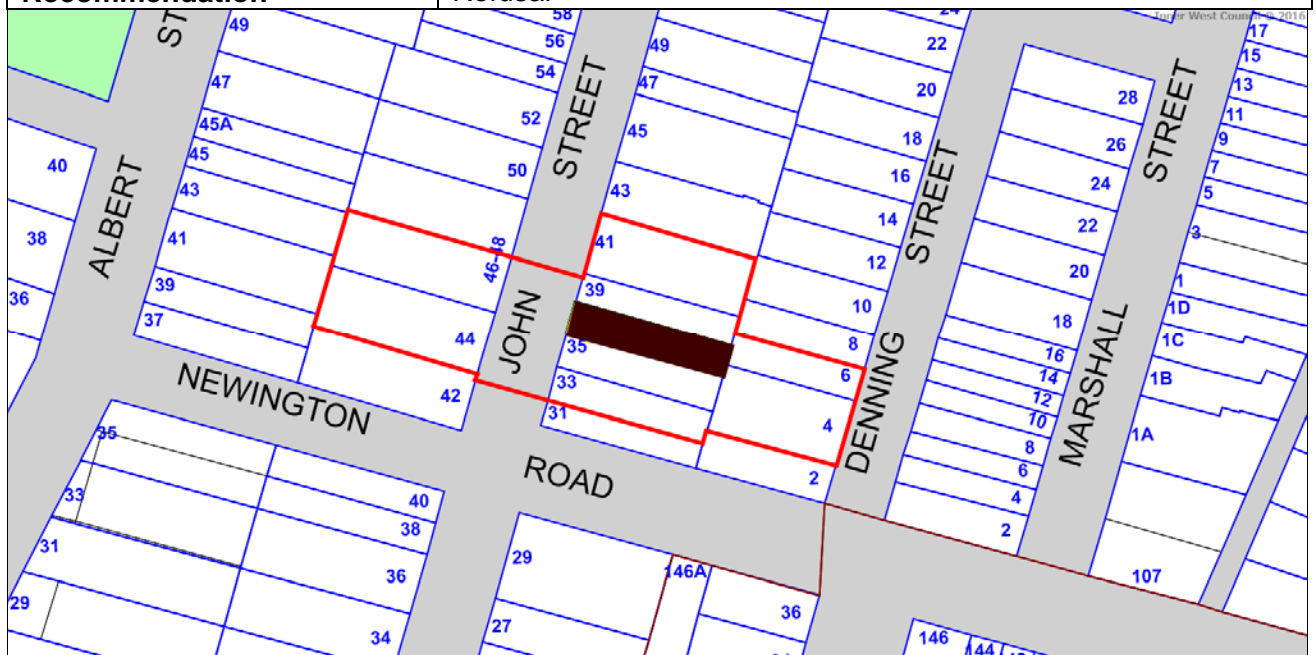




INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA201800051.01
Address	37 John Street Petersham
Proposal	Review request under Section 8.2 of the Environmental Planning and Assessment Act to review Determination No. 201800051 dated 30 May 2018 to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house.
Date of Lodgement	14 August 2018
Applicant	Attic Ladders P/L
Owners	Mr A R Chope & Ms R V Chope
Number of Submissions	No submissions
Value of works	\$218,770
Reason for determination at Planning Panel	Recommendation reaffirms original determination
Main Issues	Heritage; Floor Space Ratio; Height of Buildings; Clause 4.6
Recommendation	Refusal



Subject Site: [REDACTED]	Objectors: <i>No objections received</i>
Notified Area: —	

1. Executive Summary

This report concerns a review request under Section 8.2 of the Environmental Planning and Assessment Act to review Determination No. 201800051 dated 30 May 2018 to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house. The original development application was notified in accordance with Council's Notification Policy and no submissions were received. The subject application, being a review request, contained no changes from the original application and as such was not required to be notified in accordance with Council's Notification Policy.

The main issues that have arisen from the assessment of the application include:

- The existing building is a contributory building with the Petersham South Heritage Conservation Area (HCA 18) and the proposal results in the loss of the existing ridgelines, rear roof plane and substantially alters the original primary roof form to accommodate a second storey addition;
- The proposed bulk and scale of the second floor addition is not consistent with surrounding dwellings and results in poor heritage and streetscape outcomes;
- The proposal breaches the allowable floor space ratio at the site by approximately 3.55sqm being a 1.9% variation; and
- The proposal breaches the allowable height of buildings at the site by approximately 1.24 metres, being a 13% variation.

The development is considered contrary to the aims, controls and design parameters of the Marrickville Local Environmental Plan (MLEP) 2011 and the Marrickville Development Control Plan (MDCP) 2011.

The proposed addition compromises the primary original roof form of the dwelling and will result in alterations that are unsympathetic to the contributory building within HCA 18, contrary to the heritage provisions of Clause 5.10 of MLEP 2011 and Part 8 of MDCP 2011.

Additionally, the proposal breaches both the FSR and height of buildings development standards that apply to the site and while a Clause 4.6 objection has been submitted with the review application, the arguments put forward to justify the breaches are not considered acceptable and Council is not satisfied that compliance with the development standards is unreasonable in the circumstances nor that there is sufficient environmental planning grounds to justify contravening the development standards.

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

2. Proposal

Approval is sought by a review request under Section 8.2 of the Environmental Planning and Assessment Act to review Determination No. 201800051 dated 30 May 2018 to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house. The works include the following:

- Demolition of the rear roof plane of the primary front roof form of the dwelling and the existing first floor rear roof;
- Construction of a second floor addition, partially incorporating the retained roof space, which includes an extension of the southern side roof plane, a new roof extending to the rear from the existing ridgeline and an increase in height to a

- portion of the southern side wall to provide storage, an ensuite and bedroom;
and
- The provision of 3 skylights within the side roof plane and a rear facing window at the second floor.

3. Site Description

The site is located on the eastern side of John Street and has a frontage of 6.345 metres and a site area of 207.5sqm. The site contains a two storey semi-attached dwelling house within the Petersham South Conservation Area (HCA 18). The surrounding streetscape consists mainly of single and two storey dwelling houses with some two storey residential flat buildings and boarding houses within the vicinity of the site. The site is adjoined by 39 John Street which contains a three storey semi-attached dwelling house (which is attached to the subject dwelling) and 35 John Street which contains a two storey dwelling house. Images of the site are featured below:

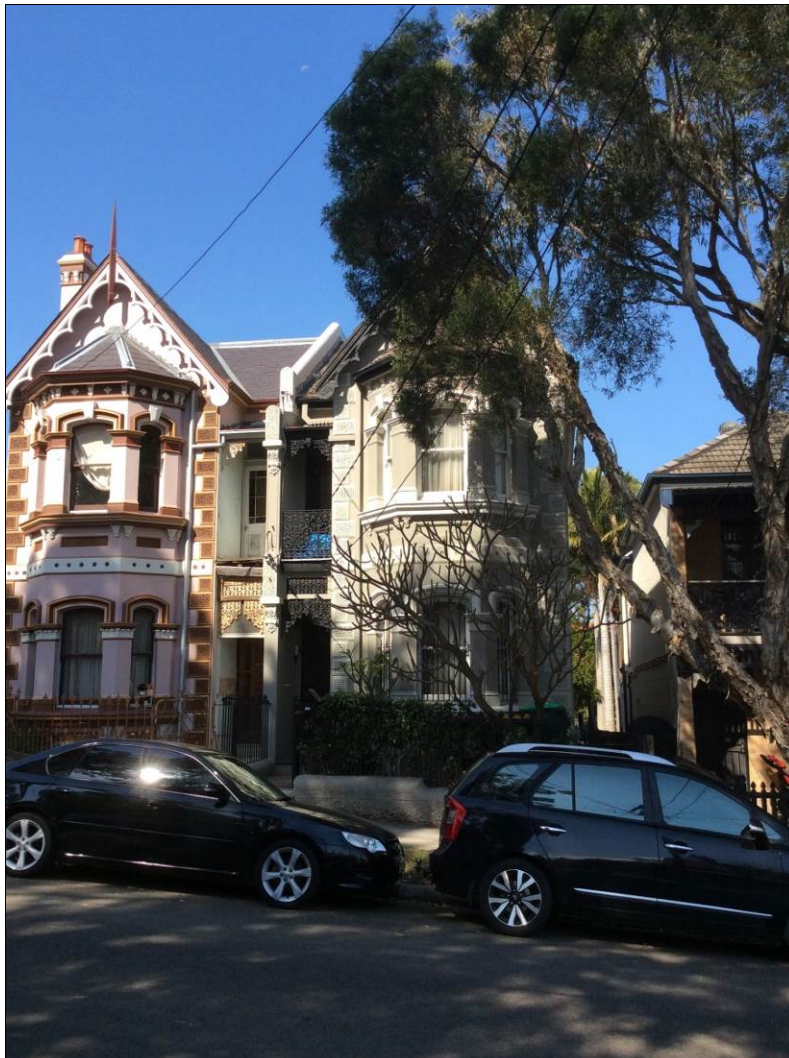


Image 1: Dwelling as viewed from street



Image 2: Southern side of dwelling and area of addition as viewed from the street

4. Background

4(a) Site history

Subject Site

Development Application No. 201800051 sought consent to demolish part of the premises and carry out ground and first floor alterations and additions to a dwelling house.

It was considered that the proposal did not comply with the aims, objectives and design parameters contained in MLEP 2011 and MDCP 2011 with regard to heritage and that the proposed breaches to the floor space ratio and height of building development standards were unjustified.

The application was refused under delegated authority as part of Determination No. 201800051, dated 30 May 2018, for the following reasons:

- 1. The proposal fails to comply the building height development standard prescribed under Clause 4.4 of Marrickville Local Environmental Plan 2011 and*

is inconsistent with the stated objectives of the development standard as the additional height compromises the integrity of the period building.

2. *The proposal fails to comply with the Floor Space Ratio development standard prescribed under Clause 4.6 of Marrickville Local Environmental Plan 2011 and fails to demonstrate the proposal is better than a compliant development.*
3. *The form and appearance of the development results in adverse impacts to the period building and Petersham South Heritage Conservation Area. In this regard the proposal is contrary to Part 4.1.6.1 of Marrickville Development Control Plan 2011 [Built form and character].*
4. *The proposal has unacceptable impact upon the qualities and character of the dwelling as the addition is not subordinate to the main roof form and results in significant alterations to the original main roof form. In this regard the proposal is contrary to Objective O24 and Control 60 of Marrickville Development Control Plan 2011 [Additional Controls for Period Dwellings] and Objectives O2, O3 and O5 and Control C22 of Part 8.3.2.6 of Marrickville Development Control Plan 2011 [Heritage].*
5. *The proposal has an adverse impact on the subject period building, the streetscape and the Petersham South HCA, and is therefore inconsistent with the relevant desired future character of the Newington Planning Precinct. In this regard the proposal is contrary to Part 9 of Marrickville Development Control Plan 2011 [Strategic Context].*

Surrounding Properties

Application	Proposal	Decision & Date
DA200300275 (39 John Street)	To demolish part of the premises and carry out ground and first floor alterations and additions to a dwelling house including an attic addition and rear first floor balcony	Staged Deferred Commencement Consent on 17 July 2003. Made operative on 14 February 2007. Modified on 7 April 2010.
DA201500592 (41 John Street)	To carry out alterations and additions to the existing residential building to use as a 9 room boarding house with associated car parking	Approval subject to conditions on 30 March 2016

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
14 August 2018	Subject application submitted to Council
25 September 2018	Advice provided by Council that the development proposal remained unsupportable, particularly given the lack of any modifications and amended plans requested by Council pursuing an addition to the rear of the first floor to address the heritage, bulk and scale, FSR and Height issues generated by the location and design of the second floor addition.

4 October 2018	Council Officers met with the property owner to discuss the issues presented by the proposal. This meeting revealed that the applicant did not intend to consider amendments.
4 October 2018	Email provided by the applicant requesting the application be prepared for consideration by the IWLPP.

It is noted that during the assessment of this review application and the original application, Council suggested other possibilities for development at the site that could likely address the issues raised in this report, particularly those relating to heritage conservation.

As part of this review application, in the request for amendments dated 25 September 2018, Council suggested the exploration of providing a master bedroom to the rear of the existing first floor, with the view to addressing the heritage conservation, building height and floor space ratio issues associated with the development as proposed. Plans had been provided to Council by the applicant exploring this option for the original application, however were not pursued. Please see the image below:

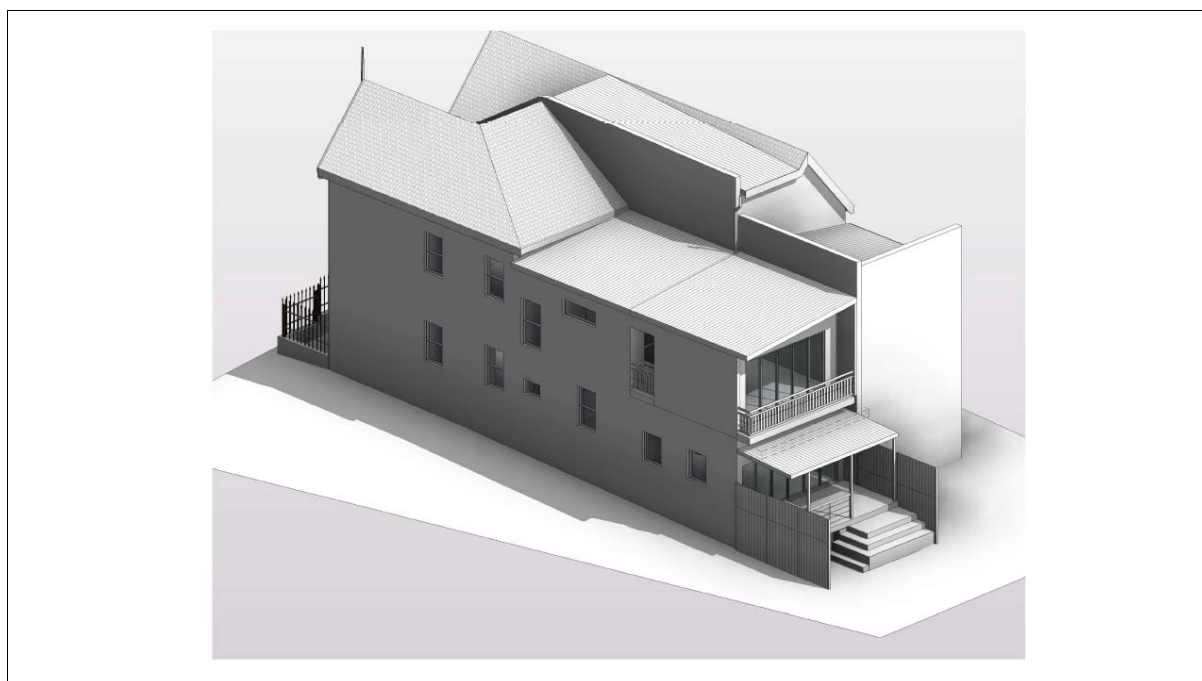


Image 3: 3D View prepared by Attic Group depicting a potential addition to the rear of the first floor

Council Officer’s then met with the property owner on 4 October 2018 to, to discuss this option for development at the site and the concerns associated with the current design being pursued. It was asserted by the property owner that this option was not suitable due to the potential for bulk and overshadowing to the neighbouring property, however no supporting diagrams or documentation to demonstrate these adverse impacts was produced. Shortly following the meeting, the applicant advised this option would not be pursued.

While there may be other impacts associated with a different form of development at the site (than that proposed), it is clear there are other development options that could be considered to address the issues associated with the current design which have not been pursued by the applicant. No information has been submitted to demonstrate any other suggested development options would result in a worse outcome than the development proposed which breaches development standards and a number of planning controls.

5. Assessment

The applicant has requested that Council review the determination under Section 8.2 of the Environmental Planning and Assessment Act, 1979. The following information has been submitted with the review request in support of the proposed development attempting to address the reasons for refusal:

- Stamped refused plans from Determination No. 201800051; and
- An amended Statement of Environmental Effects addressing the reasons for refusal and including a Clause 4.6 objection.

It is noted that an amended Statement of Environmental Effects and Clause 4.6 objection have been submitted with this review application however there has been no modifications made to the proposed development and is exactly the same development considered under Determination No. 201800051 dated 30 May 2018.

5(a) Grounds of Refusal

Below is an assessment of the information provided by the applicant as part of the Section 8.2 review request having regard to the grounds of refusal of the original development application:

- 1. The proposal fails to comply the building height development standard prescribed under Clause 4.4 of Marrickville Local Environmental Plan 2011 and is inconsistent with the stated objectives of the development standard as the additional height compromises the integrity of the period building.**
- 2. The proposal fails to comply with the Floor Space Ratio development standard prescribed under Clause 4.6 of Marrickville Local Environmental Plan 2011 and fails to demonstrate the proposal is better than a compliant development.**

Comment:

The proposal breaches both the Height of Buildings development standard specified by Clause 4.3 of MLEP 2011 (not Clause 4.4 as referenced above) and the Floor Space Ratio development standard specified by Clause 4.4 of MLEP 2011 (not Clause 4.6 as referenced above). The following table provides an assessment of the application against the development standards:

Standard (maximum)	Proposal	% of non-compliance	Compliance
Floor Space Ratio 0.9:1 186.75sqm	1.06:1 198sqm	6.2% (11.25sqm)	No
Height of Buildings 9.5 metres	10.74 metres	13% (1.24 metres)	No

It is noted that the documentation submitted with the application states that the gross floor area of the proposed dwelling is 190.3sqm which equates to an FSR of 0.91:1, being a variation to the development standard of 3.55sqm or 1.9%. However, the plans submitted with the application show that the stairways at the first floor and second floor were not included in the FSR calculation. Please see the below extract with the stairs outlined in blue.

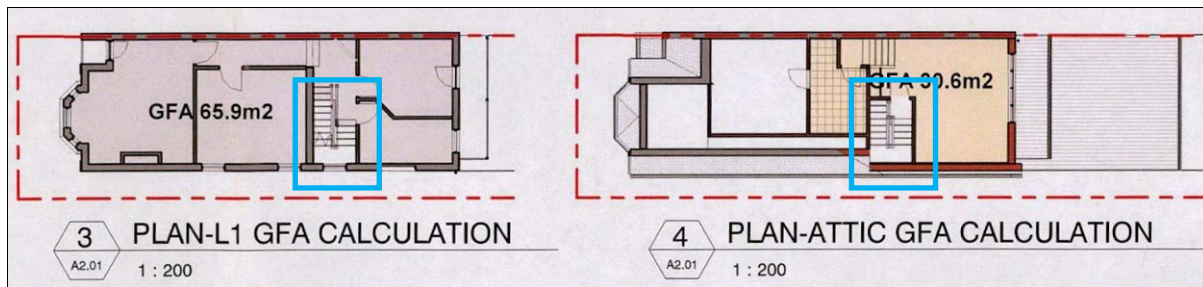


Image 4: Extract from Drawing No. A1.01 Issue A

The definition of “gross floor area” under MLEP 2011 excludes areas of common circulation. Stairwells within dwelling houses are not considered areas of common circulation, being private stairways within the dwelling house, and as such are considered to form part of the gross floor area and therefore FSR of the proposal. As such, on review of the application, Council considered the proposed FSR to be 1.06:1, being a 6.2% variation to the development standard, based on the plans provided. It is noted that the assessment of the original application also confirmed a greater variation to the FSR development standard than shown on the plans, however this has not been addressed by the documentation submitted with this review.

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

- Floor Space Ratio (Clause 4.4)
- Height of Buildings (Clause 4.3)

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of Marrickville Local Environmental Plan 2011 by 6.2% (11.25 sqm) and to the height of buildings development standard under Clause 4.3 of Marrickville Local Environmental Plan 2011 by 13% (1.24 metres).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Marrickville Local Environmental Plan 2011 below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the applicable local environmental plan and the applicant considers compliance with the development standards to be unreasonable and unnecessary for the following reasons:

- *“The shape and locality of the site and the opportunities and constraints that arise for its development as a result with no discernible impacts arising from the additional height & FSR proposed on the locality;*
- *The potential for negative town planning and urban outcomes that may arise from strict compliance with the requirement;*
- *The proposed addition maintains the existing ridgeline of the building and also maintains continuity of the built form with the adjoining semi-detached dwelling to the north. Strict compliance with the numeric height standard would result in a built form ‘at odds’ with the existing semi-detached building. The addition is located at the rear of the building and as a consequence, has no impact on the*

existing streetscape. The simple gable form of the existing building is respected in the design of the addition;

- *A number of buildings in the surrounding locality exceed the 9.5 m height standard including the building immediately to the north of the subject semi-detached building. It is considered that the height of the proposed addition to the dwelling house is consistent with the objectives of clause 4.3 of the LEP in that the resultant built form is consistent with the character and built form of a number of buildings in the surrounding locality. Satisfactory sunshine is maintained to the dwelling house immediately to the south on the site;*
- *The proposed FSR is 0.94:1. In terms of GFA, the maximum permitted on the site is 186.75m². The proposed GFA is 190.3 m². The variation sought is 3.55 m² or 1.9% exceedance. The resultant impact in regard to bulk and scale of the building is negligible and it is considered in the circumstances reasonable to permit the minor variation to GFA permitted on the site; and*
- *The unique qualities of the site and the value of the proposed architectural response in maintaining and enhancing these and the character of the locality.”*

The applicant's written rationale does not adequately demonstrate compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify contravening the development standard.

The justifications provided above are considered to be unacceptable and unworthy of support for the following reasons:

- The breach to FSR and building height development standards is a result of the second floor addition which will result in an addition that has adverse heritage impacts and is an unsympathetic addition to a contributory building within a heritage conservation area, therefore resulting in adverse planning and urban design outcomes;
- The proposed addition does not maintain the original roof form of the dwelling and will result in a three storey building which is uncharacteristic of buildings within John Street;
- While the neighbouring building which forms part of a pair with the subject dwelling has undergone a high level of alterations and addition which have resulted in substantial bulk and scale, these additions are considered unsympathetic to that dwelling, are not in accordance with current planning controls and the repetition of poor planning and urban design outcomes is not considered appropriate justification to vary the development standards;
- While some existing surrounding buildings may breach the 9.5 metres height limit, this is generally due to voluminous period roof forms rather than three storey forms and the proposed three storey form is not consistent with the predominant character of surrounding buildings within John Street;
- The variation to the FSR development standard is greater than stated by the Clause 4.6 objection and it is not considered acceptable to vary the FSR development based on the assertion that it is numerically minor, particularly given the impacts to the building and heritage implications resulting from the proposed second floor;
- The proposed addition is not considered to enhance the character of the local area but rather degrade the character of the area due to a loss of original period elements of a contributory building within a conservation area;
- It is considered that there are other development opportunities for additions to the rear of the first floor at the site which would present a development more in

- line with the applicable planning controls and result in a built form that is more characteristic of the area and would not result in adverse heritage impacts; and
- Given the above the proposed height and FSR is not consistent with the objectives of both Clause 4.3 and Clause 4.4 of MLEP 2011 in that the development is not consistent with the desired future character of the area.

It is considered the development is not in the public interest because it is inconsistent with the objectives of the R2 Low Density Residential zone, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The proposal is not providing housing needs for the community but rather providing housing that goes above and beyond the parameters for low density residential development in terms of floor space ratio, building height, heritage, built form and bulk and scale which will result in adverse streetscape and character impacts.

It is considered the development is not in the public interest because it is not consistent with the objectives of the floor space ratio and height of building development standards, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The proposal does not provide a building height that is consistent with the desired future character of the area in that the additional height proposed results in the loss of valuable heritage features at the dwelling and results in a three storey form that is uncharacteristic of the surrounding low density residential area;
- The proposed floor space ratio results in a density and bulk in relation to the site area that is unreasonable as it results in a three storey form and heritage impacts which are not consistent with the desired future character of the area; and
- The proposal will result in unsympathetic alterations and additions to the contributory building within a conservation area and these alterations will be visible from the streetscape resulting in adverse impacts to the public domain.

Overall, the Clause 4.6 objection fails to demonstrate that there are sufficient planning grounds to justify contravening the development standards or that compliance with the development standards are unreasonable or unnecessary in the circumstances of the case.

The proposed second floor addition would result in a three storey form that is uncharacteristic of the area and would result in the loss of original period features of the contributory dwelling in the heritage conservation area. The loss of heritage features and uncharacteristic built form is contrary to the desired future character of the area and is contrary to a number of applicable local planning controls relating to low density residential development.

Given the above, it is considered that the proposed variation to the development standards are unjustified and are not supportable and the Clause 4.6 objections submitted have not adequately demonstrated the proposed contraventions are acceptable with regard to Clause 4.6 (3).

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

It is noted that the original application assessed the breach to both the FSR and building height development standards to be unacceptable due to the heritage impacts, impacts to the existing contributory building and the proposed three storey form being inconsistent with the surrounding area.

While an amended Clause 4.6 objection was submitted with the review application, the built form and design of the development remained unchanged and a review of the assessment revealed these issues remain of primary concern for the reasons discussed above. As such, the proposal has not adequately addressed the grounds for refusal of Determination No. 201800051 dated 30 May 2018.

3. The form and appearance of the development results in adverse impacts to the period building and Petersham South Heritage Conservation Area. In this regard the proposal contrary to Part 4.1.6.1 of Marrickville Development Control Plan 2011 [Built form and character].

Comment:

During the original application it was assessed that the proposal was not acceptable having regard to the objectives and controls within Part 4.1.6.1 of MDCP 2011 relating to built form and character. On review, it is assessed that the proposal, which is unchanged from the original development, still results in non-compliances with the objectives and controls within Part 4.1.6.1 of MDCP 2011 for the following reasons:

- The proposal results in a three storey form which is inconsistent with surrounding development and also results in the loss of contributory building features contrary to Objective 10 and 11;
- The proposal is not consistent with the floor space ratio of height of building development standards prescribed by MLEP 2011 (discussed above), contrary to Control 7; and
- The proposal has not demonstrated the bulk of the development, being the proposed second floor addition, is acceptable in terms of the streetscape and wider locality given the proposal will result in impacts to the heritage conservation area and loss of contributory building features which does not enhance the surrounding heritage streetscape.

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

4. The proposal has unacceptable impact upon the qualities and character of the dwelling as the addition is not subordinate to the main roof form and results in significant alterations to the original main roof form. In this regard the proposal contrary to Objective O24 and Control 60 of Marrickville Development Control Plan 2011 [Additional Controls for Period Dwellings] and Objectives O2, O3 and O5 and Control C22 of Part 8.3.2.6 of Marrickville Development Control Plan 2011 [Heritage].

5. The proposal has an adverse impact on the subject period building, the streetscape and the Petersham South HCA, and is therefore inconsistent with the relevant desired future character of the Newington Planning Precinct. In this regard the proposal is contrary to Part 9 of Marrickville Development Control Plan 2011 [Strategic Context].

Comment:

In the assessment of the original application, the proposed second floor addition was considered unacceptable with regard to the impacts to the contributory building within the Petersham South Conservation Area and the objectives and controls relating to heritage and period dwellings within Part 4.1 and Part 8 of MDCP 2011. Consequently, the proposal was also contrary to the desired future character of the Newington Planning Precinct which includes the protection of period buildings and conservation areas within the precinct.

It is noted that Amendment No. 5 of MDCP 2011 which came into force on 19 September 2018, after the original determination was made, provided a distinction between contributory buildings within conservation areas and period buildings as follows:

- **“Contributory buildings** are those buildings located within a heritage conservation area;
- **Period buildings** are those buildings not located within a heritage conservation area.”

The building subject to this review is within a conservation area and is contributory, being a highly intact building built during the period of significance of the conservation area. As such, it is no longer considered a period building for the purposes of MDCP 2011 and the objectives and controls within Part 4.1 of MDCP 2011 are no longer applicable. Notwithstanding, the period dwelling controls are generally echoed in the heritage provisions of MDCP 2011.

In light of this amendment, this review application has been assessed based on the potential heritage impacts of the proposal, which is the primary issue for the above reasons of refusal.

The property contains a contributory building that is located within a Heritage Conservation Area under MLEP 2011 (Heritage Conservation Area C18 – Petersham South). The proposal includes alterations and additions to the original roof form of the building to accommodate a second floor addition.

The original application was referred to Council’s Heritage Specialist who did not support the proposal on heritage grounds. This review application was referred to Council’s Team Leader Heritage and Urban Design who reviewed the proposal and provided the following comments:

“The proposal is to adapt and extend the existing roof to construct a new third floor master bedroom and ensuite. The proposed additions mirror the unsympathetic works carried out to the adjoining semi, extending from the existing ridge of the primary roof, and removing the rear hip. The alterations to the adjoining building do not form a desirable precedent for the future character of the HCA. The proposal does not retain the form or hierarchy of the primary roof and is contrary to the standards set out in MDCP 2011 part 8.3.2.6 (Roof Form).”

The proposal results in works to the building which will result in the loss of the original roof form of the dwelling by extending a new roof from the existing ridge line, extending the original side roof plane and demolishing the original rear roof plane. The existing roof is a prominent original feature of the contributory dwelling and the development does not retain this roof form, contrary to Control 22 of Part 8.3.2.6 of MDCP 2011.

Furthermore, a range of intact Victorian style housing within the conservation area is identified as part of the heritage significance of the Petersham South HCA and it is identified that intact original roof forms, building typologies and original fabric all contribute to the consistency of streetscapes within the conservation area. With the exception of the

neighbouring building at 39 John Street, a majority of original roof forms within this portion of John Street have been retained and remain highly intact, contributing to the heritage values of the conservation area and the consistency of the streetscape.

As such, it is considered that the roof form of the existing dwelling is an important and contributory element of the building within the conservation area that should be retained and protected, which is echoed in the requirements of MDCP 2011 and the statement of significance for the Petersham South HCA. The proposal will result in a complete alteration of the original roof form and is not supported.

Additionally, on review of the application, it is considered that the proposal is inconsistent with the objectives of Clause 5.10 of MLEP 2011 relating to heritage conservation in that the development does not conserve the heritage significance of the Petersham South HCA by resulting in the loss of the original contributory roof form of the dwelling that forms part of the original fabric of the conservation area.

With regard to the desired future character of the Newington Planning Precinct, the development remains inconsistent with desired character of the area as it does not protect the heritage values of the Petersham South HCA and results in impacts to the existing contributory building in the precinct.

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

5(b) Other Matters

Neighbouring Development

The subject dwelling is a semi-detached dwelling that forms part of a pair with the neighbouring property of 39 John Street. The neighbouring dwelling has undergone a number of unsympathetic alterations and additions which were approved by Determination No. 200300275 dated 17 July 2003.

In the documentation provided with this review application, it is asserted that the proposed development will restore the symmetry of the pair and it is clear that the design and positioning of the proposed second floor addition takes cues from the neighbouring development. While the neighbouring dwelling has been highly altered, this is not considered justification to allow the proposed development at the subject site which breaches the applicable development standards and results in adverse heritage impacts, as discussed throughout this report.

The neighbouring development was approved in 2003 prior to the current planning controls, under the Marrickville Local Environmental Plan 2001. Under this previous LEP, this area was not a heritage conservation area and as such the heritage considerations, objectives and controls that now apply to the site, were not applicable at that time. The neighbouring development has resulted in the loss of the original rear roof form of the neighbouring dwelling and the alterations to the northern elevation and rear of the dwelling overwhelm the existing building and are not sympathetic to the heritage significance of the Petersham South HCA and it is not considered appropriate to further compromise the integrity of the HCA with further unsympathetic additions.

The unsympathetic additions to 39 John Street do not set a desirable precedent for development in the area and do not comply the current planning controls. Additionally, this development is an anomaly within this portion of John Street where a majority of buildings maintain the original roof forms, which contribute to the conservation area.

5(c) The Likely Impacts

The assessment of the Review demonstrates that the proposal will result in adverse heritage and bulk and scale impacts that are not in accordance with the relevant planning controls. The proposal will result in the loss of the original rear roof form of the contributory building and these impacts are facilitated by a breach to the applicable height of building and floor space ratio controls applying to the site. As such, it is considered the proposal will have an adverse impact on the built environment with regard to heritage.

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

The site is zoned R2 Low Density Residential under MLEP 2011. While the proposal is permitted with consent in the zone, the proposal is not considered to be acceptable having regard to the applicable planning controls that provide parameters for low density development. In order to achieve the development, the proposal breaches the applicable floor space ratio and height of buildings development standards for an addition that results in adverse impacts to the contributory building within a heritage conservation area and impacts to the wider Petersham South HCA. Additionally, the bulk and scale of the addition creates a second floor which is uncharacteristic of surrounding development and goes beyond both the statutory and DCP controls that manage building bulk and scale.

Given the proposed breaches to both development standards applicable to the site in order to facilitate an addition which is inconsistent in bulk and scale with surrounding development and results in adverse heritage impacts, it is considered that the impacts associated second floor addition indicate the development is incompatible with the surrounding area and the site is not suitable for the development proposed.

5(e) Any submissions

The original application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. No submissions were received. This review application was not required to be notified in accordance with Council's Notification Policy given there was no change to the proposed development from the original proposal.

5(f) The Public Interest

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

The development is contrary to the objectives and numerical controls with respect to the height of buildings and floor space ratio development standard prescribed under Clause 4.3 and Clause 4.4 of MLEP 2011 and has not provided sufficient planning grounds on which to provide an exemption to these development standards pursuant to Clause 4.6 of MLEP 2011. Furthermore, the proposal's adverse heritage impacts are contrary to the objectives of Clause 5.10 of MLEP 2011 and a number of planning controls prescribed under MDCP 2011. Given the lack of compliance with the relevant planning controls, the development is considered contrary to the public interest.

6 Referrals

The application was referred to Council's Team Leader Heritage and Urban Design and the issues raised in that referral have been discussed in Section 5 above.

7. Conclusion

This application seeks a review of Determination No. 201800051 dated 30 May 2018, under Section 8.2 of the Environmental Planning and Assessment Act to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house.

The development is considered contrary to aims, controls and design parameters of the Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011 for the reasons discussed in this report.

The review application has not adequately addressed the grounds for refusal of Determination No. 201800051, dated 30 May 2018.

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

8. Recommendation

THAT the Inner West Local Planning Panel, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, **REFUSE** Development Application No. 201800051.01 to review Determination No. 201800051 dated 30 May 2018, under Section 8.2 of the Environmental Planning and Assessment Act, to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house for the following reasons:

1. The proposal breaches the maximum Height of Buildings development standard prescribed by Clause 4.3 of the Marrickville Local Environmental Plan 2011 and has not demonstrated suitable planning grounds to justify an exemption to the development standard under Clause 4.6 of the Marrickville Local Environmental Plan 2011.
2. The proposal breaches the maximum Floor Space Ratio development standard prescribed by Clause 4.4 of the Marrickville Local Environmental Plan 2011 and has not demonstrated suitable planning grounds to justify an exemption to the development standard under Clause 4.6 of the Marrickville Local Environmental Plan 2011.
3. The proposal is contrary to the objectives of Clause 5.10 of the Marrickville Local Environmental Plan 2011 relating to heritage conservation in that the proposal does not conserve the heritage significance of the Petersham South Heritage Conservation Area and results in a loss of a portion of the original roof form of the contributory building within the conservation area which is considered to contribute to the heritage values of the area and is also contrary to the objectives and controls within Part 8 of the Marrickville Development Control Plan 2011.
4. The built form of the development results in adverse impacts to the contributory building within the Petersham South Heritage Conservation Area and results in a three storey form which is inconsistent with the predominant character of the surrounding streetscape and breaches the maximum floor space ratio and height of buildings applicable to the site, contrary to the objectives and controls within Part 4.1.6.1 of Marrickville Development Control Plan 2011.
5. The proposal has an adverse impact on the contributory building, the streetscape and the Petersham South HCA, and is therefore inconsistent with the desired future

character of the Newington Planning Precinct, contrary to Part 9.9 of Marrickville Development Control Plan 2011.

6. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the proposal's non-compliances and inconsistencies with the provisions of adopted environmental planning instruments and a development control plan are not in the public interest.

Attachment A – Assessment Report for DA201800051



Delegated Authority Report
37 JOHN STREET, PETERSHAM

File Ref: DA201800051

Synopsis

This report concerns an application to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house. The application was notified in accordance with Council's Notification Policy and no submissions were received.

The proposal fails to comply with several of Council's planning controls for Heritage, and by implication fails to meet requirements for Good Urban Design Practice, Built Form and Character, Additional Controls for Period Buildings and Strategic Context.

In addition to heritage impacts, the proposal does not demonstrate compliance with the development standards for building height and FSR contained in Marrickville Local Environmental Plan 2011. The proposed development seeks a 1.24 metre variation from the maximum building height and a 20.74sqm variation from the maximum FSR. It is considered that the applicant has failed to demonstrate that compliance with those standards is unreasonable and unnecessary in the site circumstances, and that there are insufficient planning grounds to justify the extent of the variations sought.

The application is unsupported and in view of the circumstances refusal of the application is recommended.

PART A - PARTICULARS

Location: Western side of John Street, Petersham, approximately 20 metres north of the intersection with Newington Road.



Image 1: Location Map

D/A No: 201800051

Application Date: 07 February 2018. Additional information submitted on 20 March 2018

Proposal: To demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house

Estimated Cost: \$218,770

Applicant: Attic Ladders Pty Ltd

Zoning: Low Density Residential

PART B - THE SITE AND ITS ENVIRONMENT

Improvements: Two storey dwelling house



Image 2: The Site

Current Use: Residential

Prior Determinations: Determination No. 200500596 dated 1 March 2006 refused an application to demolish part of the premises and carry out ground and first and second floor alterations and additions to a dwelling house

Determination No. 200700379 dated 29 October 2007 approved an application to demolish part of the premises and carry out ground floor alterations and additions to a dwelling house

Complying Development Certificate [Private] dated 19 November 2011 approved and application for the construction of a screen enclosure

Environment: Residential

PART C - REQUIREMENTS

1	Zoning		
	<i>Is use permissible in zoning?</i>		Yes
2	Development Standards (Statutory Requirements):		
	Type	Required	Proposed
	Height (max)	9.5m	10.74m
	Floor Space Ratio (max)	0.9:1	0.94:1
3	Departures from Development Control Plan:		
	Type	Required	Proposed
	Good Urban Design Practice		<i>See Report for comment</i>
	Built Form and Character		<i>See Report for comment</i>
	Additional Controls for Period Buildings		<i>See Report for comment</i>
	Heritage		<i>See Report for comment</i>
	Strategic Context		<i>See Report for comment</i>
4	Community Consultation:		
	Required:	Yes (newspaper advertisement, on-site notice and letter notification)	
	Submissions:	None	
5	Other Requirements:		
	ANEF 2033 Affection:	20-25 ANEF	
	Marrickville Section 94/94A Contributions Plan 2014:	\$2187.70	

PART D - ASSESSMENT

1. Background

Council's correspondence date 12 April 2018 advised that additional information was required regarding an FSR Development Standard variation and Architectural Plans to meet requirements of Council's Heritage and Urban Design Advisor. Amongst other design issues, the correspondence advised that the original roof form should remain largely intact from the front and for the length of the main roof and side elevations. On 30 April 2018, Council officers met with the Designer and Applicant, and the applicant was invited to submit amended sketch plans.

On 2 May 2018, the applicant requested details as to the 'specific clause in the DCP' with which the proposal fails to comply. The applicant was advised of the specific clause on 8 May 2018.

2. The Site and Surrounds

The site is known as 37 John Street, and is located on the western side of John Street, Petersham, approximately 20 metres north of the intersection with Newington Road. The site comprises Lot B in Deposited Plan 110188 and is approximately 207.5 square metres in area.

The site contains a 2 storey dwelling. The surrounding streetscape consists mainly of single and two storey dwelling houses. The site is adjoined by 35 John Street which contains a single storey dwelling house and 39 John Street which contains a two storey dwelling house.

3. The Proposal

Approval is sought to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house. A copy of the site plan and elevations of the development submitted with the application are reproduced below:

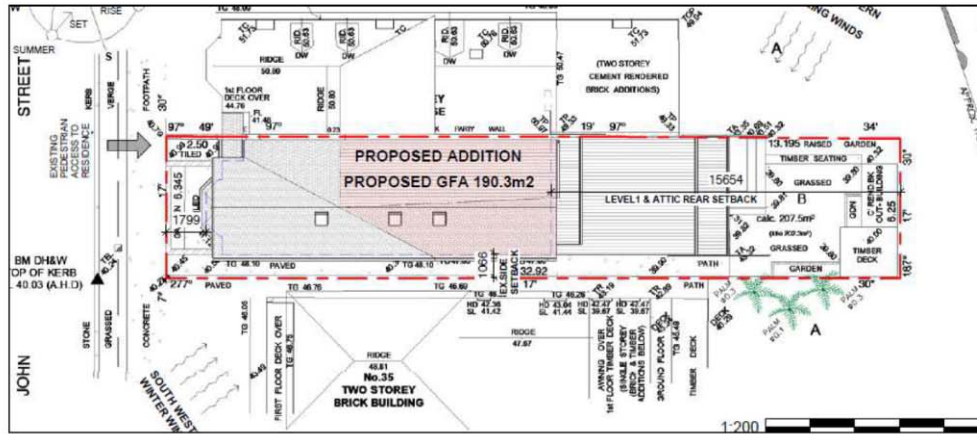


Image 3: Site Plan



Images 4 and 5: Front and Rear Elevations

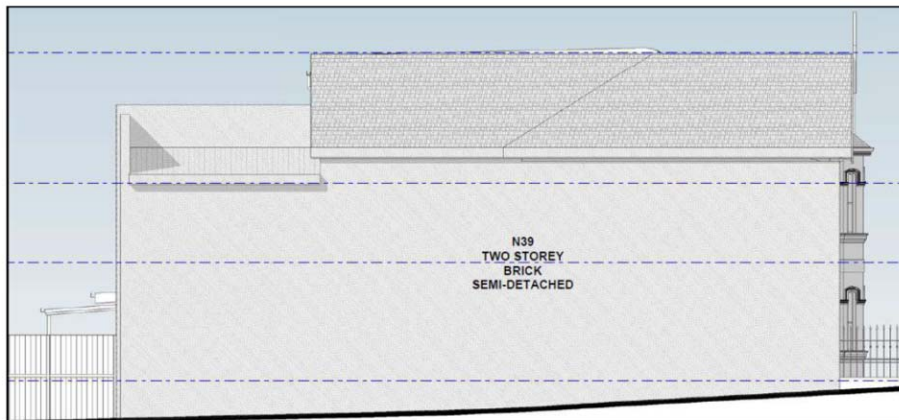


Image 6: North Elevation



Image 7: South Elevation

4. 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.

5. Marrickville Local Environmental Plan 2011

(i) Land Use Table and Zone Objectives (Clause 2.3)

The property is zoned R2 - Low Density Residential under the provisions of Marrickville Local Environmental Plan 2011 (MLEP 2011). The development is permissible with Council's consent under the zoning provisions applying to the land. The development is acceptable having regard to the objectives for development in the zone under Marrickville Local Environmental Plan 2011.

(ii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works.

(iii) Height (Clause 4.3)

The site is located in an area where the maximum height of buildings is 9.5 metres as indicated on the Height of Buildings Map that accompanies MLEP 2011. The development has a height of approximately 10.74 metres, which does not comply with the height development standard. The issue of height is discussed in more detail later in the report under "Part 4 – Residential Development (Part 4.1.6.1)".

(iv) Floor Space Ratio (Clause 4.4)

Clause 4.4(2A) of MLEP 2011 specifies a maximum floor space ratio for a dwelling house on land labelled "F" on the Floor Space Ratio Map that is based on site area as follows:

Site area	Maximum floor space ratio
≤150sqm	1.1:1
>150sqm but ≤200sqm	1.0:1
>200sqm but ≤250sqm	0.9:1
>250sqm but ≤300sqm	0.8:1
>300sqm but ≤350sqm	0.7:1
>350sqm but ≤400sqm	0.6:1
>400sqm	0.5:1

The property has a site area of 207.5sqm. Therefore 187sqm of Gross Floor Area [GFA] is permitted. The proposal is for 196sqm GFA, which equates to an FSR of 0.94:1 which does not comply with the FSR development standard. A written request, in relation to the development's non compliance with the FSR development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. The submission is discussed later in this report under the heading "Exceptions to Development Standards (Clause 4.6)". The issue of Floor Space Ratio is also discussed in more detail later in the report under "Part 4 – Residential Development (Part 4.1.6.1)".

(v) Exceptions to Development Standards (Clause 4.6)

As detailed earlier in this report, the development exceeds the maximum building height development standard and floor space ratio development standard prescribed under Clause 4.3 of MLEP 2011. The proposal exceeds the building height development standard by 1.24 metres, and the excess GFA of 23.25sqm equates to a 4.8% variation to the FSR development standard. A written request in relation to the contravention to the building height and floor space ratio development standards in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application.

The applicant considers compliance with the development standard to be unreasonable and unnecessary for the following reasons:

Height

- *The proposed height, scale and bulk is consistent with the existing and desired future character of the area;*
- *There are limited impacts arising from the proposed bulk and scale, and particularly the height non-compliance;*
- *No identified public or private views will be affected by the proposal;*
- *The height non-compliance is well setback from the street;*
- *The scale of the proposed dwelling is not excessive;*
- *The site is not identified as a heritage item and the proposal will not cause any adverse heritage impacts;*
- *The size, scale and height of the proposal is generally compatible with surrounding development;*
- *The proposal matches the adjoining dwellings (No. 39) attic level roof form and restores symmetry to both of the original identical buildings;*
- *The objectives of the Height standard are met, so while a numerical minor non-compliance exists, the objectives of the standard itself are not compromised;*
- *The objectives of Clause 4.6 of MLEP 2011 are met.*

Floor Space Ratio

- *The proposed works are entirely within the existing building footprint and will not have any impact on existing soft open space and landscaping;*
- *The density of the development is sustainable within the existing area in consideration of the context, proximity to public transport, services, and infrastructure, social and environmental qualities of the site;*
- *The additional floor area does not increase the overall scale of the building and therefore does not result in any adverse impacts on the adjoining properties;*
- *The proposed variation does not create any adverse impacts on the adjoining properties, the streetscape or the character of the locality generally;*
- *The additional floor space will not result in unreasonable overshadowing impacts to surrounding properties;*
- *The variation to floor space will not compromise the character of the area. The built form proposed under this application is considered appropriate in the context of the surrounding development;*
- *The proposal is consistent with the bulk, scale and height of the surrounding development;*
- *The proposal is not a heritage item;*
- *The design ensures that the use of enjoyment of the adjoining properties is maintained as it will not adversely affect the privacy, solar access, daylight, ventilation or views of the surrounding properties;*
- *The proposal matches the adjoining dwellings (No. 39) attic level roof form and restores symmetry to both of the original identical buildings.*

The justification provided above is considered to be unacceptable and unworthy of support, primarily because the development proposal is unsupportable on heritage grounds - Refer Part 8 of this report. Notwithstanding, it is considered the proposed works are not subordinate to the main roof form, but present as an extension of the existing roof and will appear as a 3rd storey. It is considered poor urban design practise to extend the topmost floor in the manner proposed as it accentuates the building bulk. The assertion that the proposal is not visible is incorrect, and would be visible to neighbouring properties which form part of the HCA. Any new additions should read as such, and should not mimic and extend the existing roof form to accommodate the floor area. It is noted that Council's Heritage and Urban Design Advisor has provided solutions to mitigate the concern regarding visual bulk and diminishing the character of the HCA which would still make the

addition viable in the form of a recessive rear dormer, however the applicant has not elected to do so.

It is also noted that the 4.6 objection does not provide due regard to Land and Environment Court decision *Wehbe v Pittwater Council* [2007] NSWLEC 827, which is required as a matter of standard practice with regard to relative legislative precedent.

Overall the applicant has not demonstrated that the proposal is better than a compliant development particularly as the proposal is at odds with Council's period dwelling controls and heritage controls.

(vi) Heritage Conservation (Clause 5.10)

The property is located within a Heritage Conservation Area under MLEP 2011 (Heritage Conservation Area C18 – Petersham South). The issue of heritage is discussed in more detail later in the report under the assessment against the objectives and controls contained in Part 8 of Marrickville Development Control Plan 2011.

(vii) Development in areas subject to Aircraft Noise (Clause 6.5)

The property is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour. The development is likely to be affected by aircraft noise. The carrying out of development would not result in an increase in the number of people affected by aircraft noise.

The development would need to be noise attenuated in accordance with AS2021:2015. An Acoustic Report did not accompany the application. The development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS2021:2015.

6. Marrickville Development Control Plan 2011

An assessment of the development having regard to the relevant provisions of Marrickville Development Control Plan 2011 (MDCP 2011) is provided below.

PART 2 – GENERIC PROVISIONS

(i) Site and Context Analysis (Part 2.3)

The applicant submitted a site and context analysis as part of the application that generally satisfies the controls contained in Part 2.3 of MDCP 2011.

(ii) Acoustic and Visual Privacy (Part 2.6)

The layout and design of the development ensures that the visual and acoustic privacy currently enjoyed by residents of adjoining residential properties are protected.

The top floor window does have the potential to result in overlooking of the properties to the rear, and no privacy measures are proposed. Whilst it is acknowledged the proposal is for a bedroom, no sightline analysis has been provided to demonstrate no loss of amenity for neighbouring development.

Given the above the development is unsatisfactory having regard to the objectives and controls relating to visual and acoustic privacy as contained in MDCP 2011.

(iii) Solar Access and Overshadowing (Part 2.7)

Overshadowing

The applicant submitted shadow diagrams with the application which illustrate that the solar access to adjoining properties will not be adversely impacted upon by the carrying out of the development.

Solar Access

The alterations and additions to the dwelling house have been designed in an energy efficient manner for the following reasons:

- At least one habitable room has a window having an area not less than 15% of the floor area of the room, positioned within 30 degrees east and 20 degrees west of true north and will allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9:00am and 3:00pm on 21 June; and
- The private open space provided for the dwelling house receives a minimum two hours of direct sunlight over 50% of its finished surface between 9.00am and 3.00pm on 21 June.

Given the above the development is reasonable having regard to the objectives and controls relating to solar access and overshadowing as contained in MDCP 2011.

(iv) Community Safety (Part 2.9)

The development is reasonable having regard to community safety for the following reasons:

- The principal entrance to the dwelling house is visible from the street;
- The dwelling house has been designed to overlook the street;
- The dwelling house has a Council approved house number that is clearly displayed; and
- The entrance to the dwelling house is well lit.

Given the above the development is reasonable having regard to the objectives and controls relating to community safety as contained in MDCP 2011.

(v) Parking (Part 2.10)

Part 2.10 of MDCP 2011 requires one car parking space be provided for a dwelling house. No car parking spaces are proposed. The proposal therefore does not comply with this requirement. This is an existing situation which given the scope of development is reasonable to maintain.

(vi) Landscaping and Open Spaces (Part 2.18)

The site is required to have a minimum of 45sqm open space and 66sqm of open space is retained. In excess of 50% of the private open space is maintained as previous landscaping. The arrangements for landscaping and open space remain unchanged.

(vii) Site Facilities and Waste Management (Part 2.21)

The application details adequate site facilities with regard to the provision of clothes drying areas, waste storage areas and collection points and letter box facilities. This element of the application is satisfactory. A Recycling and Waste Management Plan (RWMP) in accordance with Council's requirements was submitted with the application.

PART 4 – RESIDENTIAL DEVELOPMENT**Part 4 – Low Density Residential Development**

(i) Good Urban Design Practice (Part 4.1.4)

A design review has been carried out by Council's Heritage and Urban Design Advisor. Such review has regard to Heritage aspects of the subject site along with the contribution to the streetscape. In particular, reference is made to the unacceptable impact upon the qualities and character of the dwelling itself and the HCA - Refer 8 of this report [HERITAGE]. As such, the development fails to satisfy the requirements for Good Urban Design Practice referenced in points 2 and 4 of Part 4.1.4 of MDCP 2011 because:

- The development does not enhance the streetscape character of the locality; and
- The design and proposed materials and finishes fail to complement the locality.

(ii) Built form and character (Part 4.1.6)

The Objectives of Part 4.1.6.1 of MDCP 2011 include ensuring development is of a scale and form that enhances the character and quality of streetscapes (O10), and ensuring alterations and additions to residential period dwellings do not detract from the individual character and appearance of the dwelling being added to and the wider streetscape character (O11). As previously mentioned, the proposed development is deemed to have an unacceptable impact on the dwelling and HCA. By virtue of such impact the proposal fails to meet built form and character requirements of Part 4.1.6 of MDCP 2011.

(iii) Site Coverage (Part 4.1.6.3)

The table below demonstrates that the proposal is subject to a merit assessment.

Site Area	Site Coverage Permitted (max.)	Site Coverage Proposed	Compliance
0-300sqm (207.5sqm)	On-merit	52%	See below

The proposal:

- Results in a site coverage that is consistent with that permissible for larger allotments and the existing character of neighbouring dwellings; and
- Allows adequate provision for uses such as outdoor recreation, footpaths, deep soil tree planting, other landscaping, waste management, clothes drying and stormwater management.

The development is reasonable having regard to the objectives and controls relating to site coverage contained in MDCP 2011.

(iv) Additional Controls for Period Dwellings (Part 4.1.11)

Council's Heritage and Urban Design Advisor describes the existing dwelling as a two storey Victorian Filigree terrace which forms part of a pair. The building is identified as being:

"...largely intact, retaining its overall form, decorative detail and lacework, joinery and front garden setting (including wrought iron fence). The roof form is largely intact although the original slates have been replaced with tiles, the chimneys have been removed and the party wall now extends above the roof."

Objective O24 of Part 4.1.11 of MDCP 2011 is to accommodate contemporary additions and alterations while retaining the significant components of the period building and garden. As previously mentioned, the proposal has unacceptable impact upon the qualities and character of the dwelling and seeks to elongate the roof form thereby providing no clear distinction between the

existing development and proposed addition. As such, the proposal does not comply with Part 4.1.11 of MDCP 2011.

PART 8 – HERITAGE

Amongst other matters, Part 8 of MDCP 2011 applies to heritage conservation areas (HCAs) and aims to identify/recognise HCAs for the purposes of maintaining the significance of those areas. As previously identified, the property contains a period dwelling house and is located within a Heritage Conservation Area under MLEP 2011 (Heritage Conservation Area C18 – Petersham South). The applicable Objectives of Part 8 of MDCP 2011 are listed as follows:

- O2** *To retain evidence of historic themes of development evident in the Marrickville LGA, through the proper care and maintenance of individual heritage items and HCAs.*
- O3** *To provide guidelines for alterations and additions which complement and do not detract from the heritage significance of individually listed heritage items and HCAs.*
- O5** *To encourage new development which complements existing heritage items and heritage conservation areas in a modern context.*

The application was referred to Council's Heritage and Urban Design Advisor who provided the following comments:

The proposal would have an impact on the qualities and character of the dwelling itself and the HCA as a whole, therefore the proposal is not supported in its current form as detailed below:

- 1. The original main roof is proposed to be significantly altered. This is inconsistent with MDCP 2011 Part 8.3.2.6 C22. The original roof form is to be retained largely intact from the front and for the length of the main roof to the side elevations. Where the roof space of the main roof is to be used as habitable space, a well-proportioned dormer may be considered at the rear provided it is a minimum of 300mm below the ridgeline, symmetrically placed, and does not disrupt the gutter line (ie: set a minimum 200mm above). Furthermore, any new additions are to respect the hierarchy of built form and to ensure additions do not present as three storeys.*
- 2. Skylights are to be limited to new areas only to avoid further impact on the integrity of original materials.*
- 3. A detailed Materials and Finishes Schedule is to be provided including colours, profile, materials, finish, texture etc. References such as 'to match existing' are considered insufficient.*

Having regard to the above, the proposal is unsupportable because of an inherent failure to comply with the Objectives of Part 8 of MDCP 2011, and in particular Control C22 of Part 8.3.2.6

PART 9 – STRATEGIC CONTEXT

The property is located in the Newington Planning Precinct (Precinct 9) under Marrickville Development Control Plan 2011. Part 9.9.2 of MDCP 2011 identifies the desired future character. The following are applicable to the proposal:

- 1. To protect and preserve the identified period buildings within the precinct and encourage their sympathetic alteration or restoration.*
- 4. To protect groups or runs of buildings which retain their original built form including roof forms, original detailing and finishes.*
- 9. To protect the identified values of the Petersham South (Norwood Estate) Heritage Conservation Area, Norwood Park Estate Heritage Conservation Area and the Llewellyn Estate Heritage Conservation Area*

As identified through this report, the development proposal has an adverse impact on the subject period building, the streetscape and the Petersham South HCA.

7. Community Consultation

The application was advertised, an on-site notice was erected and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Policy. No submissions were received.

8. Conclusion

The heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of this application. The proposal will result in unacceptable impacts on the integrity and character of the existing building and the streetscape. The application is unsupportable and in view of the circumstances, refusal of the application is recommended.

PART E - RECOMMENDATION

A THAT the development application to demolish part of the premises and carry out first and second floor alterations and additions to a dwelling house be **REFUSED** for the following reasons:

1. The proposal fails to comply the building height development standard prescribed under Clause 4.4 of Marrickville Local Environmental Plan 2011 and is inconsistent with the stated objectives of the development standard as the additional height compromises the integrity of the period building.
2. The proposal fails to comply with the Floor Space Ratio development standard prescribed under Clause 4.6 of Marrickville Local Environmental Plan 2011 and fails to demonstrate the proposal is better than a compliant development.
3. The form and appearance of the development results in adverse impacts for the period building and Petersham South Heritage Conservation Area. In this regard the proposal contrary to Part 4.1.6.1 of Marrickville Development Control Plan 2011 [Built form and character].
4. The proposal has unacceptable impact upon the qualities and character of the dwelling as the addition is not subordinate to the main roof form. In this regard the proposal contrary to Objective O24 and Control 60 of Marrickville Development Control Plan 2011 [Additional Controls for Period Dwellings].
5. The proposal results in significant alterations to the original main roof form. In this regard the proposal contrary to Objectives O2, O3 and O5 and Control C22 of Part 8.3.2.6 of Marrickville Development Control Plan 2011 [Heritage].
6. The proposal has an adverse impact on the subject period building, the streetscape and the Petersham South HCA, and is therefore inconsistent with the relevant desired future character of the Newington Planning Precinct. In this regard the proposal is contrary to Part 9 of Marrickville Development Control Plan 2011 [Strategic Context].



Delegated Authority Report
37 JOHN STREET, PETERSHAM

I declare to the best of my knowledge, there is no matter in relation to my role in processing this application that would give rise to the need to disclose any Conflict of Interest under Council's Code of Conduct.

Development Assessment Officer: Kevin Smith

Date: 29 May 2018

DELEGATED DETERMINATION

I, Ruba Osman, Team Leader, Development Assessment (Planning) by virtue of the delegation given to me by the General Manager of which I have no notice of revocation, and pursuant to the Environmental Planning and Assessment Act 1979, determine the application in the manner set out in the recommendation section of this report.

I declare to the best of my knowledge, there is no matter in relation to my role in processing this application that would give rise to the need to disclose any Conflict of Interest under Council's Code of Conduct.

There is no valid Councillor Interest recorded in P&R for this application.

Delegate: Ruba Osman

Date: 29 May 2018

* * *

ADMIN INSTRUCTIONS

- Refusal - D2
- DA only application

DA DelAuth.doc

<u>Premises:</u>	37 John Street PETERSHAM
<u>Applicant:</u>	Attic Ladders Pty Ltd
<u>Proposal:</u>	To demolish part of the premises and carry out ground and first floor alterations and additions to a dwelling house
<u>Determination:</u>	Refusal
<u>DA No:</u>	201800051



Delegated Authority Report
37 JOHN STREET, PETERSHAM

I declare to the best of my knowledge, there is no matter in relation to my role in processing this application that would give rise to the need to disclose any Conflict of Interest under Council's Code of Conduct.

A handwritten signature in black ink, appearing to read "Adriana", written over a faint dotted line.

Admin Officer: ... Adriana Ferreira

Date: ... 31/5/18...

Attachment B – Conditions in the circumstance the application is approved

GENERAL

1. The development must be carried out in accordance with plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
A1.02 Issue D	Floor Plans	23.01.2018	CVMA Architects	07.02.2018
A1.03 Issue D	Attic & Roof Plan	23.01.2018	CVMA Architects	07.02.2018
A2.01 Issue D	Elevations	23.01.2018	CVMA Architects	07.02.2018
A2.02 Issue D	Elevations	23.01.2018	CVMA Architects	07.02.2018
A2.03 Issue A	Elevations	23.01.2018	CVMA Architects	07.02.2018
A3.01 Issue A	Section & Schedule of Finishes	23.01.2018	CVMA Architects	07.02.2018
A305594	BASIX Certificate	30.01.2018	CVMA Architects	07.02.2018

and details submitted to Council on 7 February 2018 and 14 August 2018 with the application for development consent and as amended by the following conditions.

2. Where any plans and/or information forming part of a Construction Certificate issued in relation to this consent are inconsistent with:
- the plans and/or information approved under this consent; or
 - any relevant requirements of this consent,
- the plans, information and/or requirements of this consent (as the case may be) shall prevail to the extent of the inconsistency.
- All development approved under this consent shall be carried out in accordance with the plans, information and/or requirements of this consent taken to prevail by virtue of this condition.
3. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

4. No work must commence until:
- A PCA has been appointed. Where Council is appointed ensure all payments and paper work are completed (contact Council for further information). Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
 - A minimum of 2 days written notice given to Council of the intention to commence work.
5. A Recycling and Waste Management Plan (RWMP) being prepared in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and submitted to and accepted by the PCA before work commences.
6. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.

7. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences. Facilities must be located so that they will not cause a nuisance.
8. The person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to include colour photographs and is to be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the property owner of the identified property, before work commences, on the buildings on the adjoining property at 39 John Street, if the consent of the adjoining property owner can be obtained. In the event that the consent of the adjoining property owner cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.
9. The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before work commences.
10. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign is to be maintained at all times until all work has been completed. The sign must include:
 - a) The name, address and telephone number of the PCA;
 - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
 - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
11. Sediment control devices must be installed before the commencement of any work and must be maintained in proper working order to prevent sediment discharge from the construction site.
12. 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.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

13. Evidence of payment of the building and construction industry Long Service Leave Scheme must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).

NOTE: The required payment is based on the estimated cost of building and construction works and the long service levy rate, set by the Long Service Payments Corporation. The rate set by the Long Service Payments Corporation is currently of 0.35% of the cost of the building and construction work.

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation.

http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm

14. A levy of \$2187.70 has been assessed as the contribution for the development under Section 7.12 of the Environmental Planning and Assessment Act 1979 and Marrickville Section 94/94A Contributions Plan 2014 (a copy of which may be inspected at the offices of the Council).

The Section 7.12 Levy referred to above is based on the estimated cost of the proposed development at time of lodgement of the application indexed quarterly in accordance with Marrickville Section 94/94A Contributions Plan 2014.

The Section 7.12 levy (as adjusted) must be paid to the Council in cash or by unendorsed bank cheque (from an Australian Bank only) or EFTPOS (Debit only) or credit card* before the issue of a Construction Certificate. Under Marrickville Section 94/94A Contributions Plan 2014 payment of Section 7.12 levies **CANNOT** be made by Personal Cheque or Company Cheque.

*NB A 1% credit card transaction fee applies to all credit card transactions.

(LEVY PAYMENT REFERENCE NO. DC002437)

NOTE: Under Marrickville Section 94/94A Contributions Plan 2014, the proposed cost of carrying out development is adjusted quarterly at time of payment of the levy in line with the *Consumer Price Index: All Groups Index Number for Sydney* provided by the Australian Bureau of Statistics.

15. Plans fully reflecting the selected commitments listed in BASIX Certificate submitted with the application for development consent must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

NOTE: The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate issued no earlier than 3 months before the date of lodgement of the application for the Construction Certificate. (Refer to Clause 6A of Schedule 1 to the Regulation).

16. The existing building must be upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke detection systems in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
17. Prior to the commencement of demolition works or before the issue of a Construction Certificate (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)	\$2100.00
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.

- 18. Sediment control devices must be constructed and maintained in proper working order to prevent sediment discharge from the construction site. Sediment control plans and specifications must be submitted to the Principal Certifying Authority before the issue of a Construction Certificate.
- 19. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021-2015 in relation to interior design sound levels, in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021-2015. Plans fully reflecting the selected commitments must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
- 20. Lighting details of the entrance to the dwelling house must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

SITE WORKS

- 21. All excavation, demolition, construction, and deliveries to the site necessary for the carrying out of the development, must be restricted to between 7.00am to 5.30pm Mondays to Saturdays, excluding Public Holidays. Notwithstanding the above no work must be carried out on any Saturday that falls adjacent to a Public Holiday.
- 22. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.

23. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy – 'Placement of Waste Storage Containers in a Public Place'.
24. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another Certifying Authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
 - a) after excavation for, and prior to the placement of, any footings;
 - b) prior to pouring any in-situ reinforced concrete building element;
 - c) prior to covering of the framework for any floor, wall, roof or other building element;
 - d) prior to covering waterproofing in any wet areas;
 - e) prior to covering any stormwater drainage connections, and
 - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
25. All demolition work must be carried out in accordance with the following:
 - a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
 - b) all works involving the demolition, removal, transport and disposal of material containing asbestos must be carried out by suitably qualified persons in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
 - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
 - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
 - e) the generation of dust and noise on the site must be controlled;
 - f) the site must be secured to prohibit unauthorised entry;
 - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
 - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
 - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
 - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
 - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
26. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.
27. If the proposed work is likely to cause obstruction of the public place and/or is likely to endanger users of the public place, a suitable hoarding or fence approved by Council must be erected between the work site and the public place.

28. A certificate of survey from a registered land surveyor must be submitted to the PCA upon excavation of the footings and before the pouring of the concrete to verify that the structure will not encroach on the allotment boundaries.
29. The person acting on this consent must comply with the requirements of the Dividing Fences Act in respect to the alterations and additions to the boundary fences.
30. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.

BEFORE OCCUPATION OF THE BUILDING

31. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
 - a) A copy of the determination;
 - b) Copies of any documents that were lodged with the Occupation Certificate application;
 - c) A copy of Occupation Certificate, if it was issued;
 - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
 - e) A copy of any missed inspections;
 - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
32. The Certifying Authority must be satisfied that each of the commitments listed in Aircraft Noise Assessment Report required by this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
33. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
34. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at www.basix.nsw.gov.au.
35. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development must be completed before the issue of an Occupation Certificate. Works must be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".

USE OF THE BUILDING

36. The premises must be used exclusively as a single dwelling house and must not be adapted for use as a residential flat building or boarding house and must not be used for any industrial or commercial purpose.

ADVISORY NOTES

- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- Contact "Dial Before You Dig" before commencing any building activity on the site.

- Useful Contacts
 - BASIX Information ☎ 1300 650 908 weekdays 2:00pm - 5:00pm
www.basix.nsw.gov.au
 - Department of Fair Trading ☎ 13 32 20
www.fairtrading.nsw.gov.au
Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
 - Dial Before You Dig ☎ 1100
www.dialbeforeyoudig.com.au
 - Landcom ☎ 9841 8660
To purchase copies of Volume One of "Soils and Construction"
 - Long Service Payments Corporation ☎ 131441
www.lspc.nsw.gov.au
 - NSW Government
www.nsw.gov.au/fibro
www.diysafe.nsw.gov.au
Information on asbestos and safe work practices.
 - NSW Office of Environment and Heritage ☎ 131 555
www.environment.nsw.gov.au
 - Sydney Water ☎ 13 20 92
www.sydneywater.com.au
 - Waste Service - SITA Environmental Solutions ☎ 1300 651 116
www.wasteservice.nsw.gov.au
 - Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au
 - WorkCover Authority of NSW ☎ 13 10 50
www.workcover.nsw.gov.au
Enquiries relating to work safety and asbestos removal and disposal.

Attachment C – Plans submitted with review application

ALTERATIONS AND ADDITIONS AT N°37 JOHN STREET PETERSHAM NSW

1 PLAN-SITE AND CONTEXT ANALYSIS
A2/01 1:200

2 PLAN-GRD GFA CALCULATION
A2/01 1:200

3 PLAN-L1 GFA CALCULATION
A2/01 1:200

4 PLAN-ATTIC GFA CALCULATION
A2/01 1:200

SHEET N	SHEET NAME
A1.01	SITE AND CONTEXT ANALYSIS PLAN
A1.02	GROUND FLOOR LEVEL 1 PLANS
A1.03	ATTIC FLOOR ROOF CONCEPT DRAINAGE PLANS
A2.03	NORTH ELEVATION
A2.02	SOUTH ELEVATION
A2.01	WEST AND EAST ELEVATIONS
A3.01	SECTION AA, COLOURS & FINISHES
A4.01	SHADOW DIAGRAM 21.06-9AM
A4.02	SHADOW DIAGRAM 21.06-12NOON
A4.03	SHADOW DIAGRAM 21.06-3PM

This application has been
REFUSED

Determination No: DA201800061
Determination Date: 31 May 2018

SITE AREA 207.5m² See attached reasons for refusal
PERMISSIBLE FSR 0.9:1 OR 186.75m²
PROPOSED GROSS FLOOR AREA 499.3m² FSR 0.9:1
NO CHANGES ARE PROPOSED TO EXISTING LANDSCAPED AREA

cvma architects ARCHITECTURE • INTERIORS

ATTIC GROUP LANDSCAPE ARCHITECTURE

DRAWING NO	SITE AND CONTEXT ANALYSIS PLAN	DRAWN BY	AC
PROJECT	ALTERATIONS AND ADDITIONS	CHECKED BY	AC
ADDRESS	37 JOHN STREET, PETERSHAM NSW	SCALE	1:200@A3
CLIENT		JOB NO	1714
		DRAWING NO	A1.01 A

1 E WEST
1 : 100

NO CHANGES ARE PROPOSED TO WEST ELEVATION

2 E EAST
1 : 100

This application has been
REFUSED

Determination No: DA201800051
Determination Date: 31 May 2018

See attached reasons for refusal

cvma architects
ARCHITECTURE • INTERIORS

ATTIC GROUP
LADDERS
STORAGE
SKYLIGHTS

CONTRACT NO.	CONTRACT DATE	CONTRACT VALUE
CONTRACT NO.	CONTRACT DATE	CONTRACT VALUE
CONTRACT NO.	CONTRACT DATE	CONTRACT VALUE
CONTRACT NO.	CONTRACT DATE	CONTRACT VALUE

PROJECT	ADDRESS	CLIENT
WEST AND EAST ELEVATIONS	37 JOHN STREET, PETERSHAM NSW	

DRAWING BY	CHECKED BY	SCALE
AC	AC	1 : 100@A3
JOB NO.	DRAWING NO.	
1714	A2.01 D	

INNER WEST COUNCIL

This application has been
REFUSED

Determination No: DA201800051
Determination Date: 31 May 2018

See attached reasons for refusal

cvma architects
ARCHITECTURE • INTERIORS

ATTIC GROUP
LADDERS
SKYLIGHTS
STORAGE

PROJECT: SOUTH ELEVATION
ADDRESS: 37 JOHN STREET, PETERSHAM NSW

CHECKED BY: Checker
SCALE: 1:100@A3
JOB NO: 1714
DRAWING NO: A2.02 D

NO CHANGES ARE PROPOSED TO NORTH ELEVATION

1 E NORTH
1 : 100

ROOF
RL 50.800

ATTIC
RL 47.079

L1
RL 44.820

G
RL 41.450

N39
TWO STOREY
BRICK
SEMI-DETACHED

This application has been
REFUSED

Determination No: DA201800051
Determination Date: 31 May 2018

See attached reasons for refusal

INNER WEST COUNCIL

cuma architects
ARCHITECTURE • INTERIORS

ATTIC
LADDERS
SKYLIGHTS
STORAGE
GROUP

11, 11, 11, 8

DATE	2018/05/18
REVISION	
DATE	
REVISION	
DATE	
REVISION	

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37 JOHN STREET, PETERSHAM NSW

DA201800051

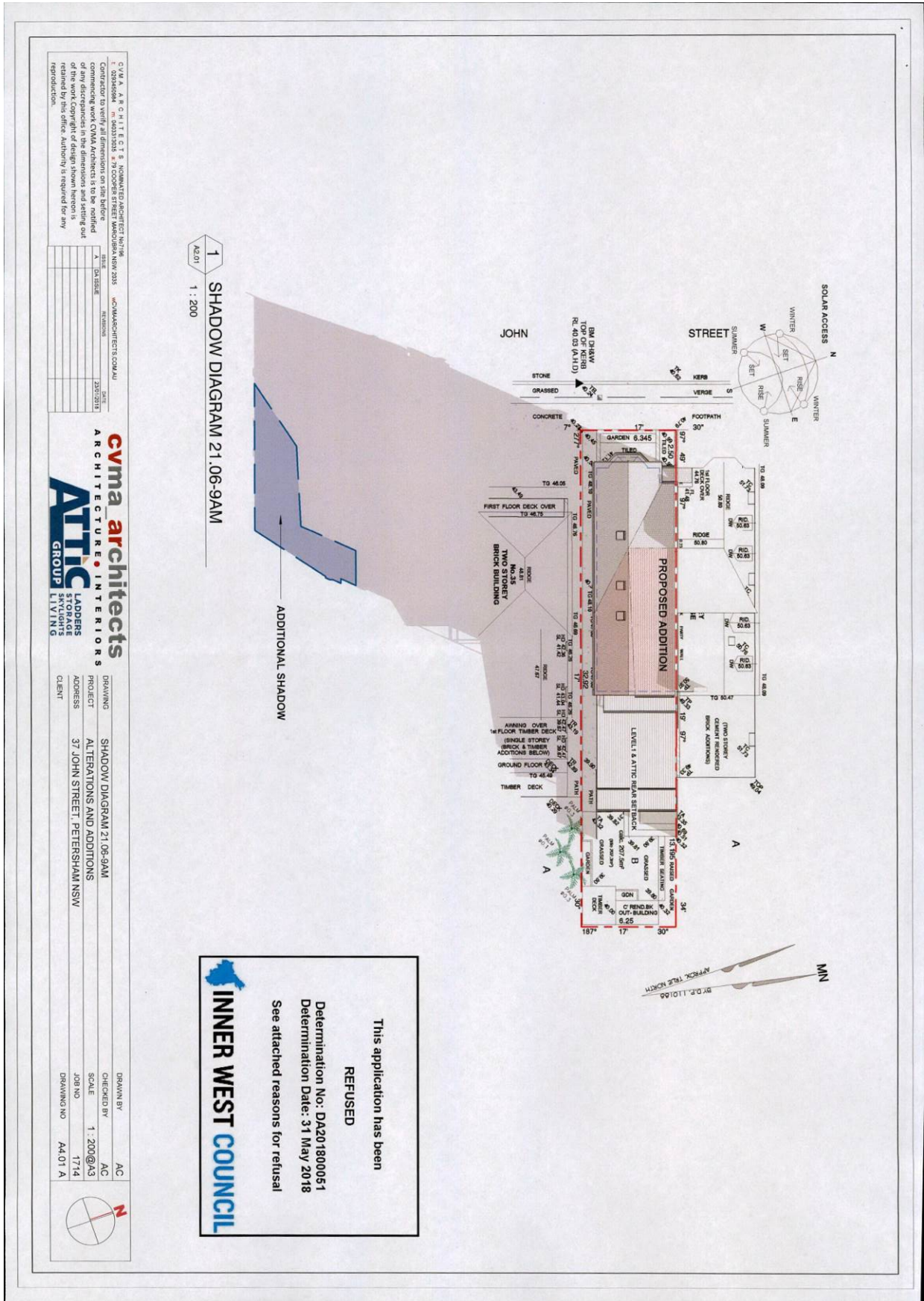
AC

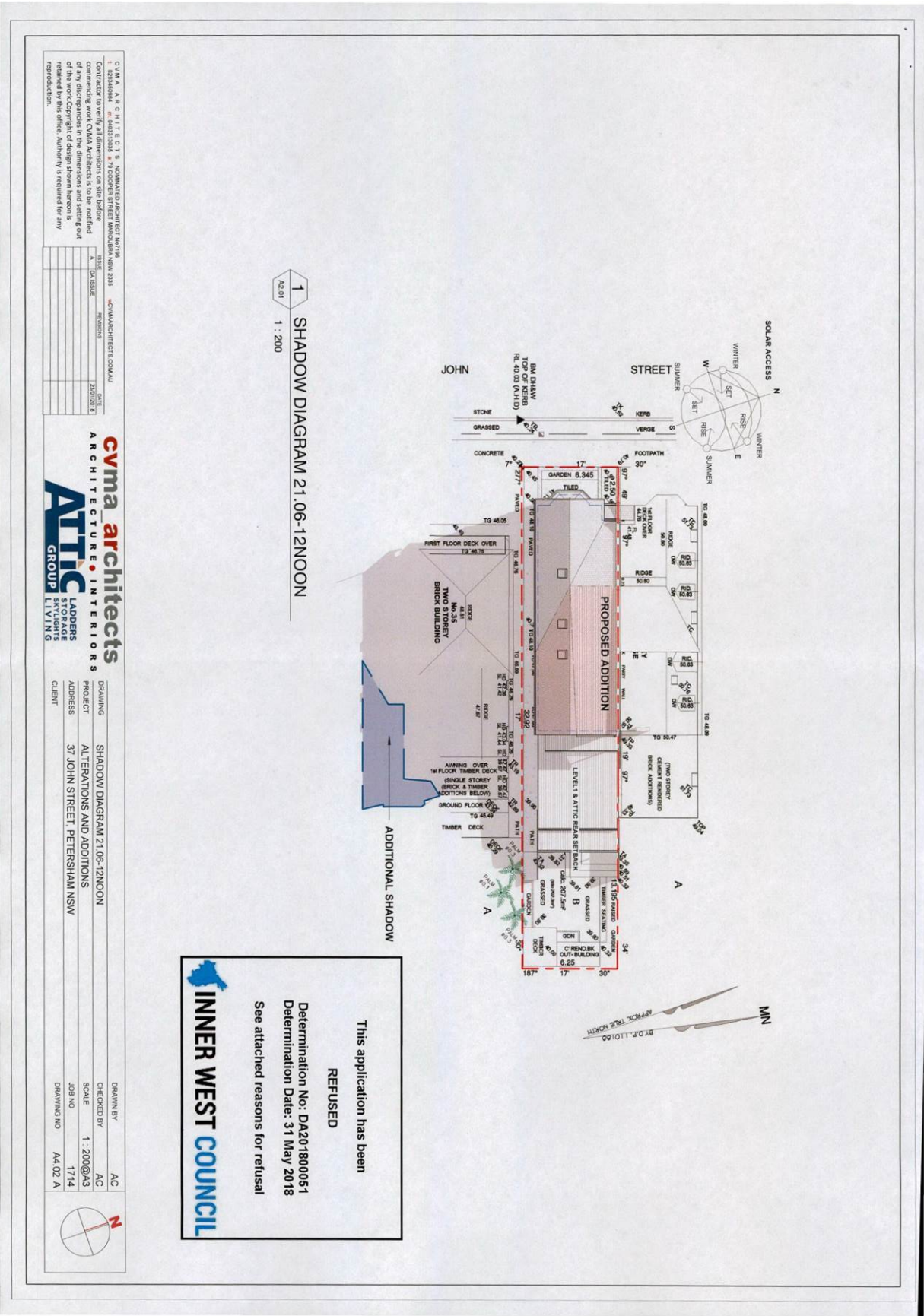
AC

1 : 100 @ A3

1714

A2.03 A





1 SHADOW DIAGRAM 21.06-12NOON
A2/01 1 : 200

This application has been
REFUSED
Determination No: DA201800061
Determination Date: 31 May 2018
See attached reasons for refusal

INNER WEST COUNCIL

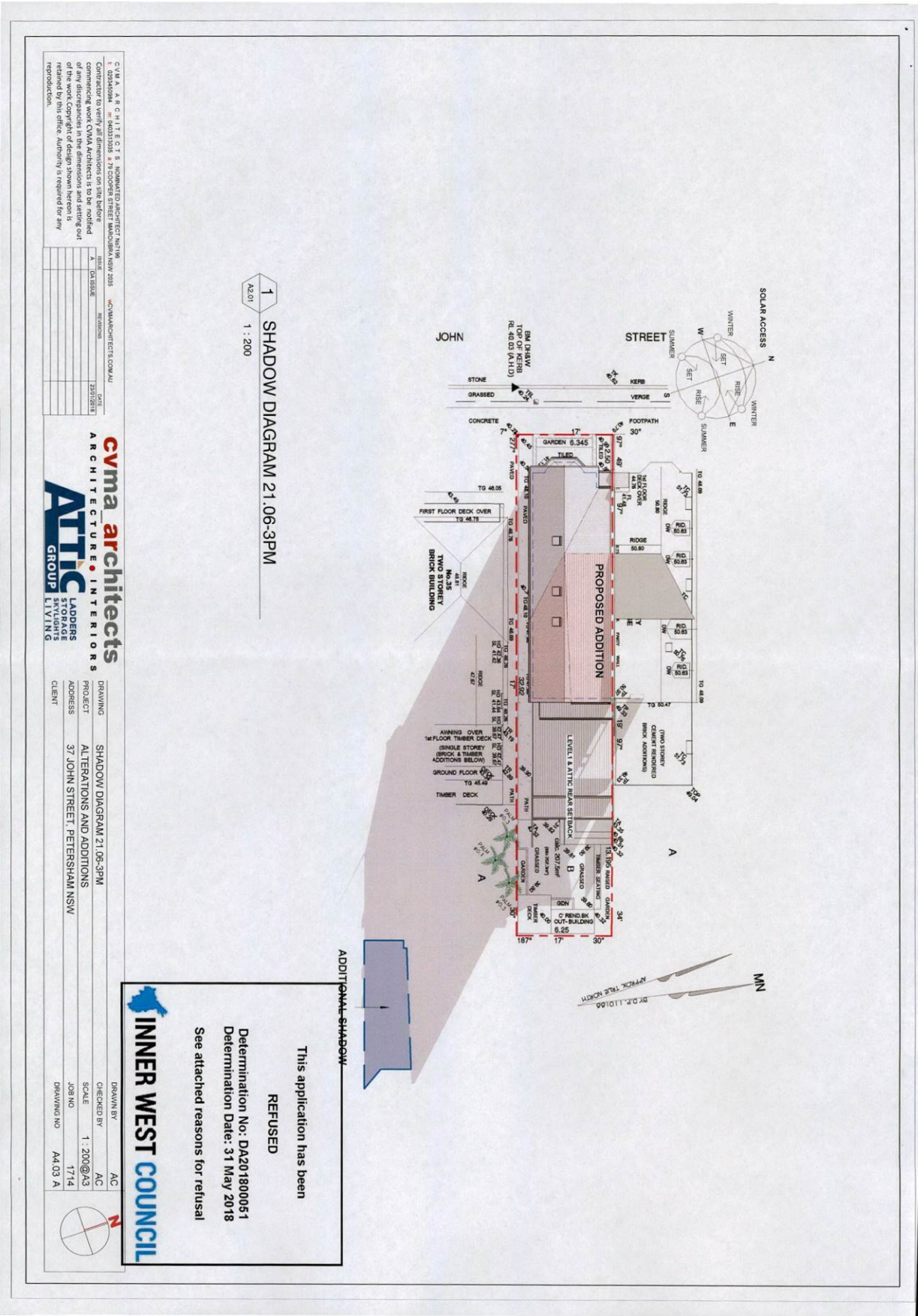
C.V.M.A. ARCHITECTS, NOMINATED ARCHITECT NO. 18
1, 323/323/324, 37 COOKS STREET, MANDURAH NSW 2235
Contractor to verify all dimensions on site before commencing work. CMA Architects is to be notified of any variations to the design shown hereon. The work copyright of design shown hereon is retained by this office. Authority is required for any reproduction.

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DRAWING SHADOW DIAGRAM 21.06-12NOON
PROJECT ALTERATIONS AND ADDITIONS
ADDRESS 37 JOHN STREET, PETERSHAM NSW
CLIENT

DRAWN BY AC
CHECKED BY AC
SCALE 1 : 200 @ A3
JOB NO 1714
DRAWING NO AA.02 A





1 SHADOW DIAGRAM 21.06-3PM
1 : 200

This application has been
REFUSED
Determination No.: DA201800051
Determination Date: 31 May 2018
See attached reasons for refusal

INNER WEST COUNCIL

CVMA ARCHITECTS NOMINATED ARCHITECT NO.118
E. 02946984 M. 04021325 5/75 COOPER STREET MANDURAH NSW 2233
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DATE	REVISION
23/03/2018	

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DRAWING: SHADOW DIAGRAM 21.06-3PM
PROJECT: ALTERATIONS AND ADDITIONS
ADDRESS: 37 JOHN STREET, PETERSHAM NSW
CLIENT:

DRAWN BY: AC
CHECKED BY: AC
SCALE: 1:200@A3
JOB NO: 1714
DRAWING NO: AA.03 A



Attachment D – Review of Statement Of Environmental Effects addressing reasons of refusal and Clause 4.6 objection

Division 8.2 Review Application



SECTION 8.3 (Division 8.2 Reviews) REVIEW APPLICATION

STATEMENT OF ENVIRONMENTAL EFFECTS

Inner West Council

LOT B in DP 110188 No.37 JOHN STREET, PETERSHAM

Section 8.3 Review of Council's Notice of Determination of DA201800051 for the construction of a new attic to the rear (master bedroom and bathroom), three (3) new skylights and new under roof storage space.

6th AUGUST, 2018

Division 8.2 Review Application

CONTENTS

1/ INTRODUCTION

1.1 Background

2/ SITE ANALYSIS

2.1 Site Description

2.2 Existing Development

3/ PROPOSED DEVELOPMENT

3.1 Proposed Development

4/ PERMISSIBILITY UNDER SECTION 8.3 (Division 8.2) OF THE ACT

4.1 Division 8.2 (section 8.3) Review

4.2 Substantially the same development

5/ PROPOSED REVIEW

5.1 Matters for Reconsideration

6/ MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011 & DCP 2011

6.1 Aims Of The Plan (Clause 1.2)

6.2 Permissibility Of The Development (Clause 2.2)

6.3 Objectives Of The R2 Low Density Residential Zone (Clause 2.3)

6.4 Heights Of Building (Clause 4.3)

6.5 Floor Space Ratio (Clause 4.4)

6.6 Heritage Conservation (Clause 5.10)

7/ CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

7.1 Justification For Contravention Of The development Standard (Height & FSR)

8/ CONCLUSION

Division 8.2 Review Application

ISSUE NO	AMENDMENT	DATE
A	Initial draft Report	3 August 2018
B	Final for issue to Client	6 August 2018

REPORT PREPARED BY:

Peter Fryar

BTP (UNSW), CERT T&CP (Ord4), MPIA



DIRECTOR,
KEY URBAN PLANNING

Waiver

This report has been prepared in accordance with and for the purposes outlined in the scope of services agreed with Key Urban Planning and the Client. It has been prepared based on the information supplied by the Client, as well as investigation undertaken by Key Urban Planning and any sub-consultants engaged by the Client for the project.

Unless otherwise specified in this report, information and advice received from external parties during the course of this project was not independently verified. However, any such information was deemed to be current and relevant prior to its use. Whilst all reasonable skill, diligence and care have been taken to provide accurate information and appropriate recommendations, it is not warranted or guaranteed and no responsibility or liability for any information contained herein or for any consequences of its use will be accepted by Key Urban Planning.

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The Client should be aware that this report does not guarantee the approval of any application by any Council, Government agency or any other regulatory authority.

Division 8.2 Review Application

1 /

INTRODUCTION

1.1 Background

Peter Fryar of Key Urban Planning has prepared this Statement of Environmental Effects ("SEE") in support of a section 8.3 Review Application. He is a Town Planner with over 30 years experience in Local Government and private practice. He holds a Degree as a Bachelor of Town Planning (UNSW). He is a Corporate Member of the Planning Institute of Australia.

This section 8.3 Review assesses the impacts of the proposed development under the provisions of the relevant Planning Controls applicable to the subject site. This assessment has been undertaken in accordance with the provisions of Section 4.15 & Division 8.2 of the Environmental Planning & Assessment Act, 1979 (the "Act").

In the preparation of this Statement we have:

- Undertaken an inspection of the site and surrounding locality;
- Undertaken a review of the Marrickville Local Environmental Plan 2011 (the "LEP");
- Assessed the proposal against the relevant chapters of Development Control Plan 2011 Development Controls for Inner West Council (the "DCP");
- Consulted with relevant Officers of Council;
- Given consideration to the relevant provisions of the Act and Regulations.

This SEE has been prepared in accordance with the provisions of Section 4.12 of the Act and Clause 50 of the Environmental Planning and Assessment Regulations 2000.

The development proposal satisfies the underlying objectives of the relevant Planning Controls adopted by Inner West Council. The refusal of the development application warrants the reconsideration of the previous determination and the granting of development consent by Council.

Division 8.2 Review Application

2/

SITE ANALYSIS

2.1 Site Description

The property is known as Lot B in DP 110188 No. 37 John Street, Petersham (the "site"). The site is located on the eastern side of John Street. The site has a frontage of 6.34m. No vehicular access to the site is available.

The total site area is 207.5m².

The site is zoned R2 - Low Density Residential under the LEP. The surrounding locality is characterised by a mix of housing types generally detached dwellings/lot.

The residential dwelling on the site is attached to the adjoining dwelling to the north by a common 'party wall'.

Figure 1 – Aerial Image of site and locality (courtesy Google Earth)



Division 8.2 Review Application

2.2 Existing Development

The site comprises the following:

- A two (2) storey brick and tile roof dwelling attached to the adjoining dwelling to the north.
- An outbuilding in the rear yard.
- A pathway providing access along the southern boundary from John Street to the rear yard.
- A small yard and garden at the rear of the site.

Photograph 1 – Panoramic view of the rear



Photograph 2 – View of site (right) from John Street



Division 8.2 Review Application

Photograph 3 – View looking from rear of site to dwelling house and adjoining site to north.



Division 8.2 Review Application

3/

PROPOSED DEVELOPMENT

3.1 The Proposed Development

The Statement of Environmental Effects that accompanied the Development Application describes the proposed development as follows:

"The development proposal involves the following works:

- *New internal stair access linking the attic and first floors;*
- *New attic floor to the rear (master bedroom and bathroom).*

It is of modest size and scale in order to complement the physical form of the existing house as well as appearance of the adjacent buildings.

- *Three new skylights*
- *New under roof space storage.*

The front section of the house will remain as is. The proposal matches the adjoining dwellings (No39) attic level roof form and restores symmetry to both of the original identical buildings."

The initial DA was determined by Council on the 31 May 2018. The application was refused for the following reasons:

"1. The proposal fails to comply the building height development standard prescribed under Clause 4.4 of Marrickville Local Environmental Plan 2011 and is inconsistent with the stated objectives of the development standard as the additional height compromises the integrity of the period building.

2. The proposal fails to comply with the Floor Space Ratio development standard prescribed under Clause 4.6 [sic] of Marrickville Local Environmental Plan 2011 and fails the demonstrate the proposal is better than a compliant development.

3. The form and appearance of the development results in adverse impacts for the period building and Petersham South Heritage Conservation Area. In this regard the proposal contrary to Part 4.1.6.1 of Marrickville Development Control Plan 2011 [Built form and character].

4. The proposal has unacceptable impact upon the qualities and character of the dwelling as the addition is not subordinate to the main roof form. In this regard the proposal contrary to Objective O24 and Control 60 of Marrickville Development Control Plan 2011 [Additional Controls for Period Dwellings].

Division 8.2 Review Application

5. *The proposal results in significant alterations to the original main roof form. In this regard the proposal contrary to Objectives O2, O3 and O5 and Control C22 of Part 8.3.2.6 of Marrickville Development Control Plan 2011 [Heritage].*

6. *The proposal has an adverse impact on the subject period building, the streetscape and the Petersham South HCA, and is therefore inconsistent with the relevant desired future character of the Newington Planning Precinct. In this regard the proposal is contrary to Part 9 of Marrickville Development Control Plan 2011 [Strategic Context]."*

In response, the Proponent is seeking a reconsideration of the matter under the provisions of section 8.3 of the Act.

Division 8.2 Review Application

4/

PERMISSIBILITY UNDER SECTION 8.3
(DIVISION 8.2) OF THE ACT

4.1 Division 8.2 (section 8.3) Review

Pursuant to section 8.3 of the Act, a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the Regulations, consider a request from the applicant to review a determination of the applicant's application. In requesting a review, the applicant is entitled to make amendments to the original application or provide additional information to address the grounds for refusal. Section 8.3 (1) – (4) states:

- (1) *"An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
- (2) *A determination or decision cannot be reviewed under this Division:*
 - (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - (b) *after the Court has disposed of an appeal against the determination or decision.*
- (3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*
- (4) *The review of a determination or decision made by a delegate of a council is to be conducted:*
 - (a) *by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
 - (b) *by another delegate of the council who is not subordinate to the delegate who made the determination or decision."*

In summary, if an applicant is dissatisfied with a Council's determination of its development application, the applicant can seek an internal review of this decision, pursuant to Division 8.2 of the Act.

Division 8.2 Review Application

When lodging a s 8.3 application the applicant is entitled to amend the original development application in response to the determination, and ask Council to review its decision, on the basis of the amended application. The application must remain substantially the same application.

The Council can review and possibly reconsider the application and can either confirm the determination or change it. The Council has a duty to undertake a review of all requests received under Division 8.2.

If the Council confirms the determination, the original determination applies (from the date of the earlier determination). If this happens, and the applicant wants to appeal to the Land and Environment Court from the original determination, the appeal must be lodged within 6 months from the date of the original determination.

If Council changes the determination, the changed determination replaces the earlier determination (from the date of review determination). In this case, an applicant then has another 6 months (from the date of the changed determination) to lodge an appeal from the changed determination.

4.2 Substantially the same development

This application requests that Council review the determination under Division 8.2 of the Environmental Planning and Assessment Act 1979. The DA can be reviewed under Division 8.2 as it was not one of the following:

- a Complying Development
- a Designated Development
- a Crown Development

Section 8.3(3) enables the proponent to make changes to the development. The changes made to the development proposal must not make the development substantially different from what was refused.

Council is empowered to consider this review application as the request for review:

- has been completed within 6 months of the determination.
- has not been made after an appeal against the determination made to the Land and Environment Court has been disposed of by the Court.

Division 8.2 Review Application

5/

PROPOSED REVIEW

5.1 Matters for Reconsideration

The Proponents do not propose any modifications to the original development application. In summary, this application for review provides as follows:

- A justification for the proposal based on the relevant Planning Controls.
- Specific reference to each ground for refusal.
- A revised Clause 4.6 objection seeking variation to the Floor Space Ratio and Height standards adopted under the LEP.

We have addressed the reasons for refusal as follows:

"1. The proposal fails to comply the building height development standard prescribed under Clause 4.4 of Marrickville Local Environmental Plan 2011 and is inconsistent with the stated objectives of the development standard as the additional height compromises the integrity of the period building."

Comment:

Whilst it is acknowledged that the proposal exceeds the height standard (max 9.5m) prescribed under clause 4.3 of the LEP, the proposed addition maintains the existing ridgeline of the building and also maintains continuity of the built form with the adjoining semi-detached dwelling to the north. Strict compliance with the numeric height standard would result in a built form 'at odds' with the existing semi-detached building.

The addition is located at the rear of the building and as a consequence, has no impact on the existing streetscape. The simple gable form of the existing building is respected in the design of the addition.

A number of buildings in the surrounding locality exceed the 9.5 m height standard including the building immediately to the north of the subject semi-detached building. It is considered that the height of the proposed addition to the dwelling house is consistent with the objectives of clause 4.3 of the LEP in that the resultant built form is consistent with the character and built form of a number of buildings in the surrounding locality. Satisfactory sunshine is maintained to the dwelling house immediately to the south on the site. No objections were raised by the adjoining landowner immediately to the south during the notification period. The addition will not be visible from the adjoining roadway and as a consequence, there will be no impacts on streetscape.

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"2. The proposal fails to comply with the Floor Space Ratio development standard prescribed under Clause 4.6 [sic] of Marrickville Local Environmental Plan 2011 and fails to demonstrate the proposal is better than a compliant development."

Comment:

Clause 4.4(2A) of the LEP (not clause 4.6 as referenced above) prescribes a maximum Floor Space Ratio (FSR) based on the area of the site of 0.9:1. The proposed FSR is 0.94:1. In terms of GFA, the maximum permitted on the site is 186.75 m². The proposed GFA is 190.3 m². The variation sought is 3.55 m² or 1.9% exceedance. The resultant impact in regard to bulk and scale of the building is negligible and it is considered in the circumstances reasonable to permit the minor variation to GFA permitted on the site.

"3. The form and appearance of the development results in adverse impacts for the period building and Petersham South Heritage Conservation Area. In this regard the proposal contrary to Part 4.1.6.1 of Marrickville Development Control Plan 2011 [Built form and character]."

Comment:

Clause 4.1.6.1 of the DCP deals with FSR and Height of Buildings. The DCP states that "...FSR and height standards intend to reflect the existing pattern of housing density, whereby the floor space ratio generally decreases as allotment size increases". The resultant built form as a consequence of the proposed addition is consistent with the existing pattern of housing density in the locality.

The surrounding locality comprises an eclectic mix of building form with no dominant pattern of building. Strict compliance with the height standard (in particular) would be contrary to objective O11 of Part 4 of the DCP as the inability to "marry" the built form with the adjoining semi-detached building would result in an addition at odds with the current building attached at No.39.

"4. The proposal has unacceptable impact upon the qualities and character of the dwelling as the addition is not subordinate to the main roof form. In this regard the proposal contrary to Objective O24 and Control 60 of Marrickville Development Control Plan 2011 [Additional Controls for Period Dwellings]."

Comment:

Control 60 of the DCP states:

"Alterations and additions at the rear and the sides and above the roof line, other than reconstruction of elements removed from the period building and garden, must be subordinate to the main body of the period building when viewed from the street."

As stated previously, the proposed addition will not be visible from the adjoining street and therefore there will be no impacts on the existing streetscape. Likewise, objective O24 aims to

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accommodate contemporary alts. & adds. while retaining significant components of the building. This is achieved in the proposal.

"5. The proposal results in significant alterations to the original main roof form. In this regard the proposal contrary to Objectives O2, O3 and O5 and Control C22 of Part 8.3.2.6 of Marrickville Development Control Plan 2011 [Heritage].

6. The proposal has an adverse impact on the subject period building, the streetscape and the Petersham South HCA, and is therefore inconsistent with the relevant desired future character of the Newington Planning Precinct. In this regard the proposal is contrary to Part 9 of Marrickville Development Control Plan 2011 [Strategic Context]."

Comment:

The building is not identified as a 'Heritage Item'. However, the site is located in a 'Heritage Conservation Area' identified under the LEP (Heritage Conservation Area C18 - Petersham South). The proposed additions will not be visible from the adjoining roadway (John Street) and therefore, will have a negligible impact on streetscape.

Council in its reference to DCP controls in the reasons for refusal in our opinion is attempting to rigidly apply provisions in the DCP as statutory controls. Amendments to the Environmental Planning and Assessment Act 1979 (the Act), which largely changed the key purpose of development control plans (DCP), came into effect on 1 March 2013. In short, the new principal purpose of a DCP is to provide '**guidance**' and the provisions of a DCP are expressly said not to be '**statutory requirements**'.

Specifically, section 4.15(3A) of the Act states that if a DCP contains provisions that relate to a pending development application, the consent authority must not impose more onerous standards, where the development proposal complies with the standards of a DCP. However, this provision does not apply when standards are set by a local environmental plan.

Alternatively, where the proposed development does not comply with the standards of a DCP, a consent authority will be obliged to 'be flexible in applying those provisions' and to 'allow reasonable alternative solutions' that achieve the objectives of those standards. This means that a consent authority cannot apply a DCP rigidly and is required by the Act to allow reasonable alternative solutions that still achieve the desired character for the relevant local government area. Accordingly, in these circumstances a consent authority is precluded from refusing consent in relation to an aspect of a development because of non-compliance with provisions of a DCP. If a development application proposes a reasonable alternative solution, the consent authority must allow that solution.

A consent authority may only consider DCP provisions in connection with the assessment of the subject development application. This means that a consent authority will not be able to consider the consequences of a decision on hypothetical future development applications, and so should not be able to hide behind the notion that an approval may set an undesirable precedent. Additionally,

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a consent authority is not to have regard to how the provisions in the DCP have been applied previously.

A Heritage Impact Statement (HIS) prepared by CVMA Architects accompanied the development application. Under section 6.2 of the HIS (p.15) it states:

" 37 John Street is an existing two storey semidetached house that is relatively intact and has been identified as contributory to the streetscape and heritage conservation area.

The subject property has been previously altered with external and internal alterations and additions at the rear.

All houses in the neighbouring sites have undergone varying degrees of alteration and additions including attic with dormer windows and first levels.

The proposal matches the adjoining dwellings (No39) attic level roof form and restores symmetry to both of the original identical buildings. The impact of the work is considered with an understanding of the guidelines provided by the Marrickville LEP 2011, in that;

- Conservation areas are generally established to maintain the historical character of the streetscape. As the attic addition is located to the rear of the site, there is negligible change to the presentation of the existing house facing John Street.*

- The development does not undermine or cause physical damage to the existing dwelling or to the adjoining dwelling.*

- The works do not affect the existing/established bulk, scale, height and massing of the site and its surrounds, thus harmonise with the prominence of two storey dwellings along John Street. The propose attic addition is an identical scale, form and height to the existing attic of the adjoining No39.*

The new works are below the ridge line of the original front roof and located to the rear and are not visually prominent.

- The materiality of the proposed works, through the use of rendered walls, timber trim and fenestration, metal colorbond roofing, tiled roofing and weatherboard profiled cladding are all from the established material palate from other dwellings in John Street, and thus positively relate to the existing established historical streetscape character.*

- There are no any effects on the established planting along John Street from the proposed works.*

- No view corridors to and from the site are lost effected from the proposed works.*

- The public can still fully appreciate the site, and the existing Petersham South Heritage Conservation Area.*

- The development is not sited on any known or potentially significant archaeological deposits.*

- The development does not substantially overshadow any surrounding buildings.*

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• The works do not impede any natural water course or other historical drainage flow paths over the site. In general the proposed new works are respectful of the identification of the heritage value of the building as a contributory building within the context of the heritage conservation area. The proposed works seek to maintain or enhance heritage values of the street facade within John Street and new works are confined to the rear of the building and are not visible from John Street."

The proposed additions will be obscured from view (properties to the north) by the additions undertaken to the rear of the building at 39 John Street and the new development under construction at 41 John Street.

The view from the rear to houses in Denning Street is relatively obscured due to topography (lower) and the presence of fencing and trees.

The proposed additions will be visible from the adjoining property to the south. No objections were raised to the proposed works following Council's notification of the development application.

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MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011 & DCP 2011

6.1 Aims of the Plan (Clause 1.2)

Marrickville LEP 2011 adopts the Standard Environmental Planning Instrument form pursuant to section 3.20 of the Act. The LEP 2011 prescribes certain broad aims of the plan which development within Inner West Council should accord with where applicable. The relevant aims of the plan to the proposed development are as follows:

- (a) to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,*
- (b) to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,*
- (c) to protect existing industrial land and facilitate new business and employment,*
- (d) to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,*
- (e) to promote accessible and diverse housing types including the provision and retention of affordable housing,*
- (f) to ensure development applies the principles of ecologically sustainable development,*
- (g) to identify and conserve the environmental and cultural heritage of Marrickville,*
- (h) to promote a high standard of design in the private and public domain."*

The proposed development is considered to be consistent with the relevant aims detailed above for the following reasons:

- The principles of ecologically sustainable development will be applied in the development by the re-use of materials where possible. The Proponents gave specific consideration in the design to the provision of skylights in the roof to take advantage of solar access not obscured by the adjoin building at 39 John Street;
- The proposal is consistent with the desired future character objectives for the locality;

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- The building alts. & adds. will provide for a mix of housing types meeting the future housing needs of the community;
- The expanded housing will be provided in close proximity to transport nodes and services;
- The development will not detract from the existing character and values of the locality;
- The proposal is consistent with the managed growth envisaged by the Council for the locality.

6.2 Permissibility Of The Development (Clause 2.2)

The site is zoned R2 Low density Residential under the LEP. The proposed works are defined under the Dictionary contained within the LEP as follows:

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

"dwelling house means a building containing only one dwelling."

Note. Dwelling houses are a type of residential accommodation—see the definition of that term in this Dictionary."

The proposed works are permissible within the R2 zone with the consent of Council.

6.3 Objectives of the R2 – Low density Residential Zone (Clause 2.3)

Clause 2.3 of LEP 2013 requires the Council in granting consent to development under the plan to *"have regard to the objectives for development in a zone when determining a development application in respect of land within the zone"*. The issue of permissibility discussed previously in this Statement is reliant upon the R2 Land Use table.

The specific objectives of the zone are;

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

Comment:

The proposed development is considered to be compatible with the mix of land uses currently situated in the locality and envisaged for future development within the zone. The proponents seek to expand the existing floor space of the dwelling house for improved living environment.

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

Comment:

Not applicable

- *To provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.*

Comment:

Not relevant to the proposed development.

- *To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.*

Comment:

Not relevant to the proposed development.

- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*

Comment:

Not relevant to the proposed development.

6.4 Heights of Building (Clause 4.3)

Clause 4.3(2) of the LEP states:

“(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.”

The maximum building height permitted under the LEP is 9.5 metres. The maximum height of the proposed dwelling house (as modified) will be 10.74 metres. A revised submission under clause 4.6 of the LEP forms part of this review application.

6.5 Floor Space Ratio (Clause 4.3)

The objectives of the FSR control are:

“(a) to establish the maximum floor space ratio,

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(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,

(c) to minimise adverse environmental impacts on adjoining properties and the public domain."

Clause 4.4(2A) of the LEP (not clause 4.6 as referenced above) prescribes a maximum Floor Space Ratio (FSR) based on the area of the site of 0.9:1. The proposed FSR is 0.94:1. In terms of GFA, the maximum permitted on the site is 186.75 m². The proposed GFA is 190.3 m². The variation sought is 3.55 m² or 1.9% exceedance. The resultant impact in regard to bulk and scale of the building is negligible and it is considered in the circumstances reasonable to permit the minor variation to GFA permitted on the site.

6.6 Heritage Conservation (Clause 5.10)

The site is located within a Heritage Conservation Area C18 – Petersham South identified on the Heritage Map referred to under clause 5.10 of the LEP. The development application was accompanied by a Heritage Impact Statement prepared by CVMA Architects. In summary, the Heritage Impact Statement concludes:

"This HIS has described the heritage significance of the building and described the development proposal. The development proposal will not be visible from the street frontage. The proposal will have a minor impact on the buildings already altered interior. The building has already undergone alteration since its original construction . At some point, the attic room and dormer were added and the interior of the building has been renovated over the years. Many houses in the neighbouring terrace row have undergone varying degrees of alteration and additions including attic levels and dormer windows. The proposal matches the adjoining dwelling (No39) attic level roof form and restores symmetry to both of the original identical buildings.

It is suggested that from a heritage conservation point of view the proposed works are of a low impact and have been designed to be contributory to the aims of the C18 heritage conservation area. As such it is suggested that the proposed be considered appropriate for approval."

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CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

Variation under Clause 4.6 of Marrickville Local Environmental Plan, 2011 to development standard for height of buildings & floor space ratio

INTRODUCTION

Key Urban Planning is providing urban planning services in support of the above described 'review application' to Inner West Council.

The purpose of this application is to request a variation to Clause 4.3 (Height of Buildings) of Marrickville Local Environmental Plan, 2011. It is proposed that the building will have a maximum height of 10.740 metres, representing a variation of 1.24 metres above the 9.5 metre Development Standard that applies to the site. It is also proposed that the building will have a Floor Space Ratio of 0.94:1 rather than the maximum permitted 0.9:1 permitted under the LEP. This results in a variation to GFA of 3.55m² which is approximately a 1.9% variation.

CLAUSE 4.6 FRAMEWORK

Clause 4.6 (Exceptions to Development Standards) provides a mechanism for a Consent Authority to grant flexibility in Development Standards when it considers this would result in improved planning outcomes for and from a development.

The clause requires that a consent authority must not grant a variation to a development standard unless it is satisfied:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;

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

Additionally, there is Case Law precedence that must be considered prior to determining any variation request under the Clause. The Land and Environment Court Case law has set questions to be addressed in requests for variations facilitated by Clause 4.6. The relevant precedence is in:

- *Wehbe v Pittwater Council (2007)*; and, more recently
- *Four2Five Pty Ltd v Ashfield Council (2015)*.

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This application to vary development standards is framed to provide responses to each of the heads of consideration under Clause 4.6 and to address the precedence set by this relevant Case Law. It is set out as follows:

- Verification that a statutory Development Standard is proposed to be varied;
- Description and quantification of the proposed variation
- Justification on merit of the validity of the variation requested (with particular attention to the current case law precedence in *Four2Five vs Pty Ltd v Ashfield Council*).
- Assessment against the remaining relevant statutory heads of consideration in Marrickville LEP 2011 and other relevant case law.

1. DEVELOPMENT STANDARD PROPOSED TO BE VARIED

The Development Standards proposed to be varied by this application are Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of Marrickville LEP, 2011.

4.3 Height of buildings

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

- (a) to establish the maximum height of buildings,*
- (b) to ensure building height is consistent with the desired future character of an area,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

(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](#)."

The map indicates that the maximum height of a building on the site shall not exceed 9.5 metres.

Height is defined in the LEP, 2011 as:

"..... the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like".

4.4 Floor space ratio

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

- (a) to establish the maximum floor space ratio,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*

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(c) to minimise adverse environmental impacts on adjoining properties and the public domain.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

(2A) Despite subclause (2), development for the purposes of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land labelled "F" on the [Floor Space Ratio Map](#) is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.

Site area	Maximum floor space ratio
≤ 150 square metres	1.1:1
> 150 ≤ 200 square metres	1:1
> 200 ≤ 250 square metres	0.9:1
> 250 ≤ 300 square metres	0.8:1
> 300 ≤ 350 square metres	0.7:1
> 350 ≤ 400 square metres	0.6:1
> 400 square metres	0.5:1

(2B) Despite subclause (2), development for the purposes of residential flat buildings on land identified with a thick red line and labelled "F" on the [Floor Space Ratio Map](#) may exceed the maximum floor space ratio shown for the land on the [Floor Space Ratio Map](#) by no more than 0.25:1."

The map indicates that the maximum FSR of a building on the site shall not exceed 0.9:1 metres.

2. ARE THE PLANNING CONTROLS IN QUESTION A DEVELOPMENT STANDARD?

Section 1.4 of the Environmental Planning and Assessment Act, 1979 defines a development Standard as follows:

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

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

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- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed."*

Clause 4.3 (Height of Buildings) & Clause 4.4 (Floor Space Ratio) of LEP, 2011 fall within this definition and are Development Standards.

3. EXTENT OF VARIATION SOUGHT

The proposal exceeds the maximum height standard by a maximum of 1.24 metres in the south – eastern portion of the building. The majority of the building is compliant with the maximum height requirement.

The proposal exceeds the maximum floor space ratio standard by 3.55m² or approximately 1.9%.

4. JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

The proposed variation is justified below firstly via a merit based assessment based on the recent case law and subsequently against the relevant heads of consideration in Marrickville LEP 2011. Recent case law (*Winten Property Group v North Sydney Council, 2001* & *Wehbe v Pittwater Council, 2007*) sets the basis for decision making on tests to assess variations to a Development Standard founded in whether the varied development would achieve the objectives of the relevant zoning and the Development Standard. In his decision in *Four2Five Pty Ltd v Ashfield Council, 2015*, Commissioner Pearson found that merely showing that the development achieves the objectives of the development standard would be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of a Clause 4.6 objection. This refined the test set in *Wehbe v Pittwater Council* to include an obligation to tie the test to outcomes specific to the proposed development and its site as opposed to grounds that would apply to any similar development on the site or in the vicinity. Consent authorities have since been applying this site &

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development specific test ("the Four2Five Test") to objections under Clause 4.6. The merit based assessment of this variation request is based on this test.

With respect to the *Four2Five* test, there are a number of outcomes for the development on this site that go to justification of the variation request for additional height & floor space ratio. These include:

- The shape and locality of the site and the opportunities and constraints that arise for its development as a result with no discernible impacts arising from the additional height & FSR proposed on the locality;
- The potential for negative town planning and urban outcomes that may arise from strict compliance with the requirement;
- The proposed addition maintains the existing ridgeline of the building and also maintains continuity of the built form with the adjoining semi-detached dwelling to the north. Strict compliance with the numeric height standard would result in a built form 'at odds' with the existing semi-detached building. The addition is located at the rear of the building and as a consequence, has no impact on the existing streetscape. The simple gable form of the existing building is respected in the design of the addition;
- A number of buildings in the surrounding locality exceed the 9.5 m height standard including the building immediately to the north of the subject semi-detached building. It is considered that the height of the proposed addition to the dwelling house is consistent with the objectives of clause 4.3 of the LEP in that the resultant built form is consistent with the character and built form of a number of buildings in the surrounding locality. Satisfactory sunshine is maintained to the dwelling house immediately to the south on the site;
- The proposed FSR is 0.94:1. In terms of GFA, the maximum permitted on the site is 186.75 m². The proposed GFA is 190.3 m². The variation sought is 3.55 m² or 1.9% exceedance. The resultant impact in regard to bulk and scale of the building is negligible and it is considered in the circumstances reasonable to permit the minor variation to GFA permitted on the site; and
- The unique qualities of the site and the value of the proposed architectural response in maintaining and enhancing these and the character of the locality.

5. ASSESSMENT AGAINST THE STATUTORY HEADS OF CONSIDERATION

The proposed variation is assessed below against the relevant sub-clauses in Clause 4.6 of LEP, 2011.

5.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl. 4.6(3)(a))

In his decision in *Wehbe v Pittwater Council [2007] NSW LEC 827* (relating to the now repealed State Environmental Planning Policy No.1), Chief Justice Preston expressed the view that there are 5 different ways in which a Development Standard may be shown to be unreasonable or unnecessary (and so that an objection to the development standard may be well founded). In accordance with this precedent, the proposed variation is tested below against each of these.

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- *The objectives of the standard are achieved notwithstanding non-compliance with the standard,*

The relevant objectives underpinning the building height development standard are:

"(b) to ensure building height is consistent with the desired future character of an area,

(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity."

Our opinion is that the relatively modest additional height proposed contributes to the delivery of a high quality development on this site. The proposed height variation realises the development potential of the site and provides a higher quality outcome than the alternative solution.

It is clear that the objectives of the standard are able to be achieved, notwithstanding the additional height, and that a superior development outcome would result. Strict compliance with the numeric height standard would result in a built form 'at odds' with the existing semi-detached building.

The relevant objectives underpinning the floor space ratio development standard are:

"(a) to establish the maximum floor space ratio,

(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,

(c) to minimise adverse environmental impacts on adjoining properties and the public domain."

The proposed FSR is 0.94:1. In terms of GFA, the maximum permitted on the site is 186.75 m². The proposed GFA is 190.3 m². The variation sought is 3.55 m² or 1.9% exceedance. The resultant impact in regard to bulk and scale of the building is negligible and it is considered in the circumstances reasonable to permit the minor variation to GFA permitted on the site.

- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objective or purpose of the standard is relevant to this development but, as illustrated in the plans submitted with the development application, it is achieved through the height variation with a higher quality urban planning and urban design outcome. The variation on FSR is negligible.

- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

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The underlying object or purpose of both standards would not be defeated or thwarted if compliance was required. However, in our opinion, strict compliance with the development standards would result in a missed opportunity specific to this site to develop a high quality development.

- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

A number of existing and more recently approved developments in the immediate locality involve departures from both development standards the subject of this clause 4.6 objection.

- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Not applicable. The zoning of the site is appropriate.

Our opinion in summary is that the proposed variations are consistent with the heads of consideration set by the decision of *Wehbe v Pittwater Council [2007]* and thus that for this particular case it would be unreasonable to strictly apply the numerical height & floor space ratio standard.

5.2 There are sufficient environmental planning grounds to justify contravening the development standard (Cl. 4.6(3)(b))

The merit based justification in Section 4 of this request provides strong evidence that the proposed height and floor space ratio variations would have clear positive outcomes including protection and enhancement of identified values specific to the site and provision of high quality housing that would contribute to housing choice in the locality.

Our opinion is that the additional height & floor space ratio is a negligible issue within the context of the greater planning benefit.

In this regard, there are sufficient environmental planning grounds specific to this site to justify the proposed minor departure from the development standard.

5.3 The proposal will be in the public interest because it is consistent with the objectives of the relevant development standard and the objectives for development within the relevant zone (Cl. 4.6(4)(a)(ii))

A superior design outcome is achieved.

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6. SECRETARY'S CONCURRENCE

Under Clause 4.6(5) of LEP, 2011, the Secretary's concurrence is required prior to any variation being granted. The proposal is assessed below against the matters to be considered by the Secretary.

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

The variation to the height & FSR development standards will raise no matters that could be deemed to have State or Regional Significance. The proposed variations have no potential for impacts outside the immediate vicinity of the site.

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

Maintaining the development standards in this case would result in the potential of the proposed additions being 'at odds' with the built form of the semi-detached dwelling.

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

We know of no other specific matters that would require the Secretary's consideration prior to granting concurrence.

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CONCLUSION

The merits of the application have been considered in this assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979, Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011. More specifically, the proposal meets the requirements of the relevant parts of the DCP.

The proposal satisfies the relevant planning controls for the locality.

The proposal achieves the objectives of Council's planning controls and is considered to be suitable for approval.

Peter Fryar

BTP(UNSW), CERT T&CP(Ord4), MPlA

Director,

KEY URBAN PLANNING