



DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	0102019000176.1
<b>Address</b>	7 Wellesley Street SUMMER HILL NSW 2130
<b>Proposal</b>	Alterations and additions to an existing dwelling including a new first floor
<b>Date of Lodgement</b>	08 November 2019
<b>Applicant</b>	Cracknell & Lonergan Architects
<b>Owner</b>	Mi Qin Shi, Alan Ning Lee
<b>Number of Submissions</b>	Three (3)
<b>Value of works</b>	\$480,000.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds officer delegations
<b>Main Issues</b>	Variation to floor space ratio
<b>Recommendation</b>	Approval with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
<b>Attachment D</b>	Statement of Heritage Significance



LOCALITY MAP

Subject Site		Objectors		N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing dwelling including a new first floor at 7 Wellesley Street, Summer Hill.

The main issues that have arisen from the application include:

2. A 17.4% (17.8sqm) variation from the maximum permitted under Clause 4.4 – Maximum Floor Space Ratio of the Ashfield Local Environmental Plan
3. Three (3) submissions regarding privacy, solar access and acoustic impacts

The non-compliances are acceptable given merits of the application and having regard to the constraints of the site and therefore the application is recommended for approval.

## 2. Proposal

The application seeks development consent for alterations and additions to an existing dwelling including construction of a new a new first floor.

Specifically, the following works/uses are proposed:

- (xiii) Alterations to the existing ground floor to accommodate a new kitchen, dining area, living room, laundry, bathroom and stairs leading to the first floor.
- (xiv) Construction of a new first floor addition incorporating a master bedroom and en-suite.

## 3. Site Description

The subject site is located on the northern side of Wellesley Street, close to the intersection of Wellesley Street and Edward Street. The site area is approximately 204.4sqm with a primary frontage to Wellesley Street. An existing single storey brick and tile dwelling house is located on the site. The site is within the Quarantine Ground Summer Hill Heritage Conservation Area (C51). The dwelling is not listed as an individual heritage item but has been ranked as being Contributory 1 building.

There is no-on site tree impacted by the current application.

Surrounding land uses are predominantly single and two storey dwelling houses



Picture 1 Zoning Map

## 4. Background

### 4(a) Site history

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

#### Subject Site

Date	Proposal	Decision
006.1963.4384	Building Application	Approved
006.1970.7475	Building Application	Approved

#### Surrounding properties

Not applicable

### 4(b) Application history

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

Date	Major Interactions
6 January 2020	Council sent a letter to the applicant asking for amended plans/additional information with regard to the following matters: <ul style="list-style-type: none"> <li>Floor Space Ratio</li> <li>Heritage and Design</li> <li>Visual Privacy</li> </ul>
28 January 2020	Amended plans were received addressing the matters raised within Council’s letter.
28 January – 13 February 2020	The amended plans were placed on re-notification to provide neighbouring properties an opportunity to review the amended design.

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

4. *State Environmental Planning Policy No. 55 – Remediation of Land*;
5. *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*;
6. *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

The following provides further discussion of the relevant issues:

- *State Environmental Planning Policy No 55—Remediation of Land*

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

Council’s records do not indicate that the site has been used in the past for activities which could have potentially contaminated the land. It is considered that the site will not require remediation in accordance with *SEPP 55*.

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

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

- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)*

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

The application does not seek consent for the removal of vegetation from within the site and on Council land.

Overall, the proposal is considered acceptable with regard to the Vegetation SEPP and DCP.

- *Ashfield Local Environment Plan 2013 (ALEP 2013)*

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

- Clause 1.2 - Aims of Plan
  - Clause 2.3 - Land Use Table and Zone Objectives
  - Clause 2.5 - Additional permitted uses for land
  - Clause 2.7 - Demolition
  - Clause 4.3 - Height of buildings
  - Clause 4.4 - Floor space ratio
  - Clause 4.5 - Calculation of floor space ratio and site area
  - Clause 4.6 - Exceptions to development standards
  - Clause 5.10 - Heritage Conservation
  - Clause 6.1 - Earthworks
- Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned AR2 under the *ALEP 2011*. The *ALEP 2013* defines the development as:

The proposal is defined as a dwelling house which is a form of ‘Residential accommodation’ which is permissible in the zone.

The development is consistent with the objectives of the R2 zone.

The following table provides an assessment of the application against the development standards:

Standard	Proposal	non compliance	Complies
<b>Height of Building</b> Maximum permissible: 8.5 m	7m	N/A	Yes
<b>Floor Space Ratio</b> Maximum permissible: 0.5:1 or 102.1m <sup>2</sup>	0.58:1 or 119.99m <sup>2</sup>	17.8sqm or 17.4%	No

Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard/s:

- Clause 4.4 - Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of the Ashfield Local Environmental Plan by 17.4% (17.8sqm).

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 or 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 Ashfield Local Environmental Plan below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the Ashfield Local Environmental Plan justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposal provides an improved interior layout which is consistent with contemporary modes of living, featuring open plan living and dining spaces, whilst also providing improved sanitation facilities and an additional bedroom to meet the needs of a growing family.*
- *The proposal successfully maintains an adequate amount of private open space (deep soil and paved terrace areas), of a similar scale to neighbouring properties, to ensure that the bulk and scale of the building does not adversely impact the amenity of the site as a whole.*
- *The proposal is beneficial in its adaptation of an existing historic dwelling (within a HCA) to meet current residential needs, whilst also maintaining its integrity and its streetscape contribution to the heritage conservation area at large.*
- *The proposal increases and improves the residential amenity of the site without adverse solar, privacy and natural ventilation impacts upon the neighbours.*
- *The proposal successfully maintains a small building footprint which is consistent with the front and rear setback pattern of adjoining properties and is thus appropriately sited within its context*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R2, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield Local Environmental Plan for the following reasons:

- The proposal enables the construction of a three bedroom dwelling house, in-line with modern living requirements and ensures a range of housing options within the locality.
- The proposed variation does not result in a development density or intensity out of character with the immediate locality and maintains a low density residential environment.
- The development maintains the desired future character of the R2 Low Density Residential Zone.

- The development of the proposal results in a housing option adequate to meet day to day living and needs of residents.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield Local Environmental Plan for the following reasons:

- The proposal results in a development density and intensity that is consistent with neighbouring sites and the desired future character of the area. The proposed alterations and additions does not result in an increased intensity of land use, as it continues to operate as a single dwelling servicing one family.
- The bulk of the proposed addition is set behind the principle ridgeline of the existing dwelling and will not be readily visible from the public domain. The proposal generally maintains the existing building foot print and has been designed as to not encroach into neighbouring POS.
- The proposal has been reviewed by Council heritage specialist who outlined that the addition would not impact the heritage significance of the existing dwelling or the heritage conservation area. The discrete nature of the additions ensures that it does not dominate or compete with the original significant elements of the dwelling.
- The proposal maintains the setback patterns to front, side and rear boundaries in a manner which is consistent with other small lot residential dwellings along the street. The proposal does not result in adverse overshadowing and does not compromise the privacy of neighbouring dwellings.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Ashfield Local Environmental Plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from clause 4.4 and it is recommended the Clause 4.6 exception be granted.

### 5(c) Development Control Plans

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

IWCDCP2016	Compliance
<b>Section 1 – Preliminary</b>	
B – Notification and Advertising	Yes
<b>Section 2 – General Guidelines</b>	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
4 - Solar Access and Overshadowing	Yes
5 - Landscaping	Yes

7 - Access and Mobility	Yes
15 - Stormwater Management	Yes
E1 – Heritage items and Conservation Areas (excluding Haberfield)	
1 – General Controls	Yes
3 – Heritage Conservation Areas (HCAs)	Yes
4 – Building Types and Building Elements within HCAs	Yes
F – Development Category Guidelines	
1 – Dwelling Houses and Dual Occupancy	Yes

The following provides discussion of the relevant issues:

#### Visual Privacy

Since the initial lodgement, the proposal has been amended to further consider the visual privacy impacts for future occupants and neighbouring sites. The proposed works will not result in visual privacy impacts from the ground floor, with the floor level of the ground floor in-line with the existing ground line. This ensures that 1.8m side boundary fencing will screen the majority of proposed windows and minimises opportunities for overlooking.

The proposed first floor addition has been amended to incorporate a single opening along the northern elevation, where it relates to the master bedroom. This single opening is a “highlight window” and incorporates privacy screening to further alleviate any opportunities for overlooking. The proposed master bedroom is not an area of high traffic within the dwelling, and this combined with the privacy screens ensures that any visual privacy impacts will be minimal. The proposed window is therefore considered acceptable and is recommended for support.

It is considered the application complies with the parts as indicated and ultimately achieves the aims and objectives of the Comprehensive Inner West Development Control Plan 2016.

#### 5(d) The Likely Impacts

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

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

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

#### 5(f) Any submissions

The application was originally advertised from the 14 November 2019 – 3 December 2019, an on-site notice was displayed on the property, and residents/property owners in the vicinity



of the property were notified of the development in accordance with Council's policy. One (1) submission was received.

The proposal was then re-notified from the 28 January – 13 February 2020 once amended plans has been received. In response to this re-notification two (2) submissions were received.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Privacy

Comment: See visual privacy assessment above.

Issue: Overshadowing

Comment: The proposal results in a compliant rate of solar access for all neighbouring sites. The orientation of the lot ensures that all neighbouring properties maintain a minimum of 3 hours solar access and that the majority of the solar access impacts fall upon the roadway of Wellesley Street. Impacts of solar access are considered to be minimal/unavoidable given the orientation of the lot and are compliant with the requirements of the DCP.

Issue: Acoustic Impacts

Comment: The development proposes living and highly trafficable areas within close proximity to the POS and within areas anticipated to incorporate main living areas. Acoustic impacts resulting from the proposal are expected to be in-line with that of a single dwelling and are acceptable. The proposal incorporates minimal openings which result in unreasonable acoustic privacy impacts.

### 5(g) The Public Interest

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

The proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

**Engineering** - The proposal was referred to Council's development assessment engineers who raised no objection, subject to suitable conditions of consent. These conditions of consent are recommended for the development application.

**Heritage Specialists** - Council's heritage advisor initially raised concerns about the impact of the proposal to the contributory building. These concerns were passed on to the applicant, who subsequently amended the plans.

The amended plans have been assessed by Council's heritage advisor who responded that the proposed works are satisfactory, raised no objection and outlined that the development will not impact the heritage significance of the locality or the building.

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$4,800 would be required for the development under Ashfield Section 94A Contributions Plan 2012. A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

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

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

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

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.4 – Floor Space Ratio of the *Ashfield Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development

will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.

- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. 010.2019.000176.1 for Alterations and additions to an existing dwelling including a new first floor at 7 Wellesley Street SUMMER HILL NSW subject to the conditions listed in Attachment A below.

**Attachment A – Recommended conditions of consent****CONDITIONS OF CONSENT****FEES****1. Section 7.12 (formerly section 94A) Development Contribution Payments**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Ashfield Section 94A Development Contributions Plan 2009 – Amendment No.3*.

Note:

Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

**Payment amount\*:**

\$4,800.00

**\*Indexing of the Section 7.12 contribution payment:*****Former Ashfield LGA & Former Marrickville LGA:***

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

**Payment methods:**

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

**2. Long Service Levy**

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

**3. Security Deposit - Custom**

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

<b>Security Deposit:</b>	Min \$2,152.50
<b>Inspection Fee:</b>	\$230.65

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

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

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

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

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

**GENERAL CONDITIONS**

**4. Heritage - Infilling of Windows**

The infilled windows are to be detailed so that the position of the window remains evident on close inspection. Existing window joinery is to be carefully salvaged and either stored within the building, utilised as part of the project for repair of any similar elements or made available to dealers in second hand building elements.

**5. Documents related to the consent**

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by

DA001 Issue D	Site Plan	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA102 Issue D	Ground Plan	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA103 Issue D	First Floor Plan	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA104 Issue D	Roof Plan	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA201 Issue D	Elevations North and South	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA202 Issue D	Elevations East and West	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA301 Issue D	Sections	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA302 Issue D	Sections	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA401 Issue D	Schedule of Finishes	24/1/2020	Cracknell & Lonigan Architects Pty Ltd
DA601 Issue D	Landscape Concept Plan	24/1/2020	Cracknell & Lonigan Architects Pty Ltd

As amended by the conditions of consent.

#### 6. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

#### 7. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

#### 8. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

#### 9. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

#### 10. Boundary Alignment Levels

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

**PRIOR TO ANY DEMOLITION****11. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

**12. Advising Neighbors Prior to Excavation**

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

**13. Construction Fencing**

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

**14. Hoardings**

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

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

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

**PRIOR TO CONSTRUCTION CERTIFICATE****15. Party Walls**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

**16. Structural Certificate for retained elements of the building**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

**17. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92*

**18. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

a. Stormwater Drainage System – Minor Developments (OSD is not required)

- a. Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:
  - b. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged by gravity to the kerb and gutter of a public road.
  - c. Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street may be drained to an on-site dispersal system such as an absorption system. The feasibility and design of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer.
  - d. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
  - e. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm.
  - f. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tanks. The stormwater pipes may need to be elevated and strapped to the building structure to achieve gravity drainage.
  - g. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.
  - h. No nuisance or concentration of flows to other properties.
  - a. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
  - j. New pipelines within the footpath area that are to discharge to the kerb and gutter must be sewer grade uPVC pipe with a maximum diameter of 100mm.
  - k. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
  - XX. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
  - IIIIIIII. No impact to street tree(s).

**DURING DEMOLITION AND CONSTRUCTION**



**19. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

**20. Survey Prior to Footings**

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

**PRIOR TO OCCUPATION CERTIFICATE****21. No Encroachments**

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

**22. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

**ADVISORY NOTES****Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

**Notification of commencement of works**

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

**Storage of Materials on public property**

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

**Toilet Facilities**

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
- b. A garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

**Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

**Other Approvals may be needed**

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

**Failure to comply with conditions**

Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

**Other works**

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**Obtaining Relevant Certification**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent; or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

**Disability Discrimination Access to Premises Code**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

**National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

**Notification of commencement of works**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
  - i. The name and licence number of the principal contractor; and
  - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
  - i. The name of the owner-builder; and
  - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

**Dividing Fences Act**

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

**Permits from Council under Other Acts**

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

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

**Noise**

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

**Amenity Impacts General**

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

**Lead-based Paint**

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

**Dial before you dig**

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406

		<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diyasafe.nsw.gov.au">www.diyasafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

### Permits

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

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

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

**Insurances**

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

**REASONS FOR REFUSAL**

### SITE CONTEXT

The property is allocated to a long, narrow site, and situated within the Heritage Conservation Area of Quarantine Ground HCA. The dwelling is also adjacent to locally listed heritage item 17 Edward Street, Summer Hill (Fig 5). Wellesey St is predominantly characterised by single and two storey brick residences with tiled roofs and lean-to extensions at the rear.

The new Flourmill development to the East of the site is a new previously industrial now residential precinct zoned as mixed use, infrastructure, Light Industrial, and Public Recreation. There is a mixture of various multi residential buildings between 5 and 14 storeys tall, with warehouses adapted for retail / commercial purposes. These cylindrical silos are a landmark that can be seen from the surrounding area in dramatic contrast to the low rise residential dwellings across the road within the site vicinity.

There are a number of public transport options in close proximity - a 5 minute walk to Lewisham West Light Rail station, 9 minutes to Lewisham Train Station, and 2 minutes to Old Canterbury Rd, a main arterial road serviced regularly with buses.

Surrounding recreational areas within a 10 minute walk include Hoskins Park, Carlgal Reserve, Carlington St Reserve and Danel Jackson Gardens. School catchment in the same proximity includes Trnity Grammar School and Lewisham Public School.

1. LOOKING EAST ON WELLESEY ST

2. LOOKING EAST ON WELLESEY ST

3. LOOKING WEST ON WELLESEY ST

4. HERITAGE ITEM No. 17 EDWARD ST

5. LOOKING NORTH ON EDWARD ST

6. LOOKING SOUTH EAST ON EDWARD ST

**ARCHITECT**  
**CRACKNELL & LONERGAN**  
 ARCHITECTS PTY LTD  
 ABN 55 100 940 501  
 Incorporated in New South Wales  
 1766 CHURCH STREET  
 NEWTOWN NSW 2042  
 PHONE +61 2 9585 1554  
 email@cracknellandlorgan.com.au

**BASED / NATHERS CERTIFICATION**

**NOTES**  
 28/06/2019 SKA - Sketch Design Issue  
 07/08/2019 DA-B  
 08/09/2019 DA-C Development Application  
 24/01/2020 DA-D Development Application - Amended Design

**DATE**    **REVISION**

**SCALE**    1:100 @ A3

**ISSUE**    **D**

**CLIENT**    JOANNE SHI

**STAGE**    SKETCH DESIGN

**ADDRESS**    7 WELLESEY ST SUMMER HILL

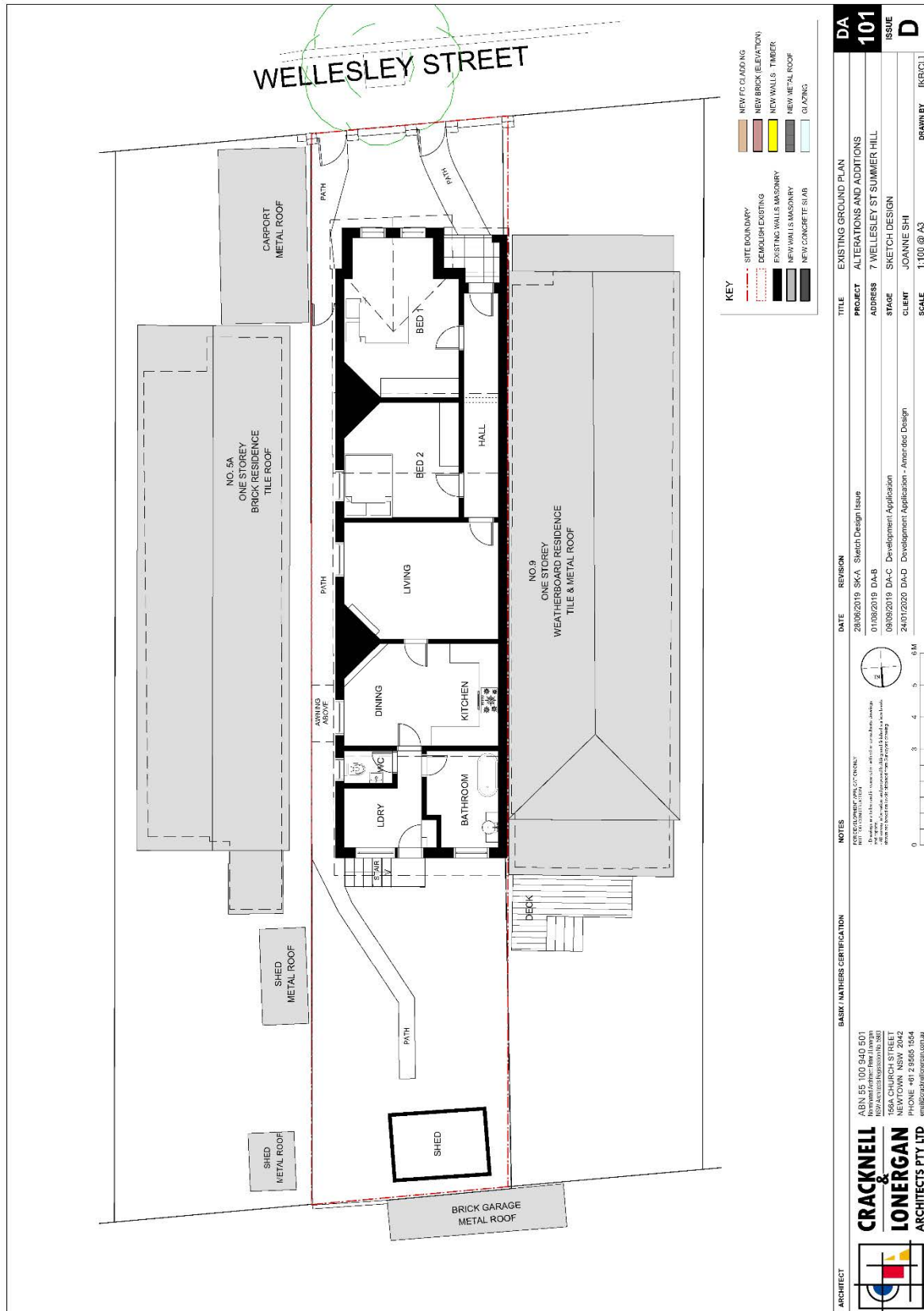
**PROJECT**    ALTERATIONS AND ADDITIONS

**TITLE**    SITE CONTEXT ANALYSIS

**DA**    **002**

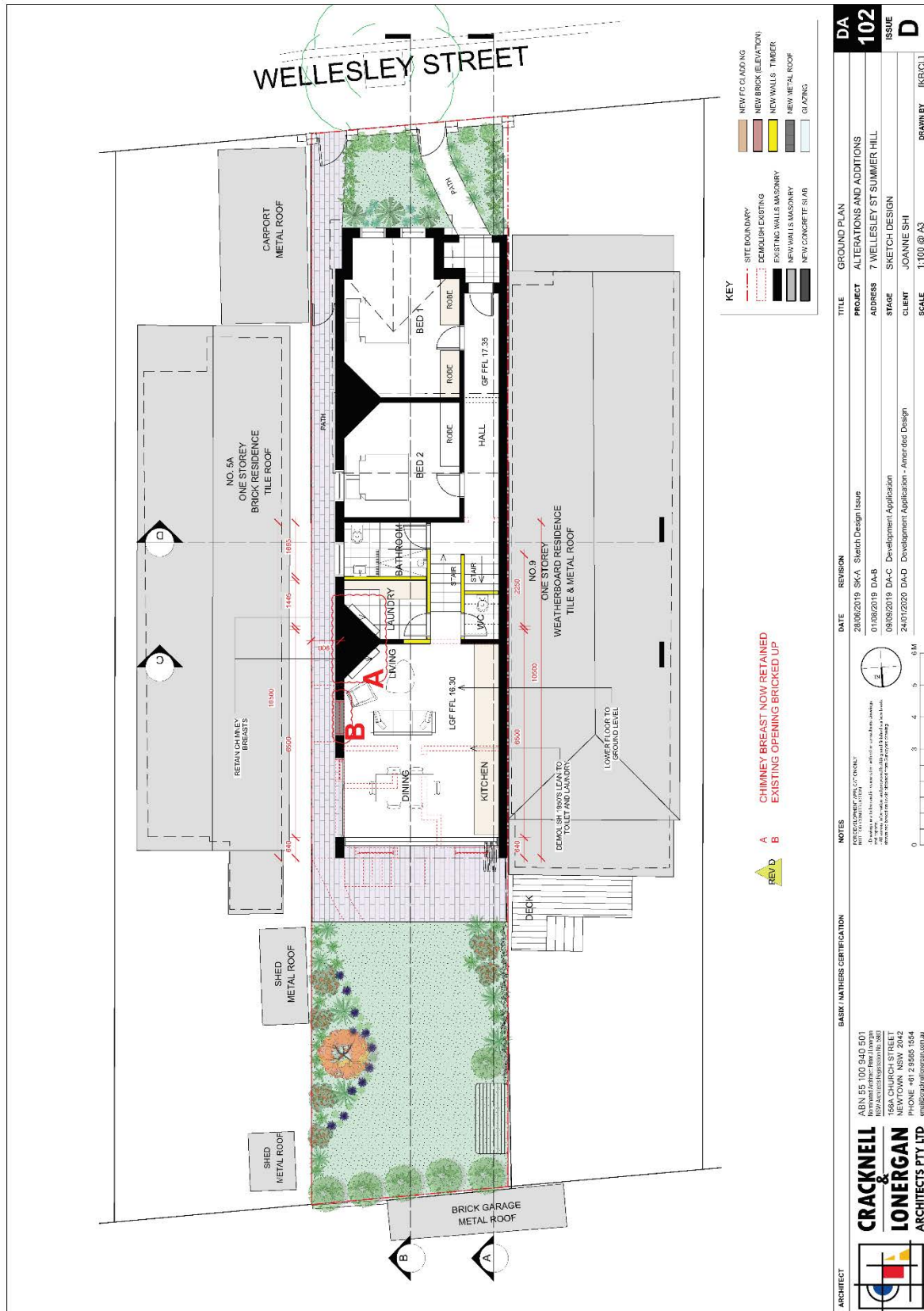
**SCALE**    1:100 @ A3

**DRAWN BY**    (KGJCL)



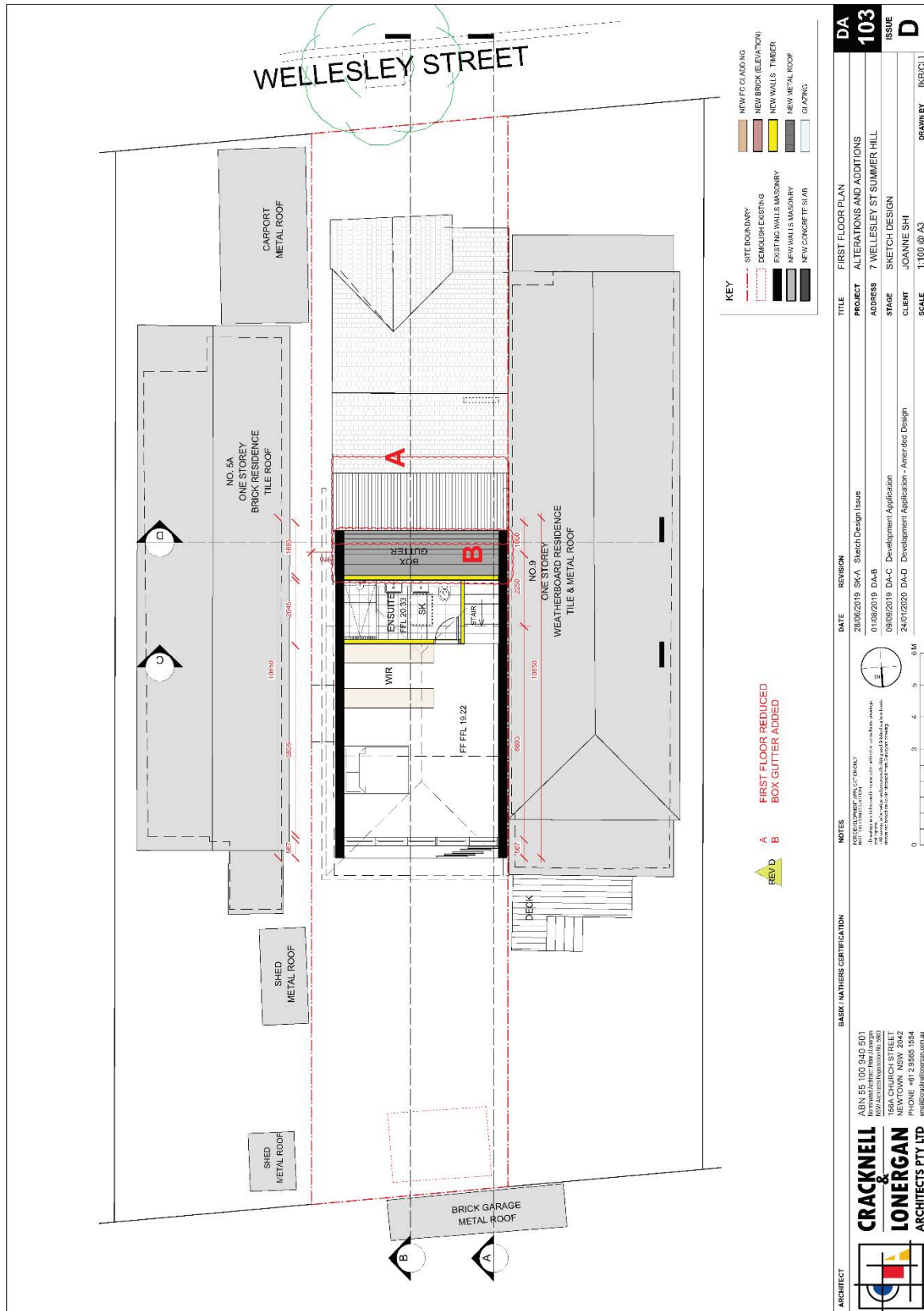






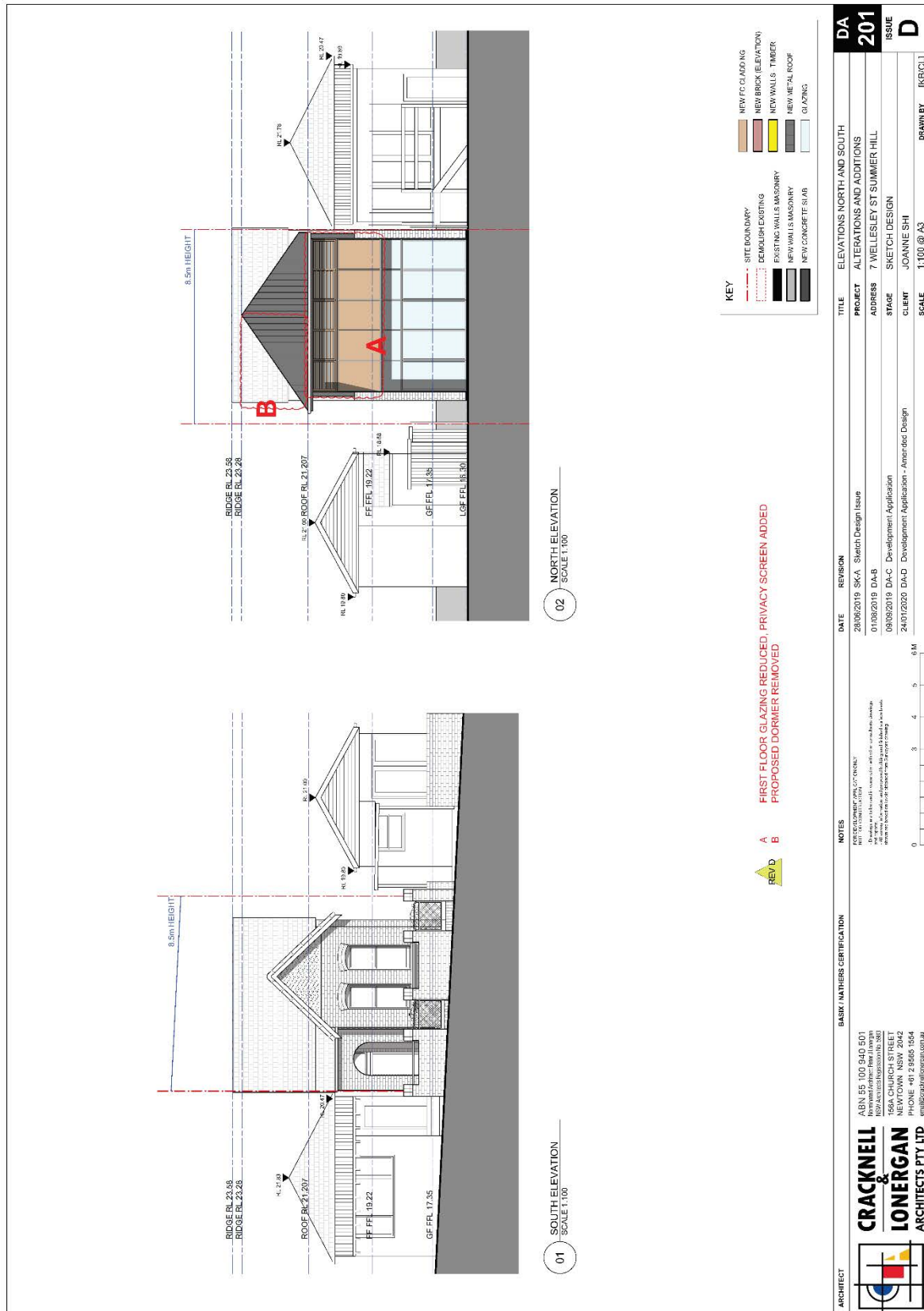
▲ CHIMNEY BREAST NOW RETAINED  
▲ EXISTING OPENING BRICKED UP

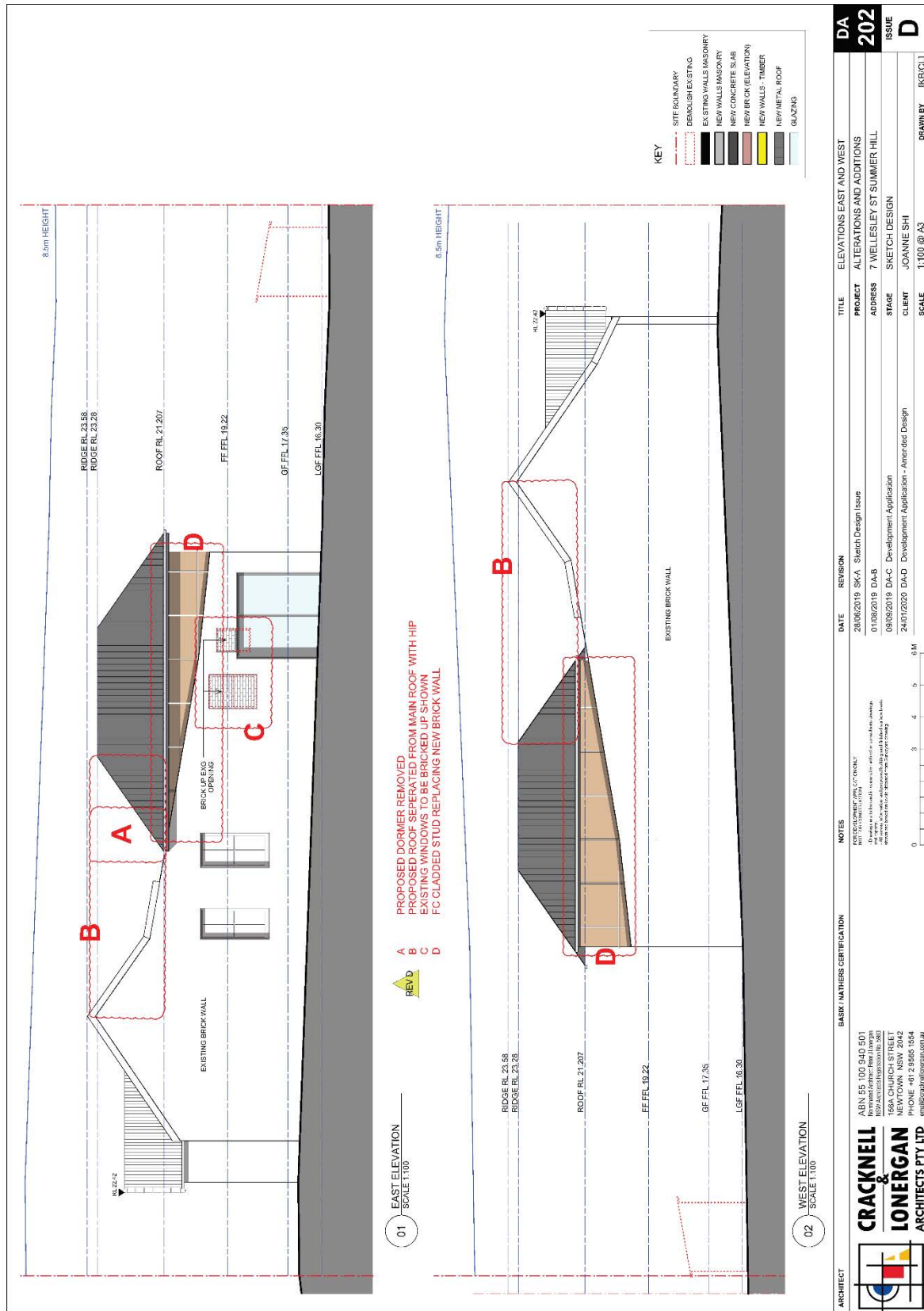
ARCHITECT	DATE	REVISION	TITLE	DA
<b>CRACKNELL &amp; IONERGAN</b> ARCHITECTS PTY LTD ABN 55 100 540 501 Registered Architect: Peter IonerGAN 156A CHURCH STREET NEWTOWN, NSW 2042 PHONE +61 2 3565 1554 email@cracknellionergan.com.au	28/08/2019	SKA - Sketch Design Issue	GROUND PLAN	102
	01/09/2019	DA-B	ALTERATIONS AND ADDITIONS	ISSUE
	08/09/2019	DA-C Development Application	7 WELLESLEY ST SUMMER HILL	ISSUE
	24/01/2020	DA-D Development Application - Amended Design	SKETCH DESIGN	ISSUE
			JOANNE SHI	SCALE 1:100 @ A3

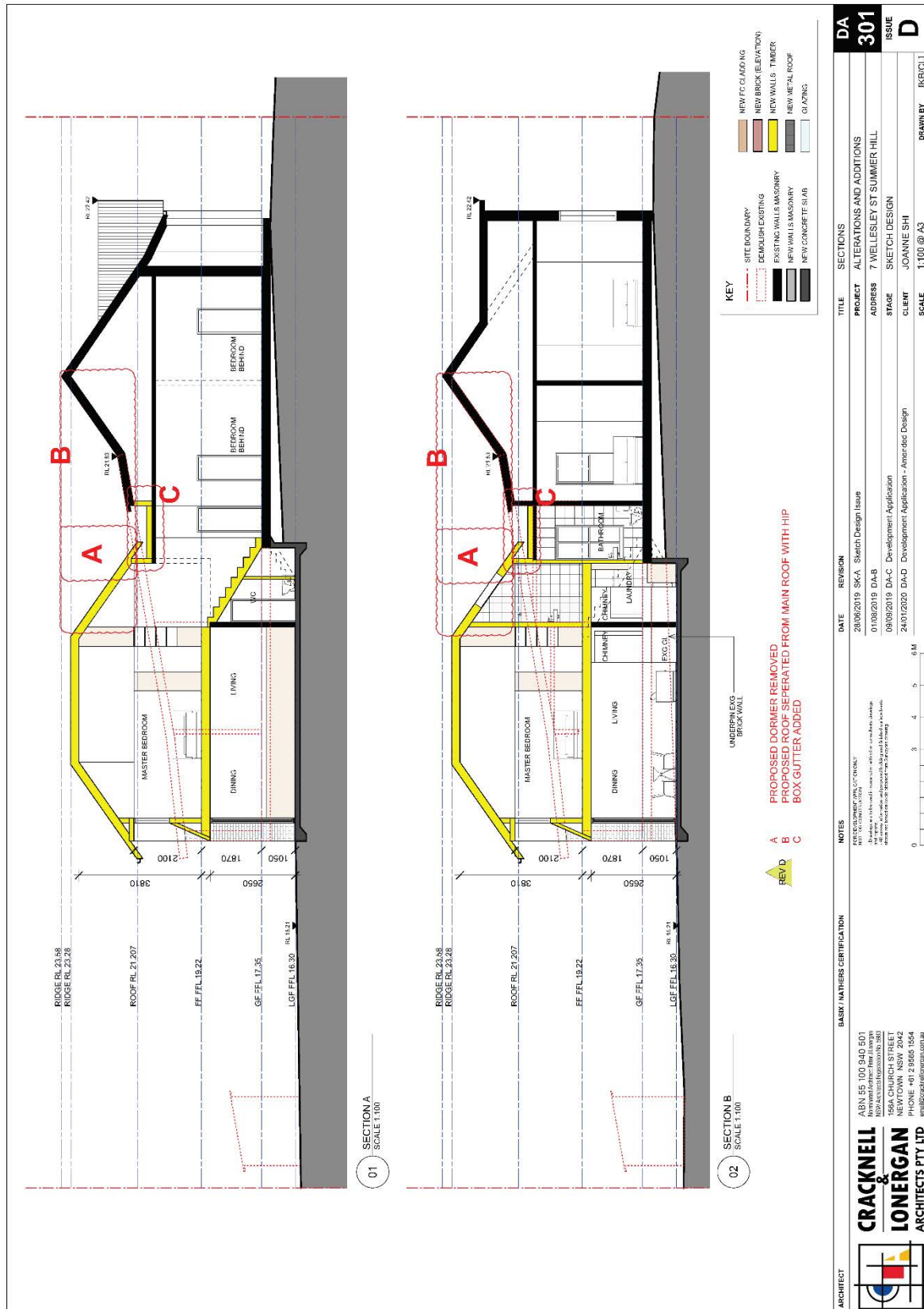


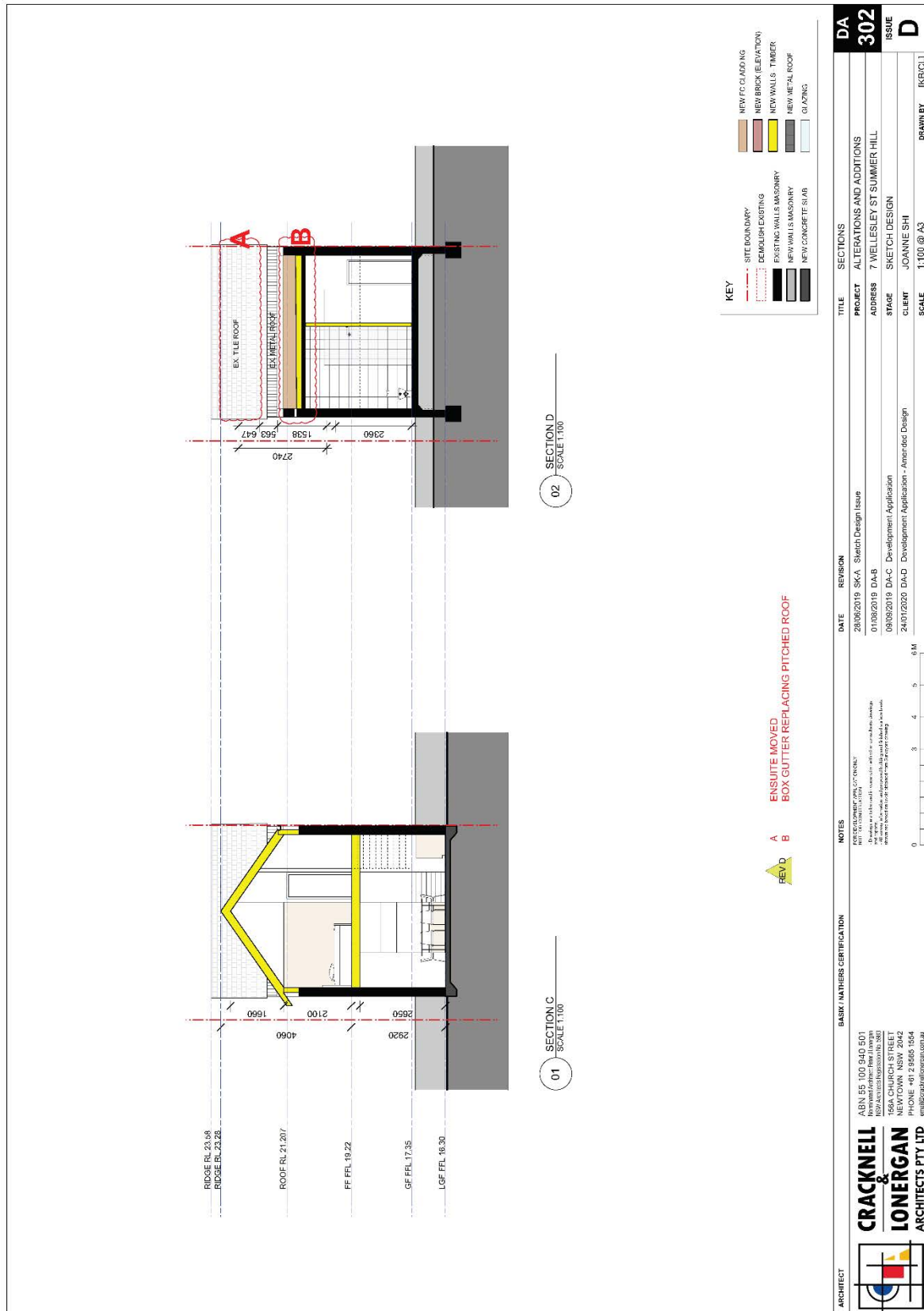
ARCHITECT	DATE	REVISION	TITLE	DA
<b>CRACKNELL &amp; IONERGAN</b> ARCHITECTS PTY LTD ABN 55 100 540 501 Approved Address: 166A Church Street 166A CHURCH STREET NEWTOWN NSW 2042 PHONE +61 2 3565 1554 email@cracknellionergan.com.au	28/09/2019	SKA	SKA - Sketch Design Issue	<b>103</b>
	01/08/2019	DA-B	DA-B	<b>ISSUE</b>
	09/09/2019	DA-C	Development Application	<b>D</b>
	24/01/2020	DA-D	Development Application - Amended Design	
<b>NOTES</b> 1. THIS DOCUMENT IS THE PROPERTY OF CRACKNELL & IONERGAN ARCHITECTS PTY LTD. 2. THIS DOCUMENT IS VALID FOR THE PROJECT AND SITE ONLY. 3. ANY CHANGES TO THIS DOCUMENT MUST BE APPROVED BY CRACKNELL & IONERGAN ARCHITECTS PTY LTD. 4. THIS DOCUMENT IS NOT VALID FOR ANY OTHER PROJECT OR SITE.		<b>PROJECT ALTERATIONS AND ADDITIONS</b> ADDRESS 7 WELLESLEY ST SUMMER HILL STAGE SKETCH DESIGN CLIENT JOANNE SHI SCALE 1:100 @ A3 DRAWN BY [KB/C]		













01 EAST ELEVATION  
SCALE 1:100

02 NORTH ELEVATION  
SCALE 1:100

REV'D A B

BATTENED FC SHEETING OVER STUD FRAME  
FIRST FLOOR GLAZING REDUCED, PRIVACY SCREEN ADDED

1 LONGLINE BASALT ROOF

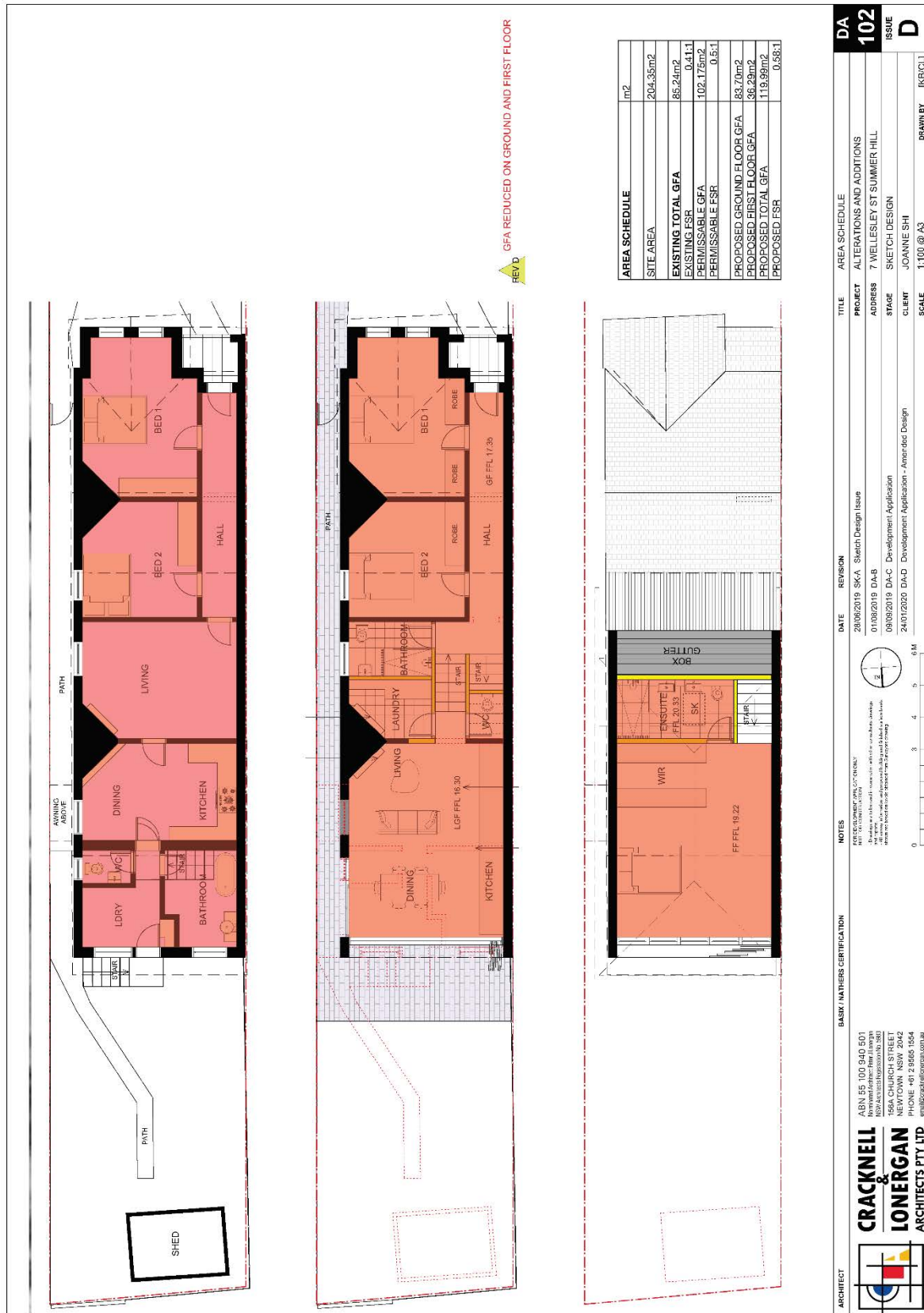
2 NEW BRICK PAINTED TO MATCH EXG

3 TIMBER PRIVACY SCREEN

4 ALUMINIUM FRAME DOORS AND WINDOWS

5 BATTENED FC SHEETING

ARCHITECT	BASIC MATTERS CERTIFICATION	NOTES	DATE	REVISION	TITLE	SCHEDULE OF FINISHES
<b>CRACKNELL &amp; IONERGAN</b> ARCHITECTS PTY LTD ABN 55 100 540 501 Registered Architect: Peter Ierangelo 156A CHURCH STREET NEWTOWN NSW 2042 PHONE +61 2 3665 1554 email@cracknellionergan.com.au	BASIC MATTERS CERTIFICATION NOT VALID FOR CONSTRUCTION WORKS This document is not valid for construction works unless it is used in accordance with the relevant provisions of the Building Act 2016 and the Building Regulation 2017.	BATTENED FC SHEETING OVER STUD FRAME FIRST FLOOR GLAZING REDUCED, PRIVACY SCREEN ADDED	28/09/2019	SKA - Sketch Design Issue	ALTERATIONS AND ADDITIONS	SCHEDULE OF FINISHES
			01/08/2019	DA-B	7 WELLESLEY ST SUMMER HILL	401
			08/09/2019	DA-C	Development Application	ISSUE
			24/01/2020	DA-D	Development Application - Amended Design	D
						1:100 @ A3



ARCHITECT	BASKY MATTERS CERTIFICATION	NOTES	DATE	REVISION	TITLE	AREA SCHEDULE	DA
<b>CRACKNELL &amp; IONERGAN</b> ARCHITECTS PTY LTD ABN 55 100 940 501 Approved Architect: Peter Ionergran 186A CHURCH STREET NEWTOWN NSW 2042 PHONE +61 2 3565 1554 email@cracknellionergan.com.au		1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED. 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.	28/09/2019	SKA - Sketch Design Issue	PROJECT ALTERATIONS AND ADDITIONS	102	DA
			01/08/2019	DA-B	ADDRESS 7 WELLESLEY ST SUMMER HILL		ISSUE
			09/09/2019	DA-C Development Application	STAGE SKETCH DESIGN		
			24/01/2020	DA-D Development Application - Amended Design	CLIENT JOANNE SHI		D
					SCALE 1:100 @ A3		DRAWN BY [KBC/L]

### LANDSCAPE NOTES

1. The landscape design is based on the following principles:

2. To create a functional and aesthetically pleasing outdoor space.
3. To provide a safe and secure environment for all users.
4. To ensure the design is sustainable and environmentally friendly.
5. To create a space that is easy to maintain and manage.
6. To provide a space that is suitable for the intended use.
7. To ensure the design is in accordance with all relevant codes and standards.
8. To provide a space that is suitable for the intended use.
9. To ensure the design is in accordance with all relevant codes and standards.
10. To provide a space that is suitable for the intended use.
11. To ensure the design is in accordance with all relevant codes and standards.
12. To provide a space that is suitable for the intended use.

### REFERENCE LANDSCAPING DETAILS (NOT FOR CONSTRUCTION)

**Soil preparation detail n.t.s.**

**Shrub planting detail n.t.s.**

**Detail 1 Sedimentation control fence**

**Detail 3 Mesh & gravel filter**

**Detail 5 Tree protection measure type 1 n.t.s.**

SCHEDULE OF PLANTS	BOTANICAL NAME	COMMON NAME	SUN	FLOWER SEASON	FLOWER COLOUR	H m	W m
1	Acer Palmatum Sookaki	Japanese maple	Part Shade	-	-	4	4
2	Dianell Yamonica	Flax Lily	Sunny/light shade	Spring	Blue	0.5 to 2	0.5 to 2
3	Clixix Minuta Belgian hybrid Orange	Port Wine Magnolia	Filtered Light	Winter/Spring	Orange	0.5	0.6
4	Magnolia Figo	Port Wine Magnolia	Full sun/part shade	Spring	Pink/White	3 to 5	2
5	Nandina Domestica	Heavenly Bamboo	Sun/light shade	Summer - Winter	White	0.6	0.6
6	Gardenia Augusta Magnifica	Gardenia	Sun/light shade	Summer - Winter	White	2	1.5
7	Liriodendron Muscari	Evergreen Giant	Full sun/part shade	-	-	0.6	0.6
8	Rhodo Dwarf	Mosses in the Cradle	Part Shade	-	-	1 to 3	1
9	Rhaphis Excelsa	Rhaphis Palm	Part Shade	-	-	0.2	0.3
10	Ophiopogon Planiscapus Nigrescens	Black Mondo Grass	Part Shade	Spring	Purple	100	50
11	Viola Hederacea	Native Violet	Sun/light shade	Summer/Autumn	Blue	1	1
12	Billardiera heterophylla	Bluebell Creeper	Sun/light shade	Summer/Autumn	Blue	100	50

### LANDSCAPE CONCEPT PLAN

**DA 601**

**ALTERATIONS AND ADDITIONS**

**7 WELLESLEY ST SUMMER HILL**

**ISSUE**

**SKETCH DESIGN**

**CLIENT** JOANNE SHI

**SCALE** 1:100

**DRAWN BY** [KG/CL]

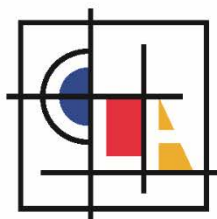
# Clause 4.6 Statement

---

7 Wellesley St  
Summer Hill

---

## Exception to Development Standards Floor Space Ratio



**CRACKNELL**  
&  
**LONERGAN**  
ARCHITECTS PTY LTD

DA ISSUE B

Prepared on 11 March 2020  
Prepared for Joanne Shi

**CRACKNELL**  
**&**  
**LONERGAN**  
**ARCHITECTS PTY LTD**

ABN 55 100 940 501  
Nominated Architect: Peter J Lonergan  
NSW Architects Registration No. 5983

156a Church Street  
Newtown NSW 2042  
(02) 9565 1554  
email@cracknellonergan.com.au  
www.cracknellonergan.com.au



**Contents**

<b>1.0</b>	<b>Introduction</b>	<b>01</b>
<b>2.0</b>	<b>Context of Objection to Development Standard</b>	<b>02</b>
<b>3.0</b>	<b>Variation Sought</b>	<b>06</b>
<b>4.0</b>	<b>Justification for Contravention to the Development Standard</b>	<b>08</b>
<b>5.0</b>	<b>NSW Land &amp; Environment Court Planning Considerations</b>	<b>13</b>
<b>6.0</b>	<b>Conclusion</b>	<b>19</b>

## 1.0 Introduction

### Prepared On:

02 October 2019 [DRAFT]

09 October 2019 [DRAFT]

15 October 2019 [DA-ISSUE]

11 March 2020 [DA-ISSUE B]

### Project Address:

7 Wellesley St

Summer Hill

### Prepared For:

Joanne Shi

### Prepared By:

Cracknell & Lonergan  
Architects Pty Ltd

Report Setup By: RM / HC

Report Response: RM/HC/KB

Draft Reviewed By: PL / HC

### Verification of Qualifications

Peter Lonergan is a Registered Architect in New South Wales, in accordance with the provisions and requirements under the Architects Act 2003 No 89 (NSW). His registration number with the New South Wales Architects Registration Board is 5983.

Clause 4.6 of the Ashfield (Inner West) Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and,
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

In providing a justification and assessment of this variation from the standards, this request has been prepared in accordance with the Department of Planning & Environment Guideline to Varying Development Standards: A Guide, August 2011 and has also incorporated relevant considerations established in NSW Land & Environment Court Case Law:

- *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248
- *Moskoich v Waverley Council* [2016] NSWLEC 1015
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7

In accordance with the above requirements, this written Clause 4.6 request identifies the variations sought and establishes that non-compliance with development standard within the circumstances of this case are acceptable. It also demonstrates that there are sufficient environmental planning grounds to justify the deviation from the numerical control and demonstrates that notwithstanding deviation from the numerical control, the underlying objective of the development standards are adequately achieved.



**Peter Lonergan**

Director  
Cracknell Lonergan Architects Pty Limited

## 2.0 Context of Objection to the Development Standard

### 2.1 Subject Site & Context

The subject site is located at No. 7 Wellesley St, Summer Hill, known formally as Lot 161 in D.P. 1624. The site has a single street frontage of 6.1 metres to the South, and a total site area of 204.25 sqm.

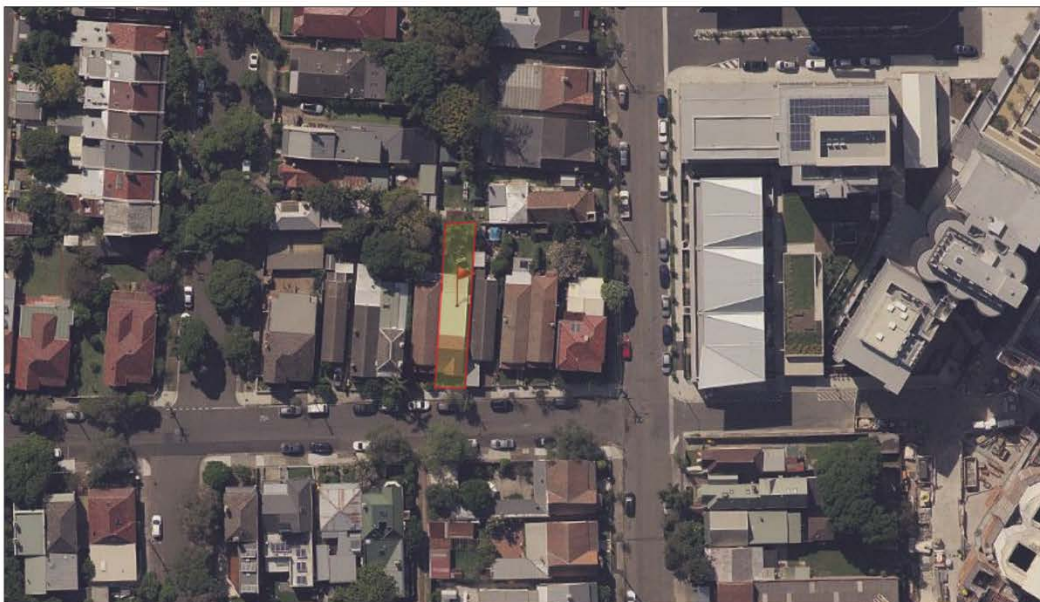
The building currently exists as a private residential single storey, two bedroom and one bathroom home, of Federation Queen Anne Style.

The property is on a long, narrow site, and situated within the Heritage Conservation Area of Quarantine Ground HCA. The dwelling is also adjacent to locally listed heritage item 17 Edward Street, Summer Hill. The far northern edge of 7 Wellesley St shares a portion of the boundary of the heritage item.

### 2.2 Description of Proposed Development

The proposal is for alterations and additions to the rear of the existing house. The proposal is to maintain the front bedrooms and entry way, while opening the rear of the rear of the house to allow for a greater quality of open living space. The proposed works maintain the outermost extent of the existing house and propose an additional pavilion level at the rear by following the natural topography of the site and stepping the house down.

<b>Site Area:</b>	204.23 sqm
<b>Proposed GFA:</b>	119.99 sqm
<b>Permissible FSR:</b>	0.50:1
<b>Existing FSR:</b>	0.41:1
<b>Proposed FSR:</b>	0.58:1



Site Location in Summer Hill (Site in Red Outline)



## 2.0 Context of Objection to the Development Standard



Streetscape and Rear Elevation showcasing bulk and scale of proposed development.



Streetscape demonstrating context of site / locality

## 2.0 Context of Objection to the Development Standard

### 2.3 Identification of Development Standard to be Varied

Pursuant to Clause 4.6 of the Ashfield Local Environment Plan (LEP), this objection seeks to vary the Floor Space Ratio standard stipulated in Clause 4.4(2) which states that:

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

The relevant extract of the LEP Development Standard Map has been supplied below and the identified standard for the site is 0.5:1.

It is also noted for reference that the objectives of the standard area as follows:

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



LEP (Development Standards Map) - Subject site is highlighted by Yellow Dotted Line.

## 2.0 Context of Objection to the Development Standard

### 2.4 Statutory Definitions

For the purposes of calculating the height of the proposal, the following definition from the LEP dictionary has been referenced:

*Cl. 4.5(2) Definition of "floor space ratio" The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

**Gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

### 3.0 Variation Sought

#### 3.1 Numerical Extent of Variation

An extract from the architectural plans illustrated here in shows the calculation for floor space ratio. The extent of the variation has been tabulated and summarised below.

Floor Space Ratio						
Residential Component	LEP Permissible FSR	Site Area (sqm)	GFA (sqm)	FSR	Variation	Percentage (%)
Permissible	0.50:1	204.23 sqm	102.12 sqm	0.50:1	-	-
Existing Site			83.73 sqm	0.41:1	-	-
Proposal			119.99 sqm	0.58:1	17.87 sqm	17.5%



Areas Schedule of the Proposed Development.

### 3.0 Variation Sought

---

#### 3.2 Nature of the Variation

The 17.5% variation, representing a deviation of 17.87 sqm from the permissible floor area arises because of the first floor addition and addition of a bedroom suite with associated facilities.

By retaining the existing building footprint of the ground floor, the proposal has sought to improve the private open space amenity afforded the site and as a consequence, supplied a second storey master bedroom and ensuite.

Overall, it was considered that the variation was justifiable because it would result in a better design outcome for the site, namely:

- The proposal provides an improved interior layout which is consistent with contemporary modes of living, featuring open plan living and dining spaces, whilst also providing improved sanitation facilities and an additional bedroom to meet the needs of a growing family.
- The proposal successfully maintains an adequate amount of private open space (deep soil and paved terrace areas), of a similar scale to neighbouring properties, to ensure that the bulk and scale of the building does not adversely impact the amenity of the site as a whole.
- The proposal is beneficial in its adaptation of an existing historic dwelling (within a HCA) to meet current residential needs, whilst also maintaining its integrity and its streetscape contribution to the heritage conservation area at large.
- The proposal increases and improves the residential amenity of the site without adverse solar, privacy and natural ventilation impacts upon the neighbours.
- The proposal successfully maintains a small building footprint which is consistent with the front and rear setback pattern of adjoining properties and is thus appropriately sited within its context.

**4.0 Justification for Contravention to the Development Standard**

4.1 Assessment Against Clause 4.6 of the Local Environmental Plan	
Objective	Response
<b>(1) The objectives of this clause are as follows —</b>	
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,	Flexibility is appropriate in this instance as it achieves better design outcomes (as per (1)(b) below) and is consistent with the objectives of the standard and consistent with objectives of the zone, not withstanding numerical non-compliance as responded to in (4)(a)(ii) in the subsequent pages.
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	<p>A better design outcome is achieved as a result of the non-compliance with the numerical control because:</p> <ul style="list-style-type: none"> <li>• The subject site is situated on the boundary of neighbouring IN2 and B4 zoning with substantially higher FSRs of 1.0:1 and 1.5:1 respectively. The subject site is therefore an interface between different land zones and different urban densities.</li> <li>• The proposal seeks to conserve and maintain the heritage characteristics of the locality and successfully maintains the significance of the heritage conservation area.</li> <li>• There are no adverse overshadowing impacts which arise as a result of the increased bulk and scale of the site. Increased shadow is almost exclusively confined to neighbouring roof forms which also do not contain solar panels or skylights which would be impacted by the proposal's shadows in Mid-Winter.</li> <li>• The proposal does not result in adverse view sharing or view loss which are currently enjoyed by neighbouring properties.</li> <li>• The proposal provides an improved interior layout which is consistent with contemporary modes of living, featuring open plan living and dining spaces, whilst also providing improved sanitation facilities and an additional bedroom to meet the needs of a growing family.</li> <li>• The proposal successfully maintains an adequate amount of private open space (deep soil and paved terrace areas), of a similar scale to neighbouring properties, to ensure that the bulk and scale of the building does not adversely impact the amenity of the site as a whole.</li> <li>• The proposal is beneficial in its adaptation of an existing historic dwelling to meet current residential needs, whilst also maintaining its integrity and its streetscape contribution to the heritage conservation area at large.</li> <li>• The proposal successfully maintains a small building footprint which is consistent with the front and rear setback pattern of adjoining properties.</li> <li>• Not withstanding the deviation from the numerical control, the proposal achieves the objectives of the Floor Space Ratio standard as assessed under (4)(a)(ii) below.</li> </ul>
<b>(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</b>	
	<p>Not Applicable.</p> <p>The Development Standard is not excluded from the operation of this clause.</p>

**4.0 Justification for Contravention to the Development Standard**

4.1 Assessment Against Clause 4.6 of the Local Environmental Plan	
Objective	Response
<b>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating —</b>	
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>Compliance is unnecessary within the circumstances of this case because:</p> <ul style="list-style-type: none"> <li>• The proposal successfully maintains an adequate amount of private open space (deep soil and paved terrace areas), of a similar scale to neighbouring properties, to ensure that the bulk and scale of the building does not adversely impact the amenity of the site as a whole.</li> <li>• The numerical variation is a typical occurrence in historic small-lot subdivisions and the non-conformation to the FSR arises because of a need to provide more substantial and appropriately scaled living areas to meet the standards of current residential design requirements.</li> <li>• The proposal continues to maintain the character and objectives of the zone in providing housing for single families within a low-density context.</li> </ul>
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>There are sufficient environmental planning grounds to justify the numerical deviation on the basis that the proposal continues to satisfy the objectives of the Floor Space Ratio standard and the R2: Low Density Residential zone.</p> <p>These matters are responded to in detail and demonstrated in (4)(a)(ii) on the subsequent pages.</p>
<b>(4) Development consent must not be granted for development that contravenes a development standard unless -</b>	
(a) the consent authority is satisfied that—	
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	The matters contained in Subclause 3 have been addressed above.
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and,	The proposal is considered to be in the public interest because notwithstanding the numerical deviation from the development standard, the proposal is able to meet the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out as assessed in the subsequent pages.

4.0 Justification for Contravention to the Development Standard

4.1 Assessment Against Clause 4.6 of the Local Environmental Plan	
Objective	Response
<p>(4)(a)(ii) Continued.</p> <p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and,</p>	<p><b>Cl. 4.4(1) Floor Space Ratio   Objectives of the Standard</b></p>
	<p><i>(a) to establish standards for development density and intensity of land use,</i></p>
	<p>The proposed alterations and additions does not result in an increased intensity of land use, as it continues to operate as a single dwelling servicing one family. It maintains the existing low-density character of the area, but adds to the flexibility and diversity of family living options for the house.</p>
	<p><i>(b) to provide consistency in the bulk and scale of new development with existing development,</i></p>
	<p>As previously identified:</p> <ul style="list-style-type: none"> <li>• The proposed bulk of the additions are clearly recessed into the existing building footprint, and the proposed new ridge sits substantially below the existing ridge line of the retained house, separated as a first floor pavilion.</li> <li>• The proposal successfully maintains a small building footprint which is consistent with the front and rear setback pattern of adjoining properties.</li> </ul>
	<p><i>(c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,</i></p>
	<p>As previously identified:</p> <ul style="list-style-type: none"> <li>• There are no adverse overshadowing impacts which arise as a result of the increased bulk and scale of the site. Increased shadow is almost exclusively confined to neighbouring roof forms which also do not contain solar panels or skylights which would be impacted by the proposal's shadows in Mid-Winter.</li> <li>• The proposal is beneficial in its adaptation of an existing historic dwelling to meet current residential needs, whilst also maintaining its integrity and its streetscape contribution to the heritage conservation area at large.</li> </ul>
	<p><i>(d) to protect the use or enjoyment of adjoining properties and the public domain,</i></p>
	<p>The proposal is capable of protecting the use and enjoyment of adjoining properties because:</p> <ul style="list-style-type: none"> <li>• The proposal maintains the setback patterns to front, side and rear boundaries in a manner which is consistent with other small lot residential dwellings along the street.</li> <li>• The proposal does not result in adverse overshadowing and does not compromise the privacy of neighbouring dwellings.</li> </ul> <p>The proposal is not adjacent to significant public domain areas which might be adversely impacted by the proposed development.</p>
	<p><i>(e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.</i></p>
<ul style="list-style-type: none"> <li>• Roofscape forms is consistent with the locality</li> <li>• The materiality and composition of the proposal maintains a strong and coherent visual relationship between new additions and the existing character.</li> <li>• The proposal would not seem out of place with the existing character of built forms.</li> </ul>	



**4.0 Justification for Contravention to the Development Standard**

4.1 Assessment Against Clause 4.6 of the Local Environmental Plan	
Objective	Response
(4)(a)(ii) Continued.  (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and,	<b>R2: Low Density Residential   Objectives of the Zone</b>
	<i>(a) To provide for the housing needs of the community within a low density residential environment.</i>
	The proposed alterations and additions maintains and enhances the residential amenity afforded to the residents of the site and will continue to provide for housing needs of the community within a low-density environment. The proposal will enhance the residential environment by providing a third bedroom, consistent with meeting the needs of a growing family. The proposal continues to meet the needs of providing housing for a single family within this particular low-density housing context.
	<i>(b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>
Not Applicable. The proposal is a residential typology.	In deciding whether to grant concurrence, the secretary must consider the matters listed in (5) below, which is responded to.
<b>(5) In deciding whether to grant concurrence, the Secretary must consider—</b>	
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	The proposal will not contravene any matter of significance for State or regional environmental planning. The proposal does not seek approval under other State or Regional Environmental Planning policies or instruments.
(b) the public benefit of maintaining the development standard, and	There is no public benefit in maintaining the numerical development standard in this instance. As outlined in this assessment, there are planning and urban design outcomes that warrant the proposed variation to the development standard, ensuring that the proposal continues to be compatible within its context, without compromising the amenity of future inhabitants of the site or neighbouring inhabitants. It is therefore considered to be in the public interest for the variation to be supported in this instance.
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.	No further matters to be considered.

**4.0 Justification for Contravention to the Development Standard**

4.1 Assessment Against Clause 4.6 of the Local Environmental Plan	
Objective	Response
<b>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—</b>	
(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or	The subject site is not situated within the listed land zones.
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.	The subject site is not situated within the listed land zones.
(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).	
	Not Applicable to the Assessment of the Clause 4.6 Variation
<b>(8) This clause does not allow development consent to be granted for development that would contravene any of the following—</b>	
(a) a development standard for complying development,	The proposal is not classified and an application is not made for complying development.
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,	The variation does not relate to commitments of SEPP BASIX.

## 5.0 NSW Land & Environment Court Planning Considerations

### 5.1 Relevant NSW Land & Environment Court Decisions

Other matters which are to be considered in the consideration an exemption to a development standard relate directly to the rulings of the NSW Land & Environment Court. Three key tests pertaining to the justification for an exemption are outlined in *Wehbe v Pittwater Council [2007] NSW LEC 827* and *Winten Developments Pty Ltd v North Sydney Council [2001] NSW LEC 46* and *Four2Five Pty Ltd v Ashfield Council*. These are discussed in the following sections.

### 5.2 *Wehbe v Pittwater Council [2007] NSW LEC 827*

In the decision of the commissioner in *Wehbe v Pittwater Council [2007] NSW LEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests for this are tabulated and responded to.

### 5.3 *Winten Developments Pty Ltd v North Sydney Council [2001] NSW LEC 46*

In the decision of the commissioner in *Winten Developments Pty Ltd v North Sydney Council [2001] NSW LEC 46*, a means of assessment of the development standard variation being requested was established and is tabulated and responded to.

### 5.4 *Four2Five Pty Ltd v Ashfield Council and Subsequent Decisions*

In the decision of Commissioner Pearson in *Four2Five Pty Ltd* and the subsequent failed appeal by Council endorsed by Commissioner Pain, further reaffirmed in the recent court cases *Moskovich v Waverley Council [2016] NSWLEC1015* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC7*, recognises the need to identify grounds particular to the circumstances of a proposed development - as opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

## 5.0 NSW Land & Environment Court Planning Considerations

5.2 Webhe v Pittwater Council [2007] NSW LEC 827				
<b>01: The objectives of the standard are achieved notwithstanding non-compliance with the standard.</b>				
The proposed development is generally consistent with, or not antipathetic to, the objectives of the FSR control, notwithstanding the numerical variation. In particular,				
<b>02: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</b>				
N/A				
<b>03: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</b>				
N/A				
<b>04: 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; and,</b>				
The proposal is consistent with other previous approvals in the Local Government Area, whereby smaller lots have been permitted to have reasonable minor deviations from the numerical standards as summarised in the table below.				
<b>For the Period October 2017 - June 2019</b>				
DA Ref.	Address	Category	Justification	Extent (%)
172.001	17 Carrington St, Summer Hill	Residential - Alterations and Additions	Unreasonable	9.8%
184.001	26 Greenhills St, Croydon	Other	Unreasonable	3.9%
125.001	15 Spencer St, Summer Hill	Other	Unreasonable/ necessary	6%
123.001	19 Stanton Rd, Summer Hill	Residential dwellings (Alts & Adds)	Unreasonable/ necessary	45.7%
045.001	29 Wellesley St, Summer Hill	Other	Unreasonable/ necessary	<1%
037.001	102 Hawthorne Pde, Haberfield	Alterations and additions to existing dwelling. Including new pool.	Unreasonable/ necessary	37.5%
220.001	30 Carrington St, Summer Hill	Alterations and addition to dwelling including first floor addition.	Unreasonable/ necessary	23%
157.001	145 Park Avenue, Ashfield	Residential - Alterations and Additions	Generally consistent with the relevant objectives of the FSR development standard under ALEP 201	7%
208.001	2 Broughton St, Ashfield	Residential - Alterations and Additions	The proposal is generally consistent with the relevant objectives of the FSR development standard	41.5%
100.001	50 Joseph St, Ashfield	Residential - Alterations and Additions	Variation is minor and less than 10%, subject site is a lot of less than 200sqm	7.14%

**5.0 NSW Land & Environment Court Planning Considerations**

**5.2 Webhe v Pittwater Council [2007] NSW LEC 827**

**05: 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.**

Compliance is unnecessary within the circumstances of this case because:

- The subject site is situated on the boundary of neighbouring IN2 and B4 zoning with substantially higher FSRs of 1.0:1 and 1.5:1 respectively. The subject site is therefore an interface between different land zones and different urban densities.
- The numerical variation is a typical occurrence in historic small-lot subdivisions and the non-conformation to the FSR arises because of a need to provide more substantial and appropriately scaled living areas to meet the standards of current residential design requirements.

If we consider the minimum permissible lot within the locality as being 500 sqm, it follows then that a 0.5 FSR control would imply that the desired single family home for the zone would be a maximum of 250 sqm within an 8.5 metre height limit. Such a generous area does not take into appropriate consideration the historic subdivisions of smaller than minimum desirable lot sizes, and it would also be inappropriate to justify achieving this minimum lot size by way of amalgamating older properties. Thus, it is perhaps appropriate to consider a sliding scale approach (such as that adopted within the Marrickville LEP) to consider the bulk and scale of the site, which, notwithstanding the numerical deviation, is able to meet the residential needs of a family and does not present adverse impacts upon neighbouring properties.

**5.0 NSW Land & Environment Court Planning Considerations**

<b>5.3 Winten Developments P/L v North Sydney Council [2001] NSWLEC 46</b>	
<b>A.</b>	<b>Is the planning control a development standard?</b>
Yes. The planning control is a development standard.	
<b>B.</b>	<b>What is the underlying object or purpose of the standard?</b>
The underlying object and purpose of the standard being varied is to control the bulk and scale of development within the zone.	
<b>C.</b>	<b>Is compliance with the development standard unnecessary or unreasonable in the circumstances of this case?</b>
<p>Yes. The compliance with the numerical control is unnecessary because:</p> <ul style="list-style-type: none"> <li>• The subject site is situated on the boundary of neighbouring IN2 and B4 zoning with substantially higher FSRs of 1.0:1 and 1.5:1 respectively. The subject site is therefore an interface between different land zones and different urban densities.</li> <li>• The proposed bulk of the additions fit within the existing building footprint, and the proposed new ridge sits substantially below the existing ridge line of the retained house, as a separated pavilion style first storey.</li> <li>• The proposal seeks to conserve and maintain the heritage characteristics of the locality and successfully maintains the significance of the heritage conservation area.</li> <li>• There are no adverse overshadowing impacts which arise as a result of the increased bulk and scale of the site. Increased shadow is almost exclusively confined to neighbouring roof forms which also do not contain solar panels or skylights which would be impacted by the proposal's shadows in Mid-Winter.</li> <li>• The proposal does not result in adverse view sharing or view loss which are currently enjoyed by neighbouring properties.</li> </ul>	

**5.0 NSW Land & Environment Court Planning Considerations**

<b>5.3 Winten Developments P/L v North Sydney Council [2001] NSWLEC 46</b>	
<b>D.</b>	<b>Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979? [Now: S1.3(a)(b)(c) of EPAA1979]</b>
	Yes. As discussed below, the proposal is able to meet the relevant aims of the objectives of the EPAA1979, notwithstanding the deviation from the numerical control.
	<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>
	The proposal encourages better environment through the proper management of alterations and additions to a contributory dwelling house. The important historic components of the house will be maintained, with new additions being confined to the rear and visually seen as secondary forms, such that the overall amenity and integrity of the Heritage Conservation Area will be maintained.
	<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>
	The proposal facilitates ecologically sustainable development by maintaining and enhancing an existing dwelling house, rather than demolishing and building anew. The proposal makes improvements which will improve the residential amenity afforded the residents and neighbourhood, without compromising the existing amenity enjoyed by neighbours.
	<i>(c) to promote the orderly and economic use and development of land,</i>
	The proposal, being consistent with the objectives of the development standard varied and the objectives of the residential zoning, is therefore considered to be capable of promoting orderly and economic use and development of land.
<b>E.</b>	<b>Is the objection well founded?</b>
	Yes. For the reasons stated above the proposed variation is able to satisfy the three primary tests required under Clause 4.6 and compliance is considered to be unnecessary. In light of this conclusion, it is believed that the objection is well founded.

## 5.0 NSW Land & Environment Court Planning Considerations

### 5.4 Four2Five Pty Ltd v Ashfield Council and Subsequent Decisions

In the decision of Pearson C in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC1009* and supported by Pain J in *Four2Five Pty Ltd v Ashfield [2015] NSWLRC 90*, merely showing that the development meets the objective of a development standard is insufficient to justify that compliance is unreasonable or unnecessary within the circumstances of the case. Additional justification has been identified as necessary in establishing 'sufficient environmental planning grounds' (Cl 4.6(3)(b)) to deviate from a development standard. Further decisions in *Moskovich v Waverly Council [2016] NSWLEC 1015* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*, provides guidelines on the structure of providing justification for flexibility in circumstances which are unique to the case. The justification for flexibility in the application of the development standard have been stated in numerous sections of this report. The following circumstances are identified as being particular to the case of 7 Wellesley Street, Summer Hill.

#### Circumstances of the Proposal

- The subject site is situated on the boundary of neighbouring IN2 and B4 zoning with substantially higher FSRs of 1.0:1 and 1.5:1 respectively. The subject site is therefore an interface between different land zones and different urban densities.
- The proposed bulk of the additions are clearly recessed into the existing building footprint, and the proposed new ridge sits substantially below the existing ridge line of the retained house.
- The proposal seeks to conserve and maintain the heritage characteristics of the locality and successfully maintains the significance of the heritage conservation area.
- There are no adverse overshadowing impacts which arise as a result of the increased bulk and scale of the site. Increased shadow is almost exclusively confined to neighbouring roof forms which also do not contain solar panels or skylights which would be impacted by the proposal's shadows in Mid-Winter.
- The proposal does not result in adverse view sharing or view loss which are currently enjoyed by neighbouring properties..

#### Conclusion

In consideration of the aforementioned points, it is believed that there are unique, site-specific circumstances of the case related to the context and the nature of the development to warrant a deviation from the height standard.



## 6.0 Conclusion

---

Compliance with the maximum Floor Space Ratio standard contained in Clause 4.4 of the Local Environmental Plan is unnecessary within the circumstances of the case and the justification is well founded.

It is considered that the variation allows for a better architectural and planning outcome with an efficient building, well resolved articulation of massing and appropriate expression of massing which appropriately responds to the site's setting and context. Despite the (17.5%) variation, the proposal will result in enhanced character which would otherwise not be achieved with strict adherence to the numerical standard.

In particular, the variation proposed will result in a successful conservation of an existing contributory item, whilst also improving the residential amenity afforded inhabitants to meet the needs of a growing family and requirements of 21st Century living. Furthermore, notwithstanding the numerical variation, the proposal continues to achieve the objectives of both the land zone and the development standard.

On the above basis, it is believed that the proposal should be approved with the variation as proposed in accordance with the flexibility afforded under Cl. 4.6 of the LEP.

C51 Quarantine Ground, Summer Hill  
Heritage Conservation Area



KEY PERIOD OF SIGNIFICANCE: 1885 to 1930s

HCA TYPE 3: Mixed Residential  
Statement of Significance

The Quarantine Ground, Summer Hill, Heritage Conservation Area is of *local* heritage significance.

The area is of *historical* significance as an area used for sheep quarantine purposes and initially subdivided for housing in 1885, and as area where the Victorian period subdivision pattern was later altered to accommodate the emerging trend for larger allotments and development of detached housing the Federation and Inter-war periods.

The area is of *aesthetic* significance for its mix of Victorian, Federation and Inter-war period housing reflecting its history of subdivision and re-subdivision from 1885 into the inter-war period. The pre-1943 street tree plantings in Spencer and Carrington Streets enhance the aesthetic significance of the area.

## Key Character Elements

Subdivision and public domain elements:

- Pre-1943 street tree planting of Brush box within carriageway in Spencer Street and Carrington Street
- Subdivision pattern of generally narrow long allotments with rear laneways (except for area east side of Spencer Street to Edward Street). Some outhouses and early outbuildings remain off the rear laneways.
- Relatively wide carriageways in Smith Street, Edward Street, Spencer Street, Carrington Street, Nowranie Street
- Narrower street width in Wellesley Street and Edward Street
- Narrow grass verges (except in Wellesley Street, Edward Street and sections of Smith Street)

Elements that contribute to the consistency of the streetscape (visible from the public domain)

- Narrow-fronted detached and semi-detached face brick single storey housing Federation Queen Anne style and Inter-war California bungalow styles
- Single storey narrow fronted detached, semi-detached and terrace Victorian housing
- 2-storey terrace and semi-detached Victorian Filigree style terraces
- All houses with small setbacks from the streets allowing for small front gardens
- Inter-war period residential flat buildings (example No. 6, 32 Nowranie Street, 52 Smith St)
- Former retail buildings (56, 102 Smith Street, 18 Spencer St) or halls (No. 60 Smith St)
- Original details such as:
  - Front verandahs with original detailing
  - Original roof forms with original cladding of slate or unglazed terracotta tiles and original chimneys
  - Gable ends facing the street with original timber shingled, roughcast stucco or imitation half-timbered finishes (Federation, Inter-war period)
  - Face brickwork (Federation, Inter-war periods) or stuccoed brickwork (Victorian period)
  - Original timber-framed windows and timber panelled doors consistent with the periods and styles of houses
- Original front fences - timber picket, low brick, brick & timber picket for Federation and Inter-war period houses; timber picket or cast iron palisade for Victorian period houses
- Vehicle access off rear laneways.



### NON-CONTRIBUTORY ELEMENTS

- Later infill buildings (No. 5A, 17 Wellesley St)
- Carports in front gardens (5A Wellesley St)
- Loss of original detailing (example 13 Edward Street, 10, 10A Nowranie Street)
- Uncharacteristic first floor additions to single storey houses which are visible from the street (examples)
- Changes to materials: Cement rendering of face brickwork to Federation period houses; modern roof cladding (eg concrete tiles) and loss of chimneys
- Front verandah or balcony enclosures (example No. 42 Nowranie St)
- Modern front fences of unsympathetic design and materials, particularly high solid masonry front fences.
- Later industrial buildings (example 94-98 Smith St)

### Historical Development

This area was part of the land granted to Joseph Foveaux in 1794 and later incorporated into Robert Campbell's Canterbury Park Estate. After Robert Campbell's death his heir Sophia Campbell leased all the land to the NSW Government as a quarantine station for sheep in the early 1880s. Ashfield Council minutes of 1883 to 1885 record a number of attempts by the Council to convince the Government to acquire the Quarantine Ground as a recreation reserve, but in 1885 it was subdivided into 183 x 20 foot wide allotments and sold. It was developed for housing and for some shops between 1885 and 1930.

In 1885 most of Sydney's population lived in terrace housing, and the twenty foot frontage, a common terrace size, with long narrow rear laneways, suggest that was intended here. This translation of inner city housing to the suburbs did not continue however, for while there is one terrace of six two-storey dwellings, and a number of terraces of single storey dwellings, the majority of the buildings within the area are free standing on long narrow allotments.

By the early years of the 20th century a number of houses in Spencer and Edward Streets were being built over two allotments resulting in double fronted houses with garden space to all sides, and two houses in Wellesley Street were built over three allotments.

