



DEVELOPMENT ASSESSMENT PANEL REPORT

<b>Application No.</b>	DA/2023/0973
<b>Address</b>	261 Enmore Road ENMORE
<b>Proposal</b>	Partial demolition, alterations and additions to the existing 2 storey commercial building and the continued operation of the electronics workshop as a goods repair and reuse premises.
<b>Date of Lodgement</b>	22 November 2023
<b>Applicant</b>	George Loupis
<b>Owner</b>	Mr Luke G Kypreos Mrs Maria Kypreos
<b>Number of Submissions</b>	Nil
<b>Cost of works</b>	\$334,050.00
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10%
<b>Main Issues</b>	Variation to Floor Space Ratio exceeds 10% & Car parking
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Section 4.6 Exception to Development Standard



Figure 1: Sample Map: Source: IntraMaps

LOCALITY MAP

Subject Site		Objectors		N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for partial demolition, alterations and additions to the existing 2 storey commercial building and the continued operation of the electronics workshop as a goods repair and reuse premises at 261 Enmore Road Enmore.

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

The main issues that have arisen from the application include:

- Variation to Floor Space Ratio exceeds 10%
- Car Parking

The non-compliances are acceptable given the existing use of the site and context, subject to conditions and therefore the application is recommended for approval.

## 2. Proposal

The proposal consists of alterations and additions to the existing 2 storey commercial building which consists of partial demolition, increase in floor area and car parking reconfiguration. Specifically, the proposal involves the following works:

### Ground Floor

- An office will be constructed on the eastern section of the ground floor.
- A manager's car parking space is proposed on the ground floor.
- A new gate will be installed.
- The loading bay, spare parts store, toilets, lift, foyer, stairs, courtyard and two (2) parking space will be retained.

### First Floor

- The floor area of the first floor will be increased to the northern and eastern boundary. The workshop, lift stairs and planter will be retained.

### Hours of Operation (as per existing)

- Monday to Friday: 8:00AM to 5:00PM
- Weekends and Public Holidays: Closed

### Staff

The business accommodates a general maximum of four (4) staff on the premises at any time.

## 3. Site Description

The subject site is located on the western side of Enmore Road, between Stanmore Road to the north and Newington Road to the south. The site is a rectangular allotment with a total area of 355.34sqm, and frontage of 9.755m to Enmore Road. The site is legally described as Lot 1 in Deposited Plan 908531.

The site supports a two storey commercial building. The subject site will retain the existing use which is identified as a goods repair and reuse premise and is permissible with consent within the E1 Local Centre zone. The adjoining property to the north at No. 259 Enmore Road is a residential dwelling and the southern adjoining property at No. 263 Enmore Road is a commercial premises.

**Figure 2: Zoning Map -Subject site highlighted in red. Source: IntraMaps**

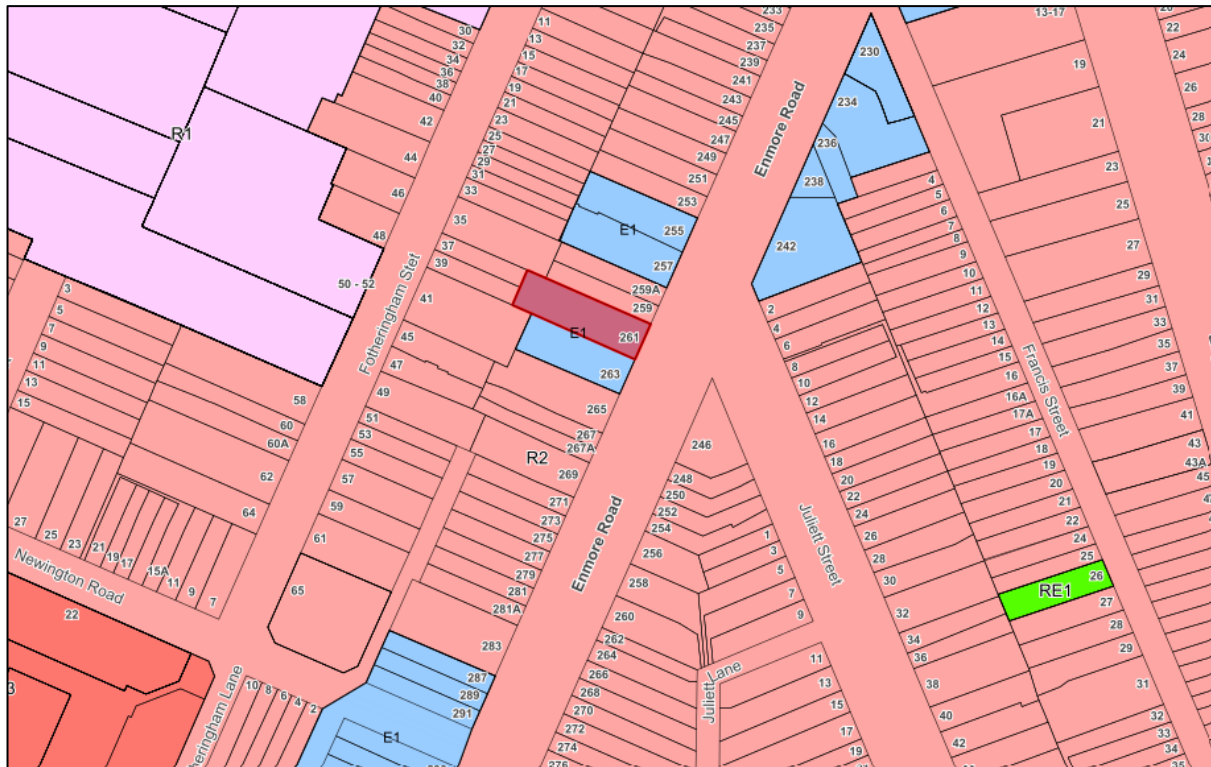




Figure 3: Photo of the subject site when viewed from Enmore Road.

## 4. Background

### Site history

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

### Subject Site

Application	Proposal	Decision & Date
BA-B627/95	Colourbond fence at rear	Rejected on 29 November 1995
PDA201700032	To demolish part of the premises and carry out alterations and additions to the existing electronics workshop and to construct an additional 2 storey containing 4 dwellings above	Advice Issued on 29 May 2017
PDA201800116	To demolish part of the premises and carry out alterations and additions to the existing electronics workshop and to construct an additional floor to create a 3 storey mixed use development with 4 studio apartments	Advice Issued on 11 October 2018

PDA/2020/0290	Demolition of part of the premises and carry out alterations and additions to the existing electronics workshop and to construct an additional floor to create a 3 storey mixed use development with 4 studio apartments	Advice Issued on 12 October 2020
DA/2023/0298	Upper floor addition of office for electronic workshop and ground floor construction of street front shop	Rejected on 28 April 2023
DA/2023/0487	Partial demolition, alterations and additions to the existing 2 storey commercial building and the continued operation of the electronics workshop as a goods repair and reuse premises.	Withdrawn by applicant on 27 September 2023

### Application history

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

Date	Discussion / Letter / Additional Information
22 January 2024	An 'Request for Further Information' (RFI) letter was issued to the application requesting the following matters to be provided: <ol style="list-style-type: none"> <li>1. An amended Stormwater Drainage Concept Plan</li> <li>2. An amended swept path diagram to demonstrate compliance with AS/NZS 2890.1-2004.</li> <li>3. An amended Statement of Environmental Effects (SEE) and Clause 4.6 variation which should detail a change in gross floor area (GFA) calculation dependent on car parking changes.</li> </ol>
19 February 2024	Additional information received included the following: <ol style="list-style-type: none"> <li>1. An amended Stormwater Drainage Concept Plan.</li> <li>2. An amended swept path diagram which indicates compliance with AS/NZS 2890.1-2004.</li> <li>3. An amended SEE and Clause 4.6 variation.</li> </ol>

## 5. Assessment

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

### A. Environmental Planning Instruments

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

#### State Environmental Planning Policies (SEPPs)

##### SEPP (Resilience and Hazards) 2021

##### Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards SEPP* requires the consent authority not consent to the carrying out of any development on land unless:

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

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

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

**Inner West Local Environmental Plan 2022**

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

**Part 1 – Preliminary**

Section	Proposed	Compliance
Section 1.2 Aims of Plan	The proposal satisfies the section as follows: <ul style="list-style-type: none"> <li>• The proposal prevents adverse social, economic and environmental impacts, including cumulative impacts</li> </ul>	Yes

**Part 2 – Permitted or prohibited development**

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table	<ul style="list-style-type: none"> <li>• The application proposes partial demolition, and alterations and additions to a commercial building, being, a <b>goods repair and reuse premises</b> which is permissible with consent in the E1 Local Centre zone.</li> <li>• The proposal is consistent with the relevant objectives of the zone,</li> </ul>	Yes
Section 2.7 Demolition requires development consent	The proposal satisfies the section as follows: <ul style="list-style-type: none"> <li>• Demolition works are proposed, which are permissible with consent; and</li> <li>• Standard conditions are recommended to manage impacts which may arise during demolition.</li> </ul>	Yes, subject to conditions

**Part 4 – Principal development standards**

Control	Proposed		Compliance
Section 4.3 Height of building	Maximum	9.5m	Yes
	Proposed	8.95m	
Section 4.4 Floor space ratio	Maximum	0.85:1 or 302.039sqm	No
	Proposed	1.06:1 or 379.1sqm	

Control	Proposed		Compliance
	Variation	77.061sqm or 25%	
Section 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 section.		Yes
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.4 of the IWLEP 2022.		See discussion below

### Section 4.6 – Exceptions to Development Standards

#### Section 4.4 Floor Space Ratio development standard

The applicant seeks a variation to the FSR development standard prescribed under Section 4.4 of the *IWLEP 2022* by 77.061sqm or 25%. Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below. A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposed works are contained solely at the front of the site, essentially extending the built form to the street front and aligning with the prevailing character*
- *The proposal results to similar GFA calculations to that of the developments in the area.*
- *The proposal results in marginal additional overshadowing to 263 Enmore Road at 9:00AM. The additional impacts are restricted to a door at ground level for the commercial tenancy. It is noted that the north facing windows are already overshadowed at 9:00AM. At 12:00PM and 3:00PM the additional overshadowing is cast onto Enmore Road and has no material impact on useable areas of the public domain.*
- *The proposed design of the development will not result to overlooking opportunities to the adjoining properties.*
- *The proposed works will not negatively impact the enjoyment of private properties.*
- *The provision of a more consistent built form with an active street frontage will allow for greater interactivity and enjoyment of the public domain.*
- *The extension of the existing business provides employment opportunities and economic growth in the area and will continue to meet the objectives of the E1 Local Centre zone.*
- *No residential development is sought as part of this application. The use does not prevent residential accommodation on other properties in the zone.*
- *The introduction of a front nil setback office space will create an active street frontage that can attract pedestrian traffic which the current building lacks.*

- *The alterations and additions to the building are deemed to align with the current building and enhance its presentation, architecturally and in terms of urban design quality, which will contribute to the desired character of the locality.*

***Whether compliance with the development standard is unreasonable or unnecessary***

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the Floor Space Ratio standard are achieved notwithstanding the numeric non-compliance.

The **objectives of Section 4.4 Floor Space Ratio** are as follows:

*(a) to establish a maximum floor space ratio to enable appropriate development density,*

The **first objective of Section 4.4 Floor Space Ratio** is referenced above. The written request states that the works are contained solely at the front of the site, essentially extending the built form to the street front and aligning with prevailing character of E1 Local Centre zoned properties in the area. Accordingly, the breach is consistent with the first objective.

*(b) to ensure development density reflects its locality,*

The **second objective of Section 4.4 Floor Space Ratio** is referenced above. The written request states that the development density is similar to that development in the immediate vicinity which reflects the uses of E1 Local Centre zone. Accordingly, the breach is consistent with the second objective.

*(c) to provide an appropriate transition between development of different densities,*

The **third objective of Section 4.4 Floor Space Ratio** is referenced above. The written request states that the proposal provides an appropriate transition between development and provides an active frontage. Accordingly, the breach is consistent with the third objective.

*(d) to minimise adverse impacts on local amenity,*

The **fourth objective of Section 4.4 Floor Space Ratio** is referenced above. The written request states that the proposal will retain the existing use and the extension of the floor area does not have a negative impact to the local amenity and will not prevent any residential accommodation to the locality. Accordingly, the breach is consistent with the third objective.

*(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain*

The **fifth objective of Section 4.4 Floor Space Ratio** is referenced above. The written request states that the subject site is identified to be E1 Local Centre and has an existing commercial use on site. The proposed development would not have an adverse impact to the private properties and the public domain. Accordingly, the breach is consistent with the third objective.

As the proposal achieves the objectives of the Section 4.4 Floor Space Ratio standard, compliance is considered unreasonable and unnecessary in this instance.



***Whether there are sufficient environmental planning grounds to justify contravening the development standard***

Pursuant to Section 4.6(3)(b), the Applicant advances three (3) environmental planning grounds to justify contravening the Floor Space Ratio development standard. Each will be dealt with in turn:

**Environmental Planning Ground 1** – *The additional 77sqm or 25% is created by the in-fill of the front setback area of the existing building to create a two-storey nil setback street wall, which will allow for the creation of an active street frontage consistent with the existing and desired future character and controls under Part 5 of the Marrickville DCP.* This environmental planning ground is accepted because it will create an active frontage and it will not have an adverse impact to the amenity of the adjoining commercial and residential properties. The change will not have detrimental impacts on the streetscape and would be consistent with the mixed character of Enmore Road.

**Environmental Planning Ground 2** – *The current street interface is of poor quality and will be enhanced by the street activation afforded by the ground level space and the nil setback of the first floor. This positive built form outcome that is encouraged by the controls is considered to be suitable environmental planning grounds to contravene the development standard.* This environmental planning ground is accepted because the proposed development compliments the existing streetscape, whilst allowing for an expansion of the commercial use.

**Environmental Planning Ground 3** – *The additional floor area occurs without environmental impact. The proposed development meets the objectives of the standard and the objectives of the zone.* These constitute separate preconditions under Section 4.6 and are considered less relevant to a consideration of environmental planning grounds. Notwithstanding, this environmental planning ground is accepted because it will not result in an adverse environmental impact to the immediate adjoining properties.

Cumulatively, the grounds are considered sufficient to justify contravening the development standard.

***Whether the proposed development meets the objectives of the development standard, and of the zone***

The objectives of the **E1 Local Centre zone** under the *IWLEP 2022* are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of business.*
- *To provide employment opportunities and services in locations accessible by active transport.*
- *To provide retail facilities and business services for the local community commensurate with the centre's role in the local centres hierarchy.*
- *To ensure Inner West local centres are the primary location for commercial and retail activities.*

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To enhance the unique sense of place offered by Inner West local centres by ensuring buildings display architectural and urban design quality and contributes to the desired character and cultural heritage of the locality.*

As indicated above, Council is satisfied that the development meets the objectives of the Section 4.4 Floor Space Ratio standard. Similarly, it is considered the proposal meets the objects of the E1 zone as it seeks to enhance the commercial use, the streetscape appearance will be compatible with nearby commercial buildings ensuring the building displays a positive urban design quality, provides for an active street frontage and will continue to provide for business services for the local community. Therefore the proposal is consistent with both the objectives of the zone and the standard, and is thereby considered to be in the public interest.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General in accordance with section 4.6(4)(b) of the *IWLEP 2022*.

For the reasons outlined above, it is recommended the section 4.6 exception be granted.

**Part 6 – Additional local provisions**

Section	Proposed	Compliance
Section 6.1 Acid sulfate soils	<ul style="list-style-type: none"> <li>• The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable.</li> </ul>	Yes
Section 6.2 Earthworks	<ul style="list-style-type: none"> <li>• The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.</li> </ul>	Yes
Section 6.3 Stormwater Management	The development has proposed a compliant method of onsite collection of stormwater and discharge and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment.	Yes, subject to conditions

**B. Development Control Plans**

**Summary**

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

MDCP 2011 Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No – see discussion
Part 2.18 – Landscaping and Open Space	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 5 – Commercial and Mixed-Use Development	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

### Marrickville Development Control Plan 2011

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

#### Part 2 – Generic Provisions

Control	Assessment	Compliance
Part 2.1 Urban Design	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> <li>• The architectural design of the development does not impact the definition between the public and private domain and is considered to be appropriate for the character of the locality given its form, massing, siting and detailing; and</li> <li>• The design of the proposal complements the existing character of the streetscape.</li> </ul>	Yes
Part 2.5 Equity of Access and Mobility	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> <li>• A designated pedestrian pathway is proposed with this application to provide appropriate access for all persons through the principal entrance to the premises.</li> <li>• A Continuous Accessible Path of Travel (CAPT) to and within the ground floor of the subject premises is provided which allows a person with a disability to gain access to all ground floor areas, however access to the first floor is not proposed;</li> <li>• The above does not negate the need to meet the requirements to comply with the National Construction Code and Premise Standards and as such will be necessary to comply with at CC stage.</li> </ul>	Yes
Part 2.6 Acoustic and Visual Privacy	<p>The proposal will have a satisfactory impact on visual and acoustic levels of the surrounds as follows:</p> <ul style="list-style-type: none"> <li>• Conditions are imposed to ensure compliance with the relevant acoustic noise criteria;</li> <li>• The proposal is for an expansion of an existing use which is not considered to result in detrimental acoustic impacts to surrounding properties;</li> <li>• There would be no visual privacy impacts as all new windows face either Enmore Road or the internal planter void area; and</li> <li>• The proposal seeks to retain the existing hours of operation which are Monday to Friday, 8:00AM to 5:00PM and no operations on weekends and public holidays. The hours of</li> </ul>	Yes

Control	Assessment	Compliance
	operation are reasonable to limit acoustic impacts to nearby/adjoining residents.	
Part 2.7 Solar Access and Overshadowing	<p>The proposal will have a satisfactory impact in terms of solar access and overshadowing on the surrounds as follows:</p> <ul style="list-style-type: none"> <li>• The increased overshadowing will predominantly be cast onto the roof and driveway of the adjoining southern property and onto Enmore Road.</li> <li>• It is noted that the adjoining property to the north at No. 259 Enmore Road is a residential dwelling and the southern adjoining property at No. 263 Enmore Road is a commercial premise; and</li> <li>• The development will not result in adverse amenity impacts as a result of overshadowing;</li> </ul>	Yes
Part 2.9 Community Safety	<ul style="list-style-type: none"> <li>• The proposal satisfies the relevant provisions of Part 2.9 as the premise entrance remains identifiable and visible from the street.</li> <li>• A new pedestrian path will be provided and clearly delineated on the ground to alert any vehicles to its dual use which is an improvement on the existing access arrangements.</li> </ul>	Yes
Part 2.10 Parking	<ul style="list-style-type: none"> <li>• The subject site is identified to be located within Parking 2 in accordance with Part 2.10 Parking of the MDCP 2011.</li> <li>• The proposed development seeks to increase the GFA of a business premise from 307.6sqm to 379.1sqm, which equates to an increase of 72.1sqm.</li> <li>• The parking provision rates requires five (5) car parking spaces to be provided.</li> <li>• It is noted that three (3) car parking spaces currently exist on site and the proposal does not seek to change the amount of car parking spaces located on site. A manager's car parking space is located within the building which complies with the vehicle manoeuvrability requirements of AS/NZS 2890.1-2004.</li> <li>• A traffic and car parking study has been submitted as part of this application. The report has demonstrated that the existing parking configuration will theoretically be retained. It has further noted that the subject site is serviceable by public transport.</li> <li>• The report also demonstrated that the largest vehicle that will access the site is a van which is considered to be a standard B99 vehicle which will be reversing into the loading area from Enmore Road which is suitable for the minimal deliveries for the operation of the premise;</li> <li>• Given the nature of the business being a goods repair and reuse premises, it does not generate additional traffic as the building will predominantly be used as a place to collect, and/or repair of goods.</li> <li>• A condition of consent will be imposed to ensure that three (3) car parking spaces will be maintained on site.</li> <li>• The provision requires the site to provide one (1) bicycle parking space for staff. As such, a condition of consent will be imposed to ensure that one (1) bicycle parking space is provided.</li> <li>• It is noted that the proposed GFA does not exceed 1000sqm, therefore bicycle parking space for customers is not required to be provided in accordance with the provisions.</li> </ul>	Yes, subject to condition
Part 2.18 Landscaping	The proposed development satisfies the relevant provisions of this Part as follows:	Acceptable based on merit

Control	Assessment	Compliance
and Open Spaces  <u>Private Open Space (POS)</u>	<ul style="list-style-type: none"> <li>The proposal would further reduce the landscaping on site. However, it is noted that, given the nature of the use being a commercial area, there is no minimum area required to be provided as landscaping.</li> <li>The area in question is currently a small garden bed, with no mature plants that does not offer a considerable level of value to the site or streetscape.</li> <li>The reduction of the landscaped area is therefore considered acceptable.</li> </ul>	
Part 2.21 Site Facilities and Waste Management	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> <li>The application was accompanied by a waste management plan in accordance with the Part; and</li> <li>Standard conditions are recommended to ensure the appropriate management of waste during the construction of the proposal.</li> </ul>	Yes, subject to condition
Part 2.25 Stormwater Management	Standard conditions are recommended to ensure the appropriate management of stormwater.	Yes, subject to conditions

**Part 5 – Commercial and Mixed Use Development**

Control	Assessment	Compliance
Part 5.1.4 Building Detail	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> <li>The architectural design of the development reads as a continuous element in the streetscape, with upper levels above the street frontage being visually subservient.</li> </ul>	Yes
Part 5.1.6 Vehicle Access, Parking and Loading Services	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> <li>The existing loading bay will be retained.</li> <li>A condition of consent will be imposed to ensure that the three (3) parking spaces will be provided.</li> </ul>	Yes
5.3.1.4 Hours of Operation	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> <li>The proposal seeks to retain the existing hours of operation, which are as follows:                             <ul style="list-style-type: none"> <li>Monday to Friday: 8:00AM to 5:00PM</li> <li>Weekends and Public Holidays: Closed</li> </ul> </li> <li>The proposed hours of operation are existing, and this application does not seek to change its hours of operation. Therefore, it is considered that it will continue to function as existing and will not result in detrimental acoustic impacts to the adjoining commercial and residential properties.</li> </ul>	Yes

**Part 9 – Strategic Context**

Control	Assessment	Compliance
Part 9.9 Newington (Precinct 9)	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> <li>The proposal compliments the character of the street; and</li> </ul>	Yes

	<ul style="list-style-type: none"> <li>The proposal ensures that the provision and location of off-street car parking does not adversely impact the amenity of the precinct.</li> </ul>	
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### C The Likely Impacts

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

### D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial surrounding and amongst similar uses to that proposed.

### E Submissions

The application was required to be notified in accordance with Council’s Community Engagement Strategy between 5 December 2023 to 19 December 2023.

No submissions were received.

### F. The Public Interest

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

This has been achieved in this instance.

## 6. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of **\$5,916.00** would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

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

## 7. Housing and Productivity Contributions

The carrying out of the development would result in an increased demand for essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure and regional open space. A contribution of **\$2,988.08** would be required for the development under Part 7, Subdivision 4 Housing and Productivity Contributions of the *EP and A Act 1979*.

A housing and productivity contribution is required in addition to any Section 7.11 or 7.12 Contribution. A condition requiring that the housing and productivity contribution is to be paid is included in the recommendation.

## 8. Referrals

A referral to Council's Development Engineer was made and their comments have been considered as part of the above assessment.

## 9. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining premises 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.

## 10. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio (FSR) development 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/2023/0973 for partial demolition, alterations and additions to the existing 2 storey commercial building and the continued operation of the electronics workshop as a goods repair and reuse premises at 261 Enmore Road, Enmore subject to the conditions listed in Attachment A for the following reasons

**Attachment A – Recommended conditions of consent**

**CONDITIONS OF CONSENT**

**GENERAL CONDITIONS**

Condition																																									
1.	<b>Documents related to the consent</b>																																								
	The development must be carried out in accordance with plans and documents listed below:																																								
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3.	<p style="text-align: center;"><b>Asbestos Removal</b></p> <p>Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
4.	<p style="text-align: center;"><b>Bin Storage</b></p> <p>All bins are to be stored within the property.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
5.	<p style="text-align: center;"><b>Permits</b></p> <p>Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• A concrete pump across the roadway/footpath;</li> <li>• Mobile crane or any standing plant;</li> <li>• Skip Bins;</li> <li>• Scaffolding/Hoardings (fencing on public land);</li> <li>• Public domain works including vehicle crossing, kerb &amp; guttering, footpath, stormwater, etc.;</li> <li>• Awning or street veranda over the footpath;</li> <li>• Partial or full road closure; and</li> <li>• Installation or replacement of private stormwater drain, utility service or water supply.</li> </ul> <p>If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>
6.	<p style="text-align: center;"><b>Electrical Substations</b></p> <p>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.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>

7.	<b>Loading and Unloading</b>
	<p>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.</p> <p>Reason: To ensure loading and unloading is carried out within the site</p>
8.	<b>Car Parking</b>
	<p>The development must provide and maintain within the site:</p> <ul style="list-style-type: none"> <li>• 3 car parking spaces must be paved and line marked;</li> <li>• 1 Bicycle storage capacity within the site; and</li> <li>• 1 Loading bay.</li> </ul> <p>Reason: To ensure parking facilities are designed in accordance with the Australian Standard and Council's DCP.</p>

## BUILDING WORK

### BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
9.	<p><b>Long Service Levy</b></p> <p>Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has been paid at the prescribed rate of 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.</p> <p>Reason: To ensure the long service levy is paid.</p>
10.	<p><b>Party Walls</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate &amp; plans must be provided to all owners of the party wall/s.</p> <p>Reason: To ensure the structural adequacy of the works AND/OR to ensure works do not rely on the party wall for vertical or lateral support.</p>
11.	<p><b>Structural Certificate for retained elements of the building</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the</p>

	<p>proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.</p> <p>Reason: To ensure the structural adequacy of the works.</p>														
12.	<p><b>Sydney Water – Tap In</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water’s online ‘Tap In’ program to determine whether the development will affect Sydney Water’s sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.</p> <p>Note: Please refer to the web site <a href="http://www.sydneywater.com.au/tapin/index.htm">http://www.sydneywater.com.au/tapin/index.htm</a> for details on the process or telephone 13 20 92.</p> <p>Reason: To ensure relevant utility and service providers’ requirements are provided to the certifier.</p>														
13.	<p><b>Concealment of Plumbing and Ductwork</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.</p> <p>Reason: To protect the visual amenity of the neighbourhood.</p>														
14.	<p><b>Section 7.11 Contribution</b></p> <p>In accordance with section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i> and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:</p> <table border="1"> <thead> <tr> <th>Contribution Category</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Open Space &amp; Recreation</td> <td>\$1,330.00</td> </tr> <tr> <td>Community Facilities</td> <td>\$0.00</td> </tr> <tr> <td>Transport</td> <td>\$3,498.00</td> </tr> <tr> <td>Plan Administration</td> <td>\$172.00</td> </tr> <tr> <td>Drainage</td> <td>\$916.00</td> </tr> <tr> <td>TOTAL</td> <td>\$5,916.00</td> </tr> </tbody> </table> <p>At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:</p> $C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$ <p>Where:</p> <p><math>C_{\text{payment}}</math> = is the contribution at time of payment</p> <p><math>C_{\text{consent}}</math> = is the contribution at the time of consent, as shown above</p>	Contribution Category	Amount	Open Space & Recreation	\$1,330.00	Community Facilities	\$0.00	Transport	\$3,498.00	Plan Administration	\$172.00	Drainage	\$916.00	TOTAL	\$5,916.00
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	<p>CPIconsent = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 136.4 for the December 2023.</p> <p>CPIpayment = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment</p> <p>Note: The contribution payable will not be less than the contribution specified in this condition.</p> <p>The monetary contributions must be paid to Council (i) <u>if the development is for subdivision – prior to the issue of the subdivision certificate</u>, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.</p> <p><u>It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.</u></p> <p>Council's Plan may be viewed at <a href="http://www.innerwest.nsw.gov.au">www.innerwest.nsw.gov.au</a> or during normal business hours at any of Council's customer service centres.</p> <p>Please contact any of Council's customer service centres at <a href="mailto:council@innerwest.nsw.gov.au">council@innerwest.nsw.gov.au</a> or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.</p> <p>Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to <a href="http://www.innerwest.nsw.gov.au/invoice">www.innerwest.nsw.gov.au/invoice</a>; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).</p> <p>The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.</p> <p>Reason: To ensure payment of the required development contribution.</p>				
<p>15.</p>	<p><b>Housing and Productivity Contribution</b></p> <p>a. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition (b.), is required to be made:</p> <table border="1" data-bbox="496 1435 906 1581"> <thead> <tr> <th>Housing and productivity contribution</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Housing and productivity contribution (base component)</td> <td>\$2,988.08</td> </tr> </tbody> </table>	Housing and productivity contribution	Amount	Housing and productivity contribution (base component)	\$2,988.08
Housing and productivity contribution	Amount				
Housing and productivity contribution (base component)	\$2,988.08				

	<p>Total housing and productivity contribution</p>	<p>\$2,988.08</p>
<p>b. The amount payable at the time of payment is the amount shown in condition 1 as the total housing and productivity contribution adjusted by multiplying it by:</p> <p style="text-align: center;"><b>Highest PPI number</b></p> <p style="text-align: center;"><b>Consent PPI number</b></p> <p>Where:</p> <p><i>highest PPI number</i> is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2<sup>nd</sup> last quarter before the quarter in which the payment is made, and</p> <p><i>consent PPI number</i> is the PPI number last used to adjust HPC rates when consent was granted, and</p> <p><i>June quarter 2023</i> and <i>PPI</i> have the meanings given in clause 22 (4) of the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i>.</p> <p>If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.</p> <p>c. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). In the Table, <i>HPC Order</i> means the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i>.</p> <p>d. The HPC must be paid using the NSW planning portal (<a href="http://pp.planningportal.nsw.gov.au/">http://pp.planningportal.nsw.gov.au/</a>).</p> <p>e. If the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:</p> <p>(a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,</p> <p>(b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.</p> <p>If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition (b.) at the time of payment.</p> <p>f. Despite condition (a.), a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the <i>Environmental Planning and Assessment Act 1979</i> to the development, or the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i> exempts the</p>		

	<p>development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.</p> <p>Reason: To ensure payment of the required development contribution.</p>				
16.	<p><b>Security Deposit - Custom</b></p> <p>Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.</p> <p>Security Deposit:</p> <table border="1"> <tr> <td>Security Deposit:</td> <td>\$5992.00</td> </tr> <tr> <td>Inspection Fee:</td> <td>\$374.50</td> </tr> </table> <p>Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.</p> <p>The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.</p> <p>Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.</p> <p>A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.</p> <p>The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.</p> <p>Reason: To ensure required security deposits are paid.</p>	Security Deposit:	\$5992.00	Inspection Fee:	\$374.50
Security Deposit:	\$5992.00				
Inspection Fee:	\$374.50				
17.	<p><b>Dilapidation Report – Pre-Development – Minor</b></p> <p>Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.</p> <p>Reason: To ensure Council assets are protected.</p>				
18.	<p><b>Stormwater Drainage System – Minor Developments (OSD is not required)</b></p>				

	<p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:</p> <ul style="list-style-type: none"> <li>a) The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. 2419 - S1&amp;S2 Rev A prepared by JOHN ROMANOUS &amp; ASSOCIATES PTY LTD and dated 11/10/2023.</li> <li>b) Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road. Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street may drained to an on-site dispersal system such as an absorption system or otherwise, subject to the roof areas being drained via a suitably sized rainwater tank, no nuisance or concentration of flows to other properties and the feasibility and design of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer.</li> <li>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.</li> <li>d) Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.</li> <li>e) The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.</li> <li>f) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.</li> <li>g) No nuisance or concentration of flows to other properties.</li> <li>h) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.</li> <li>i) A silt arrestor stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.</li> <li>j) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm.</li> <li>k) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.</li> </ul> <p>Reason: To ensure that the adequate provision of stormwater drainage is provided.</p>
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<b>19.</b>	<p><b>Design Change</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:</p> <p style="padding-left: 40px;">i. One (1) bicycle parking space is to be provided on site.</p> <p>Reason: To ensure that the proposal meets the bicycle parking requirements.</p>
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**BEFORE BUILDING WORK COMMENCES**

Condition	
<b>20.</b>	<p><b>Waste Management Plan</b></p> <p>Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
<b>21.</b>	<p><b>Erosion and Sediment Control</b></p> <p>Prior to the commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
<b>22.</b>	<p><b>Verification of Levels and Location</b></p> <p>Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
<b>23.</b>	<p><b>Dilapidation Report</b></p> <p>Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the identified properties, to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.</p> <p>Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>



<b>24.</b>	<p><b>Construction Fencing</b></p> <p>Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.</p> <p>Reason: To protect the built environment from construction works.</p>
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**DURING BUILDING WORK**

	Condition
<b>25.</b>	<p><b>Advising Neighbours Prior to Excavation</b></p> <p>At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, reasonable notice must be provided to the owner of the adjoining allotment of land including particulars of the excavation.</p> <p>Reason: To ensure surrounding properties are adequately notified of the proposed works.</p>
<b>26.</b>	<p><b>Construction Hours – Class 2-9</b></p> <p>Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:</p> <p>7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm); 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and at no time on Sundays or public holidays.</p> <p>Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.</p> <p>In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.</p> <p>This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.</p> <p>Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to 8:00am to 12:00pm, Monday to Saturday; and 2:00pm to 5:00pm Monday to Friday.</p> <p>The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works. "Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>

27.	<p><b>Survey Prior to Footings</b></p> <p>Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
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**BEFORE ISSUE OF AN OCCUPATION CERTIFICATE**

	Condition
28.	<p><b>Smoke Alarms - Certification of upgrade to NCC requirements</b></p> <p>Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.</p> <p>Reason: To ensure compliance with the National Construction Code (Building Code of Australia).</p>
29.	<p><b>Public Domain Works</b></p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the Roads Act 1993 including:</p> <ul style="list-style-type: none"> <li>a) Installation of a stormwater outlet to the kerb and gutter; and</li> <li>b) Other works subject to the Roads Act 1993 approval.</li> </ul> <p>All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".</p> <p>Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.</p>
30.	<p><b>No Encroachments</b></p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.</p> <p>Reason: To maintain and promote vehicular and pedestrian safety.</p>
31.	<p><b>Parking Signoff – Minor Developments</b></p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.</p> <p>Reason: To ensure the parking facilities comply with the relevant standards</p>

**OCCUPATION AND ONGOING USE**

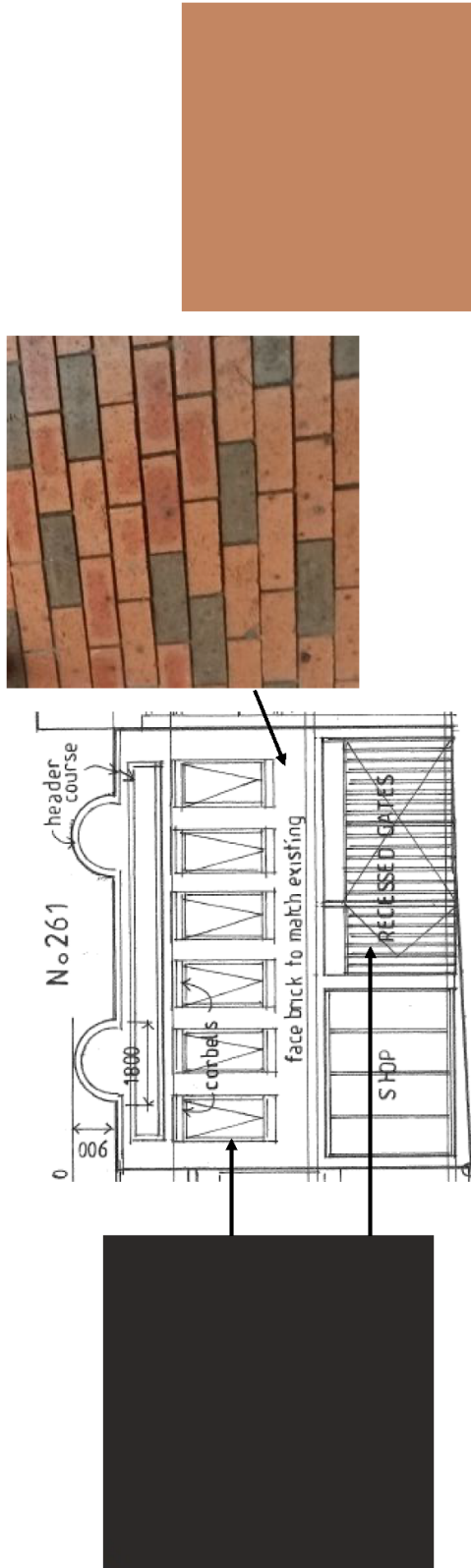
Condition							
32.	<b>Hours of Operation</b>						
	a. The hours of operation of the premises must not exceed the following:						
	<table border="1"> <thead> <tr> <th>Day</th> <th>Hours</th> </tr> </thead> <tbody> <tr> <td>Monday to Friday</td> <td>8:00AM to 5:00PM</td> </tr> <tr> <td>Saturday, Sunday and Public Holidays</td> <td>Closed</td> </tr> </tbody> </table>	Day	Hours	Monday to Friday	8:00AM to 5:00PM	Saturday, Sunday and Public Holidays	Closed
	Day	Hours					
	Monday to Friday	8:00AM to 5:00PM					
Saturday, Sunday and Public Holidays	Closed						
Reason: To protect the amenity of the neighbourhood.							

**DEMOLITION WORK**

**BEFORE DEMOLITION WORK COMMENCES**

Condition	
33.	<b>Hoardings</b>
	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. Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.

Attachment B – Plans of proposed development



**PROPOSED MATERIALS, FINISHES & COLOURS SCHEME: 261 ENMORE ROAD ENMORE**

COMPONENT	FINISH	PRODUCT	LUSTRE	COLOUR
Walls	Face brickwork	To match existing		
Aluminium Windows & Doors	Aluminium	Dulux – Powdercoat	Matt	Black
Driveway Gates	Galvanised mild steel	Dulux – Powdercoat	Matt	Black
Soffits	Painted concrete	Dulux – Acrylic	Low Sheen	Motueka

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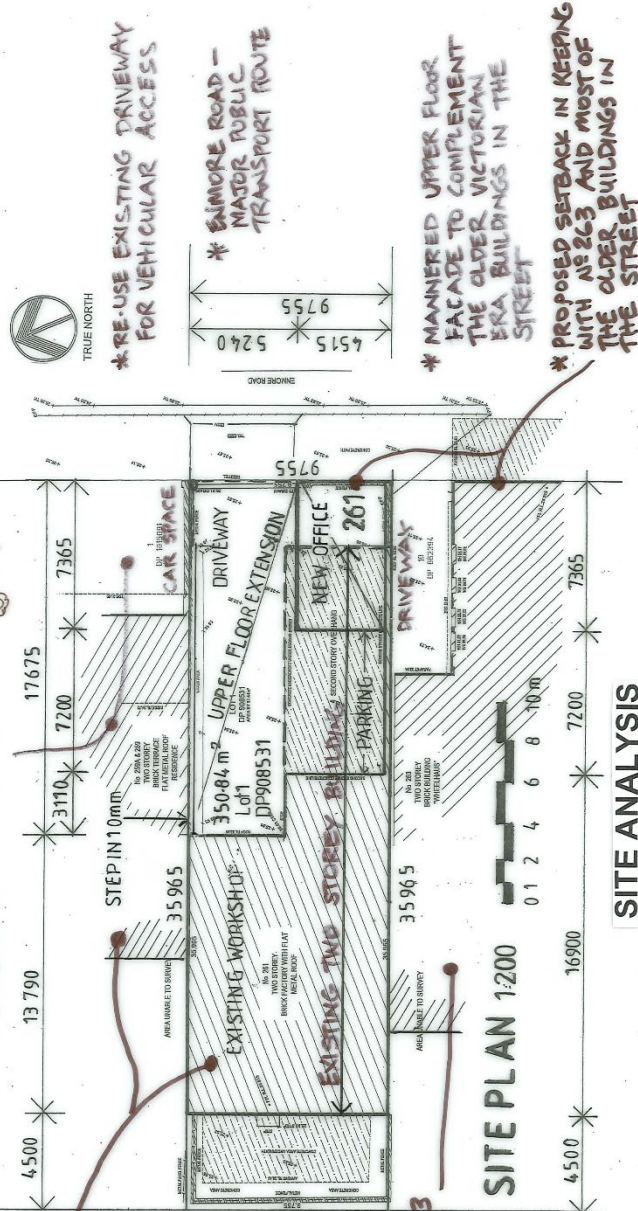
\* NO ADDITIONAL OVERSHADOWING OF ANY ADJOINING RESIDENTIAL BUILDING OR PRIVATE OPEN SPACE

\* MINIMAL ADVERSE IMPACT ON TERRACE HOUSE TO THE NORTH AS UPPER FLOOR ADDITIONAL ADJACENT TO CAR PARKING SPACE

\* EXISTING BUILDING ON SUBJECT SITE CONSTRUCTED BEFORE ADJACENT TERRACE HOUSE

\* NO ADDITIONAL IMPACT ON AMENITY OF RESIDENCES AT REAR OF SUBJECT SITE AS ALL PROPOSED WORK TO THE FRONT OF SITE

\* RESIDENTIAL COMPONENTS AT 263 CONSTRUCTED AFTER EXISTING BUILDING WAS BUILT



SITE ANALYSIS

SOUTHERLY WINDS



\* RE-USE EXISTING DRIVEWAY FOR VEHICULAR ACCESS

\* ENMORE ROAD - MAJOR PUBLIC TRANSPORT ROUTE

\* MANNERED UPPER FLOOR FACADE TO COMPLEMENT THE OLDER VICTORIAN ERA BUILDINGS IN THE STREET

\* PROPOSED SETBACK IN KEEPING WITH NO 263 AND MOST OF THE OLDER BUILDINGS IN THE STREET

DA SUBMISSION

PROPOSED ALTERATIONS & ADDITIONS TO AN ELECTRONICS WORKSHOP  
SITE ANALYSIS: 261 ENMORE ROAD ENMORE

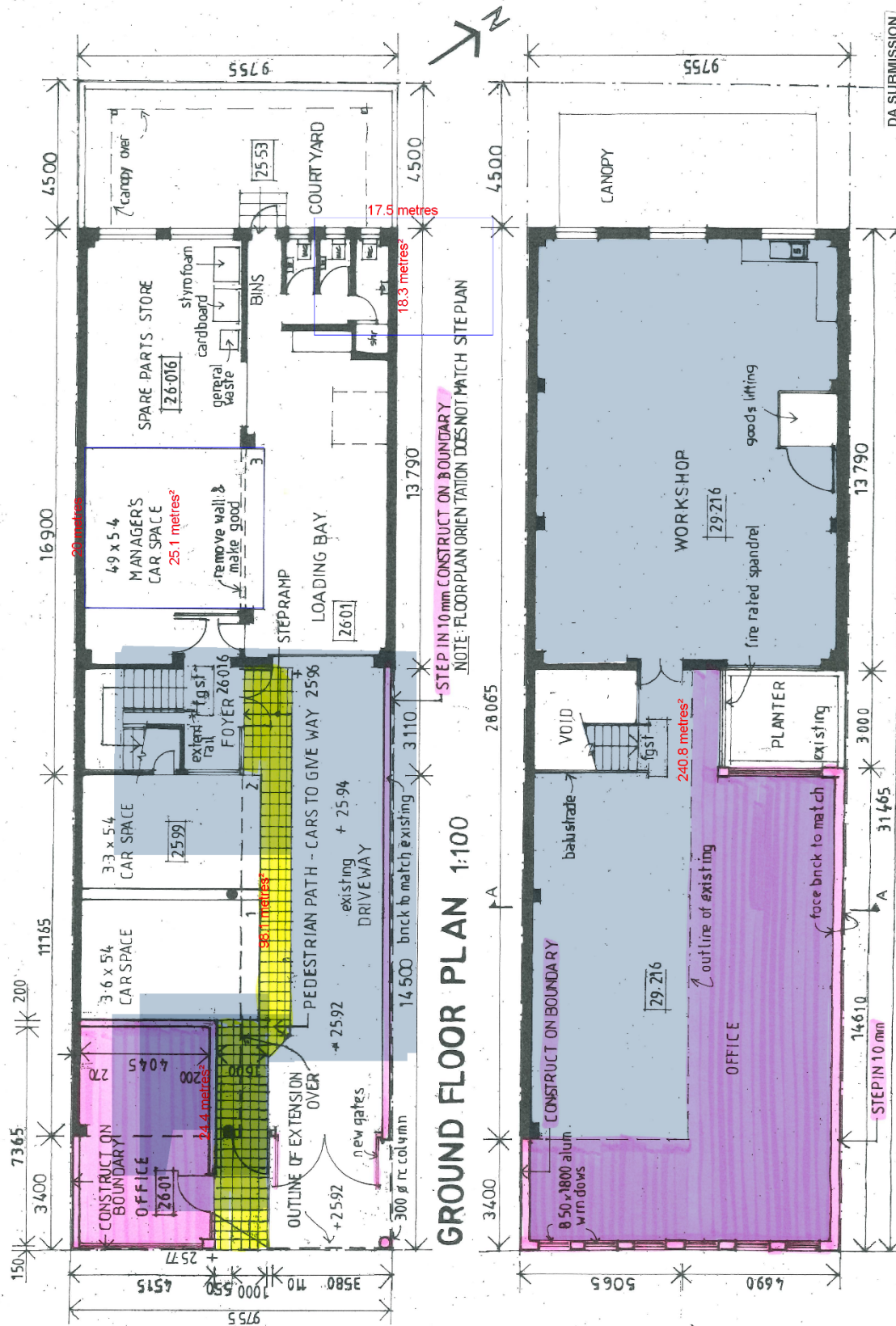
12 May 2023

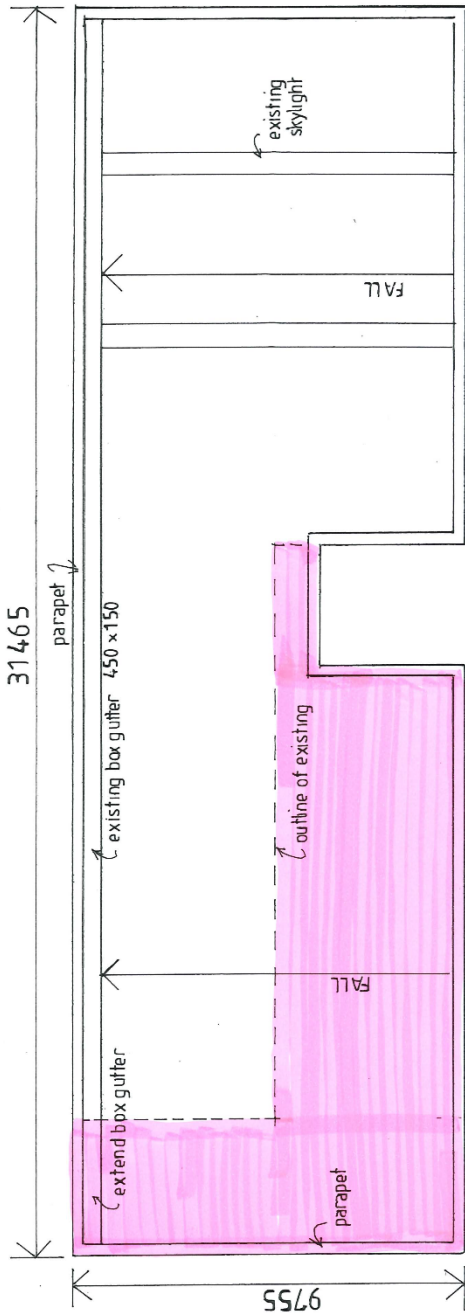
By: Dr G LOUPIS BSc(Arch), BArch(Hons), MBEnv, PhD(UNSW), GradDipEdu(Technical)

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Version: 2, Version Date: 16/04/2024





ROOF PLAN 1:100

DA SUBMISSION

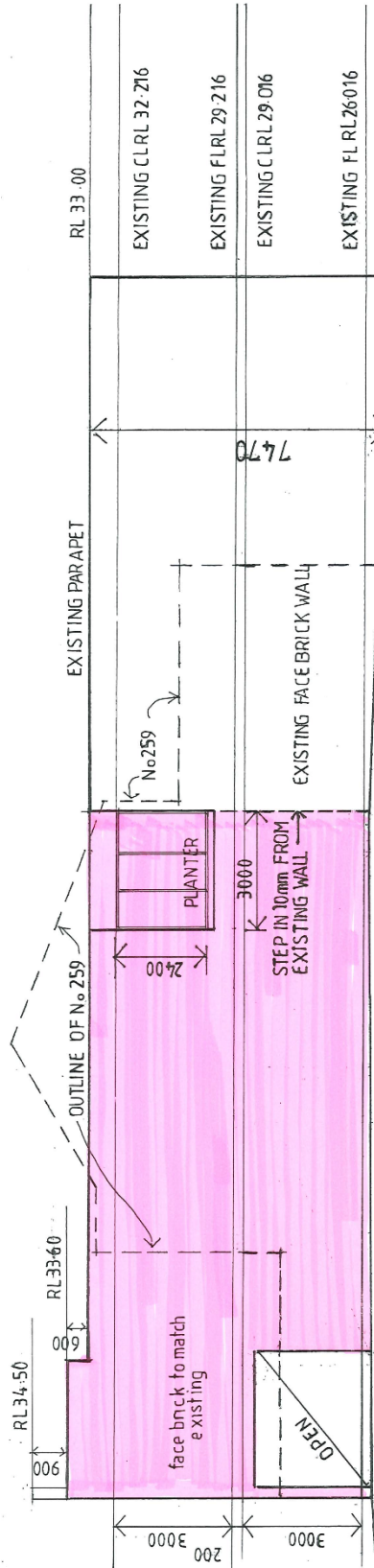
PROPOSED ALTERATIONS & ADDITIONS TO AN ELECTRONICS WORKSHOP  
ROOF PLAN: 261 ENMORE ROAD ENMORE

By: Dr G LOUPIS BSc(Arch), BArch(Hons), MBEnv, PhD(UNSW), GradDipEct(Technical)

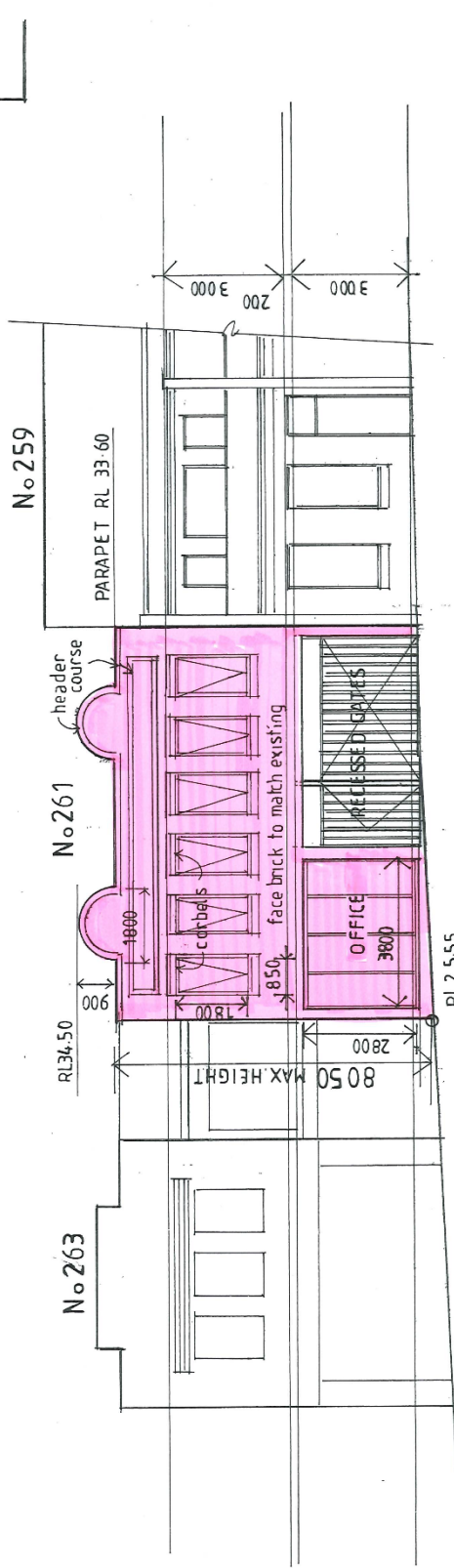
12 May 2023

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Version: 2, Version Date: 16/04/2024



**NORTH ELEVATION**



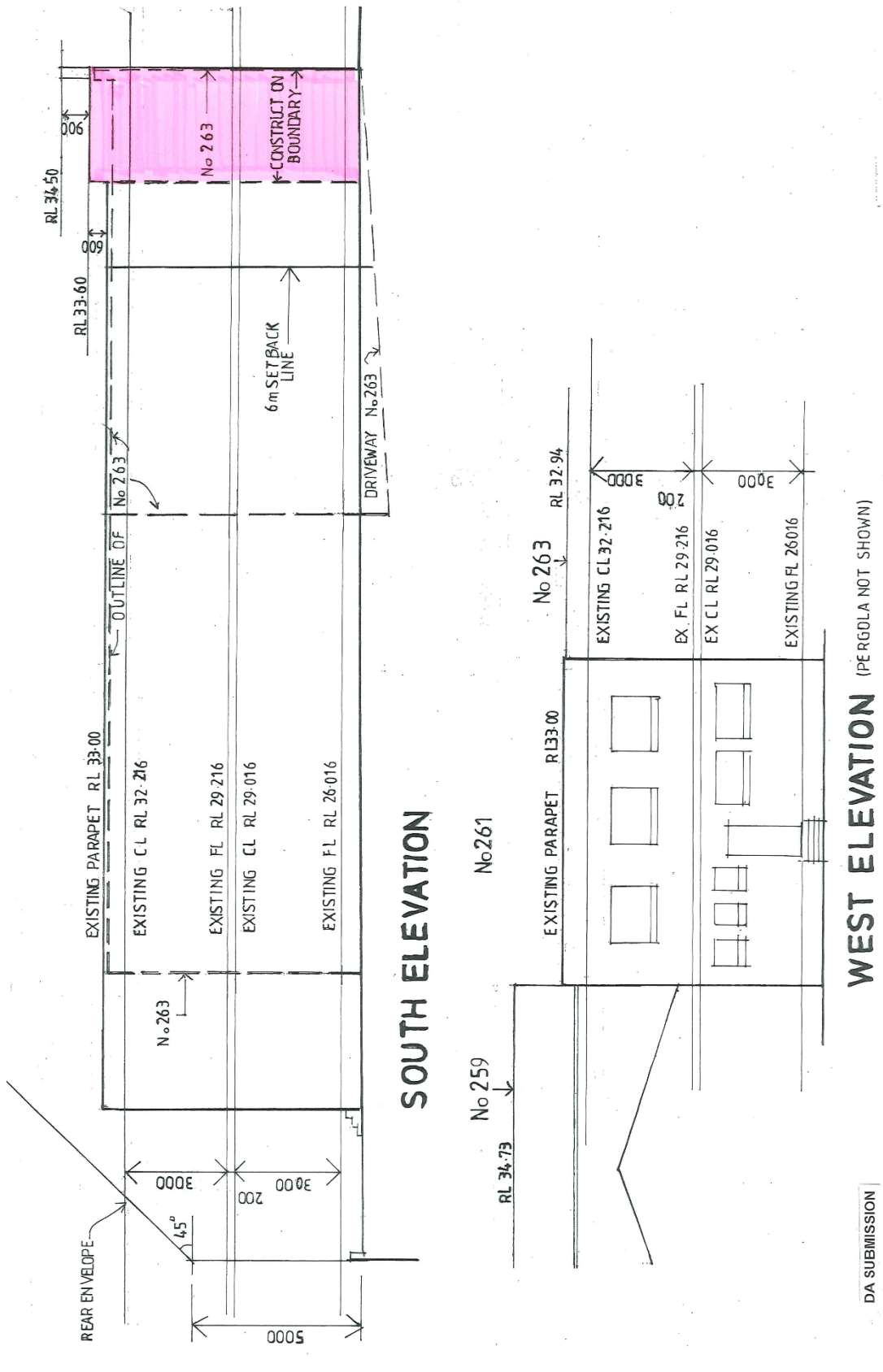
**EAST ELEVATION**

DA SUBMISSION  
 PROPOSED ALTERATIONS & ADDITIONS TO AN ELECTRONICS WORKSHOP  
 ELEVATIONS: 261 ENMORE ROAD ENMORE  
 By: Dr G LOUPIS BSc(Arch), BArch(Hons), MBEInv, PhD(UNSW), GradDipEd(Technical)

Sheet 1 of 2  
 12 May 2023

1:100 @ A3  
 Document Set ID: 38947728  
 Version: 2, Version Date: 16/04/2024



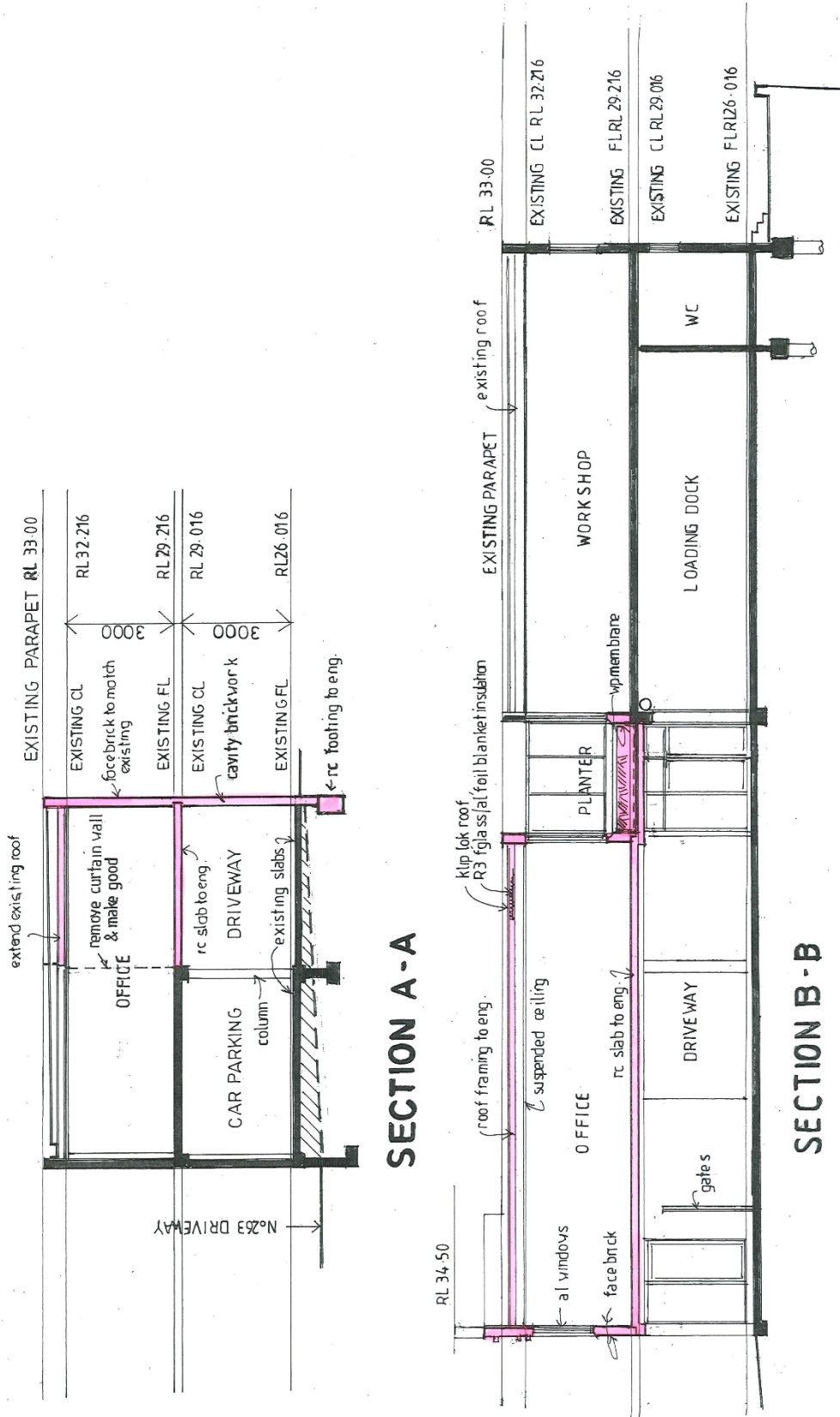


Sheet 2 of 2  
12 May 2023

**PROPOSED ALTERATIONS & ADDITIONS TO AN ELECTRONICS WORKSHOP**  
**ELEVATIONS: 261 ENMORE ROAD ENMORE**  
By: Dr G LOUPIS BSc(Arch), BArch(Hons), MBEEnv, PhD(UNSW), GradDipEd(Technical)

DA SUBMISSION  
1:100 @ A3

Document Set ID: 38847728  
Version: 2, Version Date: 16/04/2024



**SECTION A-A**

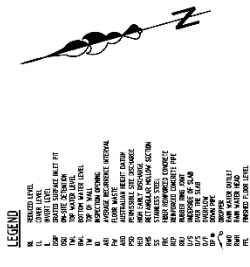
**SECTION B-B**

DA SUBMISSION  
**PROPOSED ALTERATIONS & ADDITIONS TO AN ELECTRONICS WORKSHOP**  
**SECTIONS: 261 ENMORE ROAD ENMORE**

By: Dr G LOUPIS BSc(Arch),BArch(Hons),MBEnv,PhD(UNSW),GradDipEd(Technical)

12 May 2023

**1:100 @ A3**  
 Document Set ID: 38847728  
 Version: 2, Version Date: 16/04/2024



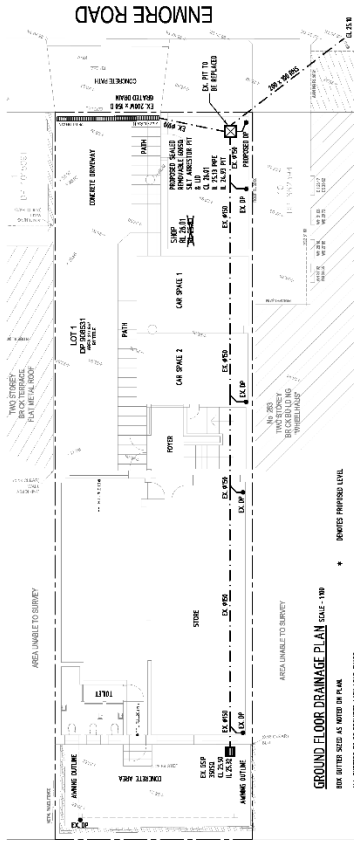
GENERAL NOTES:

- 1. ALL SERVICES ARE TO BE LOCATED THE FULL LENGTH OF THE PROPERTY... 2. DRAINAGE PITS ARE TO BE A MINIMUM 500mm DEPTH... 3. ALL PITS ARE TO BE CONCRETE TO THE FINISHED LEVEL... 4. ALL PITS ARE TO BE BUILT TO THE FINISHED LEVEL... 5. ALL PITS ARE TO BE BUILT TO THE FINISHED LEVEL...

INNER WEST COUNCIL - MARRICKVILLE DCP

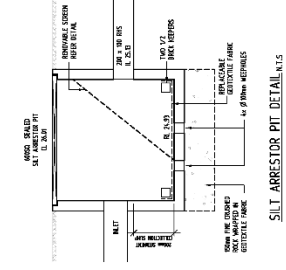
Table with 2 columns: AREA (m^2), GUTTER DISCHARGE (L/S), and INTENSITY (L/S). Row 1: 347.8, 204.4, 18.95.

NOTE: PEAK DISCHARGE TO GUTTER FROM THE SUBJECT PROPERTY IS 18.95 L/S. THEREFORE 100 0.5 D IS REQUIRED.

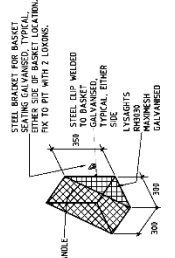


GROUND FLOOR DRAINAGE PLAN SCALE: 1:100

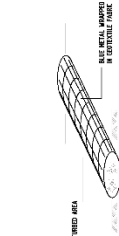
- FINISHED PROPOSED LEVEL
• EXISTING PROPOSED LEVEL
• FINISHED EXISTING LEVEL
• PROPOSED DOWNPIPE
• PROPOSED DRAINAGE PIT
• PROPOSED DOWNWATER PIPE



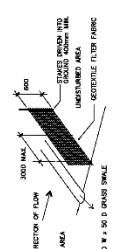
SILT ARRESTOR PIT DETAIL n1.5



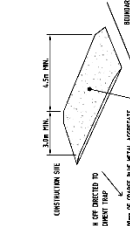
SCREEN DETAIL n1.5



SEDIMENT BARRIER n1.5



SEDIMENT FENCE DETAIL n1.5



CONSTRUCTION ENTRY/EXIT DETAIL n1.5

NOT FOR CONSTRUCTION. Project title: STORMWATER DRAINAGE / SEDIMENT CONTROL DETAILS. Client: JOHN ROMANOVIS & ASSOCIATES. Location: 201 ENMORE ROAD, ENMORE. Scale: A4/D 248 - 512.



## Attachment C – Section 4.6 Exception to Development Standards



**CLAUSE 4.6 VARIATION**  
**CLAUSE 4.4 (FLOOR SPACE RATIO)**  
**INNER WEST LOCAL ENVIRONMENT PLAN 2022**  
Date: February 2024  
Amended: April 2024

### 1. INTRODUCTION

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This submission under Clause 4.6 seeks a variation to Clause 4.4 of the Inner West Local Environmental Plan 2022 (IWLEP22), pertaining to the floor space ratio development standard.

This submission has been prepared in relation to an application for the alterations and additions to an existing business premise (a goods repair and reuse premises) at 261 Enmore Road, Enmore.

As detailed in this written request for a variation to the floor space ratio development standard under IWLEP22, the proposed development meets the requirements prescribed under Clause 4.6 of IWLEP22.

### 2. SITE BACKGROUND

---

The subject site is commonly known as 261 Enmore Road, Enmore, and is legally defined as Lot 1 in Deposited Plan 908531.

The site is located on the western side of Enmore Road and is on a block bounded to the north by Stanmore Road, to the west by Fotheringham Street and to the south by Newington Road. Refer to Figure 1 Site Location Map.

The site is a rectangular-shaped allotment with a front and rear boundary width of 9.755m and 35.965m long side boundaries. The overall site area is 350.84m<sup>2</sup>.

Located on the subject site presently is a two storey brick and metal commercial building occupied by an electronics company. The ground floor is comprised of car parking, and a loading and storage area with amenities. A workshop, office and reception area are located on the first floor. A small area of landscaping is within the front setback but is otherwise paved.

The site is zoned E1 Local Centre along with its neighbour to the south, two of several sets of properties along the western side of Enmore Road zoned E1. The remainder of the street is zoned R2 Low Density Residential. The streetscape is characterised, therefore, by a mixture of development being single and two storey residential properties and shop top housing of various styles though primarily terraces with high parapets.

Directly adjoining the site to the north is an R2 zoned two storey semi-detached terrace house with a hard stand front setback car parking space and nil setback to the site at 259 Enmore Road. To the south is a E1 zoned two storey shop top housing built to the street front with four dwellings at 263 Enmore Road. To the western, rear boundary are two storey R2 zoned semi-detached dwellings at 37-39 Fotheringham Street.

The site is proximate to public transportation. The site is 140m walking distance north of bus stops on Enmore Road at Newington Road, 230m to the south of additional stops/services on Enmore Road and Stanmore Road, and 1km from Newtown Train Station. The services at each location are frequent and allow easy access to nearby centres and further transport network connections.



Figure 1: Site Location Map (Source: Mecone Mosaic)

**3. VARIATION SOUGHT: CLAUSE 4.3 HEIGHT OF BUILDINGS**

The environmental planning instrument to which this variation relates is the Inner West Local Environmental Plan 2022. The development standard to which this variation relates is *Clause 4.4 Floor Space Ratio*, which reads as follows:

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

(2A) The maximum floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential identified as "Area 1" on the Key Sites Map is 1:1.

(2B) The maximum floor space ratio for development for the purposes of residential accommodation is as follows –

- (a) on land shown edged black or pink on the Floor Space Ratio Map—

Site area	Maximum floor space ratio
< 150m <sup>2</sup>	0.9:1
≥ 150 < 300m <sup>2</sup>	0.8:1
≥ 300m <sup>2</sup> < 450m <sup>2</sup>	0.7:1
≥ 450m <sup>2</sup>	0.6:1

- (b) on land shown edged orange or green on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m <sup>2</sup>	1.0:1
≥ 150 < 300m <sup>2</sup>	0.9:1
≥ 300m <sup>2</sup> < 450m <sup>2</sup>	0.8:1
≥ 450m <sup>2</sup>	0.7:1

- (c) on land shown edged brown on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m <sup>2</sup>	0.8:1
≥ 150 < 300m <sup>2</sup>	0.7:1
≥ 300m <sup>2</sup> < 450m <sup>2</sup>	0.6:1
≥ 450m <sup>2</sup>	0.5:1

- (d) on land shown edged yellow on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m <sup>2</sup>	0.9:1
≥ 150 < 300m <sup>2</sup>	0.8:1
≥ 300m <sup>2</sup>	0.7:1

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

Site area	Maximum floor space ratio
≤ 130m <sup>2</sup>	1.1:1
> 150 ≤ 200m <sup>2</sup>	1.1
> 200 ≤ 250m <sup>2</sup>	0.9:1
> 250 < 300m <sup>2</sup>	0.8:1
> 300 ≤ 350m <sup>2</sup>	0.7:1
> 350m <sup>2</sup>	0.6:1

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

*(2C) In calculating the floor space ratio in relation to land dedicated to the Council for the purposes of a proposed road on the Land Reservation Acquisition Map, land marked "Local Road (SP2)" must be included in the site area."*

The site is prescribed a maximum 0.85:1 FSR under the IWLEP22. Refer to the Floor Space Ratio Map in Figure 2.



Figure 2: Floor Space Ratio Map (Source: NSW Planning Portal Digital EPI Viewer)

No further subclause is relevant to the subject application and in defining the prescribed FSR.

**4. EXTENT OF NON-COMPLIANCE**

As noted above, Clause 4.4 of the IWLEP22 states the subject site has a maximum FSR of 0.85:1. Based on the site area of 350.84m<sup>2</sup>, the maximum permissible gross floor area is 298.21m<sup>2</sup>.

The proposed development seeks a gross floor area of 370.4m<sup>2</sup> (1.05:1), resulting in a variation of 72.19m<sup>2</sup> or 24.2%.

The proposed works are exclusively occurring between the existing building line and the street, bringing the built form into line with the existing and desired future character of built form within the E1 Local Centre land zoning. No new floors or extensions to the rear are sought. As is demonstrated within the SEE, the development occurs without negative impacts on surrounding properties.

A degree of flexibility is considered reasonable in this instance.



**5. CLAUSE 4.6**

This submission is made under clause 4.6 *Exceptions to development standards* of the IWLEP22. Clause 4.6 states the following:

***“4.6 Exceptions to development standards***

- (1) The objectives of this clause are as follows—*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (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.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

***Note—***

*The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) (Repealed)*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) (Repealed)*

- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4,
  - (caa) clause 5.5,
  - (ca) clause 6.27(4),
  - (cb), (cc) (Repealed)
  - (cd) clause 6.31.

#### **Application of Clause 4.6**

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development.

Clause 4.6 *Exceptions to development standards* establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

Additionally, this submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (‘Four2Five No 1’)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (‘Four2Five No 2’)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (‘Four2Five No 3’)*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*

#### **6. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

*"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

<b>First</b>	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.  The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. <b>(applicable)</b></i>
<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. <b>(not applicable)</b></i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. <b>(applicable)</b></i>
<b>Fourth</b>	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. <b>(not applicable)</b></i>
<b>Fifth</b>	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. <b>(not applicable)</b></i>

In respect of the floor space ratio development standard, the first and third methods are invoked.

**Third Method**

The third method is pursued on the basis of the second objective of Clause 4.4, which states:

*(b) to ensure development density reflects its locality,*

The third test is to establish that the underlying objective or purpose of the standard (in this case, FSR) would be defeated or thwarted if compliance was required. As will be detailed below, the objective to ensure development density reflects its locality is only achieved by the contravention of the standard.

The site is one of several pockets of E1 Local Centre zoned land along Enmore Road between Stanmore Road in the north and Addison Road in the south. These pockets are modest in size, including two instances of two isolated allotments which include the pocket that comprises the site and its southern neighbour, 263 Enmore Road.

A review of past approvals on these nearby E1 zoned properties that form the locality revealed a diverse but generally non-compliant FSR. These include the following:

Address	Application Number	Approved FSR
230 Enmore Road	DA375/00	1.55:1
263 Enmore Road	DA743/02	1.025:1
289 Enmore Road	DA60/09	1.26:1
291 Enmore Road	DA114/86	1.39:1
293 Enmore Road	DA228/03	0.94:1
295 Enmore Road	DA58/10	1.12:1
297 Enmore Road	DA209/05	1:1
299 Enmore Road	DA859/98	1.14:1

The furthest of these properties from the site is 299 Enmore Road which is 140m from the site, being well within the locality. As such, there is a significant degree of variation in FSR present across the vast majority of the E1 zoned land in the locality.

It is acknowledged the applications date back to past LEPs and have not been granted consent under the current LEP. However, it remains relevant to consider that the prescription of the FSR standard at a rate well below that of the existing development on the properties in the zone was in error.

The gazettal of the Marrickville LEP 2011 was when the FSR for these E1 zoned land was prescribed as 0.85:1. Notably, the previous LEP, Marrickville LEP 2001, prescribed these E1 properties with an FSR of 0.7:1. Several of the above approvals were granted consent under that LEP – indicating a historic and consistent issue of the prescribed FSR not reflecting the existing and approved built form in the zone.

The proposed development with an FSR of 1.05:1 fits within the lower end of the broad spectrum of approved FSRs on the most pertinent land in its locality.

Further to the above, the development results in a built form outcome that is more consistent with that of the locality than its current form. The new floor area that is above the development standard occurs at the front of the site at ground level in the form of an office component of the business and at the first floor in extending the building to a nil street setback. In both instances, this has responded to the prevailing character discussed in Part 5 of the Marrickville DCP 2011 for active street frontages in business zones and two storey street walls. This is illustrated in the comparison between the existing site in Figure 3 and the prevailing E1 built form with nil setbacks in Figures 4-6.



Figure 3: The subject site with an undercroft area at ground and a setback at first floor



Figure 4: View of the site (right) including the two storey shop top at 263 Enmore Road (left)



Figure 5: View of 257 (left) and 255 (right) Enmore Road, with nil street setbacks on both floors



Figure 6: View of a pocket of E1 zoned land at 299 (far left) to 291 (right) Enmore Road

As mentioned, the introduction of a nil setback at ground level and on the first floor ensures the development resolves the irregularity in the streetscape. Strict compliance with the

development standard would prohibit this outcome. Consequently, compliance is unreasonable in this instance.

#### ***First Method***

In accordance with the first method, compliance with the development standard is considered unreasonable or unnecessary in this case because the objectives of the development standard are nonetheless achieved.

The objectives of the development standard are quoted below. The subsequent discussion demonstrates how the proposal is consistent with the objectives.

*“(1) The objectives of this clause are as follows:*

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

#### Objective

- (a) to establish the maximum floor space ratio to enable appropriate development density,*

#### Comment

While the proposed development exceeds the maximum FSR specified for the site, it is relevant to note that the works are contained solely at the front of the site, essentially extending the built form to the street front and aligning with the prevailing character of E1 Local Centre zoned properties in the area as illustrated in Figures 3-6 above. Further, the extent of the floor area proposed remains comparable and even below that of similar developments in the area per the table of FSR above.

As such, the prescribed FSR in concert with the density of development within the same zone and locality have been used to enable an appropriate development density on the site.

#### Objective

- (b) to ensure development density reflects its locality,*

#### Comment

The position forwarded under the Third Method is reiterated: the proposed works allow for the built form to align with the prevailing character of the area, as well as the current controls under the Marrickville DCP 2011 that prescribe a nil setback and street wall for development in the business zones.

The extent of density sought will be consistent with the density in the locality notwithstanding the contravention of the development standard.

Objective

*(c) to provide an appropriate transition between development of different densities*

Comments

The site is bordered by R2 Low Density Residential to the north and west. In terms of the western neighbour, there are no works sought at the rear. The additional floor area that contravenes the development standard does not occur in an area visible to or impacts this land. Consequently, the transition between the site and the western neighbours remains as existing.

The interface with the northern neighbour, 259 Enmore Road, will be modified by the extension of the built form to a nil setback to the street and side. While there will result in some additional visual bulk from the front yard (which only consists of a car space), there is no outlook from within the property or at the rear that is affected. The dwelling has no windows facing the site, has a nil setback, and has a balcony with solid side walls restricting views toward Enmore Road only.

It is therefore submitted that there is no material impact by the contravention of the development standard. The transition between the site and the lower density zone is acceptable.

Lastly, the southern neighbour at 263 Enmore Road is the same prescribed density and as such a transition is not required to be considered. Notably, the property has an approved FSR of 1.025:1, directly comparable to the proposal.

In view of the above, despite the proposed FSR variation, the development provides an appropriate transition between densities around the site.

Objective

*(d) to minimise adverse impacts on local amenity,*

Comment

In terms of solar access amenity, the proposal results in marginal additional overshadowing to 263 Enmore Road at 9am. This additional impact is restricted to a door at ground level for the commercial tenancy and not a residential use. The remaining north facing windows are already overshadowed at this time.

At 12pm and 3pm, the additional overshadowing cast by the development falls on Enmore Road and has no material impact on useable areas of the public domain.

For privacy, the glazing proposed is generally restricted to facing Enmore Road and creates no overlooking. A lightwell is sought on the northern boundary which includes three points of glazing. However, 259 Enmore Road has a blank wall and as such no overlooking is created. Therefore, no visual privacy issues are created by the additional floor area.

In terms of acoustic privacy, the business nature of the uses would limit noise to standard business hours. As such, the extension of the existing operation administrative space will not create a noise nuisance.



Lastly, regarding the public domain interface and experience, the additional floor area will allow for the provision of ground level street activation and enhancement of the first floor.

In view of the above, the development has minimised adverse impacts on local amenity.

#### Objective

*(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

#### Comments

The existing site does not contain any trees, nor are any proposed. This is in keeping with all nearby E1 Local Centre zoned properties.

There are no specific requirements for landscaped area under Part 2.18 Landscaping and Open Space of the Marrickville DCP 2011 for a business/commercial development. The prevailing character for built form in this zone is nil street setbacks and limited outdoor area at the rear, which is consistent with the development as proposed.

The proposed works will not negatively impact the enjoyment of private properties. The provision of a more consistent built form with an active street frontage will allow for greater interactivity and enjoyment of the public domain.

In view of the above, the proposal is considered consistent with the objectives of Clause 4.4 of the IWLEP22 and demonstrates that strict compliance is unreasonable and unnecessary.

#### **7. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?**

As required by Clause 4.6 (3)(b), it must be demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The assessment above and shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The additional GFA is created by the in-fill of the front setback area of the existing building to create a two storey nil setback street wall, which will allow for the creation of an active street frontage consistent with the existing and desired future character and controls under Part 5 of the Marrickville DCP 2011.

The current street interface is of poor quality and will be enhanced by the street activation afforded by the ground level space and the nil setback of the first floor. This positive built form outcome that is encouraged by the controls is considered to be suitable environmental planning grounds to contravene the development standard.

Further to the above, the additional floor area occurs without environmental impact.

It is submitted that the above serves as sufficient environmental planning grounds to justify contravention of the FSR development standard. There is satisfactory merit to warrant contravention of the development standard in the context of the proposal.

Furthermore, it is important to also consider the objectives of the **E1 Local Centre** zone in relation to the development, which are as follows:

**E1 Local Centre zone****Objectives of zone**

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To provide employment opportunities and services in locations accessible by active transport.*
- *To provide retail facilities and business services for the local community commensurate with the centre's role in the local centres hierarchy.*
- *To ensure Inner West local centres are the primary location for commercial and retail activities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To enhance the unique sense of place offered by Inner West local centres by ensuring buildings display architectural and urban design quality and contributes to the desired character and cultural heritage of the locality.*

In response to the above the following is provided:

- The proposed alterations and additions will allow for the extension of the existing business (goods repair and reuse premises) that provides employment opportunities in the area.
- The extension of the current business will allow for continued investment in local commercial development that generates employment opportunities and economic growth.
- No residential development is sought as part of this application. The use does not prevent residential accommodation on other properties in the zone.
- The proposal is for the expansion and continuation of the business use, a non-residential use on the ground (and first floor) level.
- The extension of the existing business will create additional employment opportunities in an accessible area, being well located to train and bus services. The site is 1km from Newtown Train Station and within 230m walking distance of seven bus services leading to Newtown, Redfern, CBD, Bondi Junction, Canterbury, Marrickville, etc.
- The proposal will ensure a business in the local community commensurate with the centre's role in the local centres hierarchy.
- The use of the land does not conflict with the zones' role as the primary location for commercial and retail activities.
- The introduction of a front nil setback office space will create an active street frontage that can attract pedestrian traffic which the current building lacks.
- The alterations and additions to the building are deemed to align with the current building and enhance its presentation, architecturally and in terms of urban design quality, which will contribute to the desired character of the locality.

The proposed variation to the floor space ratio does not impact the ability of the development to meet the above objectives.

In this case, strict compliance with the FSR development standard is unnecessary and unreasonable and there are sufficient environmental planning grounds to allow the contravention of the development standard.

#### **8. IS THE VARIATION WELL FOUNDED?**

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It is considered that this has been adequately addressed within this written submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the IWLEP22 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the E1 Local Centre zoning of the land;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the existing and future character envisioned for the locality.

Based on the above, the variation is considered to be well founded.

#### **9. GENERAL**

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Clause 4.6 also states that:

- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) *(Repealed)*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
  - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *(Repealed)*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.27(4),*
- (cb), (cc) (Repealed)*
- (cd) clause 6.31.*

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

The development proposed is not complying development.

A BASIX certificate is not required for the application.

The development does not rely on or conflict with any of the clauses referenced in (c) to (cd).

#### **10. CONCLUSION**

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The proposal does not strictly comply with the maximum FSR standard as prescribed by Clause 4.4 of the IWLEP22. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the IWLEP22 have been met as addressed as the breach of the standard does not create any adverse environmental impacts and creates an improved development outcome for the site.

Consequently, strict compliance with this development standard is unreasonable and unnecessary and the use of Clause 4.6 of the IWLEP22 to vary this development control is appropriate in this instance. It is sensible to conclude that strict compliance with the maximum floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions regarding the proposed development, please do not hesitate to contact me.

Kind regards,

Darren Laybutt  
GAT & Associates  
Plan 3148