

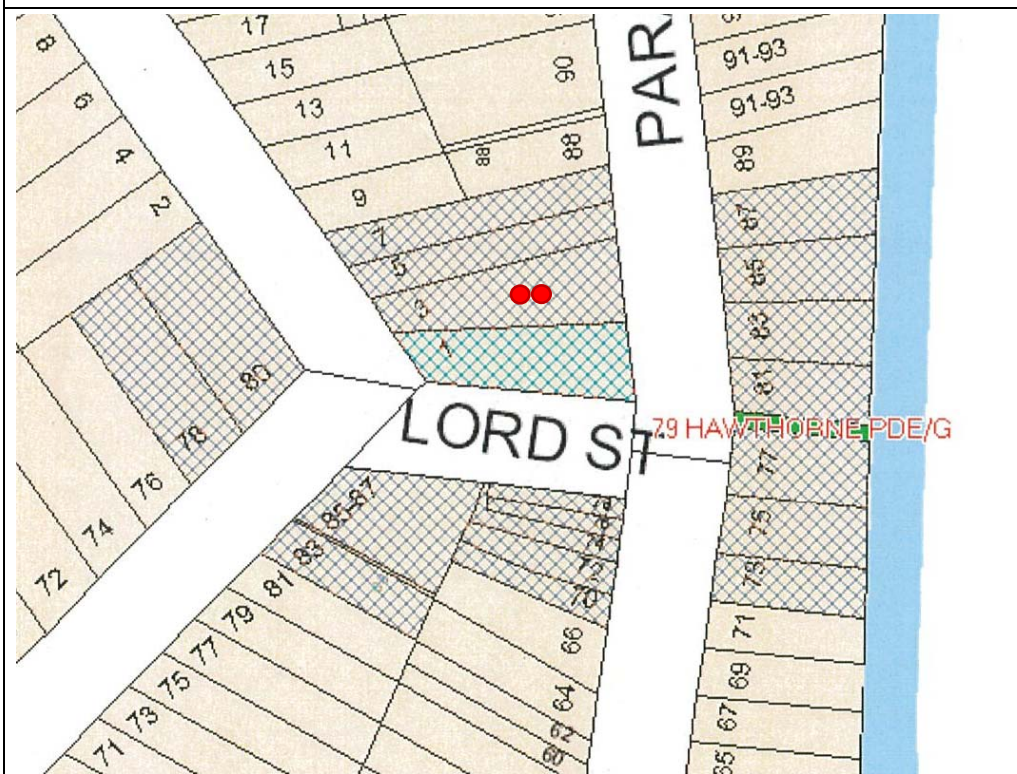


INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	10.2017.265.1
Address	1 Ramsay Street, Haberfield Lot 1, Section B, DP 1988
Proposal	Alterations and additions to a dwelling house and the conversion of an existing garage into a secondary dwelling and a single garage.
Date of Lodgement	21 December 2017
Applicant	Marcia Doheny & Nick Chapman
Owner	Marcia Doheny & Nick Chapman
Number of Submissions	One (Two from the same property)
Value of works	\$150,000
Reason for determination at Planning Panel	Potential conflict of interest – the applicant is current Council employee
Main Issues	Landscaping, setbacks
Recommendation	Approval

LOCALITY MAP



Legend

Subject Site



Submission



Notification Area



1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to a dwelling house and the conversion of an existing garage into a secondary dwelling and a single garage at No. 1 Ramsay Street, Haberfield. The application was notified to surrounding properties and two letters were received from the same property (ie one submission).

The main issues that have arisen from the application include:

- Setback of the proposed secondary dwelling; and
- landscaping

The non-compliances are acceptable given it's an existing building and existing situation with the landscaping and setbacks, therefore the application is recommended for approval.

2. Proposal

The application proposes alterations and additions to a dwelling house and the conversion of an existing garage into a secondary dwelling and a single garage.

The alterations and additions involve addition of new windows and sliding doors on the lower ground floor of an existing living, dining and kitchen.

The conversion of the existing garage into a secondary dwelling and a single garage involves an open plan combined living, dining kitchen with an attached garage on the ground floor, and a bedroom and bathroom and laundry on attic floor. Access to the garage would be from a new vehicular crossing off Hawthorne Parade. Access to the secondary dwelling would be from Hawthorne Parade with a secondary access from the Lord Street entrance. The building also includes two skylights on the south-western side of the roof to provide light into the secondary dwelling.

The application involves removal of a peppercorn tree on the southern side of the property and replacement tree planting. The application also involves some landscaping works to reduce the paved areas and to increase landscaping

3. Site Description

The subject site is located on the western side of Ramsay Street, between Lord Street and Hawthorne Street. The site consists of three street frontages, is generally irregular shaped with a total area of 595.6m² and is legally described as Lot 1, Section B, DP 1988.

The site has a frontage to Ramsay Street of 12.37 metres and secondary frontages of approximately 43.28 metres to Lord Street and 16.33 metres to Hawthorne parade.

The site supports one and two storey dwelling house on the eastern side of the site and a garage on the western side of the site. Vehicular access to the site is off Lord Street. The adjoining properties support one and two storey dwelling houses for residential use.

The subject site is within Haberfield Heritage Conservation area.

4. Background

4(a) Site history

The table below outlines the relevant development history of the subject site:

Application	Proposal	Decision & Date
DA 2000/123	Demolish timber framed sun room at rear & extension	Approved – 26/06/2000
DA 2003/365	New deck/patio	Approved – 22/03/2004
DA 2003/365/2	Section 96 modification to approved development	Approved – 10/08/2005
DA 2005/196	Alterations and additions to dwelling	Approved – 20/01/2006
Pre-DA 2016/24	Convert an existing garage to a studio/granny flat	2 September 2016

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
4/01/2018 – 31/01/2018	The application was notified.
10/04/2018	The applicant submitted revised plans demonstrating that all works are within the property boundary.
31/05/2018	Additional information was requested with respect to floor plans of the whole dwelling house, elevations with FFLs, and heritage concerns.
6/06/2018	A meeting held between the applicant and Council staff to discuss the issues raised in the request for additional information letter.
22/06/2018	Council received additional information with respect to the request.
28/06/2018	The adjoining neighbour at No.3 Ramsay Street was notified of the amended plans received into Council.
19/07/2018	Council received second submission from No. 3 Ramsay Street.

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 (as amended).

5(a) Environmental Planning Instruments

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

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Ashfield Local Environment Plan 2013

5(a)(i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

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

A BASIX Certificate was submitted with the application, which indicates that the proposal meets the required reduction targets. An appropriate condition of consent will be imposed to ensure future compliance with these targets.

5(a)(iii) State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with SEPP 55.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 which concerns the protection of trees identified under Inner West Comprehensive Development Control Plan 2016.

The application seeks consent for the removal of a tree from the site that is protected under the DCP. The issue of tree management is discussed later in this report under the heading for the relevant provisions of the DCP.

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

The *State Environmental Planning Policy (Affordable Rental Housing) 2009* was introduced by the NSW State Government to increase the supply and diversity of affordable rental and social housing in NSW. It covers housing types including villas, townhouses and apartments which contain an affordable rental housing component, along with secondary dwellings (also known as granny flats), new generation boarding houses, group homes, social housing and supportive accommodation.

The proposed secondary dwelling (granny flat) is assessed against the development standards in the *Affordable Rental Housing SEPP*, as outlined in the table below.

State Environmental Planning Policy (Affordable Rental Housing) 2009			
Control	Proposal	Requirement	Complies
Site Area	595.6m ²	450m ²	Yes
No. of Dwellings	2	2	Yes
Floor Area			
- Principle Dwelling	202m ²	N/A	N/A
- Secondary Dwelling	55.6m ²	Max. 60m ²	Yes
- Total	257.6m ²	Max. 297.8m ²	Yes
Car Parking			
- Principle Dwelling	1 spaces	1 spaces	Yes
- Secondary Dwelling	0	No additional parking	Yes

As detailed above, the proposal meets the above standards prescribed for Secondary Dwellings under Clause 22 the *SEPP (Affordable Rental Housing) 2009*.

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

Ashfield Local Environmental Plan 2013 - Summary Compliance Table				
Clause No.	Clause	Standard	Proposed	Compliance
2.2	Zoning	Zone R2 Low Density Residential	Alterations and additions to the existing dwelling house and secondary dwelling	Yes
4.3	Height of buildings	6m	Dwelling house - Existing – no change Secondary dwelling – 5.7m	Yes Yes
4.4	Floor space ratio	0.5:1 (297.8m ²)	0.43:1 (257.6m ²)	Yes
5.10	Heritage Conservation	The site is located within the Haberfield Heritage Conservation Area.		
5.10(4)	Effect of proposed development on heritage significance	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or the area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted	The proposed alteration and additions are acceptable in term of heritage impacts. Refer to discussion Section 5(d) of this report.	Yes

		under subclause (6).		
5.10(5)	Heritage Assessment	<p>The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>The applicant's Heritage Impact Statement concludes there would be no adverse impact on the heritage conservation area as a result of the proposed development</p> <p>Refer to discussion Section 5(d) of this report.</p>	Yes
6.5(3)(a)(i)	Development on land in Haberfield Heritage Conservation Area	If the development involves the addition of gross floor area above the ground floor of a dwelling house the additional gross floor area is contained entirely within the roof space of the dwelling house.	N/A – existing two storey dwelling	N/A
6.5(3)(a)(ii)	Development on land in Haberfield Heritage Conservation Area	If the development involves the additional gross floor area below the ground floor of the dwelling house – the additional gross floor area does not exceed 25 percent of the gross floor area of the dwelling house and does not require significant excavation.	N/A	N/A
6.5(3)(c)	Development on land in Haberfield Heritage Conservation Area	The development does not involve the installation of dormer or gablet windows.	No dormer or gablet windows proposed.	N/A
6.5(3)(d)	Development on land in Haberfield Heritage Conservation Area	A minimum of 50% of the site is available for landscaping.	Currently the site has 40.9% landscaped area. The proposal would increase it to 45.9%.	No - Refer to Cl. 4.6 discussion below.

Clause 6.5 Development on land in Haberfield Heritage Conservation Area

As demonstrated in the table above, the proposed development does not comply with Clause 6.5 (3)(d) with respect to the minimum 50% of the site available for landscaping.

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

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 be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*
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.*

The application is accompanied by a written request in accordance with Clause 4.6 Exceptions to Development Standards under Ashfield LEP 2013. In summary, the applicant's written request justifies the non-compliance on the basis that the proposal:

- Compliance with the numerical control cannot be achieved due to the existing pattern of development on the site and is unreasonable.
- The numerical non-compliance of the proposed development is minor in nature and the proposal increases the amount of landscaped area provided to the subject property.
- Although the proposal departs from the numerical standard, it satisfies the objectives of the standard, and hence there is scope on merit grounds to permit the breach.
- The proposal can be considered acceptable as it is the result of a well-balanced urban design solution that achieves the intent and objectives of Council's planning controls. The proposal is generally compliant with the requirements of Ashfield LEP and DCP, and the SEPP Affordable Rental Housing.
- There is no additional site coverage proposed, the proposal seeks to refurbish an existing structure on the site.
- Large established trees and shrubs on the site are retained in the proposed landscape plan.
- The proposal has no impact on adjoining properties in regards to solar access, overshadowing, privacy and amenity.
- The proposal will not detract from the streetscape, and the bulk and scale is in keeping with the existing character and the Councils controls.

- Compliance with the standard would not necessarily achieve a better outcome. The minor variation to the landscape area has a negligible impact on the amenity of the dwellings, the amenity of the neighbouring dwellings and open space, and the Haberfield streetscapes.
 - The proposal represents a high level of amenity and design, and complies with all other relevant clauses in the ALEP and the DCP, including building and wall heights, floor space ratio, private open space, car parking, privacy and solar access. Although the proposal does not meet the numerical standard, it does increase the amount of landscaping on the site.
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

The applicant has addressed the matters required under Clause 4.6 Exceptions to Development Standards, and it is considered to be well founded in this instance. The proposal would not result in a detrimental impact on the public interest and can satisfy the objectives of the development standards and Low Density Residential zoning as demonstrated below:

- The non-compliance is an existing situation as the site currently has only 40.9% (243m²) landscaping. The proposed development is not increasing the breach but would actually result in a greater landscaped area of 45.9% (273m²), which provides a better outcome than the pre-development situation.
- It is considered that the proposed landscaping is sufficient for the use of the site and it would be unreasonable for the applicant to comply with the 50% landscaped area provision.
- The numerical non-compliance with the landscaped area does not form adverse amenity impacts to the surrounding development as the proposed development generally complies with the provisions of the ALEP 2013 and Comprehensive Inner West Development Control Plan 2016 including building height, private open space, solar access, visual privacy and heritage.
- The proposed development is appropriate for the site and maintains the low density residential character of the locality.
- The non-compliance is acceptable as the proposed development would provide better amenity to the existing dwelling.

- The proposed development is primarily within the existing building footprint.
- The proposed development would not create a precedence given the existing unique situation.

Accordingly, the proposed development is considered acceptable.

5(b) Draft Environmental Planning Instruments

Draft Environment SEPP

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan 2016 as follows:-

Chapter F Development Category Guidelines – Part 1 – Dwelling Houses and Dual Occupancy

Reference	Control	Standard	Proposed	Compliance
DS3.4	Wall height	Maximum external wall height of 6 metres measured from the existing ground level.	Dwelling house - Existing - no change proposed Garage – 3.5m	Yes Yes
DS4.3	Setbacks	Side setbacks are determined by compliance with the BCA. Generally, Council requires a minimum side setback of 900mm for houses	Existing – no change proposed	Yes
DS6.1	Garages and carports	A minimum of one carparking is required per dwelling	The subject site provides one car parking on the site.	Yes
DS9.1	Principal private open space	Principal private open space is: <ul style="list-style-type: none"> • directly accessible from and at the same level as ground living area • has a minimum area of 20 m² • has a minimum dimension of 	The private open space will have a minimum area of 20m ² and a minimum dimension of 3.5m.	Yes

		<p>3.5 m</p> <ul style="list-style-type: none"> has an appropriate level of solar access, natural ventilation and privacy 		
DS 11.1	Front gardens	Requires front garden to have an area and dimensions that provide sufficient soil area for ground cover, vegetation and trees.	The existing front garden will be retained.	Yes
DS 11.2	Front gardens	Requires hard paved areas to be minimised, and driveways have a maximum width of 3 metres	The existing path will be modified to provide soft landscaping.	Yes
DS 12.1	Rear gardens	Requires rear gardens to have an area and dimension that provide sufficient soil area for ground cover, vegetation and trees.	The rear garden provides sufficient soil area for ground cover, vegetation and trees.	Yes
DS13.1-13.2	Solar access	<p>Sunlight to at least 50% (or 35m² with minimum dimension 2.5m, whichever is the lesser) of private open space areas of adjoining properties is not to be reduced to less than three (3) hours between 9am and 3pm on 21 June.</p> <p>Existing solar access is maintained to at least 40% of the glazed areas of any neighbouring north facing primary living area windows for a period of at least three hours between 9am and 3 pm on 21 June.</p> <p>Requires main living areas to be located on the northern side of buildings where possible and subject to streetscape quality considerations.</p>	<p>The proposal would not result in any unreasonable shadow impacts to the adjoining properties.</p> <p>Existing solar access is maintained to the neighbouring north facing primary living area windows.</p>	Yes
S 13.3		Requires main living areas to be located on the northern side of buildings where possible and subject to streetscape quality considerations.	The site has three street frontages and the ground floor living areas will receive some direct northern sunlight.	Yes
DS 13.4		Requires sun shading devices such as eaves, overhangs or recessed balconies minimise the amount of direct sunlight striking facades.	The existing dwelling has eaves to minimise direct sunlight striking on facades.	Yes
DS14.1	Visual privacy	Requires the number of windows to side elevations located above the ground floor to be minimised.	The proposal does not involve any new windows above ground floor.	Yes

Chapter F Development Category Guidelines – Part 2 – Secondary dwelling

Secondary Dwelling Compliance Table				
Reference	Control	Standard	Proposed	Compliance
DS1.1	Site Area	On merit	Existing site area is 595.6m ²	Yes
DS2.1	Floor Area	Maximum floor area is 60m ² .	55.6m ²	Yes

DS2.2		The total gross floor area of the principal dwelling and the secondary dwelling is no more than the maximum FSR allowed under the Ashfield LEP 2013.	0.43:1	Yes
DS3.1	Building Height	Maximum building height is single storey or as a second storey in an attic as defined in the Standard LEP instrument.	The proposal is single storey with an attic.	Yes
DS4.1	Subdivision	Subdivision of the secondary dwelling from the principal dwelling is not permitted	No subdivision is proposed	Yes
DS5.1	Setbacks	A secondary dwelling is not located forward of the front building line of the principal dwelling	The secondary dwelling is proposed to be located at the rear of the subject site within an existing building.	Yes
DS5.2		Minimum side setback is 0.9 metres	Nil - northern side	No – see discussion
DS5.3		Minimum rear setbacks maintain a useable back garden	4.8m – Southern side No changes to the rear setback	Yes Yes
DS5.4		If the secondary dwelling is built as a loft structure over a garage with rear lane access it may be built: <ul style="list-style-type: none"> - in line with an existing garage - a minimum of 1 metre from the rear boundary - contained within an attic space 	Proposed rear setback maintains usable private garden.	Yes
DS7.1	Landscaped Area	Development does not reduce landscaped areas for the property to less than the minimum required for a dwelling house	The proposed secondary dwelling is within the existing building so no reduction to the landscaped area.	Yes

It is considered the application generally complies with the parts as indicated and ultimately achieves the aims and objectives of the Comprehensive Inner West Development Control Plan 2016, with the exception of the following:

Setbacks

The proposed secondary dwelling has a nil setback on the northern and eastern boundaries, and does not comply with the 900mm side setback and 1metre rear setback requirements respectively. Notwithstanding, the proposed secondary dwelling is within an existing garage structure which has an existing nil side and rear setbacks. It is considered that the non-compliance with the setback would not have detrimental impact on the amenity of the surrounding properties or the streetscape. The proposed secondary dwelling meets the objectives of the DCP and is considered acceptable.

Tree Management

The application proposes the removal of a peppercorn tree from the southern side of the site. The application also proposes a replacement planting. Council's assessment has considered that the tree is in fair condition and has medium retention value, and provides a visual screen to Lord Street. Accordingly, the removal of the peppercorn tree is not acceptable.

Heritage/Streetscape

The site is located within Haberfield Heritage Conservation Area under ALEP 2013. The existing dwelling is a two storey dwelling house.

The applicant's heritage impact submitted with the DA concludes that there would be no adverse impact on the heritage conservation area as the proposed development is generally within the original structures to minimise its visual impact within the streetscape.

During the assessment of the application, the applicant met with Council's Heritage Advisor who raised concerns with the size and location of the proposed windows on the dwellings and the design of the secondary dwelling and its adverse impact on the streetscape. The applicant subsequently amended the design to address the concerns.

The proposed development's roof form is visually subservient within the primary streetscape. The proposal involves retention of the main façade features and incorporates complementary colours and materials to the secondary dwelling structure. Council's Heritage Advisor considers the proposed development to be acceptable in terms of the significance of the HCA.

The proposed development is therefore appropriate for the site in terms of heritage and streetscape impacts.

Stormwater Management

The development proposes to connect to existing stormwater system by gravity to the Hawthorne Parade street gutter system. Council's engineering assessment considers the drainage system is satisfactory, subject to recommended conditions.

5(d) The Likely Impacts

Section 4.15(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

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

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

The site is zoned R2 Low Density Residential. The paucity of environmental impacts demonstrates the site is suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified to surrounding properties from 4 January 2018 to 31 January 2018. One submission was received. Additionally, No. 3 Ramsay Street was notified of the

amended plans and was given an opportunity to put in a submission in early July 2018. Further submission was received. The concerns raised are addressed below:

Issue: Unacceptable boundary encroachment

Comment: Council received one submission raising concerns with respect to unacceptable boundary encroachment. The submission states that the existing garage structure encroaches over No.3 Ramsay Street. The Application has submitted a survey showing that the footprint of the existing garage is wholly within the property boundary of No. 1 Ramsay Street. Currently, there is a minor encroachment of the eaves. However, the development proposes to remove the eaves so the proposed building structure would be within the subject site with no encroachment. To ensure that no structures encroach over the property boundary, a condition of consent is recommended that the proposed secondary dwelling and garage structure is to be wholly within the property boundary.

Issue: Noise impacts

Comment: Council received one submission raising concerns with respect to noise impacts from the proposed secondary dwelling and garage into No. 3 Ramsay Street. The proposed secondary dwelling has no windows adjoining the property at No. 3 Ramsay Street. Furthermore, the living areas at No. 3 Ramsay Street are located on the western side of the property, away from the proposed secondary dwelling. The proposed secondary dwelling adjoins a double garage at No. 3 Ramsay Street. It is considered that the proposed secondary dwelling would not have adverse noise impacts on No. 3 Ramsay Street.

Issue: Inappropriate rear setback

Comment: Council received one submission raising concerns with respect to inappropriate rear setback. The proposed setbacks including rear setback have been addressed and considered acceptable under section 5(c) of this report.

Issue: Dangerous driveway location

Comment: Council received one submission raising concerns with respect to the location of the proposed driveway and that it would be dangerous. Council's assessment has considered that the proposed driveway location is appropriate and would not have adverse impact subject to appropriate construction conditions.

5(g) The Public Interest

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

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

6 Referrals

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

6(a) Internal

Heritage Officer – Council's heritage assessment considers the proposed development acceptable.

Development Engineer – Council's engineering assessment considers the proposed development acceptable subject to conditions.

Tree Management – Council's tree assessment considers the proposed development acceptable subject to conditions.

6(b) External

Not Applicable

7. Section 7.11 Levy

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$8,910.93 would be required for the development under Ashfield Section 94 Contributions Plan 2014, being for one residential accommodation (secondary dwelling) less than 60m² GFA.

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

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Ashfield Local Environmental Plan 2013 and Comprehensive Inner West Development Control Plan 2016.

The development will not result in any unreasonable impacts on the amenity of adjoining premises and the streetscape.

The non-compliance with the landscaping development standard has been adequately justified in the applicant's written request in accordance with Clause 4.6 Exceptions to Development Standards.

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

9. Recommendation

- A. That the Inner West Local Planning Panel (IWLPP) approve a variation to landscaping prescribed by clause 6.5 (3)(d) in the Ashfield Local Environmental Plan 2013, as it is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and objectives for development within the zone.

- B. That Council, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: 10.2017.265.1 for Alterations and additions to a dwelling house and the conversion of an existing garage into a secondary dwelling and a single garage at 1 Ramsay Street, Haberfield subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS

DA 2017.265.1
1 Ramsay Street HABERFIELD 2045

Description of Work as it is to appear on the determination:

Alterations and additions to a dwelling house and the conversion of an existing garage into a secondary dwelling and a single garage.

A General Conditions

(1) Approved plans stamped by Council

The development must be carried out only in accordance with the plans and specifications set out on drawing numbers prepared by and date stamped by Council and any supporting documentation received with the application, except as amended by the conditions specified hereunder.

Approved Plans:

Drawing No.	Title/Description	Prepared by	Issue/Revision	Date
DA01	Site plan/concept drainage plan	Palfreeman Sweeney Architects	C	June 2018
DA02	Secondary dwelling plans – lower level plan	Palfreeman Sweeney Architects	C	June 2018
DA03	Secondary dwelling elevations – west elevation	Palfreeman Sweeney Architects	C	June 2018
DA04	Secondary dwelling sections	Palfreeman Sweeney Architects	C	June 2018
DA05	Lower level plan (house) & east elevation (house)	Palfreeman Sweeney Architects	B	June 2018
DA06	South elevation (house) (Lord St) & North elevation (house)	Palfreeman Sweeney Architects	B	June 2018
DA07	Ground floor plan	Palfreeman Sweeney Architects	B	June 2018
DA09	Schedule of Materials and Finishes	Palfreeman Sweeney Architects	B	June 2018
L1	Landscape Plan	Phillips Marler		7/11/2017
L2	Indicative shrubs and ground cover	Ohillips Marler		7/11/2017

Supporting Documents:

Title/Document	Prepared by	Issue/Revision	Date
BASIX Certificate 879260S	Palfreeman Sweeney Architects		17 November 2017
Waste Management Plan	Unknown		November 2017

In the event of any inconsistency, the conditions of this consent shall prevail.

(2) Compliance with BCA

All architectural drawings, specifications and related documentation shall comply with the Building Code of Australia (BCA). All work must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(3) Project Arborist

A Project Arborist shall be engaged before work commences for the duration of the site preparation, demolition, construction and landscaping.

Project Arborist - for the purpose of these conditions a Project Arborist is a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF) and who does not remove or prune trees in the Inner West local government area.

The contact details of the Project Arborist shall be advised to council before work commences and maintained up to date for the duration of the works. If a new Project Arborist is appointed details of the new Project Arborist shall be notified to council within 7 days.

(4) Works near trees

Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
<i>Eucalyptus</i> sp. (Ironbark) Rear	Crown Raise Pruning

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

(5) Trees to be retained

The trees identified below are to be retained:

Tree/location
<i>Eucalyptus</i> sp. (Ironbark) rear on Hawthorne Parade boundary <i>Angophora hispida</i> (Dwarf Apple) rear, Lord Street boundary. <i>Schinus molle</i> (Peppercorn tree) side, Lord Street boundary. <i>Syzygium 'Cascade'</i> (Lilly Pilly) side, Lord Street boundary. <i>Lophostemon confertus</i> (Brush Box) street tree Hawthorne Parade.

Details of the trees to be retained must be included on the Construction Certificate plans

B Design Changes

C Conditions that must be satisfied prior to issuing/releasing a Construction Certificate

(6) Waste Management Plan

Prior to the issue of a Construction Certificate, the applicant shall prepare and submit a Waste Management Plan in accordance with the provisions of Inner West Comprehensive Development Control Plan - Planning For Less Waste and the Waste Planning Guide for Development Applications (Planning for Less Waste, prepared by the Regional Waste Boards), including:

- a) Estimations of quantities and type of materials to be reused, recycled or left over for removal from site;
- b) Identification on a plan of on site material storage areas during construction, waste storage, recycling and composting areas;
- c) Details of construction materials and methods to be used to minimise the production of waste in the completion of the new building work.
- d) How waste is to be treated on the site.
- e) How any residual non-reusable and non-recyclable waste is to be disposed of and including details of the approved waste disposal outlets where disposal will take place.

(7) Erosion & sedimentation control-management plan

Prior to issue of a construction certificate the applicant shall prepare an erosion and sedimentation control plan in accordance with Part 4 of the guidelines titled "*Pollution Control Manual for Urban Stormwater*", as recommended by the Environmental Protection Authority.

Any stormwater runoff collected from the site must be treated in accordance with the Guidelines, before discharge off the site to comply with the *Protection of the Environment Operations Act 1997* or other subsequent Acts.

Where sedimentation control basins are provided discharge shall be to the requirements of the Environment Protection Authority.

Applicants are further advised to refer to the following publications for additional information:

- i. "*Sedimentation and Erosion Control*" - Department of Conservation and Land Management.
- ii. "*Soil and Water Management for Urban Development*" - Department of Housing.

The plan must be submitted with the application for a construction certificate.

Further information may be obtained from:

Environment Protection Officer
 Environment Protection Authority
 Inner Sydney Region
 Locked Bag 1502
 BANKSTOWN NSW 2200

(8) Security Deposit

Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit (FOOT)	\$7,860.00
Inspection fee (FOOTI)	\$225.00

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

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

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

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

The amount nominated is only current for the financial year in which the 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.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

(9) Long service levy

Compliance with Section 109F of the *Environmental Planning and Assessment Act 1979* – payment of the long service levy under Section 34 of the *Building and Construction Industry Long Service Payments Acts 1986* – is required. All building of \$25,000.00 and over are subject to the payment of a Long Service Levy fee. A copy of the receipt for the payment of the Long Service Levy shall be provided to the Principal Certifying Authority (PCA) prior to the issue of a Construction Certificate. Payments can be made at Long Service Payments Corporation offices or most Councils.

(10) Home Building Compensation Fund Warranty

Compliance with Part 6 of *Home Building Act 1989* is required. A copy of either the Builders Home Warranty Insurance OR a copy of the Owner-Builder Permit shall be submitted to Council.

(11) Services and infrastructure adjustment/relocation

The applicant shall meet the full cost for Telstra, Sydney Water, Energy Australia, AGL Electricity/AGL Retail Energy or alternative service/energy providers to adjust/relocate their services/infrastructure as required. The applicant shall make the necessary arrangements with the relevant service authority or relevant retail energy company.

(For information on the location of services contact the "Dial before you Dig" service on 1100.)

Documentary evidence from the utility authorities/retail energy company confirming that all of their requirements have been satisfied shall be submitted to Council with the Construction Certificate.

(12) Footpath/laneway – photographs to be submitted

Prior to the release of the Construction Certificate, the applicant shall lodge with Council photographs of the roadway, footpath and/or laneway at the property indicating the state of

the relevant pavements. At the completion of construction, again at the expense of the applicant, a new set of photographs is to be taken to determine the extent, if any, of any damage which has occurred to the relevant pavements. If any damage has occurred, the applicant shall meet the full cost to repair or reconstruct these damaged areas to Council's relevant standard. Failure to do this will result in the applicant being held accountable for the cost of all repair works in the area near / at the site.

(13) Footpath, kerb and gutter protection

The applicant is to take all precautions to ensure footpaths and roads are kept in a safe condition and to prevent damage to Council's property.

Pedestrian access across this footpath must be maintained in good order at all times during work. Any damage caused will be made good by Council at Council's restoration rates, at the applicant's expense.

(14) Development Contribution

In accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979* and the Ashfield Council Development Contributions Plan, the following monetary contributions shall be paid to Council Prior to issue of a Construction Certificate to cater for the increased demand for community infrastructure resulting from the development:

Community Infrastructure Type	Contribution
Local Roads	\$347.83
Local Public Transport Facilities	\$456.87
Local Car Parking Facilities	\$0.00
Local Open Space and Recreation Facilities	\$7,353.96
Local Community Facilities	\$387.22
Plan Preparation and Administration	\$365.05
TOTAL	\$8,910.93

Being for one residential accommodation (secondary dwelling) less than 60m² GFA.

If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Ashfield Development Contributions Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment in the following manner:

$$\$C_c = \frac{\$C_p \times CPI_c}{CPI_p}$$

Where:

\$ C_c is the amount of the contribution for the current financial quarter

\$ C_p is the amount of the original contribution as set out in this development consent

CPI_c is the Consumer Price Index (Sydney – All Groups) for the current financial quarter as published by the ABS.

CPI_p is the Consumer Price Index for the financial quarter at the time of the original consent.

Prior to payment of the above contributions, the applicant is advised to contact Council's Planning Division on 9392 5000. Payment may be made by cash, money order or bank cheque.

Council's Development Contributions Plan may be viewed at www.innerwest.nsw.gov.au or a copy may be inspected at Council's Administration Centre.

(15) Payment of any Additional Fees

If the estimated cost of works for the construction certificate application exceeds the estimate supplied with the development application, an additional fee, any contributions and bonds based on the revised estimate must be paid to Council prior to release of the Construction Certificate.

(16) Permits

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

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

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

(17) Public Liability Insurance

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

(18) Dilapidation

The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.

(19) Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary

Note: This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the above alignment levels. Failure to comply with this condition will result in vehicular access being denied.

(20) Works near trees

Before the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (i.e. water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, located on the subject allotment and adjoining allotments.

A plan detailing the routes of these services and trees protected under the State Environmental Planning Policy shall be prepared. Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

(21) Tree Protection

To preserve the following tree/s, no work shall commence until their Protection Zone (in accordance with AS4970-*Protection of trees on development sites*) is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

Tree/location	Radius in metres
<i>Angophora hispida</i> (Dwarf Apple) rear, Lord St. boundary	3 metres
<i>Schinus molle</i> (Peppercorn tree) side, Lord St. boundary.	2 metres
<i>Syzygium 'Cascade'</i> (Lilly Pilly) side, Lord St. boundary.	2 metres

A minimum 1.8m high barrier (Chain wire mesh panels, plywood or wooden paling fence panels: refer to AS4687-*Temporary fencing and hoardings* for fencing requirements) shall be erected around the perimeter of the stated Protection Zone as measured from the base of the tree (or where practical). Shade cloth or similar should be attached to reduce the transport of dust, other particulate matter and liquids into the protected area. Fence posts and supports should have a diameter greater than 20mm and be located clear of roots. The barrier shall be constructed so as to prevent pedestrian and vehicular entry into the protection zone.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

D Conditions that must be complied with before work commences

(22) Notice of Commencement – Notification of Works

Work must not commence until the Principal Certifying Authority or the person having the benefit of the development consent has given Notification in Writing to Council no later than two days before the building work commences.

(23) Requirement for a Construction Certificate

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* the erection of a building and/or construction works must not commence until:

- a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - i. Council; or
 - ii. an accredited certifier; and
- b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and
- c) at least two days notice, in writing, has been given to Council of the intention to commence work.

The documentation required under this condition shall show that the proposal complies with all development consent conditions and the *Building Code of Australia*.

Note: If the principal certifying authority is the Council, the appointment will be subject to the payment of a fee for the service to cover the cost of undertaking building work and / or civil engineering inspections.

WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is a criminal offence that attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.

(24) Inspections required by Principal Certifying Authority

Inspections shall be carried out at different stages of construction by Council or an accredited certifier. If Council is selected as the Principal Certifying Authority (PCA) the inspection fees must be paid for in advance which will be calculated at the rate applicable at the time of payment.

(25) Sanitary facilities - demolition/construction sites

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

(26) Site Controls

Sediment and erosion controls must be in place before work is commenced on the site. The control strategies must be consistent with the technical requirements set out in the Sydney Coastal Councils' *Stormwater Pollution Control Code for Local Government*.

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

A sediment and erosion control plan must be prepared and identify appropriate measures for bunding and siltation fencing. Any such erosion and sedimentation controls shall also include the protection of stormwater inlets or gutter systems within the immediate vicinity of the site.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

(27) Building location - check survey certificate

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the: -

- a) location of the building with respect to the boundaries of the site;
- b) level of the floor in relation to the levels on the site (all levels are to be shown relative to Australian Height Datum);
- c) site coverage of the buildings on the site.

(28) Site fencing/security

The site must be appropriately secured and fenced to the satisfaction of Council during demolition, excavation and construction work to ensure there are no unacceptable impacts on the amenity of adjoining properties. Permits for hoardings and or scaffolding on Council land must be obtained and clearly displayed on site.

(29) Protection of public places - erection or demolition of building

- If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient or involves the enclosure of a public place; a hoarding or fence must be erected between the work site and the public place.
- If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- Any such hoarding, fence or awning is to be erected prior to works commencing and only with Council approval in accordance with SafeWork NSW requirements. The temporary structures are to be removed when the work has been completed.

(30) Demolition work plan

Prior to demolition, the applicant shall submit a Work Plan prepared in accordance with AS 2601 by a person with suitable expertise and experience to the Principal Certifying Authority. The Work Plan shall identify any hazardous materials, the method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.

(31) Asbestos sheeting removal - EPA/SafeWork NSW

Asbestos removal is to be carried prior to principal works commencing in accordance with Environmental Protection Authority and SafeWork NSW requirements. Proper procedures shall be employed in the handling and removal of asbestos and products containing asbestos so as to minimise the risk to personnel and the escape of asbestos particles in the atmosphere. Work is only to be carried out with the prior consent of the SafeWork NSW.

Note: There are substantial penalties for non-compliance with the above requirements.

(32) Asbestos and/or lead removal certification

The existing structures/land on the site potentially contain asbestos and/or lead. Following removal of any asbestos/lead located on site a clearance must be provided to the Principal Certifying Authority certifying that no such asbestos/lead remains on site from a suitably qualified person.

A copy of the clearance Certificate must be forwarded to Council before any other demolition work is commenced.

(33) Garbage skips on Council land - Council approval

Bulk refuse bins or garbage skips shall not be placed on grass verge, footpath or roadway without Council permission. Application forms and details of applicable fees are available from Council's Customer Service on telephone 9392 5000.

(34) Sydney Water approval

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre 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. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site: www.sydneywater.com.au, see Your Business then Building & Developing then Building & Renovating or telephone Sydney Water 13 20 92.

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E Conditions that must be complied with during construction or demolition

(35) Plans to be available on site

The Council stamped approved plans, Development Consent and Construction Certificate shall be held on site to be produced unobliterated to Council's officer at any time when required.

(36) Building construction - check survey

A check survey is to be submitted to the Principal Certifying Authority for perusal at an early stage of construction indicating excavated levels, boundary distances, site coverage and building alignment to ensure compliance with the approved plans.

(37) Storage of building materials

Building materials and spoil are to be located wholly on site and not placed in a position that may result in materials being washed onto the roadway or into the stormwater system.

(38) Signs to be erected on building and demolition sites

- a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i. stating that unauthorised entry to the work site is prohibited; and
 - ii. showing the name and address of the contractor for the building work and the person in charge of the work site and a telephone number at which the person may be contacted outside working hours; and
 - iii. showing the name, address and telephone number of the Principal Certifying Authority appointed for the building works.
- b) Any-sign shall be maintained and not removed until work has been finished.

(39) Waste Management Plan – compliance

- b) All requirements of the approved Waste Management Plan must be implemented during the demolition and/or excavation and construction period of the development. Adequate measures need to be in place to ensure the ongoing waste management of the site.
- c) Keep receipts of where waste will be taken to be treated or disposed. The receipts must be presented to the Principal Certifying Authority prior to issue of the occupation certificate.

(40) Demolition/excavation/construction - hours of work

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:

- a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

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.

In the case that a standing plant or special 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.

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.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and

2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall 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.

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

(41) Demolition/excavation/construction - noise - Protection of the Environment Operations Act 1997

Noise arising from demolition/excavation/construction works shall be controlled in accordance with the requirements of *Protection of the Environment Operations Act 1997* and guidelines currently contained in the *NSW EPA Environmental Noise Control Manual*.

(42) Demolition requirements/standards

Demolition is to be carried out in accordance with the following:

- a) Australian Standard 2601 and any requirements of the SafeWork NSW.
- b) The Waste Management Plan submitted with the Development Application.
- c) The property is to be secured to prohibit unauthorised entry.
- d) All precautions are to be exercised in the handling, removal and disposal of all asbestos materials. Licensed contractors and the disposal of asbestos is to be carried out in accordance with the requirements of the SafeWork NSW.
- e) All other materials and debris is to be removed from the site and disposed of to approved outlets.
- f) Any demolition on the site is to be conducted in strict accordance with, but not limited to, sections 1.5, 1.6, 1.7, 3.1 and 3.9 of the AS 2601 - 1991, demolition of structures. The following measures must be undertaken for hazardous dust control:
- g) Prior to demolition, the applicant shall submit a Work Plan prepared in accordance with AS 2601 by a person with suitable expertise and experience to the Principal Certifying Authority. The Work Plan shall identify any hazardous materials, the method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- h) Hazardous dust must not be allowed to escape from the site or contaminate the immediate environment. The use of fine mesh dust proof screens, wet-lead safe work practices, or other measures is required.
- i) All contractors and employees directly involved in the removal of hazardous dusts and substances shall wear protective equipment conforming to AS 1716 Respiratory Protective Devices and shall adopt work practices in accordance with WorkSafe Requirements (in particular the WorkSafe standard for the *Control of Inorganic Lead At Work* (NOHSC: 1012, 1994) and AS 2641, 1998).
- j) Any existing accumulations of dust (eg; ceiling voids and wall cavities must be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter and disposed of appropriately.
- k) All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Unclean water from the suppressant spray is not be allowed to enter the street gutter and stormwater systems.
- l) Demolition is not to be performed during high winds that may cause dust to spread beyond the site boundaries without adequate containment.
- m) All lead contaminated material is to be disposed of in accordance with the NSW Environment Protection Authorities requirements.
- n) Construction and demolition waste, particularly timber, bricks and tiles, concrete and other materials need not be disposed of- they can be recycled and resold if segregated properly from any hazardous waste contamination.
- o) Following demolition activities, soil must be tested by a person with suitable expertise to ensure the soil lead levels are below acceptable health criteria for residential areas. Full certification is to be provided for approval by the Principal Certifying Authority.

(43) Materials and colour schemes

Materials of construction are to be as specified in the schedule of finishes submitted with the development application and on the approved plans, except where amended by the conditions.

(44) Road and footpath – safety and access requirements

The contractor is to take all precautions to ensure footpaths and roads are kept in a safe condition and to prevent damage to Council's property.

Heavy vehicles entering and leaving the site must only cross the footpath where it is adequately timbered and strapped. Pedestrian access across this footpath must be maintained in good order at all times during the work. Any damage caused must be made good by Council at Council's restoration rates, at the applicant's or builder's expense.

(45) Road opening permit – Council controlled lands

A road opening permit shall be obtained for all works carried out in public or Council controlled lands. Contact Council's Engineering Services for details.

This road opening permit covers the direct costs involved in the repair/replacement of works where the public or Council controlled lands are specifically damaged/saw cut etc for the construction of services, stormwater pipes, kerb works, bitumen works, footpath works etc. It is *separate* from a Damage Deposit as listed elsewhere in these Conditions of Consent.

(46) Surface run-off

Allowance shall be made for surface run-off from adjacent properties, and to retain existing surface flow path systems through the site. Any redirection or treatment of these flows shall not adversely affect any other properties.

(47) BASIX Requirements

The new works shall be constructed in accordance with, and comply with the undertakings given on the *BASIX (Building Sustainability Index) Certificate* as obtained from the Department of Planning and Environment. For more information visit www.basix.nsw.gov.au.

(48) Tree protection during works

No mechanical excavation being undertaken within the specified radius of the trunk(s) of the following tree(s) until root pruning by hand along the perimeter line of such works is completed:

Schedule	
Tree/location	Radius in metres
<i>Eucalyptus</i> sp. (Ironbark) rear	5 metres

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly using a sharp and *fit for purpose tool*. The pruning shall be undertaken by a minimum Level 3 (AQF 3) qualified Arborist.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority

(49) Works near trees to be retained

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

Schedule	
Tree/location	Time of Inspection
<i>Eucalyptus</i> sp. (Ironbark) rear <i>Angophora hispida</i> (Dwarf Apple) rear <i>Schinus molle</i> (Peppercorn tree) side <i>Syzygium 'Cascade'</i> (Lilly Pilly) side <i>Lophostemon confertus</i> (Brush Box) street tree Hawthorne Pde.	<ul style="list-style-type: none"> • Directly following installation of protective fencing, • During excavation within the <i>Tree Protection Zone</i>, • At any time fencing is required to be altered, • At project completion to verify that protection measures have been undertaken.

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

Project Arborist - for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

F Conditions that must be complied with prior to installation of services

nil

G Conditions that must be complied with before the building is occupied

(50) Approval to use/occupy building

The building or any part thereof must not be used or occupied until an Occupation Certificate has been obtained from the Principal Certifying Authority.

Note: If Council is chosen as the Principal Certifying Authority a fee is applicable prior to the release of the Construction Certificate.

(51) Public Domain Works

All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".

(52) House stormwater disposal

The stormwater disposal from the proposed development shall be discharged to the Hawthorne Parade gutter via a 100mm dia UPVC pipe. No 'charged' lines are permitted.

(53) Light duty vehicle crossing

A light duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications", shall be constructed at the vehicular access location in Hawthorne Parade before the issue of the Occupation Certificate and at no cost to Council.

(54) Boundary encroachment

The secondary dwelling and garage structure is to be wholly within the property boundary. A survey prepared by a suitably qualified surveyor is to be prepared and submitted to the Principle certifying authority demonstrating that no structures straddle over the property boundaries.

H Conditions that are ongoing requirements of development consents

(55) Landscaping

Landscaped area shall be in accordance with the Drawing No. L1, Landscape Plan prepared by Phillips Marler dated 7/11/2017.

(56) Private Power Poles

Private power poles are not to be erected on the subject site without Council's Consent.

I Advisory Notes

(1) Works and requirements of other authorities

- Sydney Water may require the construction of additional works and/or the payment of additional fees. Other Sydney Water approvals may also be necessary prior to the commencement of construction work. You should therefore confer with Sydney Water concerning all plumbing works, including connections to mains, installation or alteration of systems, and construction over or near existing water and sewerage services.
- Contact Sydney Water, Rockdale (Urban Development Section) regarding the water and sewerage services to this development.
- Australia Post has requirements for the positioning and dimensions of mail boxes in new commercial and residential developments. A brochure is available from your nearest Australia Post Office.
- Energy Australia/AGL Electricity/AGL Retail Energy or other alternative service/energy providers have requirements for the provision of connections.
- Energy Australia has a requirement for the approval of any encroachments including awnings, signs, etc over a public roadway of footway. The Engineer Mains Overhead Eastern Area should be contacted on 9663 9408 to ascertain what action, if any, is necessary.
- Telstra has requirements concerning access to services that it provides.

(2) Modifications to your consent - prior approval required

Works or activities other than those authorised by the approval including changes to building configuration or use will require the submission and approval of an application to modify the consent under Section 96 of the *Environmental Planning & Assessment Act 1979*. You are advised to contact Council immediately if you wish to alter your approved plans or if you cannot comply with other requirements of your consent to confirm whether a Section 96 modification is required.

Warning: There are substantial penalties prescribed under the *Environmental Planning and Assessment Act 1979* for breaches involving unauthorised works or activities.

(3) Occupational health and safety

All site works must comply with the occupational health and safety requirements of the SafeWork NSW.

(4) Tree preservation

Where tree removal or work has not been approved by this Development Consent, the developer is notified that a general Tree Preservation Order applies to all trees (with the exception of certain species) in the Municipality of Ashfield with a height greater than five (5) metres. This order prohibits the ringbarking, cutting down, topping, lopping*, pruning, transplanting, injuring or wilful destruction of such trees except with the prior approval of the Council. Written consent from Council for such tree works must be in the form of a "Tree Preservation Order Permit for Pruning or Removal of Protected Trees" to be obtained from Council.

* Lopping may be carried out without consent only to maintain a minimum clearance of 500mm from power lines, pruning to remove dead wood/branches and minor pruning of branches overhanging buildings to a height of 2 metres only with the agreement of the owner of the tree. Contact Council's One Stop Shop - telephone 9716 1800, for details of the Tree Preservation Order.

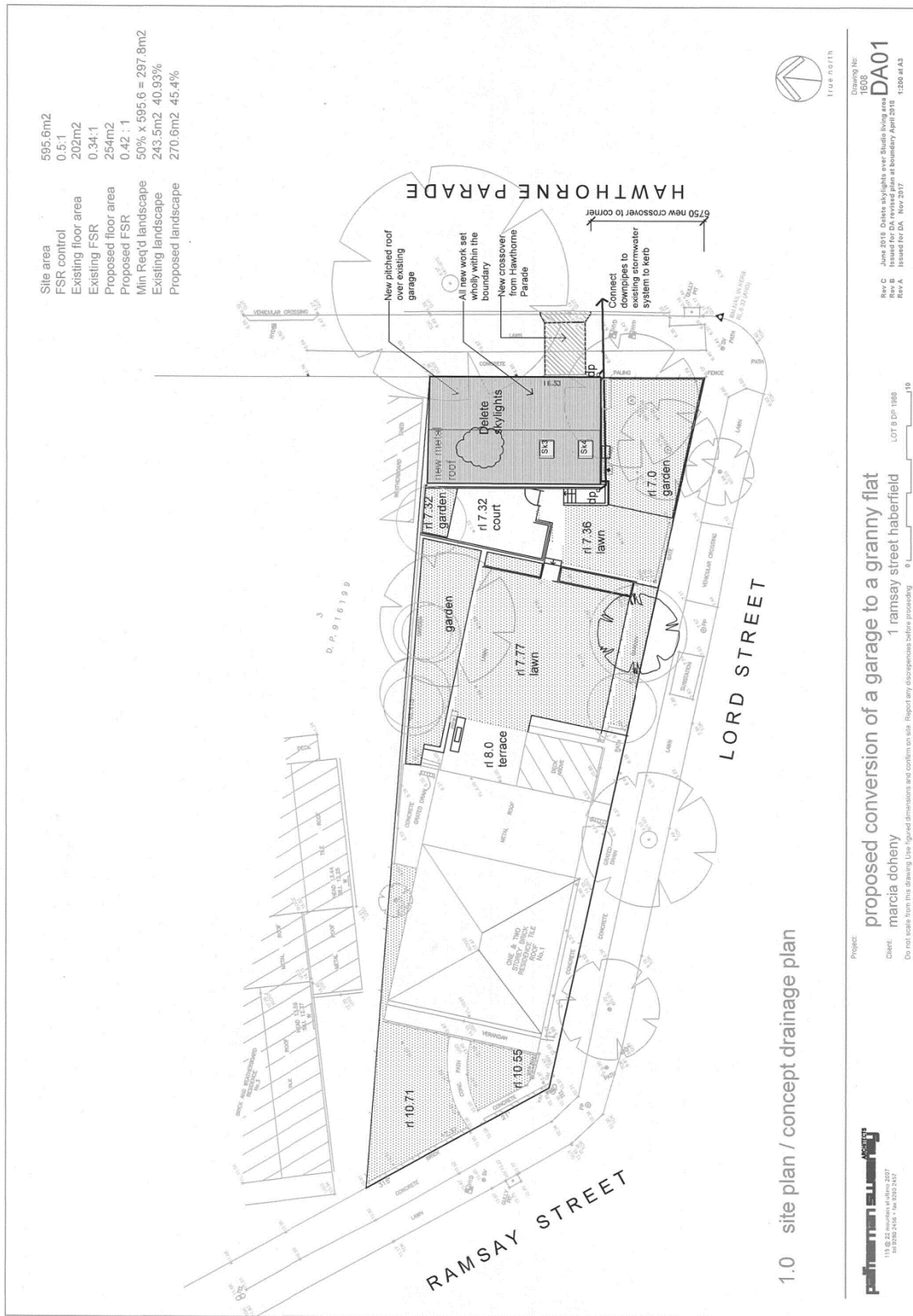
(5) Relocation of stormwater drainage

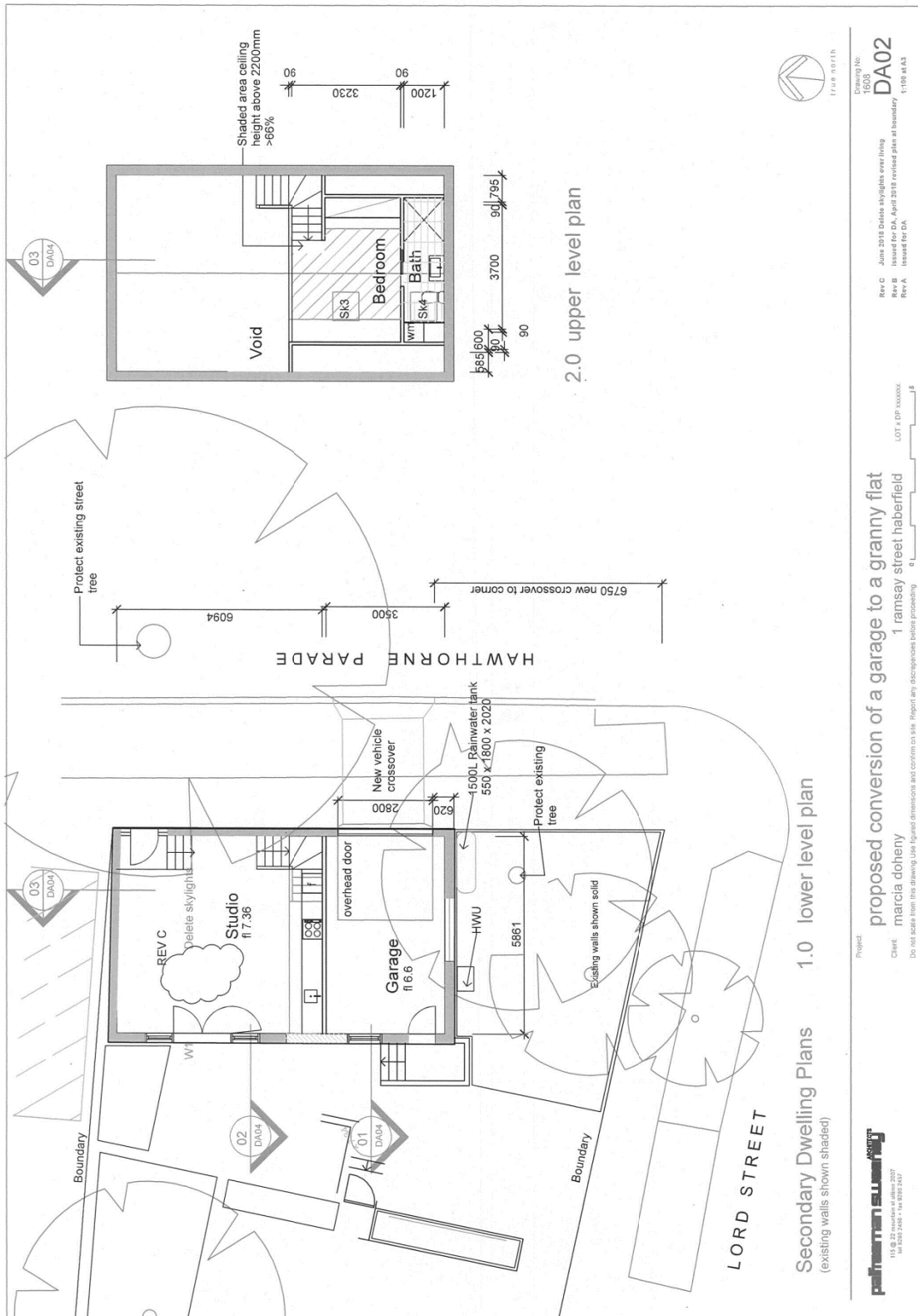
Council is not responsible for the cost of relocating Council's stormwater drainage pipes through the subject property.

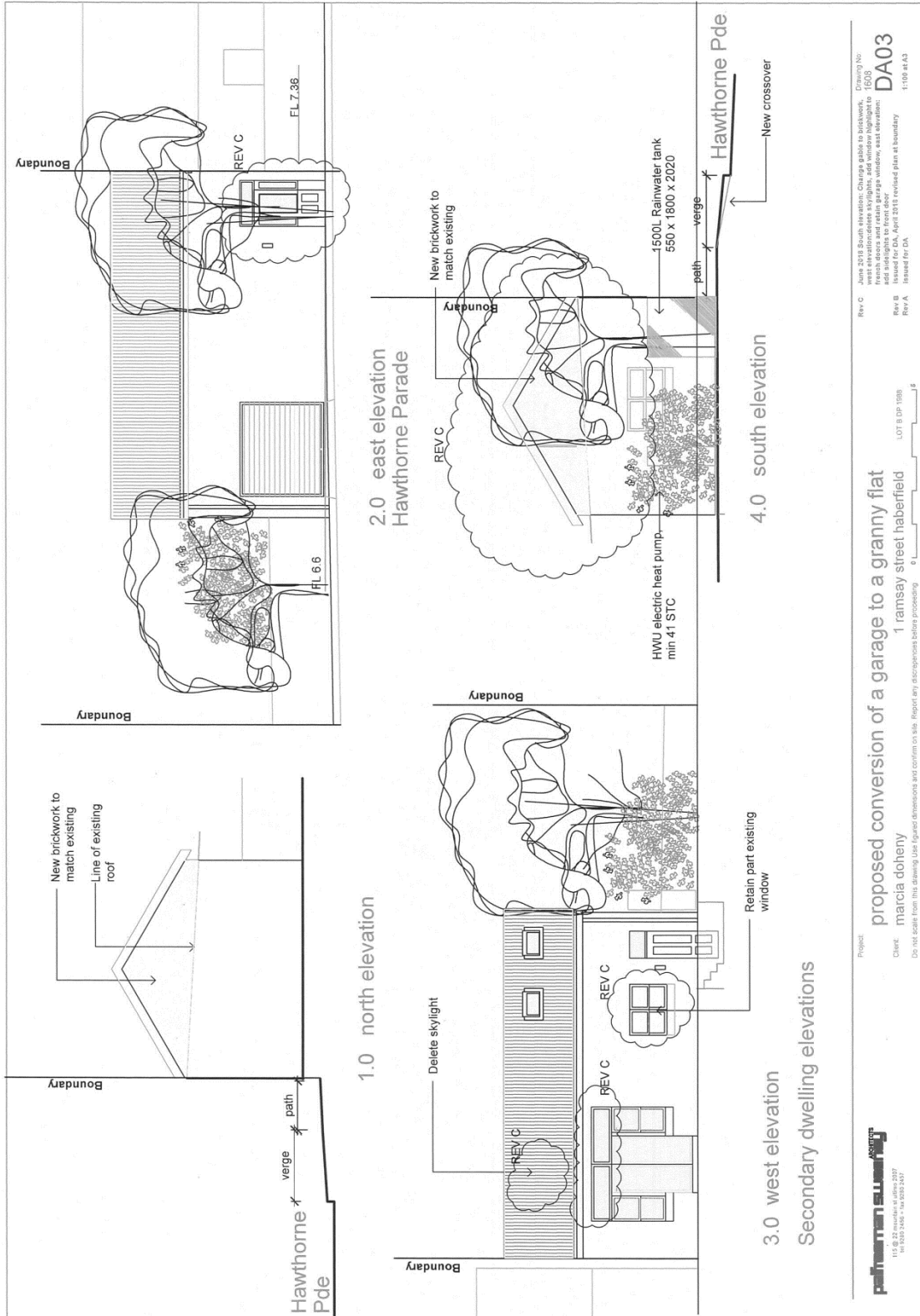
(6) New vehicular crossing

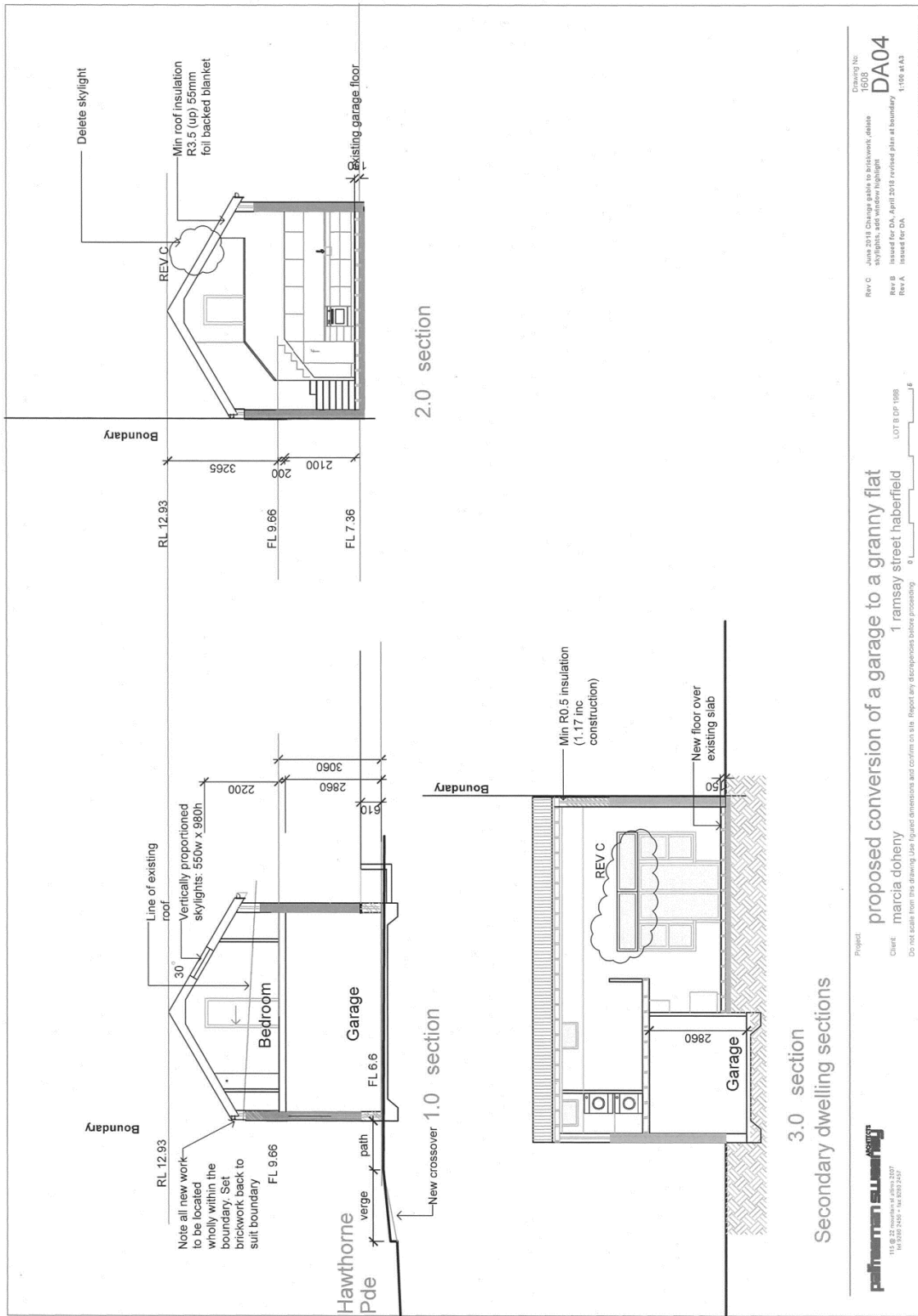
The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Construction of Vehicle Crossing and Public Domain Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate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

Attachment B – Plans of proposed development









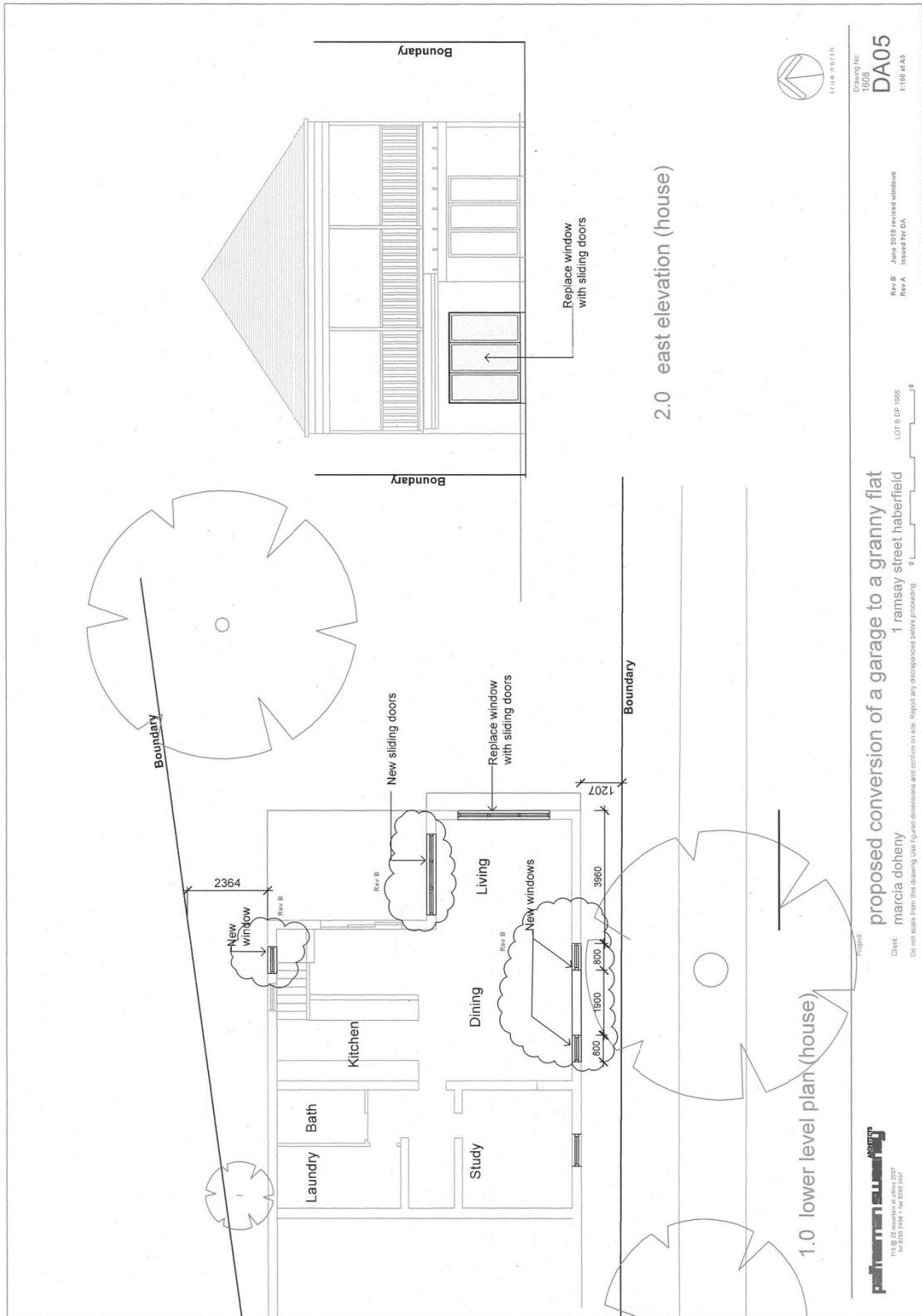
Drawing No: 1808
DA04
 1:100 at A3

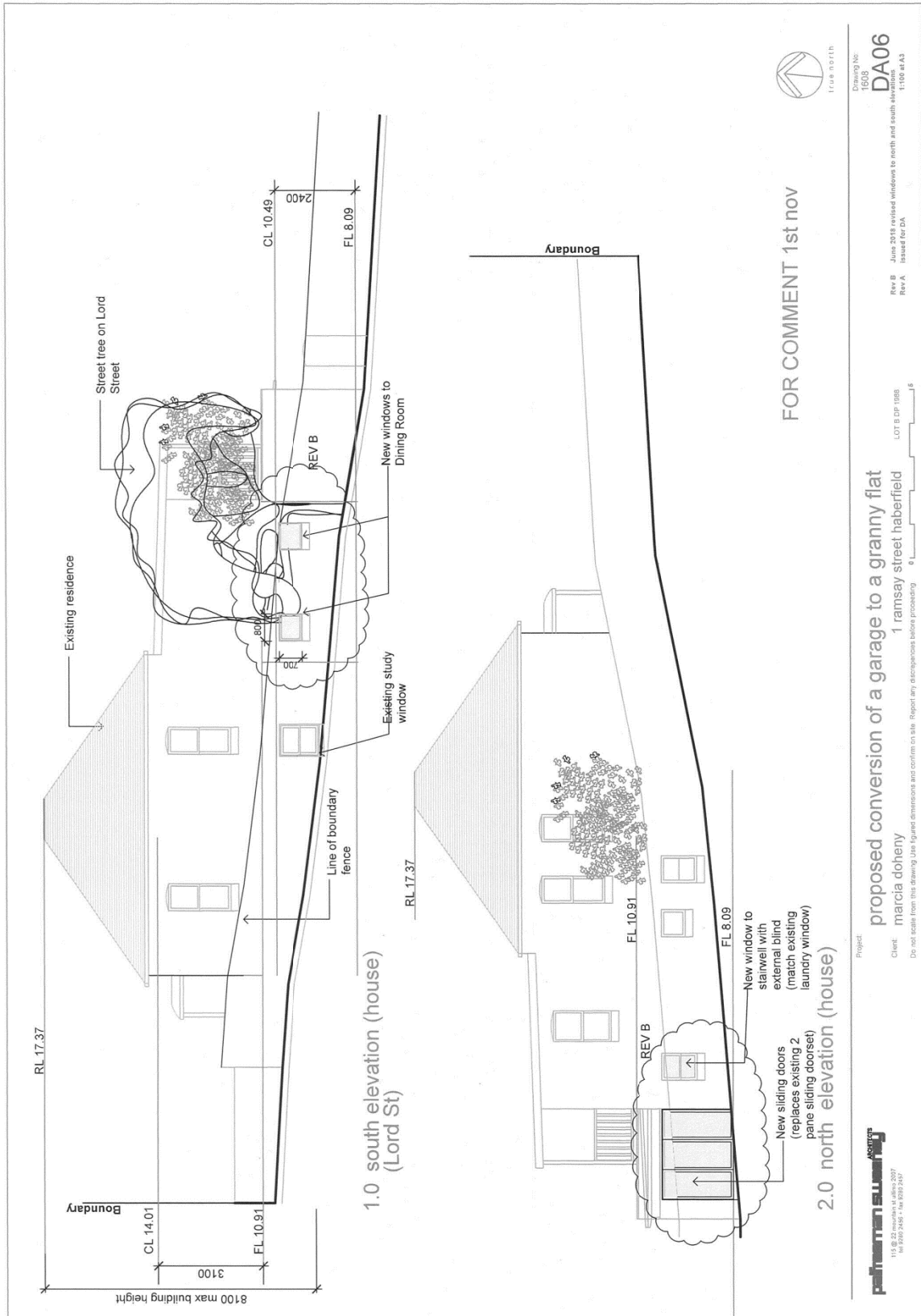
Rev C: Java 2018 Change gable to brickwork, delete skylights, add window highlight
 Rev B: Issued for DA, April 2018 revised plan at boundary
 Rev A: Issued for DA

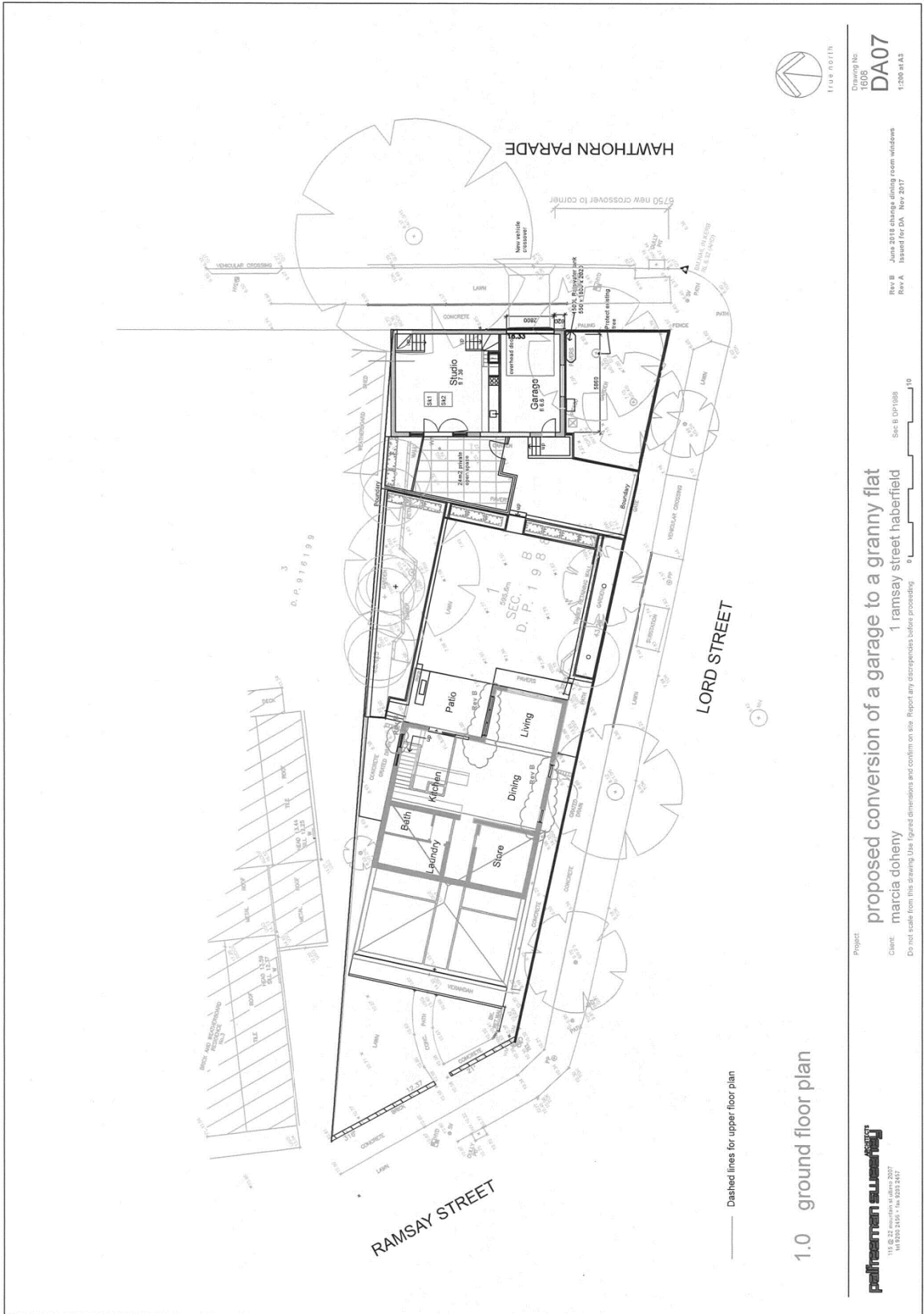
LOT 8 DP 1088

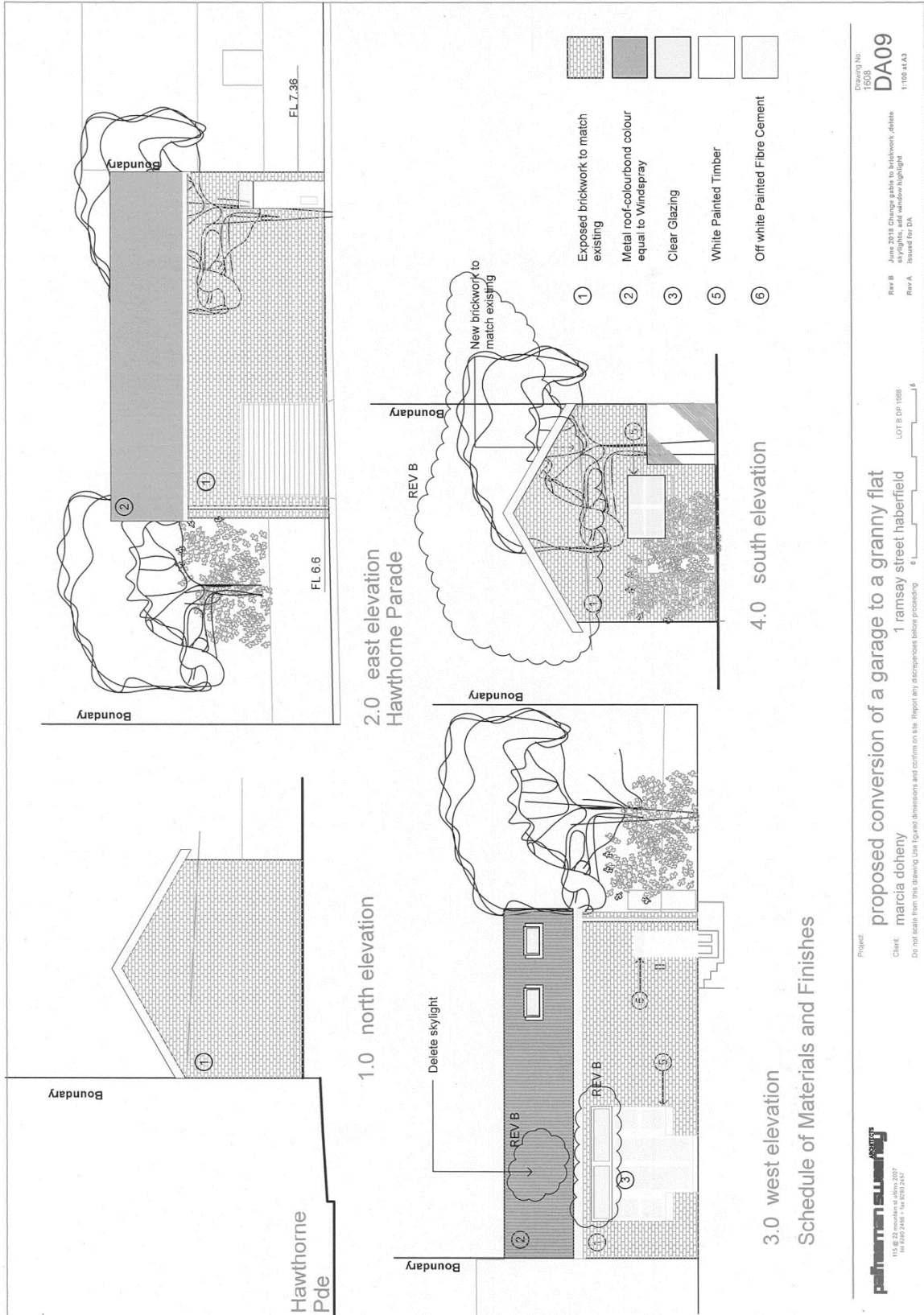
Project: **proposed conversion of a garage to a granny flat**
 Client: **marcia doheny**
 1 ramsay street haberfield
 Do not build from this drawing. Use figure dimensions and confirm on site. Report any discrepancies before proceeding.

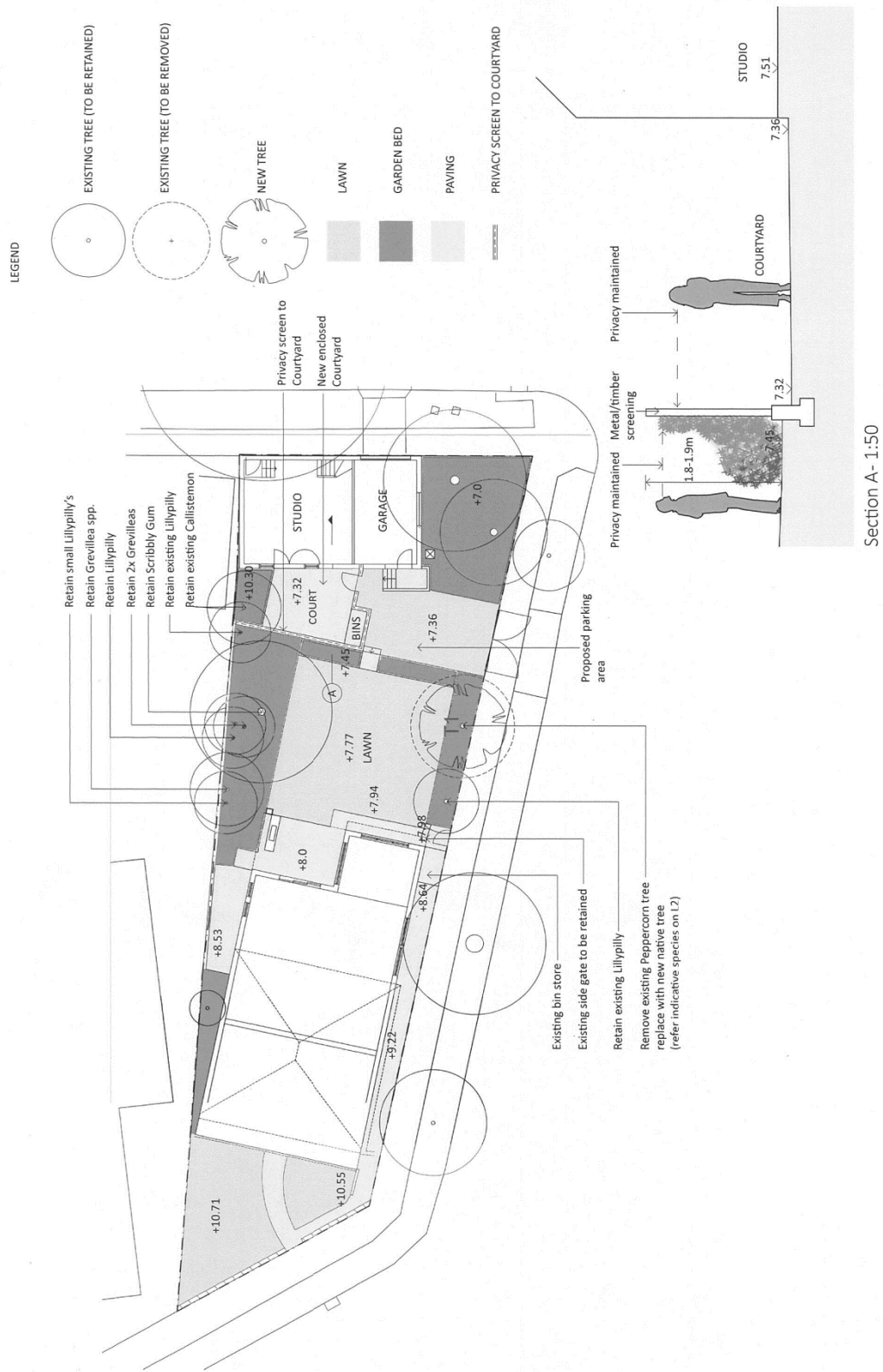
pathman
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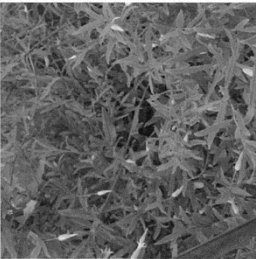


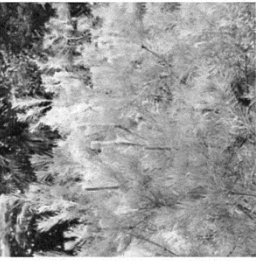

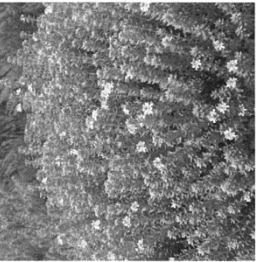
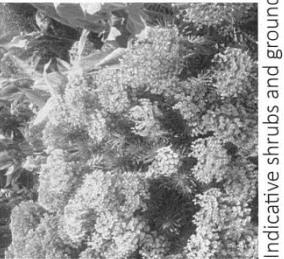

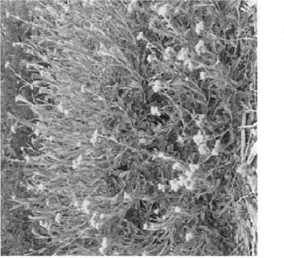
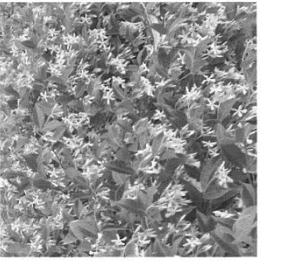
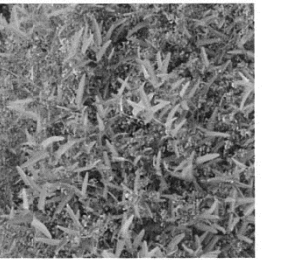
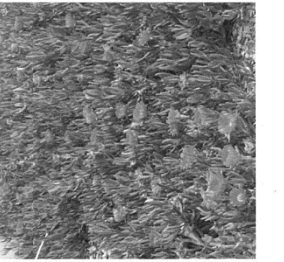


Issue: For DA approval
7th November 2017

Client: Marcia Doheny
1 Ramsay Street, Haberfield

Landscape Plan
Proposed Conversion of a garage to a granny flat

philipsmarler
Suite 203
166-172 Pitt Street
Sydney NSW 2000
PO Box 247
Broadway NSW 2007
Telephone: 02 9618 9553
jphil@philipsmarler.com.au
www.philipsmarler.com.au

<p><i>Hymenosporum flavum</i></p> 	<p><i>Waterhousia floribunda</i></p> 	<p><i>Brachychiton acerifolius</i></p> 	<p><i>Tristaniaopsis laurina 'Lucious'</i></p> 	<p><i>Billardiera scandens</i></p> 	<p><i>Diets grandiflora</i></p> 	<p><i>Anigozanthos</i></p> 	<p><i>Banksia spinulosa</i></p> 	<p><i>Dianella caerulea 'Little Jess'</i></p> 	<p><i>Westringia fruticosa</i></p> 	<p><i>Euphorbia</i></p> 	<p><i>Gazania</i></p> 	<p><i>Chrysocephalum apiculatum</i></p> 	<p><i>Trachelospermum jasminoides</i></p> 	<p><i>Hardenbergia violacea</i></p> 	<p><i>Carpobrotus glaucescens</i></p> 
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Indicative tree selection to replace Peppercorn

Indicative shrubs and groundcovers

phillipmarler
 2/15-2/16
 27-29 Carrumville Street
 Chippendale NSW 1505
 PO Box 212
 Ultimo NSW 1502
 www.phillipmarler.com.au

Indicative Plant Palette

Proposed Conversion of a garage to a granny flat

Client: Marcia Doheny

1 Ramsay Street, Haberfield

Issue: For DA approval
 7th November 2017

L2

Attachment C – Clause 4.6 – Exceptions to Development Standards

INTRODUCTION 3

ASHFIELD LEP 2013 3

 1.2 Aims of the plan..... 3

 2.1 Land use zones..... 3

 4.3 Height of buildings 4

 4.4 Floor space ratio..... 4

 4.6 Objection to Clause 4.3 Height of Buildings 4

 5.10 Heritage conservation 8

 6.5 Development on land in Haberfield Heritage Conservation Area..... 8

 4.6 Objection to Clause 6.5 Development on land in Haberfield Heritage Conservation Area. 8

 (5) In deciding whether to grant concurrence, the Secretary must consider:..... 12

COMPREHENSIVE INNERWEST DCP 2016 14

 Chapter A..... 14

 Part 3 Flood Hazard..... 15

 Part 4 Solar Access and Overshadowing 15

 Part 5 Landscaping..... 15

CHAPTER E2 HABERFIELD HERITAGE CONSERVATION AREA 18

 Section 1 Preliminary..... 18

 Section 2 Detailed Planning Measures for Residential Properties..... 18

 Section 3 - Planning measures for Commercial Properties..... 20

 Section 4 – Miscellaneous 20

CHAPTER F DEVELOPMENT CATEGORY GUIDELINES 21

 Part 2 Secondary Dwellings 23

SEPP AFFORDABLE RENTAL HOUSING 2009 24

 Division 2 Secondary Dwellings 24

SCHEDULE 1 DEVELOPMENT STANDARDS FOR SECONDARY DWELLINGS..... 25

 Part 4 Landscaping..... 25

CONCLUSION 26

PHOTOGRAPHS 27

INTRODUCTION

This proposal refers to alterations and additions at 1 Ramsay Street Haberfield.

The subject property is located on the corner of Ramsay Street, Lord Street and Hawthorne Parade Haberfield. The front of the house is west facing on Ramsay Street, and the southern elevation runs along Lord Street. The existing garage is located along the eastern (rear) boundary with Hawthorne Parade, with access from Lord Street.

The site area is 595.6m² and is a non-regular shape. The Ramsay St boundary is 12.37m, Lord St 43.28, Hawthorne Parade 16.33m and the northern side boundary is 48.42m

There is a slope of approximately 4m from Ramsay Street to Hawthorne Parade.

There are established street trees on Lord St and Hawthorne Parade.

The works include new windows to the Principal Dwelling, and the refurbishment of the existing garage into a Garage and Secondary Dwelling.

There are no changes proposed to the Ramsay Street elevation of the house.

The following statement addresses the Ashfield Local Environmental Plan 2013, the Comprehensive Inner West DCP 2016 and the SEPP (Affordable Rental Housing) 2009

ASHFIELD LEP 2013

1.2 Aims of the plan

The relevant aims include:

- (a) to promote the orderly and economic development of Ashfield in a manner that is consistent with the need to protect the environment,*
- (b) to retain and enhance the identity of Ashfield as an early residential suburb with local service industries and retail centres,*
- (c) to identify and conserve the environmental and cultural heritage of Ashfield,*
- (d) to provide increased housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities,*
- (h) to ensure that development has proper regard to environmental constraints and minimises any adverse impacts on biodiversity, water resources, riparian land and natural landforms,*
- (i) to require that new development incorporates the principles of ecologically sustainable development.*

This proposal achieves these aims, it provides an increased housing choice in the local area, while conserving the identity and environmental and cultural heritage of the local Haberfield Conservation Area.

The proposal complies

2.1 Land use zones

The site is located in R2 Low Density Residential. Home occupation is permitted.

The proposal complies

4.3 Height of buildings

The site is located in the area marked G, with a maximum building height of 7m

The existing height of the principal dwelling is approximately 8.1m above natural ground. There is no additional height proposed.

The height of the altered garage/secondary dwelling is approximately 6.4m above natural ground level. This complies with the standard.

The height breach of the existing dwelling is discussed in Section 4.6.

4.4 Floor space ratio

The allowable FSR for this site is 0.5:1 = 595.6m² x 0.5 = 297.8m²

The existing FSR is 0.34:1 = 202m²

The proposed FSR is 0.43:1 = 257m² (includes area of proposed Secondary dwelling)

The proposal complies.

4.6 Objection to Clause 4.3 Height of Buildings

This section is a submission pursuant to the requirements of Clause 4.6 of the Ashfield Local Environment Plan (ALEP) 2013 to seek approval from council for consent to be granted to an application that contravenes a development standard. It is to be read in conjunction with the statement of environmental effects for the proposed alterations at 1 Ramsay Street Haberfield.

1. Clause 4.6 Exceptions to Development Standards

This objection seeks to vary the building height requirement stipulated in ALEP 2013 Clause 4.3 Height of buildings that states:

4.3 (2) the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map

Proposed variation:

The land is shown in area G with a maximum building height of: 7m

The height of the existing building from natural ground level to the main ridge is 8.1m

There is no additional height proposed.

2. Justification for the exception and matters for consideration

The following provides justification with regards to the objectives of ALEP clause 4.6.

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,

Comment

The non-complying element of this proposal can be considered acceptable as it is the result of an existing condition. The subject dwelling is built on a slope that falls over 4m from the front boundary to the rear, and the existing ridge height in the middle of the site breaches the maximum allowable height.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment

Strict compliance with the numerical controls is not possible without removing parts of the existing dwelling. There is no additional breach as a result of this proposal.

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

Comment

The building height requirement is not excluded from 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

Comment

This section outlines justification for the case that strict compliance with the building height control in the ALEP is unreasonable and unnecessary.

The breach of the building height control already occurs in the existing building. The maximum ridge height of the principal dwelling above natural ground level is approximately 8.1m. This proposal does not include any works to the principal dwelling that increase the existing ridge height, or any other works that breach the building height control.

The building height standard in this instance represents only a numerical breach of the controls as the proposal has materially and demonstrably achieved the objectives and outcomes identified by the ALEP and ADCP.

As such, strict adherence to the development standard is in this instance, both unreasonable and unnecessary in the circumstances of the case.

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

The following outlines various environmental planning instruments that support contravening the development standard:

Flexibility in the application of planning controls in strict circumstances where strict compliance with those standards would be unreasonable or unnecessary is supported by the Environmental Planning and Assessment Act.

Clause 4.6 of the ALEP 2013 allows an applicant to seek approval from council for consent to be granted to an application that contravenes a development standard, in this case the building height. As demonstrated in the statement of environmental effects (SEE) and this section, the proposed alterations and additions comply with the intent and objectives of all other standards within the ALEP2013 and the Comprehensive Inner West DCP 2016.

The SEE demonstrates that the proposal results in alterations and additions that comply with, bulk and scale, overshadowing, and the desired future character objectives of the standards. These are all achieved despite non-compliance with the numerical objectives of Clause 4.3 Building Height. All proposed new work complies with the building height control.

As a result, there are sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment

Sub clause (3) has been adequately addressed in the above and in the SEE.

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Comment

The objectives of clause 4.3 are as follows:

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

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

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

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

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

Comment

The existing building achieves a high quality built form and it is proposed to be retained. There is no proposal to demolish the existing form to achieve the numerical building height control for this site or any proposal to increase or change the existing ridge height. Satisfactory sky exposure is maintained. There is no impact on solar access to neighbouring buildings. As the site is orientated east/west, and the west, south and eastern boundaries are to roads, there is no overshadowing onto neighbouring properties.

There are no significant public or private views in the immediate location of the proposal.

The objectives of zone R2 Low Density Residential are:

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

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

The proposals fully satisfy the objectives of the zone, despite the numerical non-compliance as the existing building maintains a low density residential environment, provides facilities to meet the housing needs of the community and the day to day and future needs of the residents.

The single dwelling character of Haberfield is maintained, and the proposal does not compromise local amenity or impact public or private views.

As described above, the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of the ALEP and the objectives for development within the R2 Zone.

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

Comment

The contravention of this standard for this application will not raise any matter of significance for State and regional environmental planning as the Clause 4.6 exception has demonstrated adequately that the proposal is in the public interest (as established above) and by addressing the requirements of Clause (3)

(b) the public benefit of maintaining the development standard, and

There is no public benefit in maintaining strict compliance with the development standard in this instance.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Summary Justification

A summary of the matters set out in this cl 4.6 exceptions to development standards request to vary the building height control for the is as follows:

- Compliance with the numerical control is unreasonable and unnecessary in the circumstances of this application, as the objectives of all of councils' planning standards are achieved despite non-compliance.
- The breach represents an existing condition, and no additional breach is proposed.
- The proposal does not give rise to any unreasonable or unexpected adverse amenity impacts on surrounding properties.
- The Objects of the Act are satisfied as departure from the building height control will have no negative consequences in terms of the proper management, development and conservation of the items identified in the act and the departure from the controls allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.
- The intent and objectives of the ALEP zone R2 Low Density Residential zone are fully satisfied with this application.
- No unreasonable public disadvantages have been identified as a result of this non-compliance and the proposals fully meet the objectives defined for the future character of the area, and
- The proposal adequately satisfies tests and considerations established by caselaw.

Conclusion

Compliance with the development standard restricting the maximum building height control is unreasonable and unnecessary in this instance. Development controls are not an end in themselves, but are a means of achieving desired outcomes. The application has demonstrated that those outcomes have been achieved despite the non-compliance.

Council is urged to support this Clause 4.6 objection.

5.10 Heritage conservation

Development consent is sought to alter a residence located within a Heritage Conservation Area.

The proposal complies

6.5 Development on land in Haberfield Heritage Conservation Area

(1) The objective of this clause is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area.

(2) This clause applies to land identified as "C42" on the Heritage Map.

(3) Development consent must not be granted to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that:

(a) if the development involves an existing building:

(i) the gross floor area above the existing ground floor level will not exceed the gross floor area of the existing roof space, and

(ii) the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor, and

(b) the development will not involve excavation in excess of 3 metres below ground level (existing), and

(c) the development will not involve the installation of dormer or gablet windows, and

(d) at least 50% of the site will be landscaped area.

The proposal includes the development of an existing building. The gross floor area of the secondary dwelling and the gross floor area above the existing ground floor level does not exceed the existing roof space. There is no gross floor area proposed below the existing ground floor. There are no dormer or gablet windows proposed.

The proposal complies clauses 1, 2, 3 (a) (b) (c), however the landscaping requirement is not met.

This is discussed in Clause 4.6

4.6 Objection to Clause 6.5 Development on land in Haberfield Heritage Conservation Area

1. Clause 4.6 Objection

This section is a submission pursuant to the requirements of Clause 4.6 of the Ashfield Local Environment Plan (ALEP) 2013 to seek approval from council for consent to be granted to an application that contravenes a development standard. It is to be read in conjunction with the statement of environmental effects for the proposed alterations at 1 Ramsay Street Haberfield.

This objection seeks to vary the landscaped area requirement stipulated in LEP Clause 6.5 that states:

(3) (3) Development consent must not be granted to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that:

(d) at least 50% of the site will be landscaped

Commentary

The site area is 595.6 m²

The *required* landscaped area under clause 6.5 is $50\% \times 595.6 \text{ m}^2 = 297.8\text{m}^2$

The *existing* landscaped area is: 243.5m² (or 40.93%) (as calculated for DA2005/196)

The *proposed* landscaped area is: 262.7m² (or 44%)

The proposal represents an increase in landscape area of 19.2m² and breaches the control by 35.1m².

2. Justification for the exception and matters for consideration

Compliance to Clause 4.6 MLEP 2012

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.

Comment

It is considered that the provision of an appropriate degree of flexibility in applying the minimum landscaped area control is warranted in this case for the following reasons:

- The proposal can be considered acceptable as it is the result of a well-balanced urban design solution that achieves the intent and objectives of councils planning controls. The proposal is generally compliant with the requirements of Ashfield LEP and DCPs and the SEPP Affordable Rental Housing
- Although the numerical requirement is not met, the proposal increases the amount of landscaping on the site from the existing condition by reducing areas of paving
- There is no additional site coverage proposed, the proposal seeks to refurbish an existing structure on the site
- Large established trees and shrubs on the site are retained in the proposed landscape plan. The existing Peppercorn tree to be replaced with a new native species of comparable height and canopy
- The proposal has not sought to maximise the floor space possible on the site
- The proposal has no impact on adjoining properties in regards to solar access, overshadowing, privacy and amenity
- The proposal will not detract from the streetscape, and the bulk and scale is in keeping with the existing character and the councils controls

Although the proposal departs from the numerical standard, it satisfies the objectives of the standard, and hence there is scope on merit grounds to permit the breach. By applying a degree of flexibility to the standard, a better outcome for the site can be achieved.

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

Comment

The landscape requirement is not excluded from 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

Comment

This clause outlines justification for the case that strict compliance with the minimum landscaping area control in the ALEP is unreasonable and unnecessary.

Compliance with the standard would not necessarily achieve a better outcome. The minor variation to the landscape area has a negligible impact on the amenity of the dwellings, the amenity of the neighbouring dwellings and open space, and the Haberfield streetscapes.

The proposal represents a high level of amenity and design, and complies with all other relevant clauses in the ALEP and the ADCP, including building and wall heights, floor space ratio, private open space, car parking, privacy and solar access. Although the proposal does not meet the numerical standard, it does increase the amount of landscaping on the site.

The minimum landscape area development standard in this instance represents only a numerical breach of the controls as the proposal has materially and demonstrably achieved the objectives and outcomes identified by the ALEP and ADCP.

As such, strict adherence to the development standard is in this instance, both unreasonable and unnecessary in the circumstances of the case.

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

Flexibility in the application of planning controls in strict circumstances where strict compliance with those standards would be unreasonable or unnecessary is supported by the Environmental Planning and Assessment Act. The following outlines various planning grounds to justify contravening the development standard:

- Clause 4.6 of the ALEP 2013 allows an applicant to seek approval from council for consent to be granted to an application that contravenes a development standard, in this case the minimum landscaped area. The objectives of this clause have been satisfied.
- The proposed building development utilises existing structures on the site and does not increase the site coverage.
- There is no net public benefit in maintaining strict compliance with this standard in this instance
- Existing established trees and shrubs are to be retained or replaced as required.

- The proposed development will increase the housing diversity in the area
- The proposal does not detract from the streetscape
- The proposal meets the intents and objectives of the ALEP and the DCP.

There is sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment

Sub clause (3) has been adequately addressed in the above and in the SEE.

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

The following provides justification with regards to the objectives of ALEP clause 6.5

(1) The objectives of clause 6.5 are as follows:

- (1) The objective of this clause is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area.**

Comment

The existing principal dwelling presents a single storey appearance to the Ramsay Street streetscape, and incorporates a two storey element at the rear of the dwelling as the site slopes down towards the back. There is no change proposed to the form of the principal dwelling.

The garage on the Hawthorne Parade boundary maintains a single storey appearance with the incorporation of additional floor space in the proposed attic roof space. There are no dormer or gable windows proposed.

The objective of this clause is met, and the proposed breach of landscaped area has no effect on the objective of the clause.

The following provides justification with regards to the objectives of ALEP Zone R2 Low Density Residential

The objectives of zone R2 Low Density Residential are:

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

The proposals fully satisfy the objectives of the zone, despite the numerical non-compliance as the alterations and additions maintain a low density residential environment, provide facilities (in this case a secondary dwelling) to meet the housing needs of the community and the day to day and future needs of the residents.

The single dwelling character of Haberfield is maintained, and the proposal does not compromise local amenity or impact public or private views.

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

Comment

The contravention of this standard for this application will not raise any matter of significance for State and regional environmental planning as the Clause 4.6 exception has demonstrated adequately that the proposal is in the public interest (as established above and by addressing the requirements of Clause 3).

(b) the public benefit of maintaining the development standard, and

There is no public benefit in maintaining strict compliance with the development standard in this instance. The proposal represents a considered and quality design response to the site and delivers a diversity of housing choice for the locality. The proposal increases the amenity for present and future residents on the site, while maintaining the amenity of neighbouring properties.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Summary Justification

A summary of the matters set out in this cl 4.6 exceptions to development standards request to vary the clause 6.5 minimum landscaped area for the site are as follows:

- Compliance with the numerical control cannot be achieved due to the existing pattern of development on the site and is unreasonable.
- The numerical non-compliance of the proposed development is minor in nature and the proposals increase the amount of landscaped area provided to the subject property.
- Despite the non-compliance, the underlying intent and objectives of LEP clause 6.5 are demonstrated to have been satisfied.
- The proposal does not give rise to any unreasonable or unexpected adverse amenity impacts on surrounding properties.
- The intent and objectives of the ALEP zone R2 Low Density Residential are fully satisfied with this application.
- The Objects of the Act are satisfied as departure from the landscape control will have no negative consequences in terms of the proper management, development and conservation of the items identified in the act and the departure from the controls allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.
- No unreasonable public disadvantages have been identified as a result of this non-compliance, and

Conclusion

Compliance with the development standard restricting the minimum landscaped area is unreasonable and unnecessary in this instance. Development controls are not an end in

themselves, but are a means of achieving desired outcomes. The application has demonstrated that those outcomes have been achieved despite the non-compliance.

Council is urged to support this Clause 4.6 objection.