



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	10.2018.126.1
Address	100 Smith Street, Summer Hill
Proposal	Alterations and additions to an existing dwelling
Date of Lodgement	12/07/2018
Applicant	Ms T. Shahmelikian
Owner	Mr D.C. Bielawski & Ms T.M. Shahmelikian
Number of Submissions	Nil
Value of works	\$350,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds officer delegation
Main Issue	FSR
Recommendation	Approval


Location Map	Legend
	<p>Site</p>  <p>Submissions</p> <p>Nil</p> <p>Neighbouring properties notified</p> 



Image 1: Site Photo

1. Executive Summary

This report concerns an application for alterations and additions to an existing dwelling. The application was notified in accordance with Council's Notification Policy and no submissions were received.

The proposal generally complies with the aims and objectives of the Ashfield Local Environmental Plan 2013 (ALEP 2013) with the exception that the proposal exceeds the maximum floor space ratio development standard by 16.95sqm or 16.6%. A written request under Clause 4.6 of ALEP 2013 has been submitted by the applicant for the variation which is considered well founded and worthy of support.

The development generally complies with the provisions of the Comprehensive Inner West Development Control Plan 2016. It is considered that the proposal will not result in any significant impacts on the streetscape or amenity of adjoining properties.

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

2. Proposal

Approval is sought for alterations and additions to an existing dwelling including demolition of the rear of the dwelling and construction of a two storey pavilion addition. The new works also include the following:

- Three (3) skylights on the western roof plane of the existing dwelling;
- One (1) skylight on the rear roof plan of the existing dwelling;
- A courtyard between the existing dwelling and rear pavilion addition with an overlooking first floor balcony and associated landscaping works;
- New roller shutter door along the rear property boundary; and
- Wheel strips in the rear yard to accommodate one (1) car parking space with associated landscaping works.

3. Site Description

The subject site is located on the southern side of Smith Street, between Nowranie Street and Carrington Street. The site consists of 1 allotment with an area of 204.3sqm and is legally described as Lot 2 DP 1624.

The site has a frontage to Smith Street of 6.2 metres and a secondary frontage of approximate 6.2 meters to Smith Lane.

The site supports a single storey residential dwelling. 102 Smith Street contains a single storey shop with a residential dwelling at the rear of the property. 98 Smith Street contains a two storey vehicle body repair workshop.

The subject site is located within the Quarantine Ground Conservation Area.

One significant tree is located in the front garden of the site.

4. Background

4(a) Site history

There are no relevant previous building and development applications submitted to Council for the subject site.

4(b) Application history

The application was submitted to Council on 12 July 2018. No additional information or amended plans have been requested as part of this application. A Prelodgement Development Application meeting was held with the applicant on 23 October 2017. The following concerns were raised in the meeting and relevant assessment letter:

- The proposal exceeds the maximum FSR permitted on the site and compliance with the development standard is preferred;
- The proposal fails to comply with minimum landscaped area required for the site given any landscaping below the cantilevered part of the rear addition does not contribute to the calculation. It was recommended that the linking hallway be reduced in length to allow for additional landscaped area at the rear of the site;
- The proposal exceeds the maximum wall height permitted on the site and compliance with this standard is required;
- The property is located within the Quarantine Ground Conservation Area. In order to ensure the development maintains the heritage significance of the area the following is required:
 - The external walls be constructed of brickwork.
 - The extent of the glazing to the north facing upper level be minimised and covered with external louvres.
 - The higher level skylight window on the western roof be deleted.
 - Two vertically proportioned windows be provided on the rear elevation.
- Details of the proposed green wall maintenance must be provided and a balustrade must be installed along the proposed walk way.

The plans submitted as part of the Development Application have incorporated the above requirements, with the exception of the proposed FSR and the higher level skylight window on the western roof. The proposed green wall has been deleted.

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.

5(a) Environmental Planning Instruments

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

A BASIX Certificate was submitted with the application indicating that the proposal achieves full compliance with the BASIX requirements. Appropriate conditions are included in the recommendation to ensure the BASIX Certificate commitments are implemented into the redevelopment.

5(a)(ii) Ashfield Local Environmental Plan (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	Yes

			house.	
4.3	Height of buildings	8.5m	6m	Yes
4.4	Floor space ratio	0.5:1 (102.15sqm)	0.583:1 (119.1sqm)	No - Refer to Cl. 4.6 discussion below.
4.6	Exceptions to Development standards	The variation to the FSR development standard is discussed below.		
5.10	Heritage Conservation	The site is located within the Quarantine Ground 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 under subclause (6).	The proposed alterations and additions are acceptable in term of heritage impacts. Refer to discussion Section 5(d) of this report.	Yes
5.10(5)	Heritage Assessment	The consent authority may, before granting consent to any development: (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.	The applicant's Heritage Impact Statement concludes there would be no adverse impact on the heritage conservation area as a result of the proposed alterations and additions. Refer to discussion Section 5(d) of this report.	Yes

Clause 4.6 – Exceptions to Development Standards

Under Clause 4.6 of the ALEP 2013, the consent authority may consider a variation, where that variation would achieve a better outcome.

The development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of ALEP 2013. A written request in relation to the contravention of the floor space ratio development standard in accordance with Clause 4.6 of ALEP 2013 was submitted with the application.

A maximum floor space ratio of 0.5:1 applies to the site under Clause 4.4 of ALEP 2013. The proposed development has a floor space ratio of 0.583 which results in a variation of 16.95sqm or 16.6%.

Clause 4.6(3) of the ALEP 2013 states the following:

“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 applicant has provided a written request that seeks to justify the proposed contravention of the floor space ratio development standard on the following grounds:

- The proposed development will retain the form and scale of the existing cottage to Smith Street;
- The FSR standard is not appropriate for the site given the size of the lot and nature of the Quarantine Ground Conservation Area;
- The proposed development will retain the heritage significant 3 rooms of the existing cottage, whilst providing a new living area with a northerly aspect;
- The bulk and scale of the proposed pavilion building is consistent with the bulk and scale of the existing buildings in the locality which have an apparent FSR in excess of the development standard;
- The proposed development will not adversely impact the nature or character of the Quarantine Ground Conservation Area; and
- The proposed development will not impact the amenity of the adjoining properties.

Clause 4.6(4) of the ALEP 2013 states the following:

“Development consent must not be granted for a 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)*
- (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 proposal is consistent with the objectives of the development standard in that:

- The proposed floor space ratio would be within the maximum building height required under the ALEP 2013;
- The proposed development provides comparable bulk and scale to the existing development and surrounding development;
- The proposed development would not have impact on the environmental amenity and enjoyment of the adjoining properties with respect to privacy and solar access;
- The proposed development would protect the use and enjoyment of the adjoining properties and the public domain;
- The proposed development would not have adverse impacts on the heritage conservation area and
- The proposed development would maintain the visual relationship between the proposal and the existing character of the area.

The site is Zoned R2 – Low Density Residential under ALEP 2013 wherein development for the purpose of residential dwellings is permissible with consent. The proposal is generally consistent with the objectives of the R2 Zone in that:

- The proposed development would provide for the housing needs of the community within a low density residential development; and
- The proposed development will enable other land uses that provide facilities or services to meet the day to day needs of residents.

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

Council may assume the concurrence of the Director-General under the Planning Circular PS 18-003 issued in February 2018.

In conclusion, the applicant's written request to justify the contravention of the Floor Space Ratio development standard is considered to be well founded in that the applicant has satisfactorily demonstrated that compliance with the standard is unnecessary or unreasonable in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

5(b) Draft Environmental Planning Instruments

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

Draft Environment State Environmental Planning Policy (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 proposal has been considered against the provisions of the Comprehensive Inner West Development Control Plan 2016.

DCP 2016 – Chapter F: Development Category Guidelines				
Control No.	Control	Standard	Proposed	Compliance
DS8.2	Minimum Landscaped area %	201sqm – 300sqm. 25% of site area	25.1% (51.3sqm)	Yes
DS8.3	Maximum site coverage	201 – 300sqm. 65% of site area	55.2% (112.8sqm)	Yes
DS3.4	Wall height	Maximum external wall height of 6 metres measured from the existing ground level.	6m	Yes
DS4.3	Setbacks	Side setbacks are determined by compliance with the BCA. Generally, Council requires a minimum side setback of 900mm for houses	Nil side setbacks for dwelling. (existing)	Yes
DS6.1	Garages and carports	A minimum of one car parking is required per dwelling	1 car parking space	Yes
DS13.1	Solar access	Sunlight to at least 50% (or 35m ² 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.	Neighbouring dwellings to retain the minimum required 3 hours solar access	Yes
DS 13.2		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.	The proposed first floor balcony would result in unacceptable additional overshadowing to the light well of 102 Smith Street. As such an appropriate condition of consent has been	No

DS 13.3		Requires main living areas to be located on the northern side of buildings where possible and subject to streetscape quality considerations.	imposed which requires the balcony be deleted. Development is appropriately designed	Yes
DS 13.4		Requires sun shading devices such as eaves, overhangs or recessed balconies minimise the amount of direct sunlight striking facades.	Proposal incorporates appropriate sun shading devices such as eaves	Yes
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.	No change to existing front garden	Yes
DS 11.2	Front gardens	Requires hard paved areas to be minimised, and driveways have a maximum width of 3 metres	No change to existing front garden	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.	Rear garden is of a sufficient size to ensure adequate vegetation and solar access	Yes
DS14.1	Visual Privacy	Requires the number of windows to side elevations located above the ground floor to be minimised.	No windows to side elevations are proposed. The proposed first floor balcony will result in an additional overlooking impact to 98 Smith. Given the property is zoned for residential, a condition of consent has been imposed which requires the balcony be deleted to prevent any future additional overlooking impact to a residential dwelling.	No
DS19.1	Stormwater Disposal	Stormwater from roofs is discharged by gravity to street gutter system	Conditioned to Engineer's requirements	Yes

It is considered the application 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 solar access and visual privacy. An appropriate condition of consent has been imposed to prevent any additional solar access or visual privacy impacts.

The proposed development is capable of complying with the BCA.

It is considered that the proposal will have no significant detrimental effect relating to the environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed

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.

Heritage

The subject site is listed as a heritage item and is located within the Quarantine Ground Conservation Area. Concern was raised by Council’s Heritage Advisor who requested the following:

- The two (2) forward skylights on the western roof plane be deleted;
- The proposed balcony be deleted and large bedroom window of the proposed extension be centralised; and
- Columns be provided to support the proposed cantilevered area at the rear

Concern has been raised by Council’s Heritage Advisor regarding the proposed skylights given they would result in the loss of significant original fabric of the dwelling.

The skylights on the western roof plane will allow for some natural sunlight to the existing cottage and are mostly not visible from the street given the height of 102 Smith Street and the significant street tree. As requested in the Prelodgement Development Application and given the above, a condition of consent has been imposed which requires the deletion of the skylight closest to the ridge only (Skylight S2).

Concern has been raised by Council’s Heritage Advisor regarding the solar access impact of proposed balcony on the light well of 102 Smith Street. The existing light well would experience significant overshadowing as a result of the existing buildings at 100 Smith Street and 102 Smith Street. It is considered that the proposed balcony wall would result in an unacceptable loss of solar access to the light well. A condition of consent has been imposed which requires the balcony be deleted and bedroom window of the proposed extension be centralised. In addition, the deletion of the balcony will prevent any overlooking impact to 98 Smith Street.

It is considered that the addition of columns to support the proposed cantilevered area is unnecessary given they would not be visible from rear lane and would have no impact on the heritage significance of the property.

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

The site is zoned R2 – Low Density Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified for a period of 14 days to surrounding properties in accordance with the Comprehensive Inner West Development Control Plan 2016 and no submissions were received.

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 and relevant agencies' 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.

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal officers:

Heritage – Refer to discussion Section 5(d) of this report.

Tree Management – The application was referred to Council's Tree Management Officer who raised no objection to the application, subject to the imposition of appropriate conditions including the planting of one (1) additional canopy tree. The planting of an additional tree is considered unnecessary given size of the site. An additional tree would reduce the effective operation and function of the landscaped area in the courtyard or at the rear of the site and would have potentially detrimental structural impacts on the proposed dwelling.

Engineering – The application was referred to Council's Engineer who raised no objection to the application, subject to the imposition of appropriate conditions.

6(b) External

Not Applicable

7. Section 7.12 Levy

A Section 7.12 Levy of \$3,500.00 would be required for the development under Ashfield Section 94A Contributions Plan 2014. A condition requiring that levy 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 significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

That the Panel, as the consent authority pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No: 10.2018.126.1 for alterations and additions to an existing dwelling at 100 Smith Street, Summer Hill subject to the conditions listed in Attachment A below.

- A. The applicant has made a written request pursuant to Clause 4.6(3) of the ALEP 2013 in support of the contravention of the development standard for 4.4 Floor Space Ratio. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds, the proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority pursuant to S4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: 10.2018.126.1 for alterations and additions to an existing dwelling at 100 Smith Street, SUMMER HILL subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS

DA 2018.126.1
100 Smith Street SUMMER HILL 2130

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

Alterations and additions to an existing dwelling

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

No.	Issue	Title	Prepared by	Council Date Stamp
1.01	F	Site Plan	Naja Architecture	01/07/2018
1.02	F	Existing Floor Plan/Demolition	Naja Architecture	01/07/2018
1.04	F	Floorplan	Naja Architecture	01/07/2018
1.05	F	Elevations N & S/Section C	Naja Architecture	01/07/2018
1.06	E	Section A & B & D	Naja Architecture	01/07/2018
1.07	F	Elevations West & East	Naja Architecture	01/07/2018
1.12	F	Stormwater Services Plan	Naja Architecture	01/07/2018
1.13	F	Windows & Skylights Schedule	Naja Architecture	01/07/2018

and any supporting documentation received with the application, except as amended by the conditions specified hereunder.

(2) **Compliance with BCA**

All works are to comply with the Building Code of Australia and relevant Australian Standard requirements.

(3) **Tree Retention**

The trees identified below are to be retained:

Tree/location	
<i>Plumeria actinophylla</i> (Frangipani)	Front garden
<i>Melaleuca bracteata</i> (Black Tea Tree)	street tree

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

B Design Changes

(1) **Amendments required to approved plans**

Amended plans must be submitted to and approved by Council which delete skylight S2, delete the proposed first floor balcony and associated western first floor boundary wall, and centralise window W6.

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

(1) 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.

(2) 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 Environmental Protection Authority.

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

- (a) "*Sedimentation and Erosion Control*" - Department of Conservation and Land Management.
- (b) "*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

(3) Permits – General

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.

(4) Dilapidation – minor

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.

(5) 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.

(6) 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)	\$8,056.50
Inspection fee (FOOTI)	\$230.64

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.

(7) 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.

(8) 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.

(9) Section 7.12 Contributions

A Section 7.12 Contribution fee of \$3,500.00 is to be paid in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979*.

(10) 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.

(11) Home Building Act 1989 Insurance

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.

(12) Energy Efficiency

The development must be designed and constructed to maximise energy efficiency, including wall and ceiling insulation and energy efficient appliances/hot water/cooling systems. Contact the Sustainable Energy Development Authority, telephone 9291 5260 for general design and construction information relating to energy efficiency. Documentation detailing the energy efficiency features of the development is to be shown on the plans to be provided with the Construction Certificate

(13) 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.

(14) Footpath, kerb and gutter protection

The applicant shall 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 shall 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.

(15) Erosion, dust, topsoil and sediment control

Temporary measures shall be provided during construction eg. bunding, shade cloth to prevent dust leaving the site, sandbags around Council/private stormwater pits etc. in order to prevent sediment, dust, topsoil and polluted waters discharging from the site. Plans showing such measures shall be submitted and approved by Council/certifier prior to the release of the Construction Certificate.

(16) 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.

(17) Underground Services

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.

(18) Tree Protection Measures

To preserve the following tree, no work shall commence until the area beneath the canopy shall be fenced off for the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area. The fence shall be maintained intact until the completion of all demolition/building work on site:

Tree/location	Radius in metres
<i>Plumeria actinophylla</i> (Frangipani) Front	3 metres - whole front garden

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. The barrier shall not project beyond the kerb onto the roadway or any adjacent footpath.

Upon installation of the required tree protection measures, an inspection of the site by the Principal Certifying Authority is required to verify that tree protection measures comply with all relevant conditions.

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.

(19) Tree Protection Signage

Prior to works commencing or release of a Construction Certificate (whichever occurs first), tree protection signage is to be attached to each tree protection zone, displayed in a prominent position and the sign repeated at 10 metre intervals or closer where the fence changes direction. Each sign shall contain in a clearly legible form (lettering should comply with AS 1319-*Safety signs for the occupational environment*), the following information:

- a) Tree protection zone;
- b) This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted;
- c) Any encroachment not previously approved within the tree protection zone shall be the subject to advice from the Project Arborist in report form and must include the following:
 - Proof shall be provided that no other alternative is available;
 - On completion, the Project Arborist's report shall be submitted to the Principal Certifying Authority for further consultation with Council;
- d) The name, address and telephone number of the builder and Project Arborist.

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.

(20) Trunk Protection

To preserve the following tree/s no work shall commence nor shall a Construction Certificate be issued (whichever occurs first) until the trunk and lower branches are protected (in accordance with AS4970-*Protection of trees on development sites*) by the placement of 2 metres lengths of 50 x 100mm timbers spaced at 150mm centres and secured by wire/hoop strap over suitable protective padding material (i.e. underlay or carpet). The trunk/branch protection shall be maintained intact until the completion of all work on site.

Tree/Location
<i>Melaleuca bracteata</i> (Black Tea tree) Street tree

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first).

D Conditions that must be complied with before work commences

(1) 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.

(2) 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.

(3) 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.

(4) 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: -

- (i) location of the building with respect to the boundaries of the site;

- (ii) level of the floor in relation to the levels on the site (all levels are to be shown relative to Australian Height Datum);
- (iii) site coverage of the buildings on the site.

(5) 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.

(6) 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.

(7) Support for neighbouring buildings and notice to adjoining owners

- (1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
 - (a) must preserve and protect the building from damage, and
 - (b) if necessary, must underpin and support the building in an approved manner, and
 - (c) must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Notes:

- (i) Details of underpinning works, prepared and certified by a practicing structural engineer shall be submitted to and approved by the Principal Certifying Authority prior to the commencement of any works.
- (ii) allotment of land includes a public road and any other public place.

(8) 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.

(9) 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.

(10) 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.

(11) Structural engineer's certificate - superimposed loads

A practising structural engineer's certificate to be submitted to the Principal Certifying Authority with the Construction Certificate application certifying that the existing dwelling is structurally capable of supporting the superimposed loads of the addition prior to commencement of any building work.

(12) Roof trusses - structural engineer certification

Details of roof trusses to be submitted to the Principal Certifying Authority and approval obtained prior to erection - for this purpose structural engineer certified truss plans will suffice and computation data is not required.

(13) Structural Engineering Details

Structural engineer's details prepared and certified by a practising structural engineer for all reinforced concrete and structural members is to be submitted to the Principal Certifying Authority for approval.

E Conditions that must be complied with during construction or demolition**(1) 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.

(2) Locate structures within boundaries

The proposed structure(s) to be erected must stand wholly within the boundaries of the allotment.

(3) Spoil and building materials on road and footpath

All building materials shall be stored wholly within the property boundaries and shall not be placed on the footpath, grass verge or roadway without prior written approval of Council.

Bulk refuse bins shall not be placed on the grass verge, footpath or roadway without Council permission. Application forms and details of applicable fees are available from Council's One Stop Shop telephone 9716 1800.

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

- (1) 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:
 - (a) stating that unauthorised entry to the work site is prohibited; and
 - (b) 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
 - (c) showing the name, address and telephone number of the Principal Certifying Authority appointed for the building works.
- (2) Any-sign shall be maintained and not removed until work has been finished.

(5) 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.

(6) 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 SafeWork Requirements (in particular the SafeWork 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.

(7) 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 hereunder.

(8) 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.

(9) 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.

(10) Roof guttering and drainage system/disposal of stormwater

The roof shall be provided with a complete guttering and drainage system. Roofwater shall be disposed of by approved drainage lines discharging into the street gutter.

(11) 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.

(12) Termite treatment

Treatment for the protection of the building from subterranean termites shall be carried out in accordance with AS 3660.1:2000 'Protection of Buildings from Subterranean Termites'.

On completion of the installation of the barrier the Principal Certifying Authority shall be furnished with a certificate from the person responsible, stating that the barrier complies with AS 3660.1.

A durable notice shall be permanently fixed to the building in a prominent location, such as the meter box or the like indicating:

- the method of protection;
- the date of installation;
- where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
- the need to maintain and inspect the system on a regular basis.

Due to the present limited effective life of soil chemical treatments, Council does not permit hand spraying as a stand alone method of termite protection. It is recommended that any soil chemical treatment should embrace a reticulation system.

(13) Waterproofing materials/installation – BCA/Australian Standards

Approved products that are impervious to water shall only be used as a substrate or as a lining and as a finish to floors and walls of wet areas (i.e. bathroom/shower room, WC compartment and laundry). Floors and cubicles shall be properly graded and drained to approved outlets.

The wet areas in the building shall be impervious to water as required by Part 3.8.1 of the Building Code of Australia (BCA). The junction between the floor and wall and the construction of the bath shower recess, basin, sink or the like shall be in accordance with the BCA & AS 3740:2004 'Waterproofing of wet areas within residential buildings'.

On completion of the waterproofing of the wet areas, the Principal Certifying Authority shall be furnished with a certificate from the person responsible. This is to state that the materials are suitable for the situation and that the application and/or installation has been carried out in accordance with the manufacturer's instructions, the BCA and AS 3740.

(14) Safety Glazing - BCA

Safety glazing complying with B1 of the Building Code of Australia (BCA) is to be used in every glazed door or panel that is capable of being mistaken for a doorway or unimpeded path of travel. The glazing must comply with AS 1288:2006 'Glass in Buildings – Selection and Installation'.

Framed panels or doors enclosing or partially enclosing a shower or bath shall be glazed with "A" or "B" grade safety glazing material in accordance with AS 1288 and Part 3.6.4 of the BCA.

(15) Fire Detection/Alarm System installation and certification

Smoke alarms must be installed in dwellings in accordance with Clause 3.7.2.3 of the Building Code of Australia (BCA) and AS 3786 on or near the ceiling in -

- (a) any storey containing bedrooms -
 - between each area containing bedrooms and the remainder of the dwelling, including any hallway associated with the bedrooms
- (b) any storey not containing bedrooms.

Smoke alarms must be connected to the consumer mains power and have a stand-by power supply.

The licensed Electrical Contractor shall on completion of the installation of the smoke alarm system, submit to the Principal Certifying Authority a certificate certifying compliance with AS 3000 and AS 3786:1993.

(16) 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 on 15 June 2018 from the Department Planning and Environment. For more information visit www.basix.nsw.gov.au.

(17) House Stormwater Disposal

The stormwater disposal from the proposed development shall be connected to the existing site stormwater system or a new line laid connecting to the Smith Street gutter, via a 100mm dia UPVC pipe. No 'charged' lines are permitted. The existing site stormwater system shall be tested by a qualified plumber to ensure it functions satisfactory in discharging water to the street gutter.

(18) Material Storage

No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.

(19) Tree Protection

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

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

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**(1) Compliance with submitted ridge height**

A survey report to be submitted upon completion of the works and prior to occupation verifying compliance with the approved ridge height details.

(2) 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.

(3) Street Number

A street number appropriately designed to complement the character of the must be displayed in a position clearly visible from the street, in numbers having a height of not less than 100mm. The number must be in place before the premises can be occupied.

(4) 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".

H Conditions that are ongoing requirements of development consents**(1) Single dwelling use only**

Dwelling shall be used as a single domicile only and shall not be adapted or occupied in two or more parts as a residential flat building.

I **Advisory Notes**

(1) 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 4.55 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 4.55 modification is required.

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

(2) Occupational health and safety

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

(3) Tree preservation

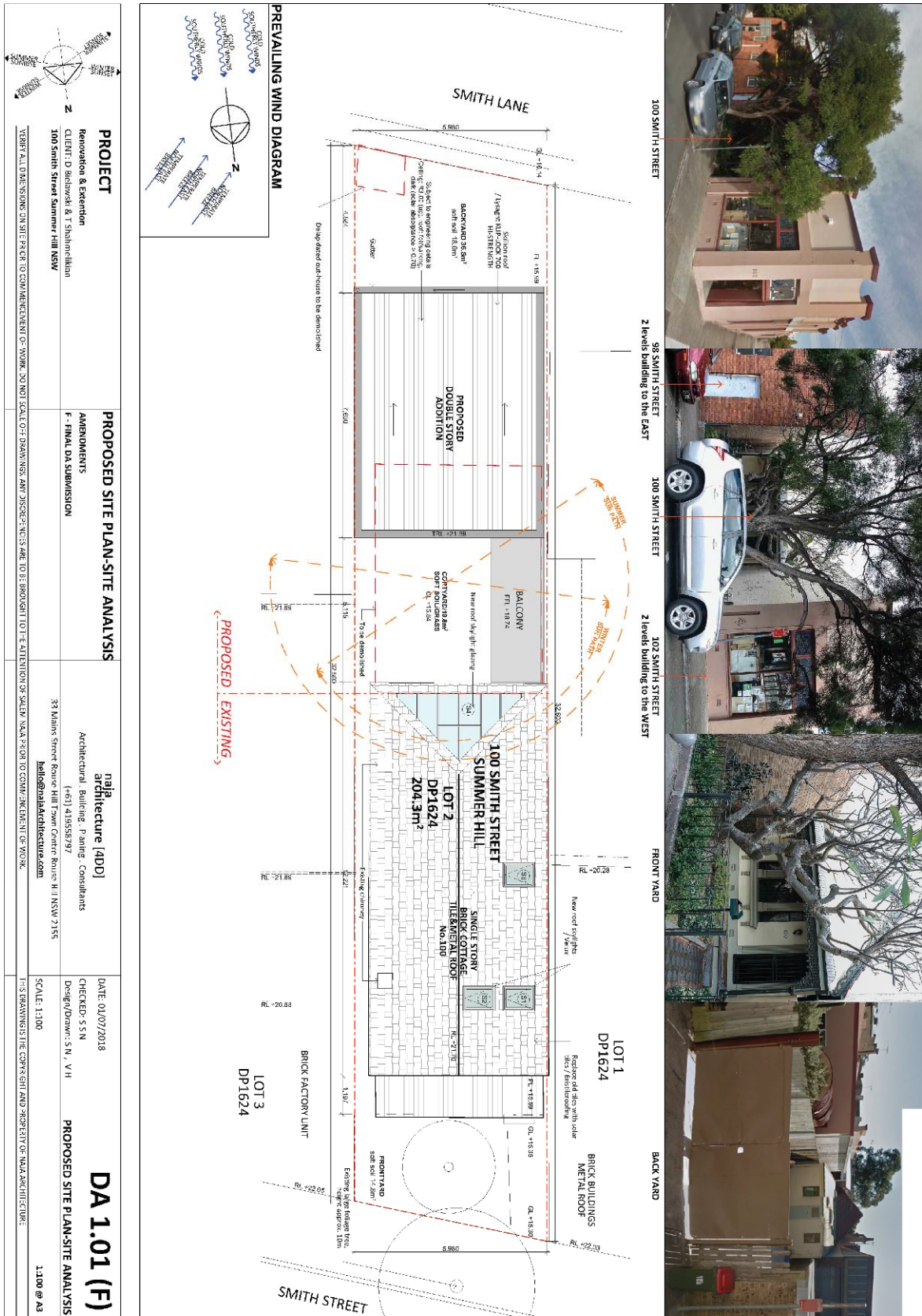
Where tree removal or work has not been approved by this Development Consent, the developer is notified that a general Tree Preservation Order applies to all trees (with the exception of certain species) in the Municipality of Ashfield with a height greater than five (5) metres. This order prohibits 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.

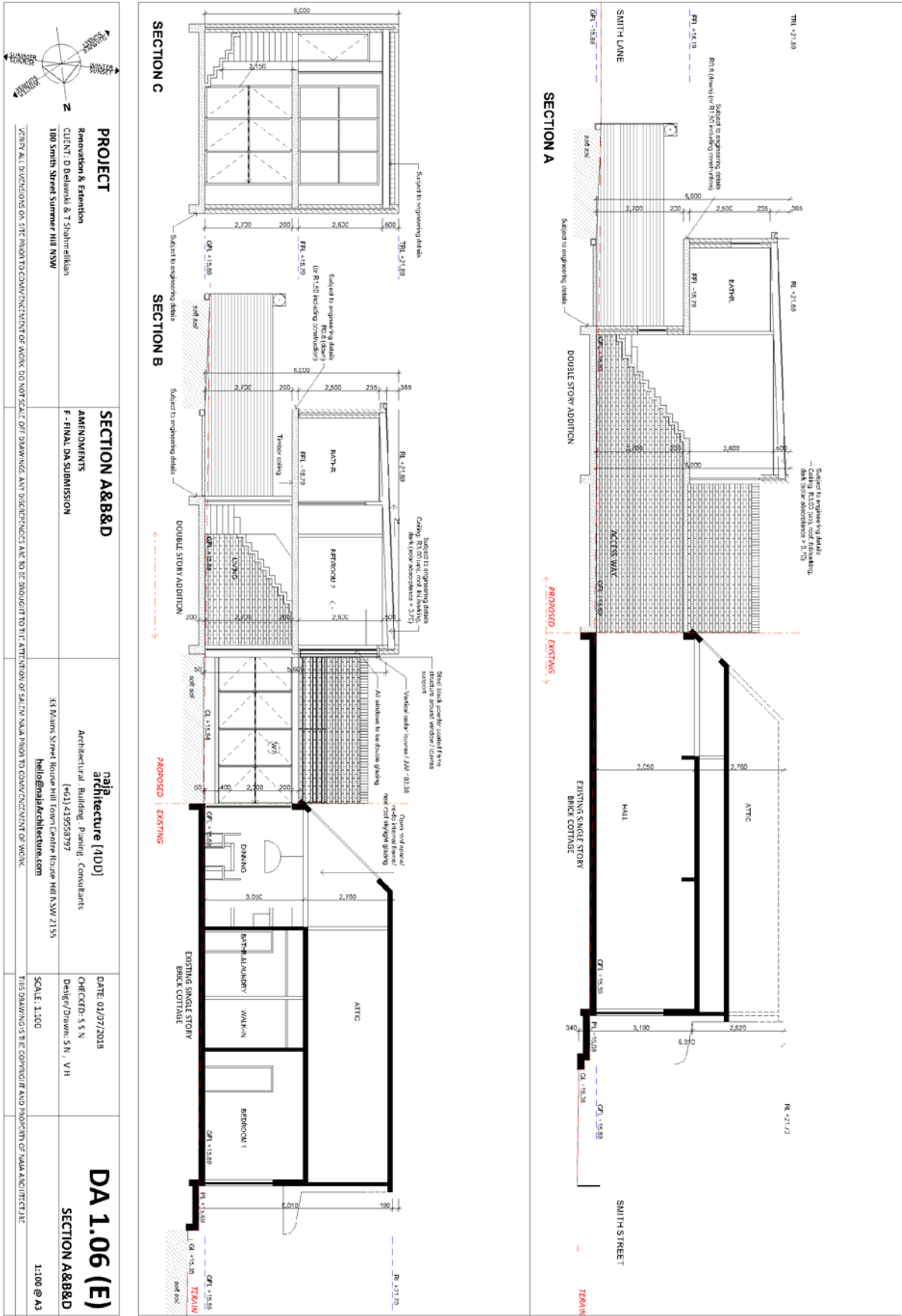
* Lopping may be carried out without consent only to maintain a minimum clearance of 500mm from power lines, pruning to remove dead wood/branches and minor pruning of branches overhanging buildings to a height of 2 metres only with the agreement of the owner of the tree. Contact Council's One Stop Shop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

(4) Relocation of stormwater drainage

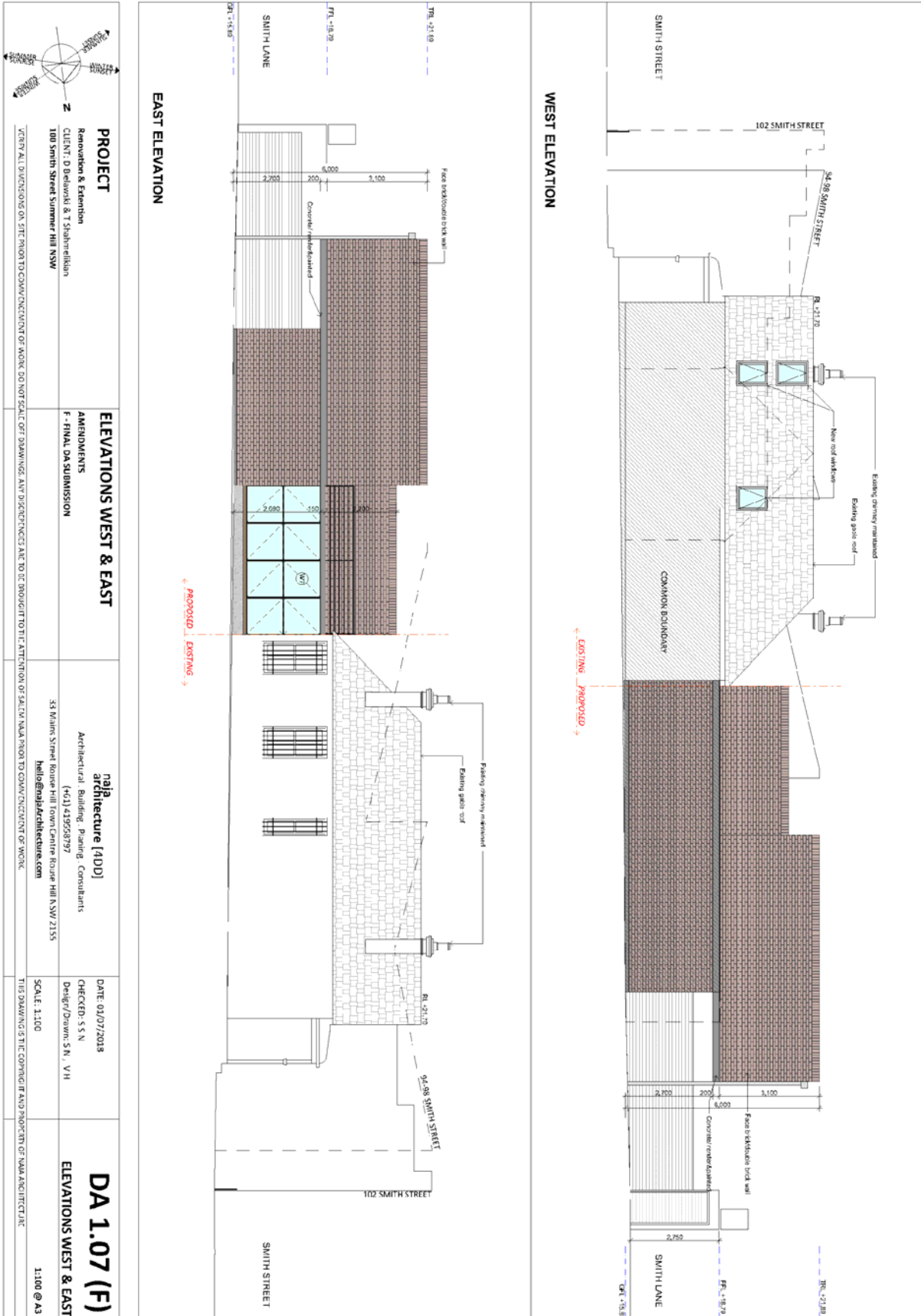
Council is not responsible for the cost of relocating Council's stormwater drainage pipes through the subject property.

Attachment B – Plans of proposed development

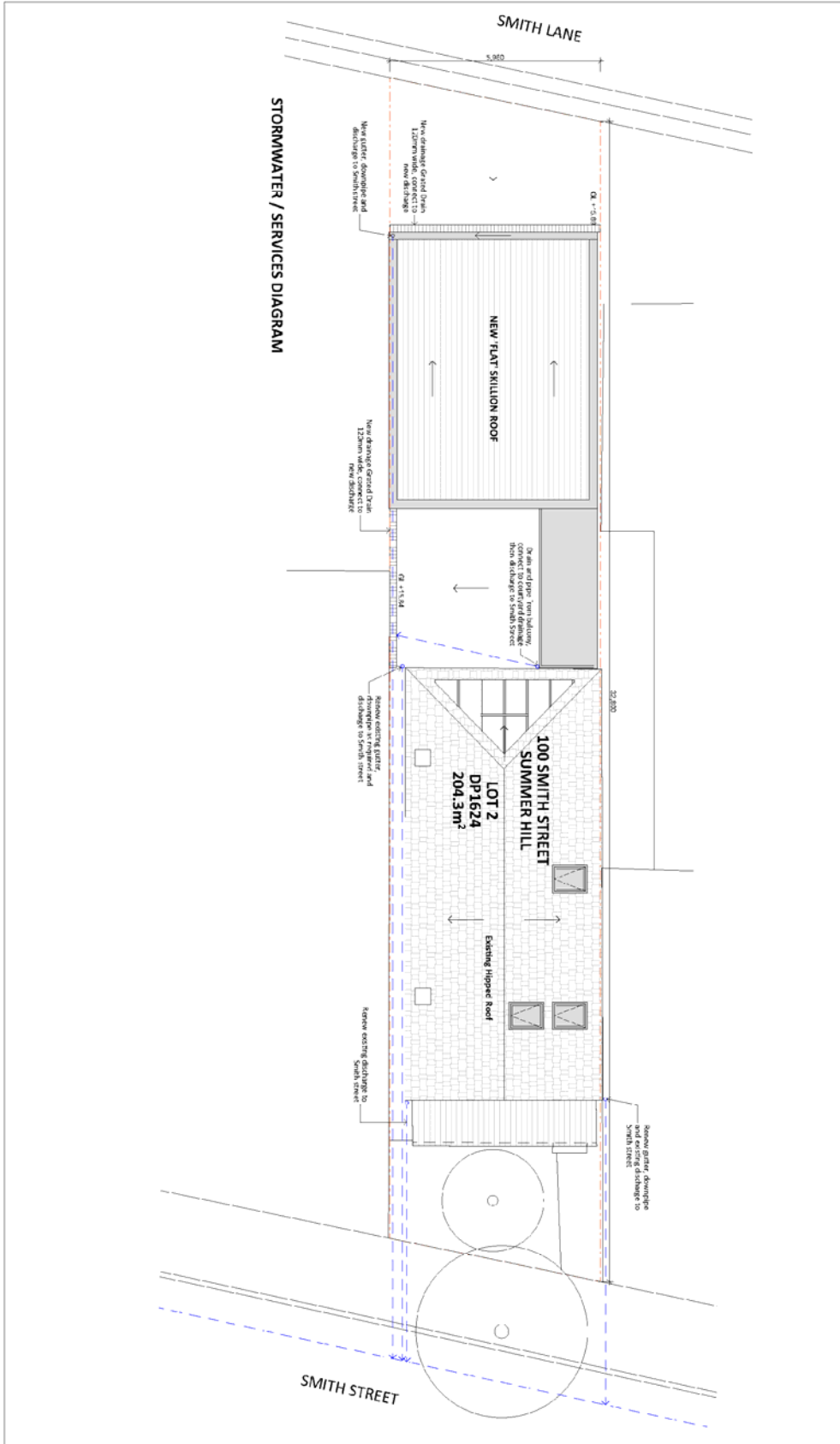




<p>PROJECT</p> <p>Removation & Extension</p> <p>CLIENT: D. Belandier & T. Sharmelilian</p> <p>100 Smith Street Summer Hill NSW</p>	<p>SECTION A&B&D AMENDMENTS</p> <p>F-FINAL DA SUBMISSION</p>	<p>naja architecture (AUD)</p> <p>Architectural Building Planning Consultants</p> <p>(+61) 43958397</p> <p>33 Wainwright Street, Summer Hill NSW 2155</p> <p>hello@najaarchitecture.com</p>	<p>DA 1.06 (E)</p> <p>SECTION A&B&D</p>
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<p>PROJECT Renovation & Extension CLIENT: D Belowski & T Shahr-eikhon 100 Smith Street Summer Hill NSW</p> 	<p>STORMWATER SERVICES PLAN AMENDMENTS F - FINAL DA SUBMISSION</p>	<p>naja architecture (4DD) Architectural, Building, Planning, Consultants (+61) 419558797 hello@najaarchitecture.com</p>	<p>DATE: 01/07/2018 CHECKED: S S N DESIGN/Drawn: S N, V H</p>	<p>DA 1.12 (F) STORMWATER SERVICES PLAN SCALE: 1:100 THIS DRAWING IS THE COPYRIGHT AND PROPERTY OF NAJA ARCHITECTURE</p>
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PROJECT
Renovation & Extension
CLIENT: D Belavski & T Shahreikhan
100 Smith Street Summer Hill NSW

WINDOW/S&SKYLIGHTS SCH.
AMENDMENTS
F - FINAL DA SUBMISSION


DA 1.13 (F)
1:100 @ A3

DATE: 01/07/2018
CHECKED: S S N
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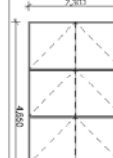
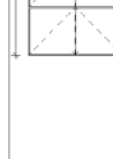

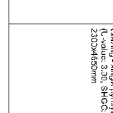


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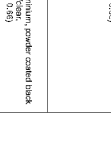
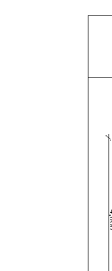
GENERAL DIMENSIONS ON SITE PRIOR TO COMMENCEMENT OF WORK DO NOT SCALE OFF DRAWINGS. ANY DISCREPANCIES ARE TO BE BROUGHT TO THE ATTENTION OF SALES MANAGER TO CORRECTIVE MEASUREMENTS OF WORK.



WINDOWS SCHEDULE

W1		W1 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 2.2, SHGC: 0.45) 700x200mm
W2		W2 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 4.12, SHGC: 0.55) 500x200mm External adjustable aluminium roller shades
W3		W3 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 3.18, SHGC: 0.4) 500x200mm
W4		W4 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 4.12, SHGC: 0.55) 700x200mm
W5		W5 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 4.12, SHGC: 0.55) 700x200mm
W6		W6 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 3.20, SHGC: 0.4) 500x200mm External fixed vertical blinds, order #M 102138
W7		W7 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 3.20, SHGC: 0.4) 500x200mm

SKYLIGHTS SCHEDULE

S1		S1 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 2.2, SHGC: 0.45) 600x200mm
S2		S2 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 2.2, SHGC: 0.45) 600x200mm
S3		S3 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 2.2, SHGC: 0.45) 600x200mm
S4		S4 Frame - Improved aluminium, powder coated black Glazing - 200mm glass, (U-value: 2.2, SHGC: 0.45) 600x200mm

Attachment C – Clause 4.6 written request

100 Smith Street, Summer Hill – Statement of Environmental Effects

4. STATUTORY CONSIDERATIONS.

4.1 Ashfield LEP 2013.

The R2 Residential zoning allows single dwellings on single lots. The planning controls that apply to the property and locality are set out in the following table.

Ashfield LEP 2013	Designation
Zoning	R2 Residential
Floor space ratio	0.5:1
Height of buildings	8.5m
Lot size	500sm
Reservation/acquisition	No
Heritage item/conservation area	No/Yes
Key site	No

Compliance table for development standards

		Compliance
Site area	204.3m ²	Existing lot
Proposed GFA	118.8m ²	
FSR	0.58:1	See clause 4.6 submission
Height	6m	Yes

The pavilion has a height of 6m and the height standard of 8.5m is complied with.

The FSR standard for the erection of a dwelling house is 0.5:1. The proposed development does not comply with this development standard. Consequently, a written submission is provided that addresses the contravention of the development standard.

4.2 Objection under Clause 4.6 of Ashfield LEP 2013 - Exception to development standard (floor space ratio)

Criteria

Clause 4.6 allows consent to be granted for development that would contravene a development standard if

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(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 and
- the consent authority is satisfied that
 - (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- the concurrence of the Director-General has been obtained

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In accordance with the guidelines provided by decisions of the Land and Environment Court and in particular the judgments in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, the submission in this Statement addresses the requirements of clause 4.6 in turn.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. The subsequent cases referred to above have confirmed that these ways are equally applicable under the clause 4.6 regime. The 5 matters to consider are whether:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The objective is not relevant to the development.*
3. *The objective would be defeated or thwarted if compliance was required.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*
5. *The zoning of the land is unreasonable or inappropriate.*

These 5 matters are discussed below.

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

Objectives for the development standard for floor space ratio

The objectives in clause 4.4 for the floor space ratio are:

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

These objectives are achieved because:

- The works will retain the form and scale of the existing cottage to Smith Street.
- The FSR standard of 0.5:1 and lot size of 500m² may be appropriate for the more suburban parts of the former Ashfield LGA. However, strict compliance with these standards is not necessary or appropriate for small lots that

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contain original Victorian cottages. The key elements of the Quarantine Ground Conservation Area in which the site is located is the retention of the original subdivision pattern and the maintenance of the character of the Victorian cottage on the site. Both these elements are satisfactorily addressed in the application.

- The strategy for the upgrade of the existing accommodation is to retain the significant 3 rooms of the existing cottage, whilst providing a new living area with a northerly aspect. The rear pavilion does not impact on the streetscape of Smith Street. The two storey scale of the pavilion is compatible with the scale of the adjoining non-residential buildings.
- The bulk and scale of the proposed pavilion building is consistent with the bulk and scale of the existing buildings in the locality. It would appear that all the buildings at 86, 88, 90, 92, 94-98 and 102 Smith Street have an FSR that is well in excess of 0.5:1 and in fact more than 0.6:1. This is apparent in the aerial photograph above and on the site analysis plan (DA1.03(F)).
- The pavilion will not adversely affect the heritage conservation area.
- The pavilion will not impact on the amenity of the adjoining properties.

In these circumstances, strict compliance with the FSR standard would be unreasonable and unnecessary.

2. The objective is not relevant to the development.

This contention is not applicable to the proposal.

3. The objective would be defeated or thwarted if compliance was required.

This contention is not applicable to the proposal.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.

This contention is not applicable to the proposal.

5. The zoning of the land is unreasonable or inappropriate.

This contention is not applicable to the proposal.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- There are other similar two storey buildings along the lane, including a 2 storey rear wing to the house at 80 Smith Street.
- Both adjoining properties have non-residential buildings that have a built form that substantially exceeds the standard of 0.5:1. The building at 102 Smith Street comprises an early shop with later rear additions. The rear additions were approved by Council in 1990 and 2003. The buildings at 94-96 and 98 Smith Street are industrial buildings in common ownership with a site coverage of more than 80% and a bulky roof form. These buildings have been used for motor repairs and have the potential to be re-used for a variety of purposes. It is mostly unlikely that these buildings would be substantially demolished. Consequently, the relatively minor variation from the FSR development standard by only 16m² is not out of character and nor inconsistent with the adjoining built form.
- The shadow from the rear addition will fall on the rear yard and lane. The central courtyard provides an area of private open space that has good solar access.

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Will the proposed development be in the public interest because it is consistent with the objectives of the development standards?

The objectives of the FSR standard have been addressed above. The proposal is consistent with these objectives. Further, the objectives are achieved despite the numerical non-compliance. The development will be in the public interest because it will be consistent with the original subdivision pattern and retains the character of the existing cottage. It is also consistent with the size of other nearby houses as well as the size and scale of the adjoining non-residential buildings.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

The objectives for development within the R2 zone are:

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

The proposal is consistent with the first objective for the zone because it will provide a better form of residential accommodation for the current owners.

Concurrence of the Director-General

The concurrence of the Director-General may be assumed by Council.

Council must also consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning*
- (b) *the public benefit of maintaining the development standard*

Any matter of significance for State or regional environmental planning

There are no matters of significance for State or regional environmental planning

Public interest

The proposal is considered to be neutral in terms of the public interest.