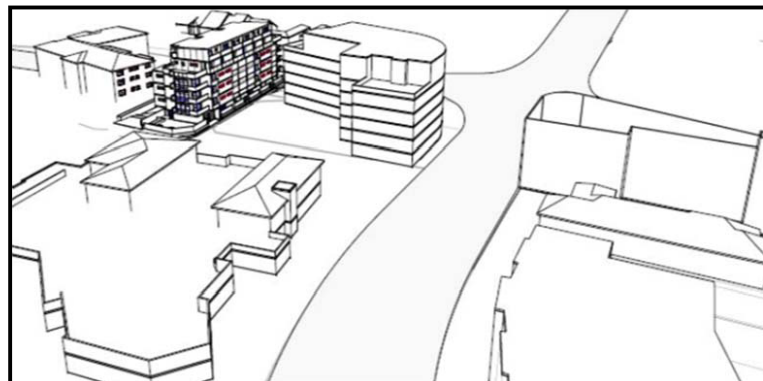


Fig F – View from east looking west along Liverpool Road. Eastern façade of the building stepped to allow solar access to the south in the morning. The two original upper levels above the height were setback significantly from the southern boundary to reduce potential impacts and provide visual separation (note that the revised boarding house scheme reduces the original scheme by one level when compared to Figure F)

The proposal is supported by the Smith Tzannes urban design study which identifies the transitional role of the site in a baseline urban design sense as shown below:

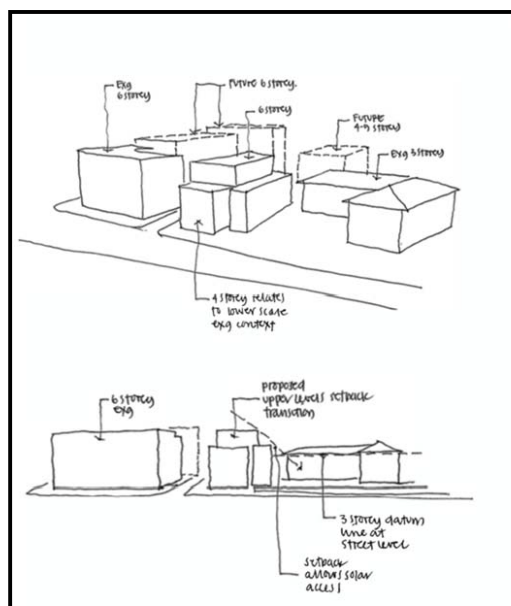


Fig G - Massing study by Smith Tzannes 27.11.19

The study identifies the fact that the sites to the east have a 15m transitional height between the 23m and the 12.5m which provides opportunities to achieve a transitional form given that additional FSR can be achieved under the Affordable Housing SEPP (i.e. due to sites proximity to public transport and the fact that boarding houses are permissible in the zone). The additional affordable housing FSR enables the heights to be achieved given that the affordable housing is added to the 0.7:1 base FSR.

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case include both built form and amenity considerations with particular regard to solar, visual and privacy impacts. When considered within the framework of the objectives the height control requires a development to achieve a high-quality built form and to provide reasonable amenity impacts as a result of the building height. The following justification is provided:

(a) to achieve high quality-built form for all buildings,

The architectural design, layout and street presentation of the proposal achieves a high-quality development adjacent the AWP which is experiencing a high level of redevelopment, particularly along Liverpool Road. The proposal emulates contemporary building materials and finishes, with a change of materials for the upper level which breaks up the additional height of the building above 12.5m. The upper level will not read as a full level due to the setback and the reduced floor plate when compared to the level below. When viewed in the context of the 7- storeys to the north and 3- storeys to the south the proposed built form is appropriate and fits with the streetscape and overall built form outcomes contemplated by the AWP. The site is intrinsically linked with the outcomes of the AWP in that the site provides for a two-way vehicle access solution in Milton Lane. Easements are proposed to facilitate improved access.

(b) to maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and Lanes

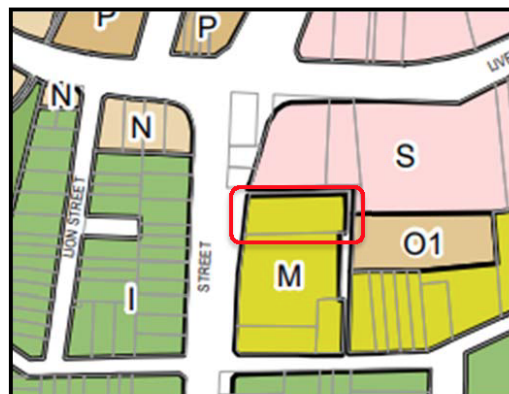
The proposed height maintains acceptable sky exposure to existing buildings adjoining or adjacent to the site. Shadow diagrams are submitted with the revised plan set demonstrate adequate daylight is maintained to the units to the south.

Shadow diagrams demonstrate that the proposed development, including the additional height, provides for a compliant solar access assessment of the adjoining residential flat building. The northern rooms in the adjoining building are at ground floor, Level 1 and Level 2. When compared to a compliant proposal the application provides improved solar to the bedroom window on the ground floor. The proposal maintains 2 hours solar to the two units facing north (see Annexure A).

(c) to provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings

The following ALEP Height of Buildings map shows the change in height limits of the subject site, adjoining and adjacent sites in the immediate area.

There is no transition between the 23m height limit immediately north of the site and the 12.5m height limit or to the 8.5m height limit area immediately opposite the site and south of Norton Street. The O1 labelled area has a 15m height limit and acts as a transitional height on what is currently land occupied by the Ashfield RSL club.



I = 8.5m
 M = 12.5m
 N = 13m
 S = 23m
 O1 = 15m

Map 2 – Height Map ALEP

In considering the height interface the ALEP currently provides for N (13m) with I (8.5m) to the west of the site resulting in a transitional height difference of 4.5m. The difference between the site to the north and the subject site is S (23+m) v M (12.5m) representing a change of 10.5m and therefore a transition is appropriate on this site in this particular location.

The subject proposal offers transitional form provided by the proposal offers an acceptable urban design outcome and one which is supported by the original design analysis conducted by Smith Tzannes architects who prepared the UDR.

(d) to maintain satisfactory solar access to existing buildings and public areas.

Shadow diagrams are submitted with the revised plan set. The site has an east-west orientation. Therefore, a higher building can be expected to result in more shadow on the property immediately south of the site. The submitted diagrams demonstrate what the changes in shadow impacts are at various times of the day – as they impact on the northern and western walls of the adjoining building. Given the siting of that 3-storey RFB on the block the level of impact is considered acceptable in this case. The analysis in Annexure A confirms that the solar access provided to the adjoining units is acceptable as 2 hours solar is provided to the units on level 1 and 2. The solar access to the ground floor units is improved to the bedroom when the proposal is compared to a height compliant development. A comparison against a compliant envelope is a useful exercise when determining whether a clause 4.6 variation to height is appropriate for the site. The requirement of the objective is to maintain satisfactory solar access, and in this example, when considering the existing solar access; compliant envelope impacts; number and orientation of units within the adjoining development; the solar access is deemed to be satisfactory.

9.0 4.6(3)(b) – Sufficient Environmental Planning Grounds

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to height and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R3 Medium Density Residential.

The additional height is 4.455m representing a further reduction in height when compared to the refused scheme. We also note this is the worst case scenario as measured to the skillion roof element and the southern wall height variation is much less.

The environmental planning grounds justification for the height variation is provided as follows:

- The site has been the subject of mandatory road widening by the RMS (Milton Street frontage) and by Council via the provisions of the Ashfield DCP (Milton Lane). There are no planning incentives to achieve the widening of the rear Lane. It is common for areas affected by public burden and urban design studies to receive incentives to increase the likelihood of redevelopment so that the overall strategic planning imperatives can be achieved. In this case the height has not been altered from the base 12.5m unlike sites to the north which have seen a significant change to height and FSR. The increased height significantly increases the likelihood of the strategic planning objectives being achieved.
- Currently the ALEP 2013 does not provide any transition between the site and higher/denser development fronting Liverpool Road immediately north of the site. The height limit drops from 23m at the corner of Liverpool Road and Milton Street down to 12.5m for the subject site, notwithstanding that the ALEP 2013 contains seven (7) other height limits that could have been adopted for this site. The proposed 4.455m height variation is therefore not exceptional in terms of what is available for a transitional site under the provisions of ALEP 2013.
- The site dimensions create a development site that is capable and suitable for development of a building that has greater bulk and scale than that anticipated by the 12.5m height limit (4 storeys). The frontage is 23.25m and side boundaries of 57-58m with total site area over 1605sqm. The site to the south is one storey below the height control given that 12.5m is capable of supporting 4 storeys (each level is 3.1m floor to floor under the ADG).
- The site is suitable for the development as shown in the revised plans based on its location and neighbourhood context as a transitional site. The site's capacity to support the additional height as assessed by Smith & Tzannes is appropriate based on the transition it provides between the 23m height to the north and 12.5m height to the south. The height variations elsewhere in the locality are not as significant with 4 – 5m being the difference between height interface sites as opposed to the current 10.5m difference between the site and the southern neighbour. The proposed transition between the 23m and the 12.5m is an appropriate urban design outcome for the precinct.
- The east-west orientation of the site creates additional issues for the design and layout of a development that does not result in significant adverse amenity impacts on existing development to the south. The solar analysis attached at annexure A demonstrates that the revised scheme has acceptable impact to 44 – 48 Milton Street. The proposal has been designed to account for the site constraints with increased setbacks as required to maintain solar access and to articulate the built form.
- Sufficient onsite parking for the boarding rooms is accommodated within the proposed basement parking levels with access proposed from Milton Lane on the rear of the site via easements benefiting Council. Perimeter footpath network is also established under the scheme which is consistent with the approved flat building scheme.
- The proposal provides an additional affordable housing that can not be Strata Titled. Additional boarding house accommodation is in line with the Inner West RLS and is in the public interest.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to height. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

“1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,***
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,***
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,***
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,***
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),***
- (g) to promote good design and amenity of the built environment,***
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,***
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,***
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)***

A development that complies with the landuse zoning of the site (R3 Medium Density Residential) satisfies the objectives of under S1.3 EP&A Act 1979.

The plans by Habitation Design & Interiors Architecture **Revision B** dated **14.10.21** and specifically the height variation indicated on the plans, satisfies the objectives in bold given that:

- The development replaces a non-compliant landuse (industrial/commercial) with a compliant medium density residential development, in line with Council's strategic planning objectives and the ALEP 2013.
- The development allows for the timely and economic development of the land as there is currently a high level of redevelopment occurring in the Ashfield West Precinct, including a significant corner development immediately north of the subject site.
- The development of boarding rooms in this location is a positive social outcome for residents seeking alternate forms of residential accommodation in a highly accessible location.
- Provides acceptable solar access to the adjoining residential units even with the proposed height variation.
- The development improves management of the States land resources by providing a more efficient use of private land with a transition in height, bulk and scale of new residential development on a site that is well positioned to take advantage of its proximity to high quality public transport, jobs, services and local and regional leisure, recreation and cultural activities.
- The additional height of the development facilitates additional FSR that is more affordable than compared to new studio/apartment buildings which lease at higher rates than boarding houses. This forces some of the community into share accommodation in order to moderate the costs which is less private.
- The urban design outcomes of the development, incorporating the additional height, has been assessed by an independent Urban Designer and found to provide an acceptable built form outcome for the site given its transitional nature and context.
- The design and layout of the east-west site reflects maintains satisfactory access to daylight, sunlight and natural ventilation while reducing overlooking and other amenity issues for residents to the south of the site.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. In this case, these include:

- The proposal has an acceptable visual fit and balances the opportunities and constraints.
- Maintains satisfactory levels of solar access to the neighbours based on the overall impact of solar to the flat building development and ADG provisions.

In summary, the HOB variation is considered to be in the public interest given its ability to not cause significant adverse impacts but also because of its ability to provide site specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case.

The proposal as one departing from the height standard is in the public interest given its ability to:

- not cause significant adverse natural and built form impacts;
- provide reasonable levels of amenity to the future residents;
- provide reasonable levels of amenity to the neighbouring properties;
- provide site specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances. The justification and specific site considerations are not matters that would apply to all sites zoned R3 Medium Density under the Ashfield LEP. This site is fairly unique in that it lies outside the AWP boundaries but is required under the ADCP to provide community benefit. Based on the extract below from Smith Tzannes the site appears to be the only site burdened by land dedication that is not in the AWP precinct and that does not have incentives (see Fig H below)

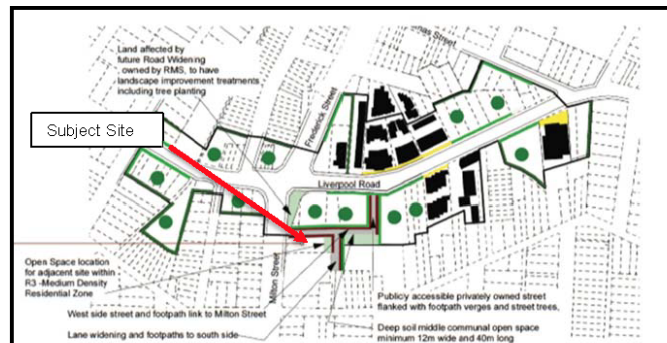


Fig H: Extract of Ashfield West Precinct where subject site is shown to require footpaths and widening to the site as well as the placement of the communal open space

Clause 4.6(4)(a)(ii) The proposed development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the HOB standard, to reasonably satisfy the stated objectives of the zone.

R3 Medium Density Residential

The objectives of the R3 Medium Density Residential zone are as follows:

Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The following provides a review of the zone objectives:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposal is a change of landuse from the existing industrial/commercial occupation of the land to a compliant boarding house building. The objective is achieved based on the provision of housing in a medium density environment where boarding houses are permissible forms of development.

- *To provide a variety of housing types within a medium density residential environment.*

The proposal is residential in nature. A boarding house is permissible with Council's consent. The boarding house offering provides variation and choice in the residential accommodation available in the LGA. The accommodation is provided on a site that is well located in terms of access to jobs, services and public transport. The objective is achieved.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This objective is not relevant to the proposal.

Overall the departure to the HOB control does not hinder the ability of the development to provide appropriate residential accommodation for a variety of residents. The additional floor area achieved on the site as a result of the height variation increases housing supply in the immediate area. The bulk and scale of the development provides an acceptable visual fit for the site given the transitional nature of the site between the adopted ALEP height limits. The site provides an opportunity to achieve a transitional built form to lessen the height interface variation of 10.5m (i.e. height change between the 23m control to the north and the 12.5m control to the south).

10.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume

the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the ALEP.

The Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

The proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the Height of Building development standard under cl4.3 of ALEP 2013 and the building control under cl 4.3 of the ALEP is a development standard and is not excluded from the application of cl 4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the ALEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- the proposed development is consistent with the relevant objectives of the development standard pursuant to cl 4.3 of the ALEP 2013 and is consistent with the relevant objectives of the R3 zone and therefore the proposed development is in the public interest;
- the proposed boarding house will not result in significant adverse environmental harm to the amenity of neighbouring properties;
- there is no significant adverse impacts on the Milton Street streetscape and to the contrary the proposed built form provides an appropriate transition between the existing 3 – 7 storey built forms;



In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:

- Replacement of a non-compliant landuse with one that is compliant with the local land use planning controls for the site;
- Additional gross floor area that provides specifically for additional affordable housing supply in a highly accessible area in terms of jobs, services and public transport;
- Urban design rationale based on the site being a transitional site mediating the scale and form of the 23m to the north and the 12.5m to the south. The scale and form of the development is appropriate for the setting and the site based on the surrounding heights. Proposal maintains the rhythm of development by providing suitable separation between the sites so that the subdivision pattern remains legible;
- The submitted shadow and sun-eye diagrams demonstrate that the proposed development, with the additional height, maintains adequate solar access to the adjoining development (immediately south of the subject site).

ANNEXURE A – Solar Assessment

Below is the analysis of the additional shadow diagrams and sun eye diagrams prepared by Habitation Design and Interiors Revision B dated 14.10.21 submitted as part of the RFI response.

Justification provided below supports the applicant's clause 4.6 variations in relation to the FSR variation. The updated photomontages and plans provide further justification for the clause 4.6 written variation request. The photomontages demonstrate that the boarding house proposal has acceptable visual fit and contributes to the overall urban design response for this precinct.

This review focuses on the impact of the built form outside a compliant scheme. The shadow diagrams (that is the sun eye and elevational shadows) identify the impact of a compliant scheme and the proposed clause 4.6 scheme.

In preparing the shadow analysis the applicant has relied upon a GIPA application to determine the approved floor plates of the affected units to the south (see extracts below).

The shadow diagrams / sun eye diagrams shows the built form of the proposal and its relationship to the existing windows to the south of 3 x West facing apartments at 44 – 48 Milton Street. This enables an assessment of the available direct sunlight to the windows of the bedrooms, kitchens and the living rooms of the three neighbouring units. We note that these 3 apartments have options of achieving north and west facing sunlight via the kitchen facing north and the living room facing west.

The clause 4.6 variation relies on a suitable urban design outcome; achievement of the ADCP urban design based precinct objectives; and affordable housing benefits of a boarding house typology as the environmental planning grounds supporting the written variation request. The justification provided is not common to all land of the same zoning and is site and locale specific. We request that Council has regard to the more recent Court decisions supporting the '*sufficient environmental planning grounds*' justification.

The justification below demonstrates that the adjoining unit block has compliant AGD sunlight to the level 1 and 2 units affected by the proposal. In relation to the lower ground floor unit that unit has no access to sunlight (except to the bedroom) based on a height and FSR compliant development (see further comments below under 'ground floor'). The following analysis confirms the existing floor plans and analyses the solar access between 9am – 3pm.

Adjoining Floor Plans

As provided in Figure A below the floor plan layouts of the adjoining site to the south have been provided. The extracts of the plans can be seen below with the kitchen and living areas fronting Milton Street.



Fig A: Floor plan layout

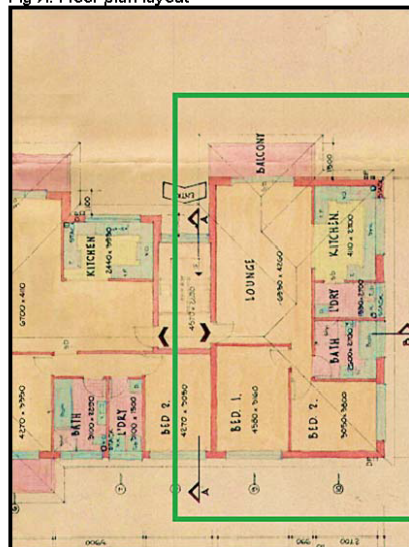


Figure B: Typical unit layout for the ground Level 1 & Level 2. Unit block is angled to the boundary and receives sun to its façade as shown in the sun eye diagrams.

The analysis of the shadows is as follows and for reference the adjoining units to the south are referred to as ground, level 1 and level 2 being the three (3) units facing the subject site facing north within an existing residential flat building.

As a general comment the remaining units in the neighbouring unit block primarily rely on a west facing front façade to obtain natural light and therefore the north facing units in question (the northern elevation is the shortest elevation) can be counted in the 30% of the units under the ADG that do not achieve the 2 hours even though the units achieve the 2 hours currently and face north. Under the ADG 30% of all units are permitted to have 2 hours or less and 15% of all units can be south facing and no direct sun light.

Based on the analysis undertaken the level 1 and level 2 units have access to 2 hours or more direct sun access and comply with the ADG. The ground floor unit has no solar access along its northern façade except for the bedroom window and therefore the proposal has no greater impact than the impact resulting from a height and FSR compliant scheme.

The shadow diagrams show three shadows as follows:

1. Shadow of the existing warehouse
2. Shadow of an Envelope compliant shadow
3. Shadow of the proposal with supporting sun eye diagrams showing 2 hours or more to the level 1 and 2 units with the proposed development in place. Demonstrates that solar access to bedroom on ground floor is greater under the proposed scheme than under a height and FSR compliant scheme.

The assessment relies upon the comparison between a compliant envelope scheme and the subject proposal as one stepping outside the height controls. There is no legal impediment to approving a development with additional impact even if it provides greater height or FSR. The relevant test is whether there are *sufficient environmental planning grounds* and whether the objectives of the zone and the standard can be satisfied. Our clause 4.6 variation establishes that there is an urban design rationale for the variations and that the zone objectives and objectives of the standard are satisfied to the extent necessary. The analysis confirms that the urban design response adopted outside the current controls does not give rise to significant adverse solar access issues. As stated above at least 2 hours solar access can be achieved to the units which have 2 or more hours solar access under a compliant envelope solar test.

The following provides analysis of each floor of the adjoining units facing west with a north facing bedroom, bathroom, kitchen and living room glazing.

Ground Floor

Based on the shadow diagrams a height and FSR compliant shadow causes complete overshadowing of the kitchen/living room windows. 2 hours of direct solar is provided to the bedroom window (based on at least 1sqm of window glazing). On this basis there is no additional impact on the ground floor kitchen/living area windows resulting from the proposal when compared to a height and FSR compliant development. Between 11am – 12 midday the proposal provides more solar access to the bedroom window than a compliant development (refer to blue dotted line v grey colouring on plan B135)

As shown on plan B135 below the proposed development, being outside the numerical controls, performs better in numerous areas than a compliant scheme where the grey shaded area (proposed shadow) is within the blue dotted line (compliant height shadow). We note that where the grey shading is outside the blue dotted line it has no impact on the ground floor windows but rather improves solar as outlined above at 11 and 12 midday. It is unreasonable to expect that a ground floor apartment would retain compliant 2 hr solar access where the impact arises from a compliant scheme as represented by the blue dotted line.

Level 1

Unit 1 currently achieves more than the required 2 hours to the kitchen/living area glazing as required by the ADG based on a compliant envelope shadow assessment. The kitchen achieves sunlight at 10.00am – 11am and 12.15pm – 1.15pm. The living area glazing achieves solar access between 12.30pm and 2.30pm (see plan F136 – F137). Overall 2 hrs is provided to the kitchen/living areas between 9am and 3pm.

The proposal causes some additional overshadowing as a result of the additional height at various periods which is offset by improvements to the solar access when compared to the compliant envelope and improved solar access to the ground floor bedroom. The following observations are made:

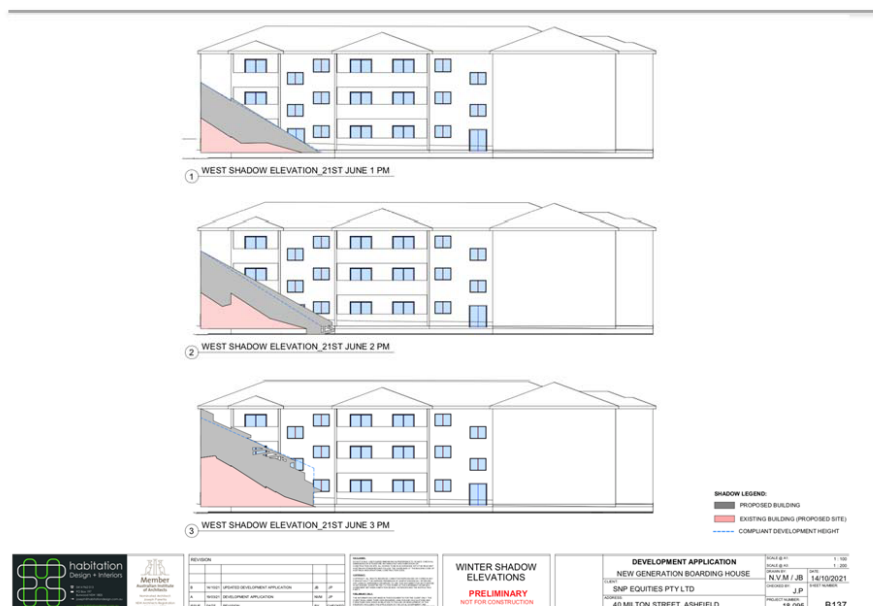
- At 9am no impact from the proposal. Additional shadow lands on external walls. Some reduction in shadows also occur however the reduction does not fall on windows.
- At 10am and 1pm improvement to kitchen solar access compared to a compliant envelope.
- At 11am additional impact to kitchen but kitchen retains 1sqm of solar access and this can be calculated in the hourly solar access for this unit. No impact on bedroom window. NOTE: Improvement to ground floor bedroom solar access at 11am. No impact to west facing living room glazing.
- At 12 midday additional shadow lands on the kitchen window. Solar access returns at 12.15pm to 1.15pm (noted with reduced glazed area but solar available to glazing). Living area has solar access between 11am – 2pm. No impact on bedroom window. NOTE: Improvement to the ground floor bedroom solar access at 12midday. No measurable additional impact to west facing glazing of units directly adjacent to the northern boundary. No impact on bedroom window.
- At 1pm minor improvement to the kitchen window solar access. Slight impact to bathroom window however adequate solar access maintained. No impact to west facing glazing. Solar access available between 11am to 2pm to living room glazing.
- At 2pm no impact to kitchen window as no solar provided by compliant envelope. No impact on bedroom window. Very minor increase to the living room glazing facing west however the glazing remaining is extensive and the additional shadow at 2pm to west facing glazing has not impact.
- At 3pm no impact to the immediate adjacent apartments and improvement to the adjoining apartment in the block on level 1. Some improvement through the open type structure to the west facing glazing as shown on plan B137.

Level 2

The following observations are made:

- At 9am – 2pm no impact
- At 3pm some minor impact to the kitchen window however solar access maintained to achieve more than 2 hours solar access
- All west facing glazing 11am to 3pm solar access maintained.

The following plan extracts are provided as referenced above (plans B135 – 137):



Summary:

Based on the findings of the solar assessment the proposal satisfies the **height** objectives on the basis that the proposal maintains adequate solar access to the adjoining units. The proposal as one departing from **height** is deemed to be acceptable given that:

- The proposal essentially affects three (3) of the adjoining units which form part of a larger unit block fronting Milton Street and these units have a westerly aspect given the location of the kitchen and dining area plus balcony (facing west not north to Milton Street). Two of the 3 affected units comply with the 2 hours solar. We note that 30% of all units in any given apartment block can be below 2 hours and 15% of all units are permitted to face south thus it is expected that some units will be affected particularly at ground level.
- 2 hours of solar access is provided to the ground floor bedroom thus part of the ground floor unit complies with the 2 hours. No solar access to the ground floor apartment based on the blue line complaint envelope.
- The proposed development provides greater solar access on the ground level apartment when compared to a compliant envelope scheme.
- The proposal improves the solar access to the ground floor bedroom window between 11am – 12 midday which is a desirable outcome if considering the impact of a compliant development versus the proposed development. There is some additional shadow to level 1 at this same time period but this is offset by the improvement to the ground floor bedroom window.
- The proposal improves solar access to Level 1 kitchen window at 10am and solar access is achieved from 10am to 11am. Even though there is some impact at 11am to the kitchen window adequate solar is maintained via the remaining glazed areas. Level 1 kitchen window also receives direct sun light via part of the north facing window between 12.15pm and 1.15pm and then obtains solar access via the living room glazing facing west between 12.30pm and 2.00pm (more than 2 hours of direct solar provided). Even though there is some impact at 12 midday to the level 1 kitchen window the overall solar access is acceptable.



-
- All windows at level 2 have solar access between 9am and 3pm.
 - The approval will enable the site to contribute to an improved urban form and one that increases affordable housing in line with the findings of the Residential Housing Strategy without any significant amenity impacts when. Compared to a FSR and Height compliant scheme.

**Attachment D – Clause 4.6 Exception to Development Standards
(Clause 4.4 Floor space ratio)**



CLAUSE 4.6 REQUEST FOR VARIATION TO

CLAUSE 4.4 (2) (FLOOR SPACE RATIO) OF ASHFIELD

LOCAL ENVIRONMENTAL PLAN 2013 (ALEP)

**40 MILTON STREET,
ASHFIELD**

Proposed Boarding House

October 2021



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1.0 Background

- This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Ashfield Local Environmental Plan 2013 (ALEP 2013), the relevant clause being Clause 4.4(2) (Floor Space Ratio) (FSR).
- This written variation request has been revised to support the revised scheme submitted as part of a response to Councils RFI letter dated 9th September 2021;
- The relevant maximum FSR for the site is **0.7:1** and there is an additional **0.5:1** FSR available via the SEPP Affordable Housing (SEPPARH) making a total maximum permissible FSR of **1.2:1**. The requested FSR variation is **0.39:1** based on a total FSR of **1.59:1** which is calculated by adopting the reduced site area of 1328.5sqm arising as a result of the Milton Street TfNSW land resumption of 274sqm.

2.0 Introduction

- The FSR control is a *development standard* for the purposes of the *EP&A Act 1979*.
- This request to vary the FSR development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (“Initial Action”), *Wehbe v Pittwater Council, Big Property Pty Ltd v Randwick City Council [2021]* and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112* (SJD DB2). The provision of affordable housing is an environmental planning ground as established in *Big Property Pty Ltd v Randwick*.
- The objective of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- The relevant plans relied upon are those identified as the plans prepared by Habitation Design + Interiors Architecture **Revision B dated 14.10.21**. The original Urban Design Report, prepared by Smith Tzannes (UDR) is relied upon in relation to the locational context of the site and its role as a transitional site. The UDR concluded that the original scheme had an acceptable visual fit and that a sound urban design rationale existing for a scheme landing outside the FSR numerical controls. It follows that a revised scheme of lesser height, bulk and scale (i.e. GFA reduced to **2120.6sqm**) satisfies the established urban design principles. Vehicle access is improved by dedicated easements in favour of council facilitating two-way access in Milton Lane. Easements adjacent to the eastern boundary for road widening remain as part of the site area.
- The original DA demonstrated that the development, as one being outside the FSR controls, offers suitable solar access to the site and the adjoining sites particularly 44 – 48 Milton Street. **Annexure A** provides the updated sun eye diagrams and elevational shadows demonstrating adequate solar access to apartments at 44 – 48 Milton Street.
- The revised scheme has been reduced in height by removing one level to address the concerns raised by Councils planning staff and the AEP which has led to a reduction in the height, bulk and scale. Solar impacts have been quantified where it can be concluded that adequate solar amenity is provided to the units located at 44 – 48 Milton Street. All apartments sizes comply with the minimum set by the ADG.
- The original UDR is relied upon in relation to the locational context and role of the site as a transitional site between the bulkier development to the North having a 2:1 FSR and development to the south having a 0.7:1 FSR. The planning panel has recently approved a flat building with a very similar height, bulk and scale.

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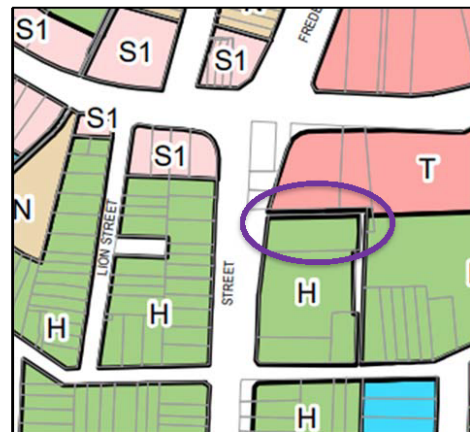
3.0 Development Standard to be Varied – Floor Space Ratio

The relevant *development standard* to be varied is the 0.7:1 FSR control under Clause 4.4(2). Clause 4.4 of ALEP relevantly provides:

4.4 Floor space ratio

- (1) *The objectives of this clause are as follows—*
 - (a) *to establish standards for development density and intensity of land use,*
 - (b) *to provide consistency in the bulk and scale of new development with existing development,*
 - (c) *to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
 - (d) *to protect the use or enjoyment of adjoining properties and the public domain,*
 - (e) *to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The relevant FSR map is identified below:



Map A: FSR under ALEP

The subject site is mapped “H” – 0.7:1 (max) and T is 2:1

The provisions of the Affordable Housing SEPP applies which provides an additional 0.5:1 FSR as the site is within an accessible area and a flat building is permissible in the zone. The maximum FSR is therefore increased to 1.2:1.

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4.0 Nature of Variation Sought

The requested variation is as follows:

The proposal has a permitted FSR as follows:

Site Area before Milton Street or Milton Lane acquisition/dedication: **1602.6sqm**

Site area with Milton Street Dedication in place: **1328.5sqm**

ALEP FSR = **0.7:1**

SEPP (ARH) bonus FSR = **0.5:1**

Total permitted FSR is **1.2:1**.

An FSR of **1.2:1** equates to a total permissible GFA of **1,926sqm**.

Proposed gross floor area (GFA) of **2120.6sqm**

Based on the reduced site area of **1328.5sqm** the FSR is **1.59:1**

The base FSR of **1.2:1** is available under the SEPPARH and therefore the variation under Clause 4.6 is **0.39:1**. Over the base FSR the variation is 0.89:1

5.0 Floor Space Ratio – Development Standard

A development standard is defined in S1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation,*
and
- (o) such other matters as may be prescribed."*

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The 0.7:1 maximum floor space ratio standard is a *development standard* as defined under the *EP&A Act 1979*.

6.0 Clause 4.6 of Ashfield Local Environmental Plan 2013

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

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

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (4) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (5) *that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)*

The proposed development does not comply with the FSR development standard pursuant to cl4.4 of the ALEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (6) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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Sections below of this written request address the matters required under cl4.6(4)(a) of the ALEP 2013 and cl4.6(4)(b).

Clause 4.6(5) provides that:

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

Sections below of this written request addresses the matters required under cl4.6(5) of the ALEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

7.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. There is no provision in ALEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (**the DA**). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (**FSR**) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

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The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

Big Property Pty Ltd v Randwick

The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council* [2021] (herein '*Big Property*'). This decision was also followed by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] (herein '*HPG*').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by Big Property against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced *SJD*, and went on to hold that:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realization of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that realisation of particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at44]

Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments,

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such as that for Affordable Rental Housing, 'incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site'. This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

8.0 **Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Based on the above the following identifies the first method identified in *Wehbe*:

"Ways of establishing that compliance is unreasonable or unnecessary

42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: (our emphasis)

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the control it is necessary to identify the purpose of the FSR control and then progress to dealing with the consistency or otherwise with the FSR objectives. The first consideration relates to overall scale of a building given that both FSR and height determines the scale of a building to another building or natural feature. A residential flat building of very similar bulk, scale and height was recently approved by the LPP on the 13th October 2021.

The visual fit of the building in this particular instance having regard to the variation sought is addressed in the original Smith & Tzannes UDR submitted with the original DA documentation for the flat building development (see relevant extracts below and the Smith Tzannes UDR is also tendered as part of the subject DA and is available on

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the NSW Planning Portal). It concludes that in this case the buildings 'fit' is acceptable and appropriate for this site. It follows that the revised design of the boarding house scheme (with its reduced GFA and height) would equally satisfy the relevant urban design principles established by the original Smith and Tzannes UDR.

The visual 'fit' of the boarding house proposal is acceptable based on the greater FSR. As depicted in the elevations the bulk and scale of the built form is appropriate and responds to existing development either side of the site. The site has an east-west orientation therefore the proposed boarding house presents its narrowest view to Milton Street therefore minimising bulk and scale when viewed from the public domain. The southern separation of the upper level when measured to the adjoining building is 12.475m to the parapet edge of the planter and in the order of 15m or more when measured to the wall of the upper level 4 and is therefore acceptable.



Fig 1. Elevation view from Milton Street (Source: Habitation, 14.10.2021)

The 3D model images in figures A1 – A3 below depicts the anticipated built form within the immediate surrounds of the site. A vacant site to the north fronting Liverpool Road is yet to be developed which provides greater bulk and scale along with the future redevelopment of the Club site. As indicated in the study the sites to the south fronting Milton Street are not afforded a transition site like that provided to the east.

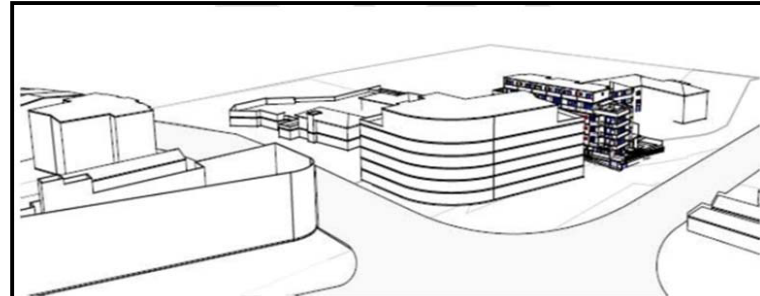


Fig A1. Context massing model study prepared prior to the flat building and boarding house proposal to determine the viability of the additional height and FSR. The urban design study was prepared by Smith and Tzannes.

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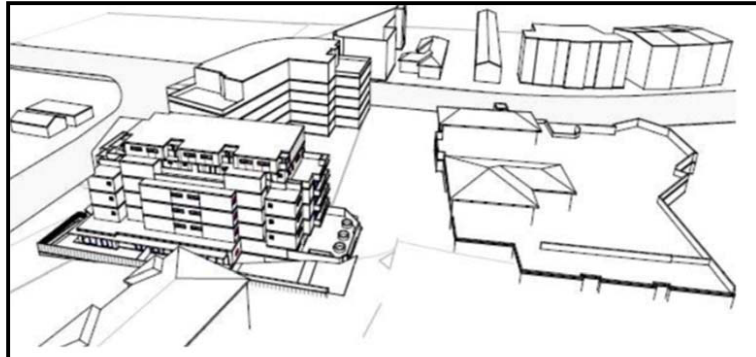


Fig A2 – View from the south east. Significant additional built form anticipated on the vacant site and Club site to the north and north east due to the height and FSR controls. Site will provide a transition both from Milton Lane and Milton Street with the reduced height and bulk.

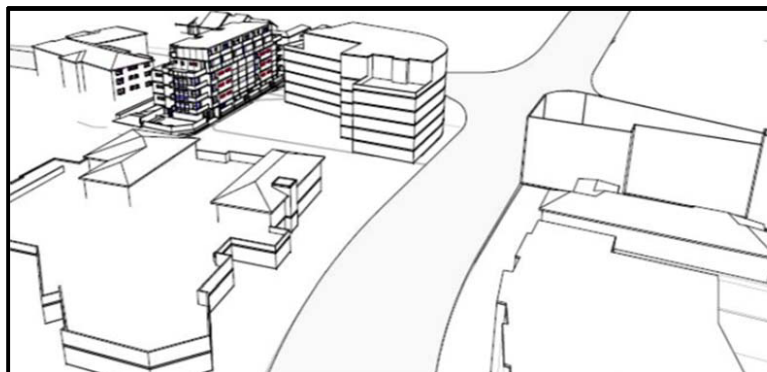


Fig A3 – View from east looking west along Liverpool Road. Eastern façade of the building stepped to allow solar access to the south in the morning. Close to 15m separation is provided at the upper level and the RFB to the south. Note original image shows two level DA flat building scheme and the revised scheme adopts a boarding house typology with reduced bulk and scale. The overall form is very similar to the recently approved flat building scheme by the LPP on the 13th Oct 2021.

The proposal is supported by the Smith Tzannes study which identifies the transitional role of the site in a baseline urban design sense as shown below:

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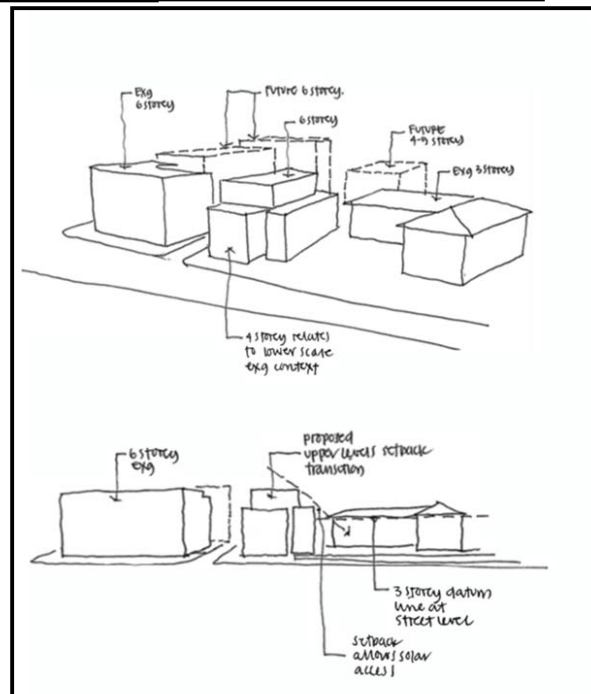


Fig B1- Massing study by Smith Tzannes 27.11.19

The original study identifies the fact that the sites to the east have a 15m transitional height which potentially provides a transitional form given that additional FSR can be achieved under the Affordable Housing SEPP because of the site's proximity to public transport and the fact that residential flat buildings are permissible in the zone. The additional FSR enables the heights to be achieved given that it is added to the 0.7:1 base FSR.

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case include both built form and amenity having regard to solar, visual and privacy impacts. When considered within the framework of the objectives the purpose of the FSR control requires the development to achieve an appropriate built form and provide reasonable amenity impacts as a result of the bulk and scale.

The following justification is provided.

(a) to establish standards for development density and intensity of land use

The proposal seeks to vary the FSR development standard due to the site-specific circumstances of this case. These circumstances are established by the lack of transitional height and density provisions between the Liverpool Road properties immediately north of the site and the medium density residential development south of the site. The bulk and scale of the new development at the corner of Liverpool Road and Milton Street is quite substantial when considered against the 12.5m height and 0.7:1 FSR to the south. Properties fronting Liverpool Road to the south could have a theoretical height of 23m and FSR of 2.5:1 if adopting the affordable housing component. On this basis the subject site is capable of supporting additional density

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and acts as a transitional site mediating bulk and scale from 23m and 2.5:1 to 12.5m and 1.2:1 (includes 0.5:1 bonus for affordable). The proposed FSR at 1.59:1 FSR offers a mediating scale and form.

The objective is satisfied given the circumstances of this case based on the findings of the UDR and the proposal 'fit' for the site serving as a transitional element.

(b) to provide consistency in the bulk and scale of new development with existing development

The submitted plans, supported by the original UDR, demonstrates that the proposed development has an acceptable 'fit' for the site. The proposals overall bulk and scale is consistent and compatible with the surrounding development both now and in the future (increased future development likely to 23m and 2.5:1 FSR to the north – north – east). The proposed FSR offers a mediating transitional form from the 2:1 plus FSR to the north and the existing development to the south. In dealing with compatibility it is appropriate to adopt the relevant principles established in Project Ventures v Pittwater Council. The principles establish that in order to be compatible the development does not necessarily need to be the same. As depicted in the elevations and 3D images forming part of this variation request the proposal is said to be compatible with the existing built form.

This objective is satisfied.

(c) to minimise adverse environmental impacts on heritage conservation areas and heritage items

The site is not a heritage item, is not located within a conservation area and is not proximity to any heritage items.

This objective is satisfied.

(d) to protect the use or enjoyment of adjoining properties and the public domain

The use and enjoyment of adjoining properties and public domain will be protected by the development as:

- Replacement of existing non-conforming landuse occurs with a compliant landuse;
- Improved connectivity between residential uses and the street improves causal surveillance which in turn improves safety and security of the area including public and private lands
- Siting of the development on the land to minimise potential amenity impacts on adjoining residents, are far as possible given the east-west orientation of the site and the siting of the existing RFB on the neighbouring land. The upper level setbacks for the additional level is acceptable at close to 15m from the wall of the southern building to the glazing line of the upper level boarding rooms which provides adequate separation.
- The proposal will not cause the unit block to the south to depart from the 70% solar requirements under the ADG.
- The use and enjoyment of lands to the south will be maintained given that the orientation of the development is to the north and communal open space is to the eastern corner limiting potential impacts on neighbours. Communal space is distributed over ground and upper levels. 133.5sqm of communal open space is provided in accordance with the Ashfield West Precinct controls.

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This objective is satisfied by the development as follows.

(e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation

As stated previously the locational context of the site lends itself to acceptance of a variation to the FSR. The immediate area to the north is captured by the new precinct controls and is likely to undergo further transformation in the future based on the current height and FSR controls. The site to the north has been recently redeveloped. Other sites including the vacant site to the north and Club site are likely to be redeveloped and therefore substantial transformation is proposed. The site to the south may be redeveloped in the medium to long term given the size of the allotment and changes to Strata laws. At this stage the assessment is undertaken on the current built form to the south. The visual relationship between the site and its immediate neighbours is appropriate having regard to the residential nature of the development and the context. The demolition of the industrial building provides an opportunity to provide a setback from the southern boundary.

Based on the above the objective is achieved.

9.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to FSR and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R3 Medium Residential Density.

The urban design study provides a rational and basis for the additional FSR in the form of a transitional built form element that mediates the 2:1 FSR to the north and the 0.7:1 FSR to the south.

The additional FSR for the proposed building is outlined above in section 2 and is 0.39:1.

The environmental planning grounds justification for the FSR variation is provided as follows and includes Annexure A shadow analysis:

- The site has been the subject of mandatory road widening by TfNSW (Milton Street frontage) and by Council - via the provisions of the Ashfield DCP (Milton Lane) even though the site is outside the nominated ADCP precinct area. There are no planning incentives for the subject site (unlike other sites in the precinct) to achieve the strategic planning outcomes for the area. The additional FSR is justified on first principles (urban design justification) but secondly can be justified because it provides a greater likelihood that the vehicle and pedestrian access can be improved within the precinct. The additional 0.39:1 FSR provides an incentive for the land owner to redevelop the site.
- ALEP 2013 does not provide a transition between the denser development permitted along Liverpool Road, immediately north of the site and the subject site. The FSR drops from 2.0:1 at the corner of Liverpool Road and Milton Street down to 0.7:1 on the subject site. The ALEP 2013 contains three (3) other FSR limits that could have been adopted for this site to achieve a

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transition such as “S1” – 1.5:1 or “S2” – 1.8:1. The proposed FSR of 1.59:1 is therefore acceptable for a transitional site under the provisions of ALEP 2013. The transitional site justification is supported by the original UDR prepared by Smith & Tzannes demonstrating that the site functions as a transitional site based on the immediate FSR controls afforded to neighbouring sites.

- Due to its attributes the site is suitable for development of a building with greater bulk and scale than contemplated by the 0.7:1 FSR. The frontage is 23.25m and side boundaries of 57 - 58m with total site area of 1,328.5sqm (taking into account the loss of area for the road widening of 274sqm). There are no specific site constraints that would seek to limit the overall potential of the site. The northern boundary is the side boundary fronting Milton Lane which offers opportunities for natural light and outlook.
- The proposal does not result in undue adverse amenity impacts on existing development to the south of the site. We accept that the neighbour would be exposed to a 4 storey building however a 5 storey building is proposed. We note that the upper level is not a full level and has significant setbacks appearing more like a roof element. The upper level also has a reduced floor when compared to the level below which minimises the perceived bulk and scale.
- The proposal will not cause the unit block to the south to depart from the 70% solar requirements under the ADG. It improves the solar access to the ground floor unit bedrooms, which is a desirable outcome.
- The proposal has been designed to account for this site features/characteristics/opportunities and constraints. The design provides increased side setbacks to the upper floor level; communal areas to the north (where possible); and communal open space at ground level having direct solar access. The site is capable of supporting greater FSR without any significant adverse impacts on its neighbours. Whilst some additional overshadowing occurs it is not causing significant adverse impact and units have orientation to the north, west and east (refer to analysis in Annexure A). The additional FSR offers a mediating and transitional form stepping down from the 2:1 FSR plus to the north and 0.7:1 FSR to the south.
- Sufficient onsite parking for the 61 boarding rooms which is accommodated within the proposed basement parking levels with access available from Milton Lane to the rear of the site.
- The additional FSR of 0.39:1 FSR is to be used as boarding house accommodation which is in the public interest. The provision of affordable housing is in line with the SEPP 70 initiatives of the State Government – notwithstanding that Inner West is yet to complete amendments to the ALEP 2013 to achieve SEPP 70 provisions. The Inner West RLS seeks to increase affordable housing across the LGA and this proposal will provide an additional GFA that would not otherwise be provided as part of a development proposal seeking additional GFA above the 0.7:1 standard.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to FSR. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

“1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,**
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)

A development that complies with the landuse zoning of the site (R3 Medium Density Residential) satisfies the objectives of under S1.3 EP&A Act 1979.

The revised plans by Habitation Design & Interiors Architecture, **dated 14.10.21 Revision B** and specifically the FSR variations satisfy the objectives in bold given that:

- The development replaces a non-compliant landuse (industrial/commercial) with a medium density residential development in line with Council's strategic planning and the ALEP 2013.
- The development assists in achieving a co-ordinated and timely outcome for the site based on the outcomes under the Ashfield West Precinct (AWP) which affects the subject site. Even though the site is outside the nominated area under the ADCP it is nevertheless called upon to dedicated land for improved vehicle movements which form part of the overall planning deliverables/outcomes.
- The development of boarding house dwellings in this location is a positive social outcome for a variety of residents as the development is in a highly accessible location.
- The development offers better and proper management of the State's land resources by providing a more efficient use of private land that is well positioned to take advantage of its proximity to high quality public transport, jobs, services and local and regional leisure, recreation and cultural activities.
- The additional FSR of the development provides additional affordable GFA which is dedicated as boarding house GFA which can not be Strata titled.
- The urban design outcomes, incorporating additional height and FSR have been based on the original specialist Urban Design report and found to be acceptable with regard to the built form outcomes for the site given the bounding FSR to the north and south of the site. The FSR needs to be considered with height given that the FSR is utilised to achieve a taller building in this instance that mediates the higher and lower range of the FSR.
- The proposal will not cause the unit block to the south to depart from the 70% solar requirements under the ADG and 2 hours solar is provided. The proposal improves solar access to the ground floor bedroom window and provides 2 hours solar to north facing units at levels 1 and 2.

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- The design and layout of the east-west site reflects opportunities to optimise exposure to daylight, sunlight and natural ventilation while reducing overlooking and other amenity issues for residents to the south of the site.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the FSR variation.

Notwithstanding the above Preston CJ clarified in *Micaul* and *Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. We note that the subject proposal does provide for additional shadow when compared to a fully compliant FSR proposal. The considerations set out in *Initial Action v Woollahra Council* requires an assessment to be undertaken that does not require the development to perform equally or better than a compliant version.

In summary, the FSR variation (whether the lesser or greater amount is used based on the site area) is considered to be in the public interest given its ability to:

- not cause significant adverse natural and built form impacts;
- provide site specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances. The justification and specific site considerations are not matters that would apply to all sites zoned R3 Medium Density under the Ashfield LEP. This site is fairly unique in that it lies outside the AWP boundaries but is required under the ADCP to provide community benefit. Based on the extract below from Smith Tzannes the site appears to be the only site burdened by land dedication that is not in the AWP precinct and that does not have incentives (see Fig AB below).

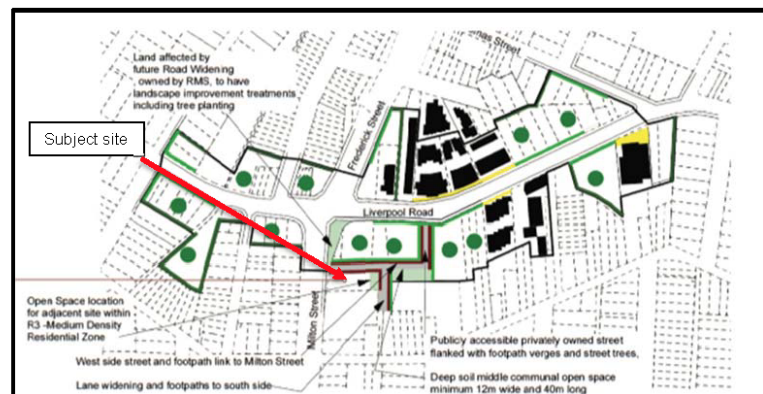


Fig AB: Extract of Ashfield West Precinct where subject site is shown to require footpaths and widening to the site as well as the placement of the communal open space.

Clause 4.6(4)(a)(ii) The proposed development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the FSR standard, to reasonably satisfy the stated objectives of the zone.

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Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The following provides a review of the zone objectives:

- ***To provide for the housing needs of the community within a medium density residential environment.***

The proposal is a change of landuse from the existing industrial/commercial occupation of the land to a compliant new age boarding house. The objective is achieved by the provision of additional residential housing in the form of boarding rooms (housing choice is an outcome of the RLS). Objective is satisfied.

- ***To provide a variety of housing types within a medium density residential environment.***

The proposal is residential in nature. A boarding house is permissible with Council's consent. A boarding house residential typology offers housing choice on a site that is well located in terms of access to jobs, services and public transport. The objective is achieved.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

This objective is not relevant to the proposal.

Comment: The departure from the FSR control does not hinder the ability of the development to provide appropriate residential accommodation for a variety of residents. The additional residential GFA adds to the housing supply in the immediate area. The bulk and scale of the development is an acceptable given the transitional nature of the built form.

10.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the ALEP.

The Court has power to grant development consent to the proposed development even though it contravenes the FSR development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

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Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

The proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the Floor Space Ratio development standard under cl4.4 of ALEP 2013 and the FSR control under cl4.4 of the ALEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.4 of the ALEP 2013 and is consistent with the relevant objectives of the R3 Medium Density Residential zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed boarding house will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no adverse impacts on the Milton Street streetscape.

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In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the FSR development standard including:

- Replacement of a non-compliant landuse with one that is compliant with the local landuse planning for the site;
- Appropriate urban design outcome that offers transitional built form in accordance with the strategic planning imperatives for the locality;
- Additional GFA that provides specifically for additional residential housing supply in a highly accessible area in terms of jobs, services and public transport and as such is in the public interest;

A handwritten signature in black ink that reads 'A Martin'.

Andrew Martin *MPIA*
Planning Consultant

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ANNEXURE A – Solar Assessment

Below is the analysis of the additional shadow diagrams and sun eye diagrams prepared by Habitation Design and Interiors dated 14.10.21 submitted as part of the RFI response.

Justification provided below supports the applicant's clause 4.6 variations in relation to the FSR variation. The updated photomontages and plans provide further justification for the clause 4.6 written variation request. The photomontages demonstrate that the proposal has acceptable visual fit and contributes to the overall urban design response for this precinct.

This review focuses on the impact of the built form outside a compliant scheme. The shadow diagrams (that is the sun eye and elevational shadows) identify the impact of a compliant scheme and the proposed clause 4.6 scheme.

In responding to the Council's request the Architect has prepared additional sun eye diagrams to represent the proposed scheme and the available direct sunlight available to living areas of the adjoining flat building to the south. We have also relied upon a GIPA application to determine the approved floor plates of the affected units to the south (see extracts below).

The shadow diagrams / sun eye diagrams shows the built form of the proposal and its relationship to the existing windows to the south of 3 x West facing apartments. This enables an assessment of the available direct sunlight to the windows of the kitchens and the living rooms of the three neighbouring units.

The clause 4.6 variation relies on a suitable urban design outcome; achievement of the ADCP precinct objectives; and affordable housing benefits as the environmental planning grounds supporting the written variation request. The justification provided is not common to all land of the same zoning and is site and locale specific. We request that Council has regard to the more recent Court decisions supporting the '*sufficient environmental planning grounds*' justification.

The justification below demonstrates that the adjoining unit block has compliant AGD sunlight to the level 1 and 2 units affected by the proposal. In relation to the lower ground floor unit that unit has no access to sunlight based on a height and FSR compliant development (see further comments below under 'ground floor'). The following analysis confirms the existing floor plans and analyses the solar studies.

Adjoining Floor Plans

As provided in Figure A below the floor plan layouts of the adjoining site to the south have been provided. The extracts of the plans can be seen below with the kitchen and living areas fronting Milton Street.

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Fig A: Floor plan layout

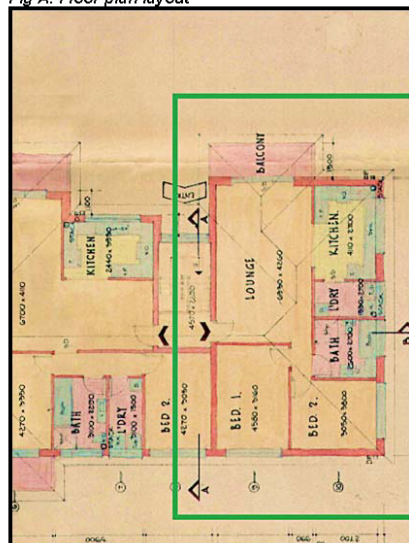


Figure B: Typical unit layout for the ground Level 1 & Level 2. Unit block is angled to the boundary and receives sun to its façade as shown in the sun eye diagrams.

The analysis of the shadows is as follows and for reference the adjoining units to the south are referred to as ground, level 1 and level 2 being the three (3) units facing the subject site facing north within an existing residential flat building.

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As a general comment the remaining units in the neighbouring unit block primarily rely on a west facing front façade to obtain natural light and therefore the north facing units in question (the northern elevation is the shortest elevation) can be counted in the 30% of the units under the ADG that do not achieve the 2 hours even though the units achieve the 2 hours currently and face north. Under the ADG 30% of all units are permitted to have 2 hours or less and 15% of all units can be south facing and no direct sun light.

Based on the analysis undertaken the level 1 and level 2 units have access to 2 hours or more direct sun access and comply with the ADG. The ground floor unit has no solar access along its northern façade except for the bedroom window and therefore the proposal has no greater impact than the impact resulting from a height and FSR compliant scheme.

The shadow diagrams show three shadows as follows:

1. Shadow of the existing warehouse
2. Shadow of an Envelope compliant shadow
3. Shadow of the proposal with supporting sun eye diagrams showing 2 hours or more to the level 1 and 2 units with the proposed development in place

The assessment relies upon the comparison between a compliant envelope and the proposal given that there is no legal impediment to approving a development with additional impact even if it provides greater height or FSR. The relevant test is whether there are *sufficient environmental planning grounds* and whether the objectives of the zone and the standard can be satisfied. Our clause 4.6 variation establishes that there is an urban design rationale for the variations and that the zone objectives and objectives of the standard are satisfied to the extent necessary. The analysis confirms that the urban design response adopted outside the current controls does not give rise to significant adverse solar access issues. As stated above at least 2 hours solar access can be achieved to the units which have 2 or more hours solar access under a compliant envelope solar test.

The following provides analysis of each floor of the adjoining units facing west with a north facing bedroom, bathroom, kitchen and living room glazing.

Ground Floor

Based on the shadow diagrams a height and FSR compliant shadow causes complete overshadowing of the kitchen/living room windows. 2 hours of direct solar is provided to the bedroom window (based on at least 1sqm of window glazing). On this basis there is no additional impact on the ground floor kitchen/living area windows resulting from the proposal when compared to a height and FSR compliant development. Between 11am – 12 midday the proposal provides more solar access to the bedroom window than a compliant development (refer to blue dotted line v grey colouring on plan B135)

As shown on plan B135 below the proposed development, being outside the numerical controls, performs better in numerous areas than a compliant scheme where the grey shaded area (proposed shadow) is within the blue dotted line (compliant height shadow). We note that where the grey shading is outside the blue dotted line it has no impact on the ground floor windows but rather improves solar as outlined above at 11 and 12 midday. It is unreasonable to expect that a ground floor apartment would retain compliant 2 hr solar access where the impact arises from a compliant scheme as represented by the blue dotted line.

At least vel 1

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The unit currently achieves more than the required 2 hours to the kitchen/living area glazing as required by the ADG based on a compliant envelope shadow assessment. The kitchen achieves sunlight at 10.00am – 11am and 12.15pm – 1.15pm. The living area glazing achieves solar access between 12.30pm and 2.30pm (see plan F136 – F137). Overall 2 hrs is provided to the kitchen/living areas between 9am and 3pm.

The proposal causes some additional overshadowing as a result of the additional height at various periods which is offset by improvements to the solar access when compared to the compliant envelope. The following observations are made:

- At 9am no impact from the proposal. Additional shadow lands on external walls. Some reduction in shadows also occur however the reduction does not fall on windows.
- At 10am and 1pm improvement to kitchen solar access compared to a compliant envelope.
- At 11am additional impact to kitchen but kitchen retains 1sqm of solar access and this can be calculated in the hourly solar access for this unit. No impact on bedroom window. NOTE: Improvement to ground floor bedroom solar access at 11am. No impact to west facing living room glazing.
- At 12 midday additional shadow lands on the kitchen window. Solar access returns at 12.15pm to 1.15pm (noted with reduced glazed area but solar available to glazing). Living area has solar access between 11am – 2pm. No impact on bedroom window. NOTE: Improvement to the ground floor bedroom solar access at 12midday. No measurable additional impact to west facing glazing of units directly adjacent to the northern boundary. No impact on bedroom window.
- At 1pm minor improvement to the kitchen window solar access. Slight impact to bathroom window however adequate solar access maintained. No impact to west facing glazing. Solar access available between 11am to 2pm to living room glazing.
- At 2pm no impact to kitchen window as no solar provided by compliant envelope. No impact on bedroom window. Very minor increase to the living room glazing facing west however the glazing remaining is extensive and the additional shadow at 2pm to west facing glazing has not impact.
- At 3pm no impact to the immediate adjacent apartments and improvement to the adjoining apartment in the block on level 1. Some improvement through the open type structure to the west facing glazing as shown on plan B137.

Level 2

The following observations are made:

- At 9am – 2pm no impact
- At 3pm some minor impact to the kitchen window however solar access maintained to achieve more than 2 hours solar access
- All west facing glazing 11am to 3pm solar access maintained.

The following plan extracts are provided as referenced above (plans B135 – 137):

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1 WEST SHADOW ELEVATION, 21ST JUNE 10 AM



2 WEST SHADOW ELEVATION, 21ST JUNE 11 AM

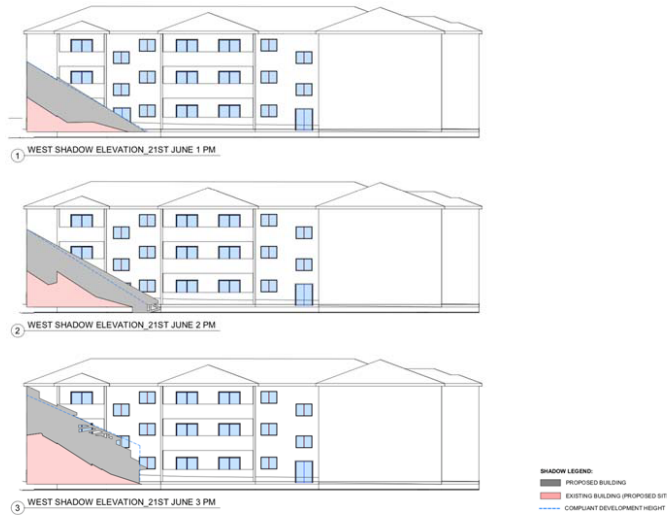


3 WEST SHADOW ELEVATION, 21ST JUNE 12 NOON

SHADOW LEGEND:
 ■ PROPOSED BUILDING
 ■ EXISTING BUILDING (PROPOSED SITE)
 --- COMPLIANT DEVELOPMENT HEIGHT

REVISIONS 1. 2021/06/14 Initial design 2. 2021/06/14 Final design		WINTER SHADOW ELEVATIONS PRELIMINARY NOT FOR CONSTRUCTION		DEVELOPMENT APPLICATION NEW GENERATION BOARDING HOUSE SNP EQUITIES PTY LTD 40 MILTON STREET, ASHFIELD		DRAWN: J.P. CHECKED: N.V.M./J.B. DATE: 14/10/2021 PROJECT: J.P. SHEET: 18 095 B136
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		Name: _____ Address: _____ City: _____ State: _____ Postcode: _____ Email: _____ Phone: _____	WINTER SHADOW ELEVATIONS PRELIMINARY NOT FOR CONSTRUCTION	DEVELOPMENT APPLICATION NEW GENERATION BOARDING HOUSE SGP EQUITIES PTY LTD 40 MILTON STREET, ASHFIELD	PROJECT NO: NVM/JJB DATE: 14/10/2021 DRAWN BY: J.P. SCALE: 1:100 SHEET NO: 18/095 TOTAL SHEETS: 8/137
		Date: _____		40 MILTON STREET, ASHFIELD	18/095 8/137

Summary:

Based on the findings of the solar assessment the proposal satisfies the FSR objectives on the basis that the proposal maintains adequate solar access to the adjoining units. The proposal as one departing from **FSR** is deemed to be acceptable given that:

- The proposal essentially affects three (3) of the adjoining units which form part of a larger unit block fronting Milton Street and these units have a westerly aspect given the location of the kitchen and dining area plus balcony (facing west not north to Milton Street). Two of the 3 affected units comply with the 2 hours solar. We note that 30% of all units in any given apartment block can be below 2 hours and 15% of all units are permitted to face south thus it is expected that some units will be affected particularly at ground level.
- 2 hours of solar access is provided to the ground floor bedroom thus part of the ground floor unit complies with the 2 hours. No solar access to the ground floor apartment based on the blue line complaint envelope.
- The proposed development provides greater solar access on the ground level apartment when compared to a compliant envelope scheme.
- The proposal improves the solar access to the ground floor bedroom window between 11am – 12 midday which is a desirable outcome if considering the impact of a compliant development versus the proposed development. There is some additional shadow to level 1 at this same time period but this is offset by the improvement to the ground floor bedroom window.
- The proposal improves solar access to Level 1 kitchen window at 10am and solar access is achieved from 10am to 11am. Even though there is some impact at 11am to the kitchen window adequate solar is maintained via the remaining glazed areas. Level 1 kitchen window also receives direct sun light via part of the north facing window between 12.15pm and 1.15pm and then obtains solar access via the living room glazing facing west between 12.30pm and 2.00pm (more than 2 hours of direct solar provided).

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Even though there is some impact at 12 midday to the level 1 kitchen window the overall solar access is acceptable.

- All windows at level 2 have solar access between 9am and 3pm.
- The approval will enable the site to contribute to an improved urban form and one that increases affordable housing in line with the findings of the Residential Housing Strategy without any significant amenity impacts when. Compared to a FSR and Height compliant scheme.

Attachment E – Plan of Management

**PLAN OF
MANAGEMENT (POM)**

40 MILTON STREET ASHFIELD

BOARDING HOUSE

PLAN OF MANAGEMENT

AND

HOUSE RULES

OCT 2021

Plan of Management
New Age Boarding House
OCT 2021#

1.0 Object of this Plan

- 1.1 The primary purpose of this Management Plan (PoM) is to ensure that neighbours' amenity is not unreasonably reduced by the use of the premises as a Boarding House.
- 1.2 To achieve this, the Management Plan has been drafted with the following matters in mind:
 - a. to maintain the internal and external appearance of the premises.
 - b. to ensure a person is readily contactable to assist in the ongoing implementation of this Management Plan.
 - c. to ensure that this Management Plan is enforceable.
 - d. to make provision for this plan to be amended from time to time with the approval of the Council in order to facilitate timely and responsive operational changes to improve residential amenity within and external to the site.
 - e. That the use will be controlled by the PoM and the Boarding House Rules.
 - f. To conform with the Boarding Houses Act, 2012.

2.0 Primary Person Responsible

- 2.1 The owner of the premises is responsible for ensuring that this Management Plan is properly implemented at all times. The owner to exercise this through the appointed Property Manager or 'Manager' (see cl. 3.1 below).
- 2.2 The Manager on behalf of the owner to ensure that all occupants are given a copy of this Management Plan and a document called "Boarding House Rules" ("the Rules") at the time they commence their occupancy. The Rules are to include a policy statement for occupants of the Boarding House directed to the objects set out above. The Rules include guidelines for the conduct of occupants to minimise inappropriate behaviour that might reduce any neighbour's amenity. The Rules may not be inconsistent with this Management Plan or the conditions of development consent.
- 2.3 All tenants in the boarding house are to sign an agreement undertaking to comply with the Rules.
- 2.4 The Manager is to enforce all the Rules of the Boarding House.
- 2.5 The Manager subject to any limitations imposed by the Residential Tenancies Act, is to remove any person from the Boarding House who fails to comply with any Rule after one warning, unless a serious breach occurs in which case no warning is required. If that person fails or refuses to leave the Boarding House, the Manager is to contact the police immediately. The owner must (if requested to do so) assist the Manager to the extent necessary to give effect to this provision.
- 2.6 The Manager is to maintain a register of occupants who have been evicted from the Boarding House and ensure that those people are prevented from entering the premises in the future.
- 2.7 The Manager is to take all reasonable steps necessary to ensure that occupants of the Boarding House do not affect the amenity of neighbours. The Manager may evict occupants who unreasonably affect the amenity of the neighbours of the Boarding House. The owner must (if requested to do so) assist the Manager to the extent necessary to give effect to this provision.
- 2.8 The Manager or owner is to ensure that a list of the Rules to be displayed in the entrance, communal room, rooms of the Boarding House.

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- 2.9 A sign to be displayed at the entrance to the Boarding House advising occupants to be aware and mindful of the amenity of neighbours when entering or leaving the premises.
- 2.10 A contact mobile phone number for the Manager is to be displayed at the entrance to the boarding house.

3.0 Manager

- 3.1 The owner will appoint a manager. The Manager is to have the appropriate skills to administer the PoM, and Boarding House Rules and assist in dispute resolution.
- 3.2 The On Site live in Manager is to ensure all occupants are provided with a Boarding House Occupancy Agreement and Boarding House Rules.
- 3.3 The owner is to ensure a contact number is available for occupants to contact the Manager in the case of an emergency.
- 3.4 The Manager shall inspect the premises regularly to ensure compliance with all relevant provisions of this Plan of Management and the House Rules, and any applicable conditions of development consent.
- 3.5 The boarding house common areas shall be professionally cleaned on a weekly basis by a contractor employed by the owner/manager.
- 3.6 All waste bins shall be placed at the kerbside on the evening prior to waste collection and collected on the day of pick up and returned to the basement area and washed and cleaned.
- 3.7 Providing assistance where possible and as reasonably practical to occupants who are in need of health, personal and or community services for example by providing information, and referral for occupants so that they can obtain necessary assistance.

4.0 Rental Periods, Terms & Fees etc

- 4.1 All tenants must be provided with and sign an Occupancy Agreement.
- 4.2 A fee structure is to be designed which includes methodology for rental increases and basis upon which any rental increase is to be determined. The minimum rent shall be \$..... per week.

Generally, a tenant's rent should not be increased more than once in any 12 month period. Rent may be influenced by (but not limited to) room location, size, aspect, number of boarders, term of lease period, allocation of parking.

5.0 Residents Register

- 5.1 The manager is to keep a register which to include the occupant's name, previous address and license details if any.
- 5.2 Only two residents to be registered at any one time per room. Inspections may be undertaken by Council from time to time to ensure that this is being satisfied.

6.0 Occupancy Principles

In accordance with the Boarding Houses Act, 2012, the following Occupancy principles shall apply:

- 6.1 State of premises
A resident is entitled to live in premises that are:
a) reasonably clean, and

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- b) in a reasonable state of repair, and
 - c) reasonably secure.
- 6.2 Rules of registrable boarding house
A resident is entitled to know the rules of the registrable boarding house before moving into the boarding house.
- 6.3 Penalties for breaches of agreement or house rules prohibited
A resident may not be required to pay a penalty for a breach of the occupancy agreement or the rules of the registrable boarding house.
- 6.4 Quiet enjoyment of premises
A resident is entitled to quiet enjoyment of the premises.
- 6.5 Inspections and repairs
A proprietor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes.
- 6.6 Notice of increase of occupancy fee
A resident is entitled to 4 weeks written notice before the proprietor increases the occupancy fee.
- 6.7 Utility charges
(1) The proprietor is entitled to charge a resident an additional amount for the use of a utility if:
 - a) the resident has been notified before or at the time of entering the occupancy agreement of the use of utilities in respect of which the resident will be charged, and
 - b) the amount charged is based on the cost to the proprietor of providing the utility and a reasonable measure or estimate of the resident's use of that utility.
- (2) A utility for the purposes of this clause is each of the following:
 - a) the supply of electricity, supply of gas, supply of oil, the supply of water, the supply of any other service prescribed by the regulations.
- 6.8 Payment of security deposits
(1) The proprietor may require and receive a security deposit from the resident or the resident's authorised representative only if:
 - a) the amount of the deposit does not exceed 2 weeks of occupancy fee under the occupancy agreement, and
 - b) the amount is payable on or after the day on which the resident (or the resident's authorised representative) enters the agreement.
- (2) Within 14 days after the end of the occupancy agreement, the proprietor must repay to the resident (or the resident's authorised representative) the amount of the security deposit less the amount necessary to cover the following:
 - a) the reasonable cost of repairs to, or the restoration of, the registrable boarding house or goods within the premises of the boarding house, as a result of damage (other than fair wear and tear) caused by the resident or an invitee of the resident,
 - b) any occupation fees or other charges owing and payable under the occupancy agreement or the Act,
 - c) the reasonable cost of cleaning any part of the premises occupied by the resident not left reasonably clean by the resident, having regard to the condition of that part of the premises at the commencement of the occupancy, the reasonable cost of replacing locks or other security devices altered, removed or added by the resident without the consent of the proprietor,
 - d) any other amounts prescribed by the regulations.

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- (3) The proprietor may retain the whole of the security deposit after the end of the occupancy agreement if the costs, fees or charges referred to in subclause (2) (a)–(e) are equal to, or exceed, the amount of the security deposit.
- (4) In this clause: security deposit means an amount of money (however described) paid or payable by the resident of a registrable boarding house or another person as security against:
- a) any failure by the resident to comply with the terms of an occupancy agreement, or
 - b) any damage to the boarding house caused by the resident or an invitee of the resident, or
 - c) any other matter or thing prescribed by the regulations.
- 6.9 Information about occupancy termination
A resident is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction.
- 6.10 Notice of eviction
(1) A resident must not be evicted without reasonable written notice.
- (2) In determining what is reasonable notice, the proprietor may take into account the safety of other residents, the proprietor, the manager of the boarding house.
- (3) Subclause (2) does not limit the circumstances that are relevant to the determination of what is reasonable notice.
- 6.11 Use of alternative dispute resolution
A proprietor and resident should try to resolve disputes using reasonable dispute resolution processes.
- 6.12 Provision of written receipts
A resident must be given a written receipt for any money paid to the proprietor or a person on behalf of the proprietor.
- 7.0 Safety & Security**
- The Manager and, where necessary or appropriate, the owner are to ensure all safety requirements of the Boarding House are met at all times, including ensuring the following:
- 7.1 Emergency access routes are clear.
- 7.2 Any items that are a fire hazard are removed from the premises without delay.
- 7.3 Maintenance of all fire safety measures including any required smoke detectors/alarms, sprinklers, emergency lighting and fire exits and ensure that regular inspection and certification is carried out.
- 7.4 CCTV surveillance of the common areas and grounds are maintained in good working order and viewable and accessible by the Manager. Managers room to have CCTV monitor.
- 7.5 Access is to be programmed to restrict access to any level other than the residents level of occupation.
- 7.6 Providing assistance where possible and as reasonably practical to occupants who are in need of health, personal and or community services.

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- 7.7 Consideration is given to designation of suitably located smoking and non smoking rooms, to avoid congregation of smokers on the public and communal areas and nuisances to other residents from emanating smoke.
- 7.8 Contacting Police of any suspected criminal activity, or of any domestic violence or disturbance.
- 7.9 The maximum occupancy shall be 104 persons.

8.0 Cleaning & health

- 8.1 The premises are to be professionally cleaned on a weekly basis, and garbage bins placed at the kerbside for collection, in accordance with clauses 3.4 and 3.5 above. Arrangements for this will at all times be the responsibility of the Manager.
- 8.2 The manager is to ensure that the grounds of the Boarding House are maintained in a reasonably clean and tidy manner at all times.
- 8.3 Specific garbage room is allocated for use of the boarding house residents. The residential garbage bins are to be lockable to restrict use by others.

9.0 Public Complaints Resolution Procedure

- 9.1 The Manager is to maintain a complaint register of public (external) complaints.
- 9.2 This register is to comprise forms to be completed by the Manager, occupants and or complainants. The form is to record the name, addresses, phone number details and date of any person making a complaint including anonymous persons. Only complaints where all the above information is given are to be recorded in the register.
- 9.3 The Manager (or, where appropriate, the owner) is to respond by telephone to a complaint whether written or oral within 24hrs by telephone (provided that the complainant has provided a phone number).
- 9.4 The Manager is to respond within 7 days to a complaint in writing.
- 9.5 Where required, the Manager is to use best endeavours to arrange a meeting with complainants. The owner to be present at such meetings if practical. The Manager is to keep minutes of such meetings and keep these minutes in a public Complaints Resolution Procedure Register. This register is to be made available to the Council for inspection on 7 days' notice.
- 9.6 If a matter of complaint cannot be resolved and the complainant wishes to escalate the complaint, the matter may be referred to the Council or Community Justice Centre for resolution by the complainant.

10.0 Variations to this Plan of Management and the House Rules

- 10.1 This approved Plan of Management (incorporating the House Rules) may be varied from time to time by the Council, on the application of the owner, without the need for formal modification of the development consent.
- 10.2 The object of this clause is to facilitate timely and responsive alterations to the Plan of Management (and House Rules) where Council agrees that such alterations are appropriate and beneficial in preserving and enhancing residential amenity for occupants and/or for the locality.
- 10.3 The House Rules may be incorporated into the Occupancy Agreement.

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10.4 Boarding House Rules

- The Boarding House Rules to include the following:
- Alcohol is not to be consumed outside of the Boarding House except within the designated outdoor communal area, the use of which shall be restricted to between 10.00am and 9.00pm (10.00pm during summer months). No intoxicated persons shall be permitted within the communal areas.
- No illicit drugs or illegal activity shall be permitted within the Boarding House and its immediate environs.
- Occupants to have a swipe card to the Boarding House, which is not to be given to any other person. Loss of the swipe card will result in reimbursement.
- The maximum number of persons permitted within the room shall be as per the signed occupancy agreement, and in no case exceed two (2) adults per room and at no time exceed 116 in total (excluding the onsite managers room which is limited to 2 persons).
- All landscaped and communal areas of the Boarding House not to be used by occupants between the hours of 9.00pm (10.00pm in summer months) and 7.00am except for the purposes of gaining direct access and egress to and from the Boarding House.
- Smoking is only permitted in the external courtyard and balconies of the premises or designated smoke permitted rooms. Ash and butts are to be disposed of appropriately and not off balconies or windows.
- Occupants to place all empty containers/bottles/cans and other rubbish in bins provided in the communal areas and / or in the garbage room. There shall be no littering.
- Occupants conduct is to be quiet, orderly and lawful at all times when residing at the Boarding House, this includes not causing nuisance from noise from amplified music, radios, televisions, loud talking, banging of doors, or any other activities etc. maintaining the reasonable amenity of neighbours (both within and external to the premises) is a fundamental obligation of all tenants.
- Occupants to comply with all requests of the owner/Manager or they are liable to eviction.
- Occupants to keep their room and bathroom clean at all times and make their room available for inspection by the Manager once a week.
- Internal communal areas are generally restricted to (other than for access/ passage purposes) between 6am and 10pm, except with the approval of the Manager or as determined by the acoustic engineer. Manager to ensure the use complies with the acoustic report requirements.
- No parties are permitted on the premises unless attended by the occupants only, and only subject to the prior written approval of the manager who may impose conditions at his/her absolute discretion.
- The manager at their absolute discretion may ask any person to vacate the communal areas.
- No guests or invitees are permitted to remain on the premises between the hours of 11.00pm and 7.00am, unless prior written approval is obtained by the manager. An additional fee may be payable, and under no circumstances is the occupancy of the room to exceed 2 persons in a room greater than 16sqm. If the room is less than 16sqm then

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the max number of occupants is 1 person. Max number of residents is **116 excl the managers room (managers room max 2 persons)**.

- The use of the car spaces shall be allocated by the manager at his/her absolute discretion.
- Any disabled person shall have precedence to the use of the accessible sized parking spaces. The manager has the right to rescind any permission to use the carpark area.
- No person shall park within the designated disabled parking space unless displaying a valid disabled permit.
- No clothes, washing, towels, surfboards or other items are to be placed on any window or balcony.
- No pets are permitted on the premises.
- No prostitution shall be permitted on the premises.
- Manager to keep a complaints register on site at all times that logs all complaints and provide a written entry as to the remedy or action taken.
- Manager is to be provided with internal screens showing all CCTV coverage of communal areas and all of the basement.
- Manager is to have mobile device with CCTV coverage.
- Boarding house is to be provided with a 24 hour telephone number for the live-in on-site manager.
- On site manager must be responsible for the efficient operation, administration, cleanliness and fire safety of the premises, including compliance with all aspects of the POM with annual registration annual Fire Safety Certification as well as the Emergency Management and Evacuation Plan.
- A floor plan must be permanently fixed to the inside of the door of each sleeping room to indicate the available emergency egress routes from the respective sleeping room.
- Safety and security publication in each room for all residents may include, but are not limited to such things as emergency contact numbers for essential services such as fire, ambulance, police, and utilities such as gas, electricity, plumbing, installation of perimeter lighting, appropriate fencing, secure gates and all residents to have own keys to rooms and personal storage areas.