



DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/371
Address	3 Hosking Street BALMAIN EAST NSW 2041
Proposal	Alterations and additions including 3 storey side extension, lift, ground works and tree removal
Date of Lodgement	19 September 2019
Applicant	Apwdesign
Owner	Mr Justin D Boyd Mrs Ronite A Hammond
Number of Submissions	Initial: 0 Amended: 0
Value of works	\$349,514.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Overdevelopment of Site
Recommendation	Refusal
Attachment A	Draft Conditions
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standard – Floor Space Ratio
Attachment D	Statement of Significance - Balmain East Conservation Area



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 including erection of a three (3) storey side extension, new lift, tree removal and rear landscaping works at 3 Hosking Street, Balmain East.

The application was initially notified to surrounding properties and no submissions were received in response. The amended drawings the subject of this report were re-notified to surrounding properties. No submissions were received.

The main issues that have arisen from the application include:

- Significant Breach of Floor Space Ratio Development Standard
- Significant Breach of Landscaped Area Development Standard
- Significant Breach of Site Coverage Development Standard
- Excessive Bulk & Scale
- Overdevelopment

The non-compliances are unacceptable as the clause 4.6 case for exception to the breach of the maximum Floor Space Ratio development standard is not supported. Further, no contravention requests have been submitted for the breaches of the Landscaped Area and Site Coverage Development Standards. Therefore, the application is recommended for refusal.

2. Proposal

The amended proposal, the subject of this report, includes the erection of a three-storey addition to the side of the existing *semi-detached dwelling*, and internal alterations comprising:

- Ground Floor – Addition including Lift well.
- *First Floor – Bedroom with rear lightwell, ensuite, front deck, and the conversion of part of an existing screened front garden deck into a laundry.
- Second Floor – Media Room, front deck. Minor internal alterations to the existing building.
- Third Floor – Living Room, new front deck with external kitchen. Internal alterations and additions to the existing building to accommodate a walk-in pantry, WC, rear deck. The rear setback area, including rock/cliff, is proposed to be reprofiled as landscaped area.

(* - It is noted that no consent exists in Council records for the conversion of a terrace level (the level shown on the *First Floor Plan*) into an enclosed level containing a bedroom and ensuite. This level of the building is shown on submitted information to have ceiling heights of 1.84m. Such a ceiling height is contrary to the deemed to satisfy requirements of the National Construction Code for habitable rooms which require a minimum 2.4m ceiling height in the bedroom and 2.1m in the ensuite. These low ceilings also appear to extend to the area of the stairwell which is proposed to accommodate a lift door. The submitted drawings do not indicate how this lift door could be accommodated within the 1.84m ceiling heights of that level of the building. In light of the above, the area shown as bedroom and ensuite on the *First Floor* could only be suitable for use as a non-habitable storage area)

3. Site Description

The subject site is located on the northern side of Hosking Street, between Union Street & Johnston Street. The site consists of one allotment and is rectangular with a total area of 145.4sqm and is legally described as Lot 101 /DP11960383, 3 Hosking Street Balmain East. The site has a frontage to Hosking Street of 10.8metres.



Subject Site – 3 Hosking Street, Balmain East

The site is affected by a number of easements including party wall cross-easements with 1 Hosking Street. The title of the site also benefits from a 1m wide Right-of-Way over the rear of the adjoining dwelling at 1 Hosking Street linking the rear yard of the subject site to Johnston Street.

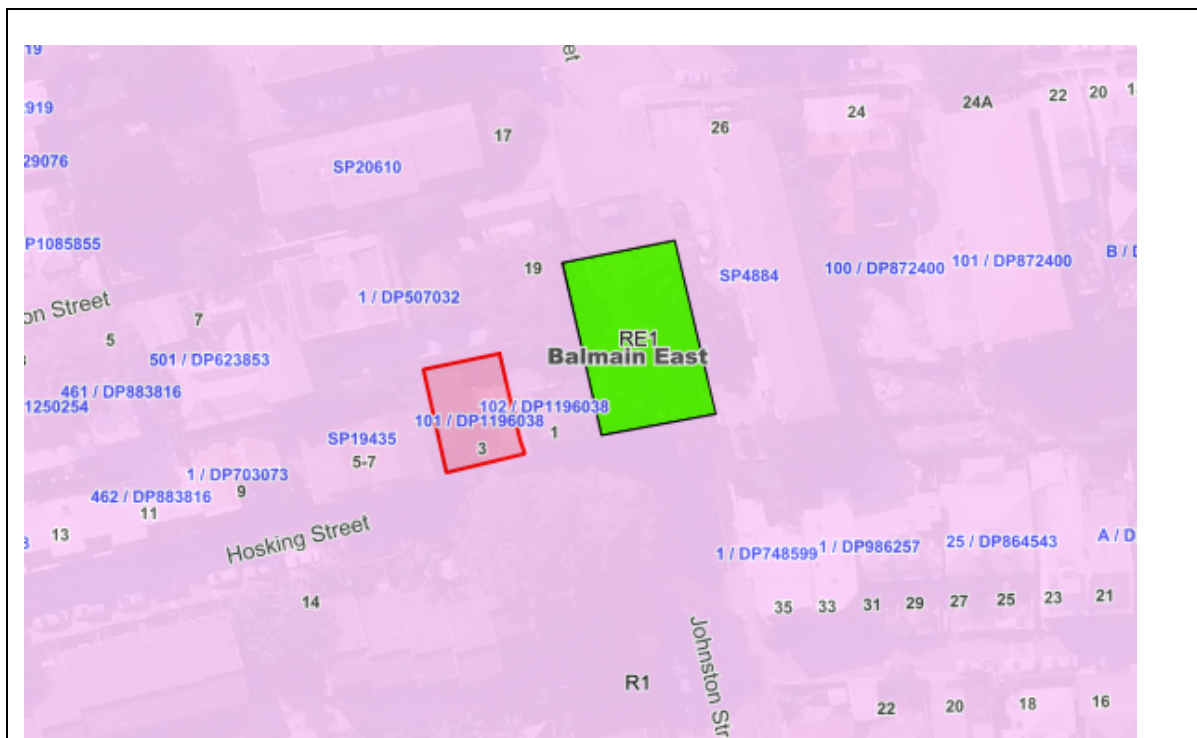
The site supports an attached three/four level attached brick dwelling with side and rear open space/yard areas. The adjoining dwelling contains a similar building. The adjoining properties support two or three level residential buildings, some on lots raised above street level, including garages.

The property is located within a Conservation Area.

An Item of Heritage is located behind the site at 19 Johnston Street.

The following trees are located on the site.

- Weeping Bottle Brush – Located in the front south-eastern corner of the existing side yard of the subject site.



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

Application	Proposal	Decision & Date
DA 214/83	Strata Subdivision into 2 lots	Approved - 16/8/1983
BA 86/514	Installation of windows to southern elevation of existing Terrace Level in Lot 2 (Current 3 Hosking Street)	Approved - 11/9/1986
D/2013/552	Torrens subdivide into two lots, fence & new entrance to No.3.	Approved – 11/3/2014
PREDA/2019/55	Alterations and additions including internal alterations, three-storey extension and lift.	Issued – 13/5/19

Surrounding properties

1 Hosking Street

Application	Proposal	Decision & Date
T/2013/160	Removal of 1 Eucalyptus tree from the Hosking Street frontage.	28 May 2013

5 Hosking Street

Application	Proposal	Decision & Date
D/2012/619	Alterations and additions (consent expired)	12 February 2013

4(b) Application history

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

Date	Discussion / Letter / Additional Information
21/11/2019	Council wrote to applicant identifying the proposal's significant shortcomings (consistent with previous PreDA advice) and deficient information within the application.
15/12/2019	Amended Plans submitted
19/12/2019	Council wrote to applicant identifying additional issues and deficient information within the amended application.
12/2/2020	Council wrote to applicant advising that no response had been received to Council's letter of 19/12/2019 and advising withdrawal of the application.
13/2/2020	Applicant advised application would not be withdrawn and submitted additional information.
18/2/ - 11/3/2020	Amended plans renotified.

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:

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy No 55—Remediation of Land*

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. *SEPP 55* requires 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.

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

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

A BASIX Certificate dated 17/9/2019 was submitted with the original application. However, the certificate does not relate to the current (significantly amended) architectural plans and as such, the requirements of the SEPP have not been met.

5(a)(iii) 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.

There is currently a mature Weeping Bottle Brush at the front of the property. The tree was found to be of good health and vigour and fair to good form at time inspection. In addition, the tree was noted to making a positive contribution the streetscape. The tree was estimated to have a canopy area of 20m² or 14% of the overall site coverage.

Assessment of the proposal revealed that another tree had been removed from the rear of the site (stump in situ). A survey submitted with the PreDA dated 7 December 2011, prepared by John R Holt Surveyors Pty Ltd, stated this tree to have had an estimated height of 10m. Aerial imagery indicated that the tree had an estimated canopy spread of 84m² or 57% coverage of the site. The removal of that tree has resulted in a significant loss of canopy coverage from the surrounding landscape.

Council's Tree Management Controls and Urban Forest Policy focus on protecting and maintaining trees. Furthermore, where trees are removed, adequate and appropriate compensatory planting is required. This strategy is supported by the NSW State Government through the Draft Urban Tree Canopy Guideline. The Guideline sets out a target of 25% canopy coverage for medium to high density residential areas. Given these considerations the application is not supported as:

- No landscaped area has been proposed to allow for the offset of the removal of the trees.
- The proposal results in a net loss of Urban Forest and is inconsistent with the above policies and Controls and as such, is considered to be a poor outcome for the community and the natural environment.

Leichhardt Local Environment Plan 2013 (LLEP 2013)

The application was assessed against the following relevant clauses of *the Leichhardt Local Environmental Plan 2013*:

Clause 1.2 - Aims of the Plan
Clause 2.3 - Zone objectives and Land Use Table
Clause 2.7 - Demolition
Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
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 6.2 - Earthworks
Clause 6.4 - Stormwater management

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

The site is zoned R1 under the *LLEP 2011*. The *LLEP 2013* defines the development as:

Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

The development is permitted with consent within the land use table. It is Council's assessment that the amended design is not consistent with the following objectives of the R1 zone:

- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To provide landscaped areas for the use and enjoyment of existing and future residents.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

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

Standard	Proposal	Non-compliance	Complies
Floor Space Ratio Maximum permissible: 1:1 or 145.4 sqm	1.56:1 or 226.2sqm	80.8sqm or 55.57%	No
Landscape Area Minimum permissible: 15% or 21.8sqm	8.6% or 12.5sqm	9.31sqm or 42.69%	No
Site Coverage Maximum permissible: 60% or 87.2sqm	65.34% or 95sqm	7.76sqm or 8.9%	No

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 - Floor Space Ratio

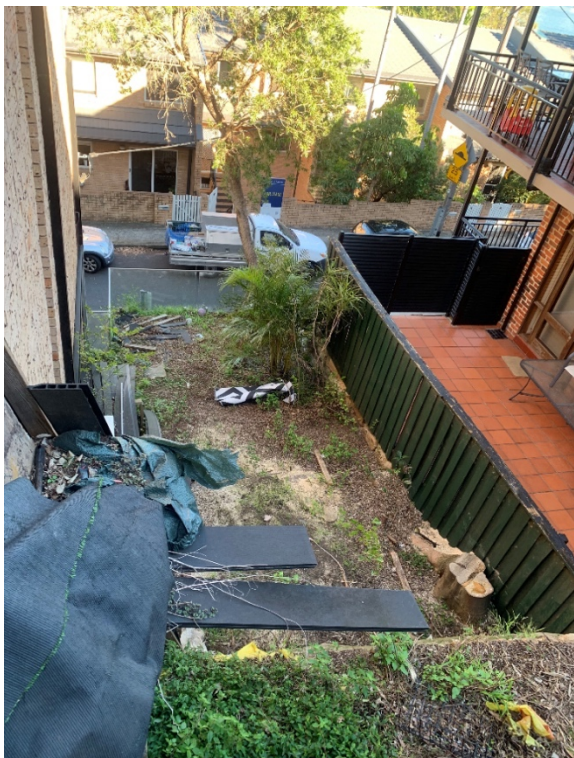
[Note: The applicant has **not** sought a variation to the Landscaped Area and Site Coverage development standards under Clause 4.3A of the Leichhardt Local Environmental Plan, as contrary to the assessment noted above, the application contends that the proposal complies with these standards.]

A case has been submitted seeking a variation to the Floor Space Ratio development standard under Clause 4.4 of the Leichhardt local environmental plan by 80.8sqm, or 55.57%.

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the applicable local environmental plan below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the LLEP 2013 justifying the proposed contravention of the development standard which is summarised as follows:



Existing side yard Landscaped Area viewed from rear of site

- The standard is breached by 29% [This figure is incorrect. The breach is significantly greater, as the applicant has not included gross floor area comprising the lower ground level garage].
- The proposal does not cause overshadowing impacts.
- The proposal does not cause overlooking impacts.
- The proposal utilises an area of the site which is *'not able to be properly managed at present and that has the tendency to be neglected and hazardous'*.
- The proposed alterations and additions improve the internal amenity and usability of the existing dwelling.
- The proposal provides a lift to improve accessibility for the residents.

The applicant's written rationale does not adequately demonstrate that compliance with the development standard is unreasonable or 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 not in the public interest because it is inconsistent with the objectives of the R1 zone as required to be assessed under Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons.

The relevant Objectives of the R1 General Residential Zone are:

- *'To provide for the housing needs of the community.'*
- *To provide for a variety of housing types and densities.*

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.'*
 - The bulk of the proposal results in a density of development which is contrary to the character of the area.
 - The bulk of the proposal results in the proposal failing to provide the minimum required Landscaped Area on the site capable substantial tree planting and for the use and enjoyment of residents.
 - Similarly, the bulk of the proposed additions would result in excessive site cover uncharacteristic of the area.
 - The excessive bulk, site cover and reduction of available landscaped area on the site as proposed would result in a reduction in amenity for both residents of the site and the neighbourhood.
 - The size and bulk of the resultant building results in an overdevelopment of the site.

It is considered the development is not in the public interest because it is inconsistent with the objectives of the cl.4.4 Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

The relevant Objectives of the Floor Space Ratio development standard are:

- '(a) to ensure that residential accommodation—*
- (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) provides a suitable balance between landscaped areas and the built form, and*
 - (iii) minimises the impact of the bulk and scale of buildings'*

- The proposal would be incompatible with the character of the surrounding area as the proposal deletes the existing side setback area which is a feature of the pair of dwellings comprising 1 and 3 Hosking Street.
- The bulk of the proposed additions results in the existing Landscaped Area on the site being reduced to an unsuitable area of rock shelf and setback between the building and rockface at the rear of the site. Further, the area of landscaped yard shown on plans in front of the additions is located on an existing concrete slab and is therefore not Landscaped area as defined.
- The bulk of the additions would result in excessive site coverage without adequate provision of suitable areas for landscaping and private open space on the site for the use and amenity of the occupants.
- The bulk and scale of the proposed additions does not balance the provision of built form to landscaped area, as the existing landscaped area on the site is largely eliminated.
- The reduction in size of the development in the amended drawings the subject of this report from those originally submitted demonstrate that the proposal cannot remedy the impact of the breach of this development standard through redesign.

The concurrence of the Planning Secretary may be assumed for matter dealt with by Local Planning Panels, however, in this instance support of the Clause 4.6 request is not recommended, other required Clause 4.6 requests have not been tendered and refusal of the overall proposal is considered warranted.

The proposal does not accord with the objective in Clause 4.6(1)(b) and the requirements of Clause 4.6(3)(b) of the Leichhardt Local Environmental Plan. Consequently, for the reasons outlined above, there are insufficient planning grounds to justify the departure from the cl.4.4 Floor Space Ratio development standard and it is recommended that the Clause 4.6 exception **not** be granted.

(ii) Clause 5.10 - Heritage Conservation

The site is located within the 'Balmain East Heritage Conservation Area' (C3).

It is located in close proximity of the following heritage item:

- 'House, "Penbroke Villa", including interiors' - 19 Johnston Street (I447) The subject site is occupied by a contemporary residential building that is neutral to the heritage conservation area.

The subject site is within the South Darling Street sub-area of the East Balmain Distinctive Neighbourhood as specified in Leichhardt DCP 2013.

The amended drawings prepared by APW Design, dated 21 December 2019, have been considered.

Control C2 of Part C1.3 of the DCP requires that development must preserve the consistency in architectural detail and form of attached dwellings. Even though this is a contemporary dwelling constructed in the 1980s, it is a semi-detached dwelling, with its pair at No. 1 Hosking Street. Any new works should have regard to the impact it will have on the pair and their presentation to the street.

Pre-DA advice had previously been sought for similar alterations and additions (PREDA/2019/371). The following specific design amendments *in italics* were advised to be made to that proposal. Additional commentary with respect to the current drawings the subject of this report is provided.

1. *All balustrades are to be constructed of vertical metal elements.*

Comment: Balustrades to balconies on the southern façade of the addition are proposed to be glazed, which is not appropriate to sympathetic materials to the conservation area. These must be replaced with vertical metal elements. If the existing glazed balustrades on the existing dwelling are to be replaced, these must be replaced with vertical metal elements.

2. *A Schedule of materials, finishes and colours is to be provided with any future application. Proposed new materials must employ light colours to offer a sympathetic response to the heritage conservation area.*

Comment: Control C6 of Part C2.2.2.2 of the LDCP requires that the character of the area be maintained by keeping development consistent in architectural style, building form and materials. The Materials and Finishes schedule shows Colorbond steel matt wall sheeting

which is not appropriate within the conservation area, especially as the proposal is adjacent to a heritage listed “Penbrooke Villa” and is visible from the public domain. The Colorbond Steel Matt wall sheeting must be replaced with a sympathetic material, e.g. horizontally laid weatherboard cladding, or FC sheeting (also be laid horizontally if the sheeting contains grooves). Colorbond roof sheeting is acceptable, though black, as shown, is not. A pre-coloured traditional corrugated steel should be used for the roofing, finished in a colour equivalent to Colorbond colours “Windspray” or “Wallaby”. Further, the face black painted brick on the southern façade must be painted in accordance with the above.

3. *Changes to the rear of the site must maintain the existing rock outcrops, which are protected under Part C1.19 of LDCP 2013; and the objectives of Leichhardt LEP 2013.*

Comment: Excavation of the existing rock outcrop is inconsistent with Control C1 a. of Part C1.19 of the DCP which is to minimise onsite disturbance and is contradictory to Control C1 b. of Part C1.19 of the DCP, which is to locate buildings where the rock features are not located.

Control C10 of Part C2.2.2.2 of the DCP requires that the integrity of the escarpments is preserved and that development around them is to avoid cutting, changing the topography or removing associated vegetation around the escarpment. Further, buildings and structures are to avoid dominating the escarpments. Control C17 of Part C2.2.2.2 of the DCP requires that escarpments and stone walls are to be preserved and that construction on escarpments or cutting into stone walls (or into rock faces) is to be avoided.

The first floor level of the addition must be deleted from the proposal, including bedroom 2, the ensuite and the lightwell, so the existing rock outcrops can be retained and the development comply with C1 a. and b. of Part C1.19 of the DCP.

In addition to the above issues, the proposed deck on the third level off the living area, is proposed to be cantilevered out over the deck below on the second level. Though the existing dwelling contains cantilevered balconies, these are discouraged as they are uncharacteristic to the streetscape and the HCA. Any more cantilevered balconies should be avoided. Any approval should require the third floor deck depth to be reduced to match the depth of the second floor deck so as to present as a flush elevation to the street, not staggered or cantilevered.

The proposal is unacceptable from a heritage perspective as it will detract from the heritage significance of Balmain East Heritage Conservation Area and the heritage listed “Penbrooke Villa” adjoining the site, without the recommended design changes are made, so as to ensure the development is in accordance with the Clause 5.10 Objectives 1(a) and (b) of Leichhardt LEP 2013 and the relevant objectives and controls in the Leichhardt DCP 2013.



Affected rockface at rear of site.

5(b) Draft Environmental Planning Instruments

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

- Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

For the reasons identified elsewhere in this report the proposal results in significant breaches of the Floor Space Ratio, Landscaped Area and Site Cover development standards, and fails to adequately address heritage. Consequently, the development is considered unacceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

Leichhardt Development Control Plan 2013

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	Yes
Part C	
C1.0 General Provisions	No – the proposal fails to achieve objective O6 Compatible in terms of the desired future character of the heritage conservation area.
C1.1 Site and Context Analysis	No – the proposal fails to demonstrate compliance with objectives O1 f) in terms of consistency with the desired future character of the heritage conservation area.
C1.2 Demolition	No - while demolition can be supported, the proposed alterations and additions to the dwelling fail to demonstrate compliance with relevant development controls and consistency with the desired future character of the heritage conservation area
C1.3 Alterations and additions	No
C1.4 Heritage Conservation Areas and Heritage Items	No – the proposal results in adverse heritage impacts to the significance of the Conservation Area in terms of setting and form.
C1.5 Corner Sites	Not applicable
C1.6 Subdivision	Not applicable
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes

C1.12 Landscaping	No – The loss the level landscaped area on the site; the lack of suitable landscaped area at the rear of the site; is contrary to Objective O1 and Controls C3, C4, C6, C13. [Note: the landscaped area shown in front of the additions is partially above an existing concrete slab].
C1.13 Open Space Design Within the Public Domain	Yes
C1.14 Tree Management	No – see discussion
C1.15 Signs and Outdoor Advertising	Not applicable
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	Not applicable
C1.17 Minor Architectural Details	Not applicable
C1.18 Laneways	Not applicable
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	No – The proposal will likely involve further excavation of the existing rockface at the rear of the property. Further, no information has been submitted as to how the area indicated on plan as landscaped area is to be made so without covering or otherwise interfering with existing rockface in that location.
C1.20 Foreshore Land	Not applicable
C1.21 Green Roofs and Green Living Walls	Not applicable
Part C: Place – Section 2 Urban Character	
C2.2.2.2 - East Balmain Distinctive Neighbourhood C2.2.2.2(c) - South of Darling Street Sub Area	No – the proposal fails to comply with Controls C5, C6, C8, C9, C10, C11 and C13 C15 C16 C17, C18 C19 of clause C2.2.2.2; and Controls C1, C2, C8 of clause C2.2.2.2(c), given the siting and design of the additions seek to infill the exist side yard/ landscaped area component of the site leaving inadequate open space on the site; and the form of the additions fail to respect heritage design considerations for this neighbourhood. Also see specific discussion in CI 5.10 Heritage Conservation.

Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – the proposal fails to achieve objectives O3, O4 and O5 in terms of compatibility with the desired future character and heritage significance of the place, and overdevelopment.
C3.2 Site Layout and Building Design	No – The side additions result in a breach of the side setback control by over 2.5m and the 6m building envelope control by 1.7m.
C3.3 Elevation and Materials	No – see discussion
C3.4 Dormer Windows	Not applicable
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Not applicable
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – the proposal fails to achieve objective O1 and Controls C1 in terms of the reliance on an elevated front (upper level) external entertaining/ BBQ balcony as private open space.
C3.9 Solar Access	No – The subject site and adjoining site No.5 Hosking Street are heavily shadowed during winter, the side additions will result in loss of solar access for a greater portion of the year to No.5. which is considered contrary to Objective O1, and Control C11.
C3.10 Views	Yes
C3.11 Visual Privacy	No – See 'Acoustic Privacy' below.
C3.12 Acoustic Privacy	No – The additions rely on an elevated (upper level) front external entertaining/ BBQ balcony as private open space which overlooks neighbouring private open space with potential noise and overlooking impacts.
C3.13 Conversion of Existing Non-Residential Buildings	Not applicable
C3.14 Adaptable Housing	Not applicable
Part C: Place – Section 4 – Non-Residential Provisions	Not applicable

Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Not applicable
D2.5 Mixed Use Development	Not applicable
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	<p>Inadequate information has been submitted with application.</p> <p>Documentation has not been submitted addressing all relevant requirements of Part E (Water) of Leichhardt DCP 2013 must be submitted, including:</p> <p>-Managing Stormwater within the site in accordance with the relevant controls of Section E1.2.2.</p> <p>-Further, insufficient details have been provided with respect to overland flow from uphill lands and to demonstrate on a merit basis that it is not necessary for the dwelling to be setback from the western side boundary to provide an overland flow path from the rear of the site to Hosking Street as required by E1.2.2 of Leichhardt DCP2013.</p>
E1.1.4 Flood Risk Management Report	Not applicable
E1.1.5 Foreshore Risk Management Report	Not applicable
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	No – see discussion
E1.2.3 On-Site Detention of Stormwater	No – see discussion
E1.2.4 Stormwater Treatment	Not applicable
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	Not applicable
E1.2.7 Wastewater Management	Not applicable
E1.3 Hazard Management	Not applicable

E1.3.1 Flood Risk Management	Not applicable
E1.3.2 Foreshore Risk Management	Not applicable
Part F: Food	Not applicable
Part G: Site Specific Controls	
Insert specific control if relevant	Not applicable



Existing rear private open space – comprised of decking, paved area and void between building and escarpment

The following provides additional discussion of the relevant issues:

C1.14 Tree Management

There is currently a mature Weeping Bottle Brush at the front of the property. The tree is of good health and vigour and fair to good form at time inspection. In addition, the tree is noted to be making a positive contribution the streetscape. The tree was estimated to have a canopy area of 20m² or 14% of the overall site coverage.

It is noted that another tree was removed from the rear of the site in 2019 (the stump was still in situ). A submitted partial Detail Survey dated 7 December 2011 prepared by John R Holt Surveyors Pty Ltd, noted that the tree was estimated to have a height of about 10m. Aerial imagery indicated that this tree had an estimated canopy spread of 84m² or 57% coverage of the site. This removal resulted in a significant loss of canopy coverage from the surrounding landscape.

Council’s Tree Management Controls and Urban Forest Policy have a focus on protecting and maintaining trees. Furthermore, where trees are removed, adequate and appropriate compensatory planting is required. In addition, this strategy is supported by the NSW State

Government through the Draft Urban Tree Canopy Guideline. The Guideline sets out a target of 25% canopy coverage for medium to high density residential areas.

Given the above, the current application is not supported given:

- No landscaped area has been proposed to allow for the offset of the removal of the trees.
- The proposal results in a net loss of Urban Forest and is inconsistent with the above policies and controls and as such, is considered to be a poor outcome for the surrounding community.

E1.2.2 Managing Stormwater within the Site

The drainage system as proposed appears not to function properly due to the existing topography of the site.

Documentation addressing all relevant requirements of Part E of Leichhardt DCP 2013 has not been submitted with the application, including details regarding the management of stormwater within the site in accordance with the relevant controls of Section E1.2.2.

Further, insufficient details have been provided with respect to overland flow from uphill lands and demonstration that on a merit basis, it is not necessary for the dwelling to be setback from the western side boundary so as to provide an overland flow path from the rear of the site to Hosking Street as normally required.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

Overdevelopment

The proposal will result in breach of the floor space ratio control by over 55% and a breach of the floor space ratio control by over 42%, thereby resulting in excessive bulk on the site with inadequate provision of landscaped area on the site for future residents.

Heritage /Design

The development will result in a built form that is unacceptable from a heritage perspective as it will detract from the heritage significance of the Conservation Area and setting of the adjoining heritage item "Penbroke Villa".

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

It is considered that the proposal will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development. The application has failed to demonstrate that the site can adequately accommodate landscaping and stormwater facilities required to support the development.

5(g) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. The amended drawings the subject of this report were renotified for a period of 14 days to surrounding properties. No submissions were received in response to the notifications.

5(h) 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.

Approval of the proposal would be 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.

- Heritage

It was advised that the proposal is not supported on heritage design grounds. See discussion above.

- Urban Forest

It was advised that the proposal is not supported on having regard to its impact on urban canopy. See discussion above.

- Engineer

It was advised that the proposal is not supported as inadequate information has been submitted with application with respect to stormwater system design.

6(b) External

The application was referred to the following external bodies:

- Ausgrid

No objection raised to the proposal. Advice provided that if the application were approved the developer is to note advice regarding proximity of works to existing Overhead Power Lines and Underground Cables in the vicinity of the site.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

8. Conclusion

The proposal has been considered under the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*

The development is an overdevelopment of the site which would result in significant impacts on the amenity of the adjoining properties, the heritage conservation area and the natural environment and is not considered to be in the public interest.

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to vary Clause 4.4 – Floor Space Ratio of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is **not** satisfied that compliance with the standard is unnecessary or unreasonable in the circumstances of the case or that there are sufficient environmental grounds to support the variation. The proposed development will **not** be in the public interest because the exceedance is 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*, **refuse** Development Application No. D/2019/371 for Alterations and additions including 3 storey side extension, lift, ground works and tree removal at 3 Hosking Street, Balmain East NSW 2041 for the following reasons.
1. The application has not been accompanied by a Clause 4.6 request to vary the Development Standards for Landscaped Area or Site Coverage under the Leichhardt Local Environmental Plan 2013.
 2. The proposal has not demonstrated compliance with the following Clauses of the Leichhardt Local Environmental Plan 2013 pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - i. Clause 1.2 – Aims of plan
 - ii. Clause 2.3 – Zone objectives and Land Use Table
 - iii. Clause 4.3A (3)(a) – Landscaped Area for residential development in Zone R1
 - iv. Clause 4.3A (3)(b) – Site Coverage for residential development in Zone R1
 - v. Clause 4.4 – Floor Space Ratio
 - vi. Clause 4.6 – Variations to development standards
 - vii. Clause 5.10 – Heritage Conservation
 - viii. Clause 6.4 - Stormwater management
 3. The proposal has not demonstrated compliance with the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979: Part C – Section 1 – C1.0 – General Provisions
 - i. Part C – Section 1 – C1.1 – Site and Context Analysis
 - ii. Part C – Section 1 – C1.12 – Landscaping
 - iii. Part C – Section 1 – C2.2.3.2 – Piperston Distinctive Neighbourhood
 - iv. Part C – Section 3 – C3.1 – Residential General Provisions
 - v. Part C – Section 3 – C3.2 – Site Layout and Building Design

- vi. Part C – Section 3 – C3.8 – Private Open Space
 - vii. Part C – Section 3 – C3.9 – Solar Access
 - viii. Part E – Section 3 – C3.11 – Visual Privacy
-
- 4. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
 - 5. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
 - 6. The proposal is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.
 - 7. The application is not in the form required by Clause 50 of the Environmental Planning and Assessment Regulation.

Attachment A – Draft Conditions

Conditions of Consent

Fees

1. 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.

2. Security Deposit - Standard

Prior to the commencement of demolition works or 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.

Security Deposit:	\$2,950.00
Inspection Fee:	\$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

3. 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
01/A - SPA	Site Plan	21/12/2019	apwdesign
02/A	Ground Floor Plan	21/12/2019	apwdesign
03/A	First Floor Plan	21/12/2019	apwdesign
04/A	Second Floor Plan	21/12/2019	apwdesign
05/A	Third Floor Plan	21/12/2019	apwdesign
06/A	North Elevation	21/12/2019	apwdesign
07/A	South Elevation	21/12/2019	apwdesign
08/A	West Elevation	21/12/2019	apwdesign
09/A	Sections	21/12/2019	apwdesign
01/A MFA	Materials and Finishes	21/12/2019	apwdesign
A356015	BASIX Certificate	17/9/2019	apwdesign

As amended by the conditions of consent.

4. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a) All balustrades to be of vertical metal elements instead of glass.
- b) New openings to the upper floor must employ the same glazing pattern used for the first and second storey main elevation, which are vertically proportioned openings.
- c) Removed stone from the front stonewall is to be carefully removed, safely stored during construction and reused for the staircase returns. Where not enough, similar sized blocks are to be used. New mortar is to be compatible with stone (traditional lime mortar) with the appropriate grad and type of sand and the appropriate mix. No painting/rendering of sandstone walls is supported.
- d) Facestone finishes are not to be rendered and are to remain facestone.
- e) Changes to the rear are to maintain existing rock outcrops, which are protected on the Leichhardt DCP 2013 under Clause 1.19 and the objectives of the Leichhardt LEP 2013. Any new landscaping works should also maintain the existing retaining wall near the boundary with heritage item at no.19 Johnston Street.
- f) Colorbond steel roofing is to employ a corrugated profile similar to Custom Orb with a colour similar to "windspray", "wallaby", or "jasper".
- g) Proposed new materials must employ light colours to offer a sympathetic response to the heritage conservation area.

5. 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.

6. 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.

7. 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.

8. Works Outside the Property Boundary

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

Prior to any Demolition**9. 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.

10. 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.

11. 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.

Prior to Construction Certificate**12. 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.

13. 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.

14. 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 132092.

During Demolition and Construction**15. 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.

16. Stormwater Drainage System

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road.
- b. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (ARR), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- c. Charged or pump-out stormwater drainage systems are not used including for roof drainage.
- d. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15litres/second (100year ARI);
- e. The volume of the OSD can be reduced where on-site retention (OSR) facilities for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m³ from the OSD storage volume, for every 2.5m³ of OSR storage provided (up to a maximum OSD offset of 10m³). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council's DCP.
- f. Details and dimensions of the OSD tank and OSR tank, the invert and top water level in the OSD and OSR and details of the discharge control device including calculation of rates of discharge and volume of storage must be indicated on the drainage plans.

- g. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
- h. An overland flow path shall be provided within the setback to the northern boundary between the rear of the dwelling and Johnston Street frontage. The rear courtyard shall be graded so that bypass flows from the site drainage system are directed to the overland flow path.
- i. Details demonstrating compliance with the requirements of this condition are to be marked on the plans.
- j. A 150mm step down must be provided between the finished floor level of the internal room and the finished surface level of the external area except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings..
- k. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- l. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- m. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- n. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm.
- o. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
- p. All redundant pipelines within footpath area must be removed and footpath/kerb and gutter be reinstated.
- q. No impact to street tree(s).

17. 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](#)

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.

- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

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
 - 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.

Construction of Vehicular Crossing

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

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.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Dial before you dig

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

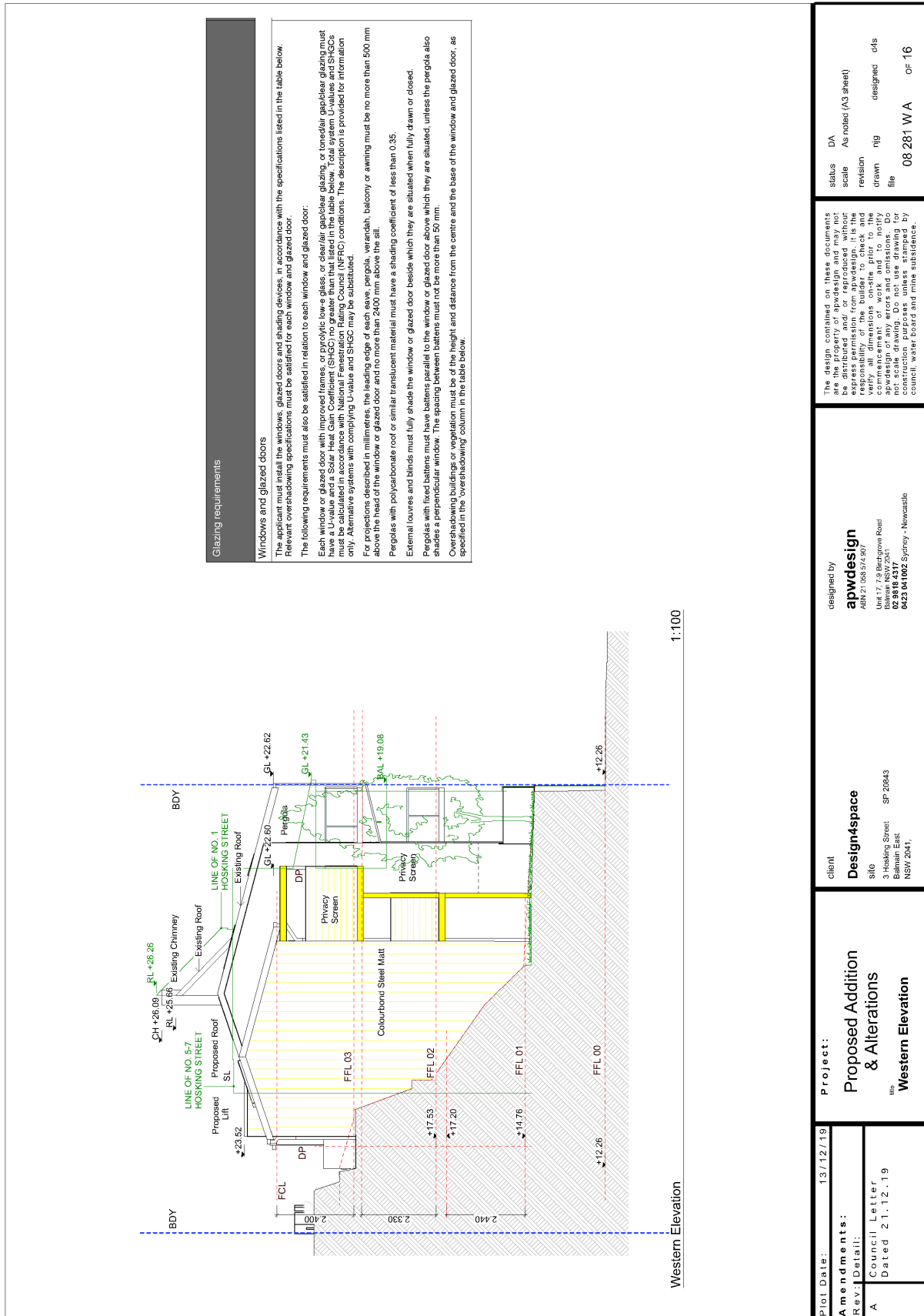
Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior.toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
SafeWork NSW	13 10 50 contact@safework.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

REASONS FOR REFUSAL

1. The application is not in the form required by Clause 50 of the Environmental Planning and Assessment Regulation.
2. The proposal is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.
3. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
4. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
5. The proposal has not demonstrated compliance with the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - i. Part C – Section 1 – C1.0 – General Provisions
 - ii. Part C – Section 1 – C1.1 – Site and Context Analysis
 - iii. Part C – Section 1 – C1.12 – Landscaping
 - iv. Part C – Section 1 – C2.2.3.2 – Piperston Distinctive Neighbourhood
 - v. Part C – Section 3 – C3.1 – Residential General Provisions
 - vi. Part C – Section 3 – C3.2 – Site Layout and Building Design
 - vii. Part C – Section 3 – C3.8 – Private Open Space
 - viii. Part C – Section 3 – C3.9 – Solar Access
 - ix. Part E – Section 3 – C3.11 – Visual Privacy
6. The proposal has not demonstrated compliance with the following Clauses of the Leichhardt Local Environmental Plan 2013 pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 1.
 - i. Clause 1.2 – Aims of plan
 - ii. Clause 2.3 – Zone objectives and Land Use Table
 - iii. Clause 4.3A (3)(a) – Landscaped Area for residential development in Zone R1
 - iv. Clause 4.3A (3)(b) – Site Coverage for residential development in Zone R1
 - v. Clause 4.4 – Floor Space Ratio
 - vi. Clause 4.6 – Variations to development standards
 - vii. Clause 5.10 – Heritage Conservation
 - viii. Clause 6.4 - Stormwater management
7. The application has not been accompanied by a Clause 4.6 request to vary the Development Standards for Landscaped Area *or* Site Coverage under the Leichhardt Local Environmental Plan 2013.

Attachment B – Plans of proposed development



Glazing requirements

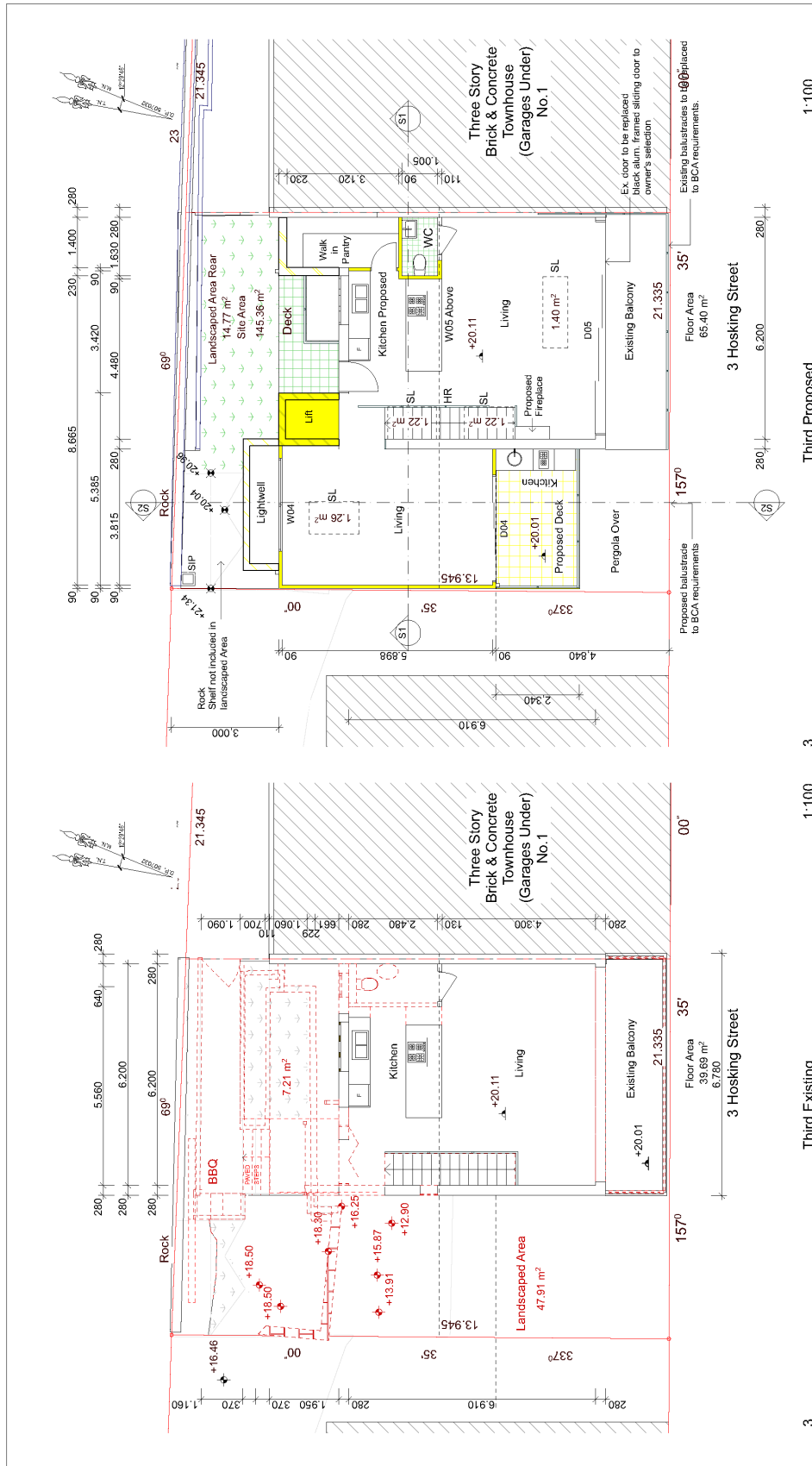
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.

The following requirements must also be satisfied in relation to each window and glazed door:

- Each window or glazed door with improved frames, or pyrolytic low-e glasses, or clear/air gap/clear glazing, or toned/air gap/clear glazing must have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Performance Rating Council (NPRC) conditions. The description is provided for information only. Alternative systems with complying U-values and SHGC may be substituted.
- For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2500 mm above the sill.
- Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.
- External louvres and blinds must fully shade the window or glazed door beside which they are situated when fully drawn or closed.
- Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.
- Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.

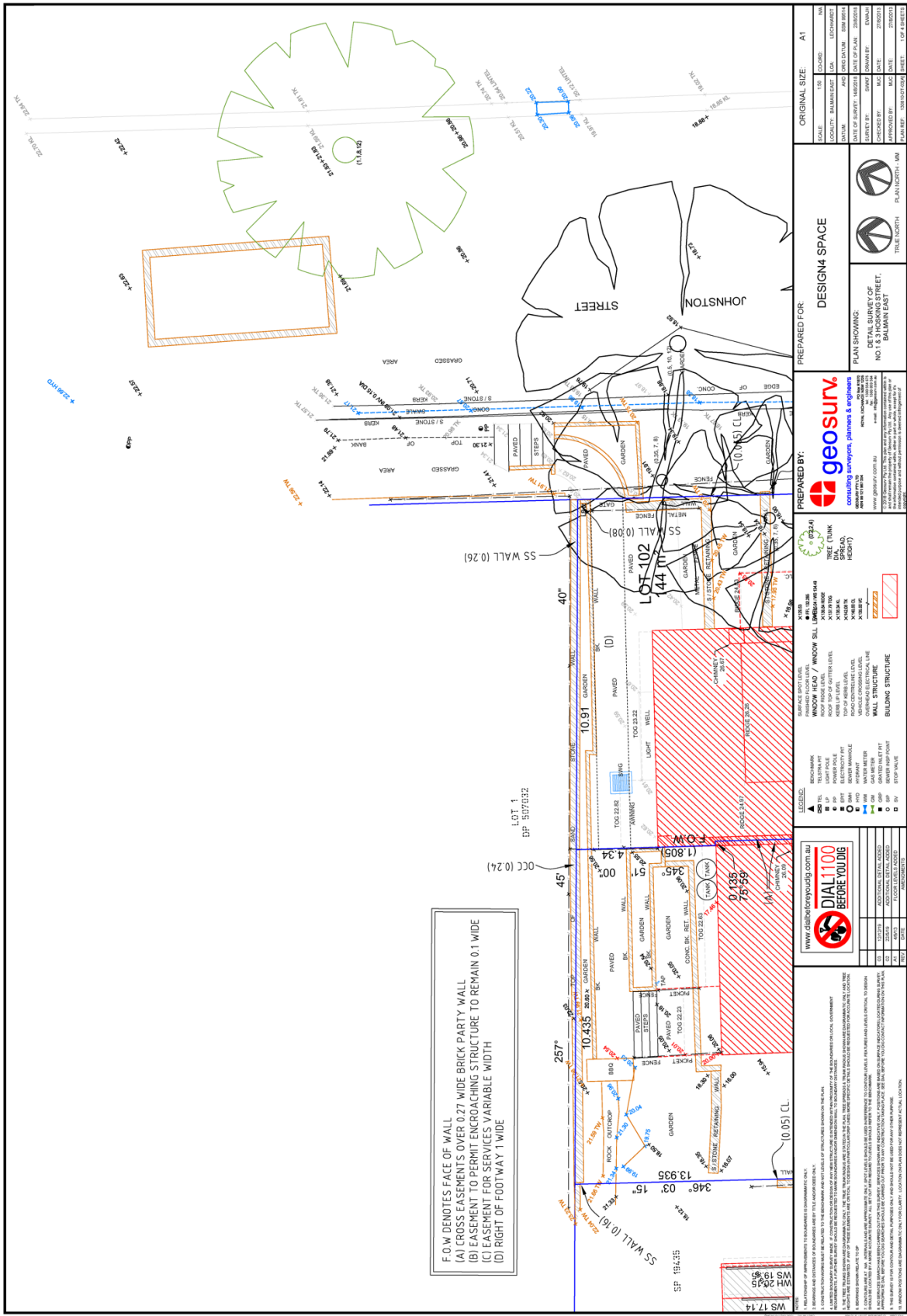
Western Elevation 1:100

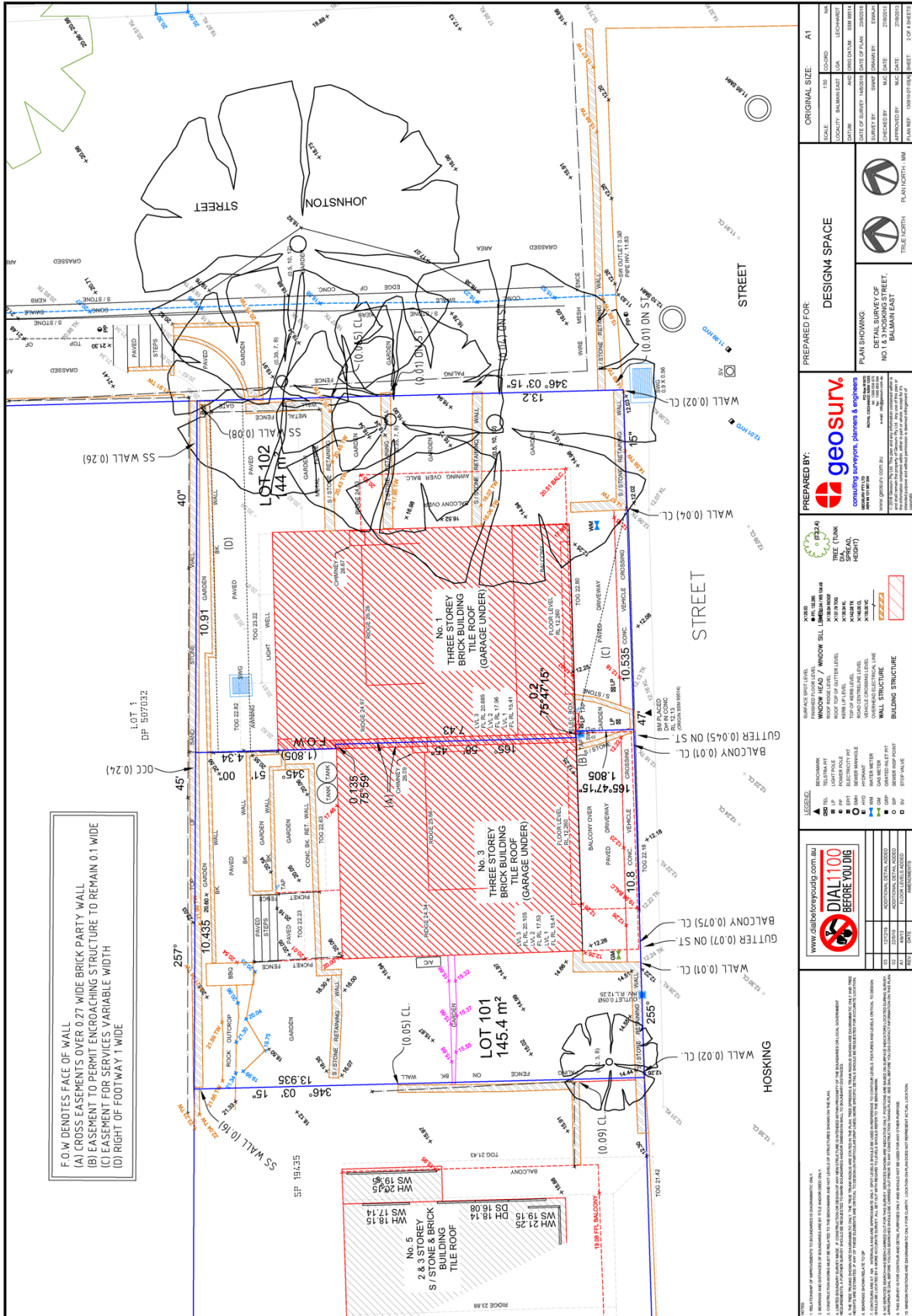
<p>Plot Date: 13/12/19</p> <p>Amendments: Rev. Detail: A Council Letter Dated 21.12.19</p>	<p>Project: Proposed Addition & Alterations Western Elevation</p>	<p>client Design4space Silo 3 Hosking Street Balmah, East, NSW 2041, SP-20443</p>	<p>designed by apwdesign AM/21 506 674 430 155 The Kingsway Road Balmah NSW 2041 02 8818 4317 0423 041002 Sydney - Newcastle</p>	<p>The design contained on these documents are the property of apwdesign and may not be distributed and/or reproduced without the written consent of apwdesign. It is the responsibility of the builder to check and verify all dimensions on-site prior to the commencement of any work and no liability is accepted for any errors or omissions on this drawing. Do not use drawing for construction purposes unless stamped by council, water board and mine subsidence.</p>	<p>status DA scale As noted (A3 sheet) revision drawn nlg checked ods file 08 281 W A OF 16</p>
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<p>Plot Date: 13/12/19</p> <p>Amendments:</p> <p>Rev. Detail:</p> <p>A Council Letter Dated 2.1.12.19</p>	<p>Project:</p> <p>Proposed Addition & Alterations</p> <p>for Third Floor Plan</p>	<p>client</p> <p>Design4space</p> <p>site 3 Hosking Street Balmain East NSW 2041.</p>	<p>designed by</p> <p>apwdesign ABN 21 058 574 907 Unit 17, 7-9 Bridgegrove Road Balmain NSW 2041 02 83 04 002 Sydney - Newcastle</p>	<p>status DA</p> <p>Scale As noted (A3 sheet)</p> <p>revision</p> <p>drawn nlg</p> <p>designed ohs</p> <p>file 05 281 TFP A</p> <p>of 16</p>
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F.O.W DENOTES FACE OF WALL
 (A) CROSS EASEMENTS OVER 0.27 WIDE BRICK PARTY WALL
 (B) EASEMENT TO PERMIT ENCROACHING STRUCTURE TO REMAIN 0.1 WIDE
 (C) EASEMENT FOR SERVICES VARIABLE WIDTH
 (D) RIGHT OF FOOTWAY 1 WIDE

PREPARED BY:

geosurv

consulting surveyors, planners & engineers

16/1701/1800100
 4/200 WINDYBUSH RD
 WINDYBUSH NSW 1570
 www.geosurv.com.au
 PHONE 61 61 955 2896

DESIGN SPACE

PLAN NORTH - MM

TRUE NORTH

ORIGINAL SIZE: A1

SCALE	THE BOARD	NMA
1:2000	1000	1000
1:1000	500	500
1:500	250	250
1:250	125	125
1:100	50	50
1:50	25	25
1:25	12.5	12.5
1:10	5	5
1:5	2.5	2.5
1:2	1.25	1.25
1:1	0.625	0.625

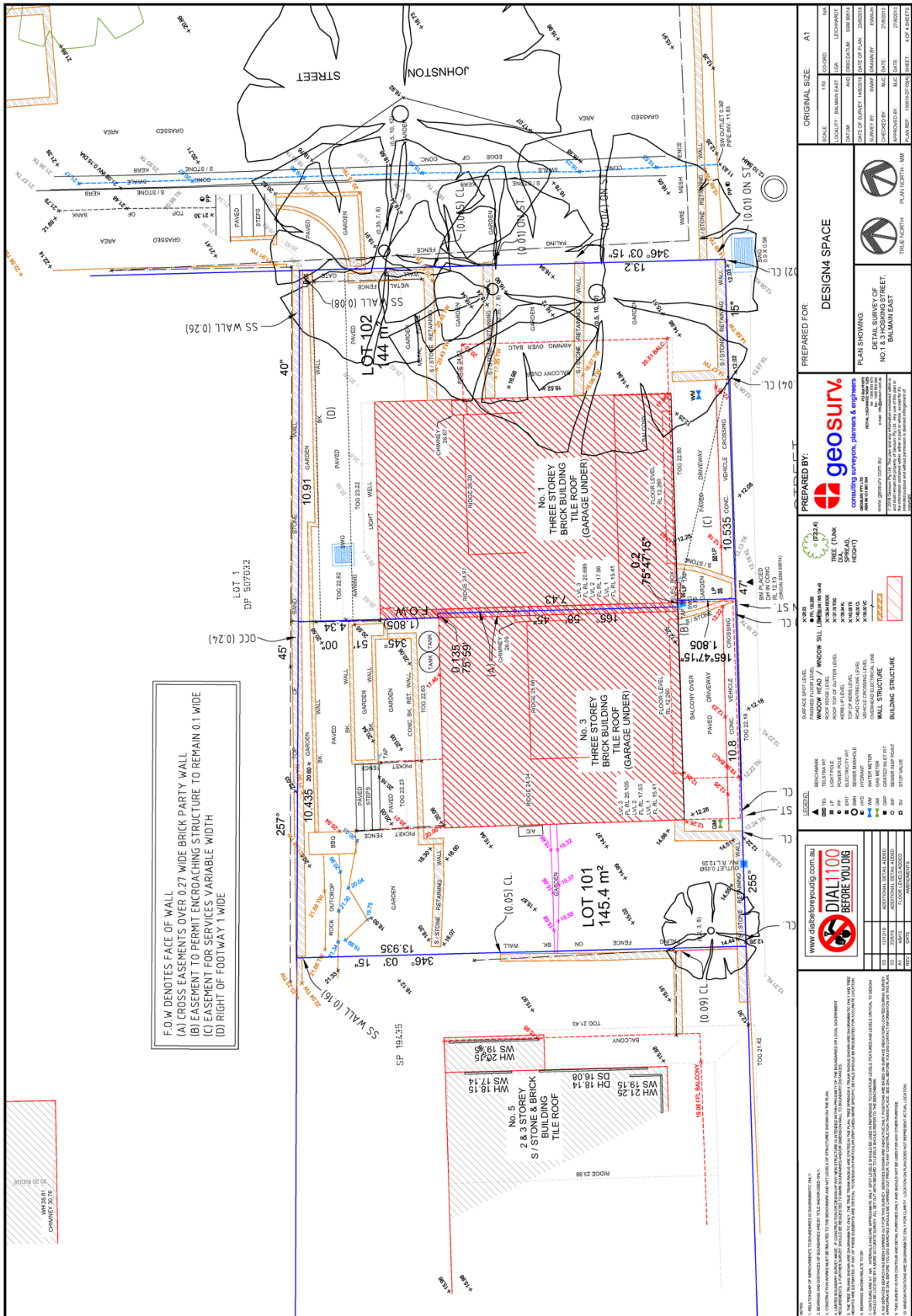
LEGEND:

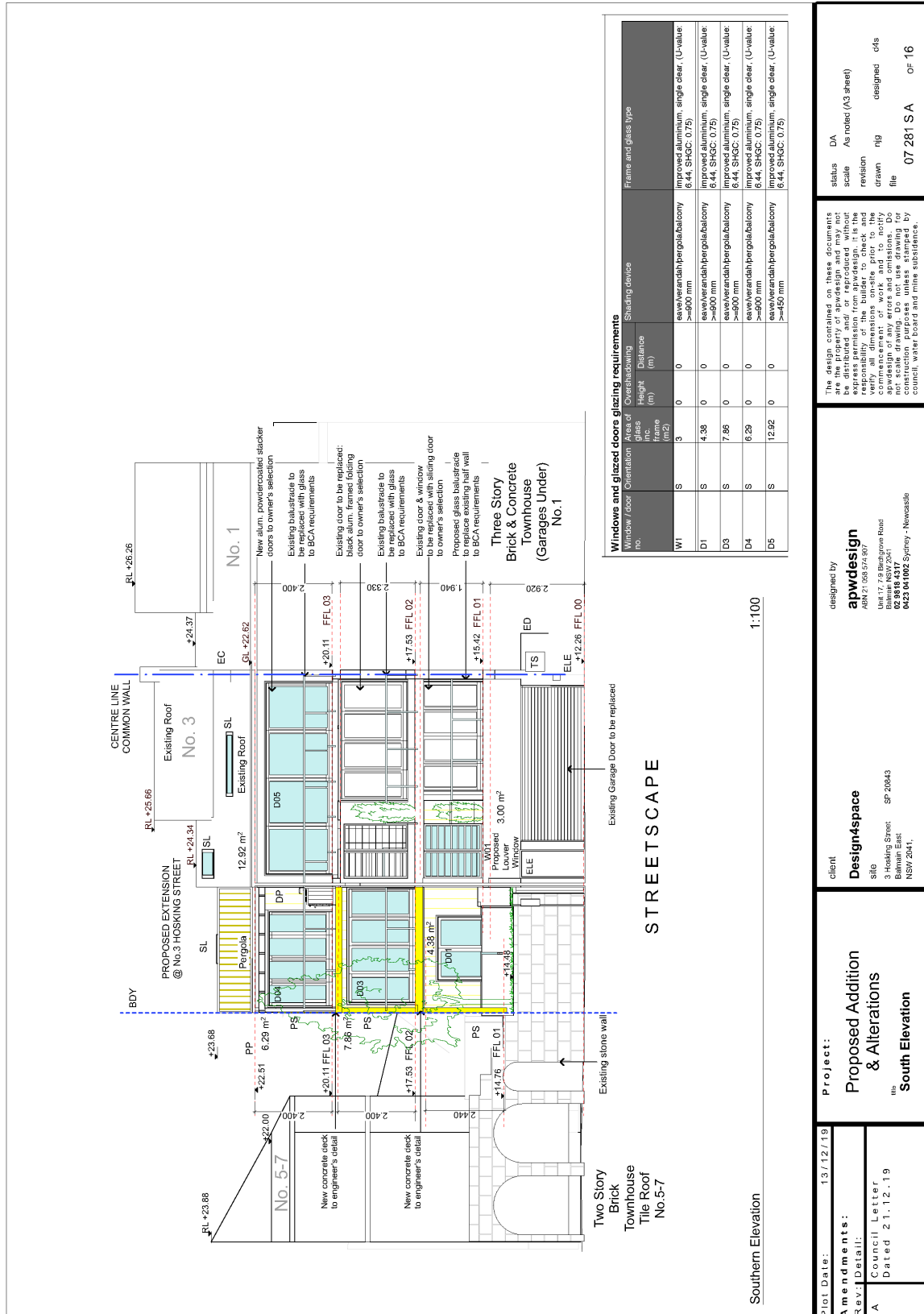
▲	BENCHMARK
■	ROOF LEVEL
■	LEVEL
■	POWER POLE
■	POWER POLE
■	SEWER MANHOLE
■	WATER MANHOLE
■	WATER METER
■	GAS METER
■	SEWER STOP POINT
■	STOP VALVE

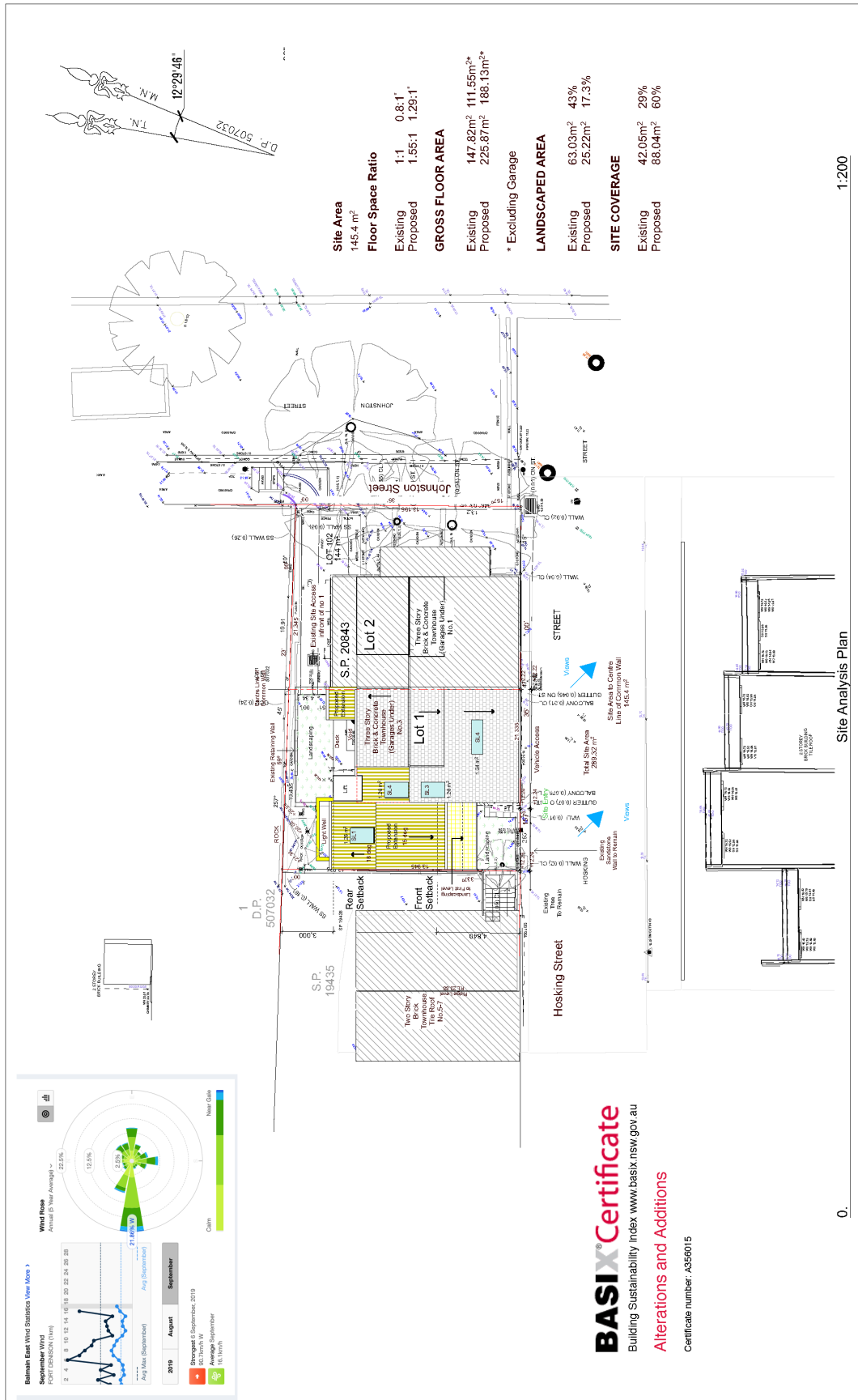
WWW.DIAL1100.BEFOREYOUDIG

DIAL 1100 BEFORE YOU DIG

CALL 1100 TO GET THE LOCATION AND DEPTH OF ALL UTILITIES IN YOUR AREA.







<p>Plot Date: 13/12/19</p> <p>Project: Proposed Addition & Alterations Site: 3 Hosking Street, Balmain East NSW 2041</p>		<p>client: Design4space SP 20843</p> <p>designed by: apwdesign ABN 21 050 574 697 Unit 1/2, 7-9 Blighmore Road, Balmain NSW 2041 02 8918 4317 0423 041002 Sydney - Newcastle</p>	
<p>Amendments: A Council Letter Dated 2.1.12.19</p>		<p>The design contained on these documents are the property of apwdesign and may not be distributed and/or reproduced without the written consent of apwdesign. It is the responsibility of the builder to check and verify all dimensions on-site prior to the commencement of construction. Do not scale drawing. Do not use drawing for construction purposes unless stamped by a suitably qualified and trained professional.</p>	
<p>status: DA</p> <p>scale: As noted (A3 sheet)</p> <p>revision: 01</p> <p>drawn by: nlg</p> <p>checked by: dms</p> <p>file: 01_281_SPA</p> <p>of: 16</p>			



Fixtures and systems

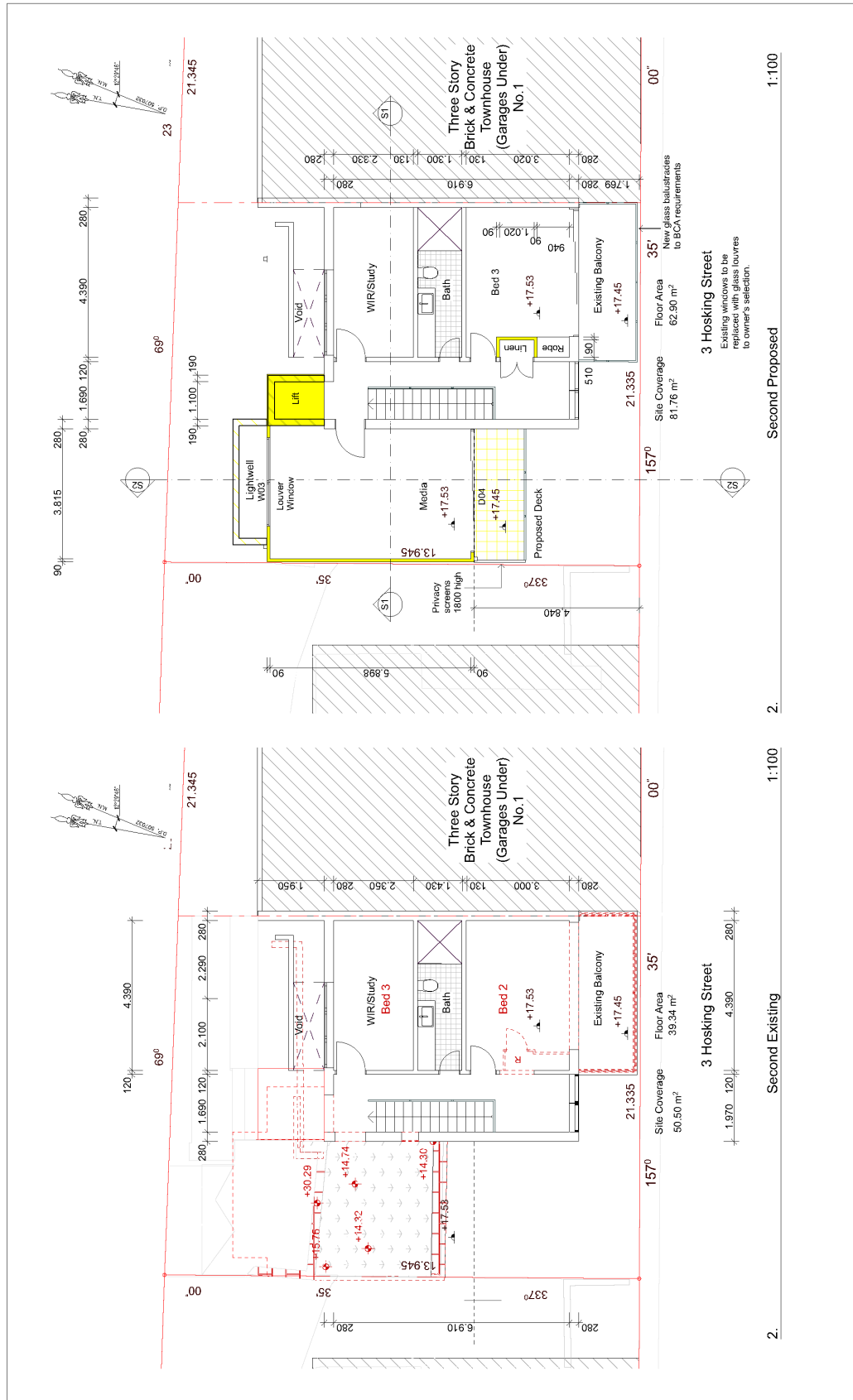
- Lighting**
 The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light emitting diode (LED) lamps.
- Fixtures**
 The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.
 The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.
 The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.

Construction

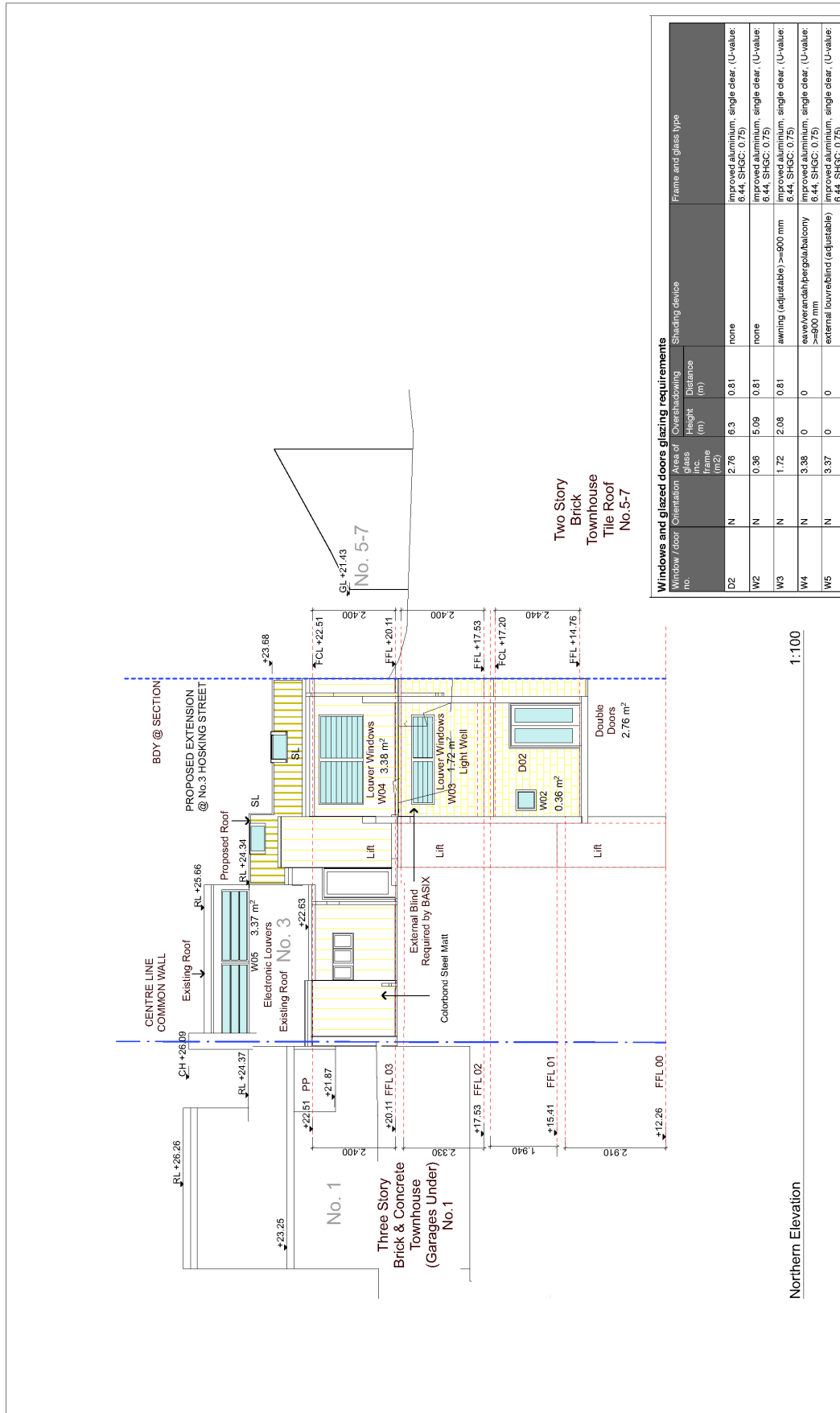
Insulation requirements
 The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m², b) insulation specified is not required for parts of altered construction where insulation already exists.

Construction	Additional insulation required (R-value)	Other specifications
concrete slab on ground floor.	nil	
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)	
external wall: concrete block/plasterboard	R1.18 (or R1.70 including construction)	
raked ceiling, pitched/skillion roof: framed ceiling R2.50 (up), roof: raked/sarking		medium solar absorbance 0.475 - 0.70

<p>Plot Date: 13/12/19</p> <p>Amendments:</p> <p>Rev. Detail:</p> <p>A Council Letter Dated 21.12.19</p>	<p>Project:</p> <p>Proposed Addition & Alterations</p> <p>the Sections</p>	<p>client</p> <p>Design4space</p> <p>SITE 3 Hosking Street Balmain East, NSW 2041.</p> <p>SP 20643</p>	<p>designed by</p> <p>apwdesign</p> <p>ABN 21 058 574 807</p> <p>Unit 17, 7/9 Bayswater Road Balmain NSW 2041. 02 9818 4317 0423 041002 Sydney - Newcastle</p>	<p>status DA</p> <p>scale As noted (A3 sheet)</p> <p>revision drawn nlg designed dks</p> <p>file 09 281 SA of 16</p>
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Plot Date: 13/12/19 Amendments: Rev: Detail: A Council Letter Dated 21.12.19		Project: Proposed Addition & Alterations to Second Floor Plan		client Design4space site 3 Hosking Street Balmain East NSW 2041.	designed by apwdesign Unit 7/503 Jane St Unit 17/78 Bridgegrove Road Balmain East NSW 2041 02 9818 4317 0423 041002 Sydney - Newcastle	This design, contained on these documents, are the property of apwdesign and may not be distributed and/or reproduced without express permission from apwdesign. It is the responsibility of the client to ensure that all dimensions on-site prior to the commencement of work and to notify apwdesign of any changes. This drawing is not a scale drawing. Do not use drawing for construction purposes unless stamped by council, water board and mine subsidence.	status DA scale As noted (A3 sheet) revision drawn nlg designed dhs file 04_281_SFP_A OF 16
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1:100

Northern Elevation

Plot Date: 13/12/19	Project: Proposed Addition & Alterations to the North Elevation	client: Design4space	designed by: apwdesign	status: DA
Amendments: Rev: j Detail: A	Council Letter Dated 21.12.19	site: 3 Hosking Street, Balmain East, NSW 2041	ARB 21 088 04 827 Unit 17, 76 Burrows Road, Balmain, NSW 2041 02 9818 4317 0423 041002 Sydney - Newcastle	scale: As noted (A3 sheet)
				revision: draw nlg designed ods file 06 281 NA of 16



Colorbond Steel Roofing



Colorbond Steel Matt Wall Sheeting



Aluminium Black powder coated privacy Screen



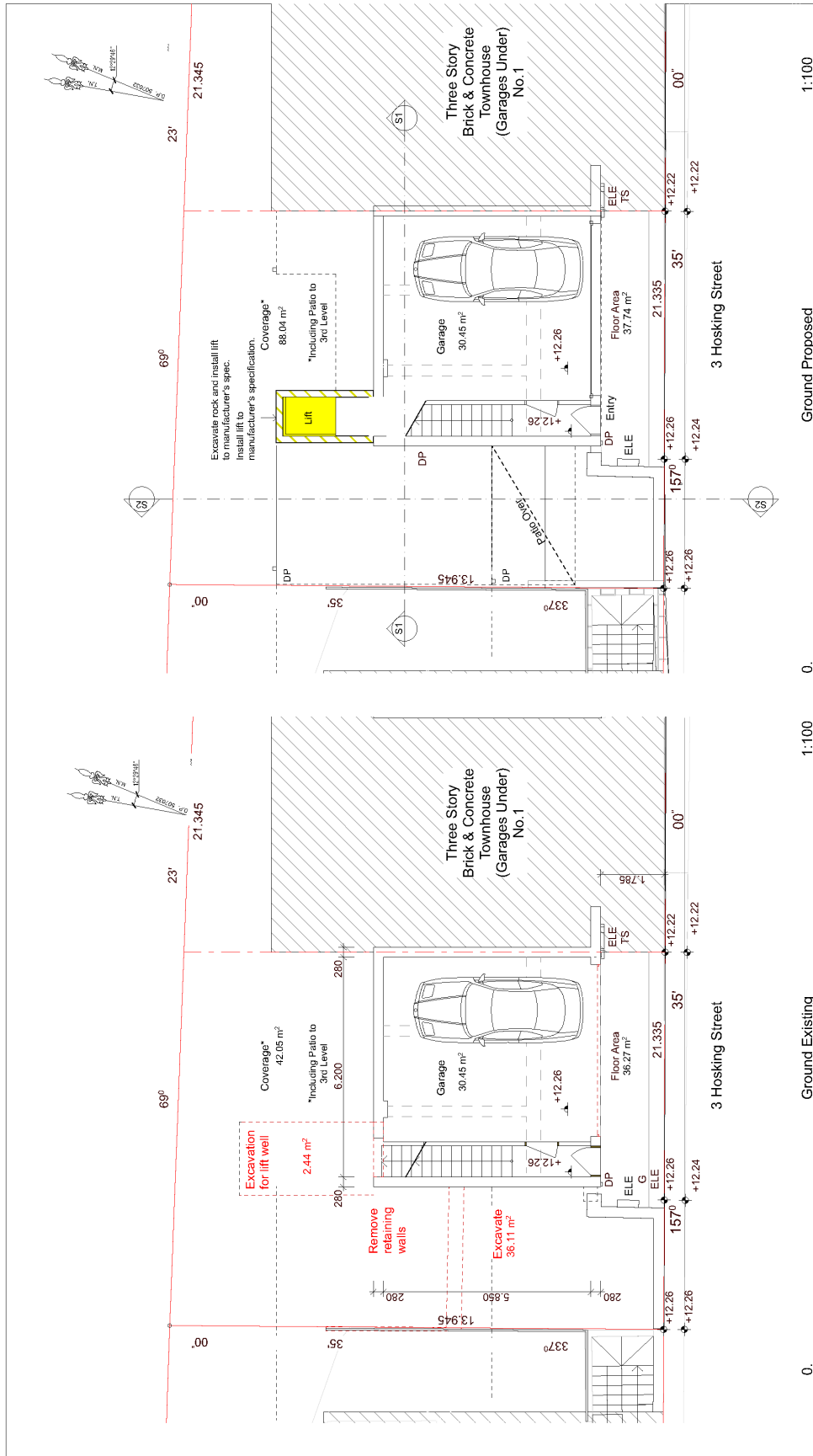
Aluminium Black powder coated doors



Aluminium Black powder coated doors

Materials and Finishes

Plot Date: 13/12/19 Amendments: Rev: Detail: A Council Letter Dated 21.12.19		Project: Proposed Addition & Alterations in the Materials and Finishes		client Design4space site 9 Hosking Street Balmain East NSW 2041, SP 20643		designed by apwdesign Unit 17, 28 Beckroon Road Balmain NSW 2041 02 9818 4317 0422 041002 Sydney - Newcastle		The design contained on these documents are the property of apwdesign and may not be distributed and/or reproduced without the written consent of apwdesign. It is the responsibility of the builder to check and verify all dimensions on-site prior to the commencement of construction. Do not use for reproduction of any errors and omissions. Do not scale drawing. Do not use drawing for construction purposes unless stamped by council, never build out into substance.		status DA scale As noted (A3 sheet) revision drawn nlg designed dds file 01 281 MF A of 16	
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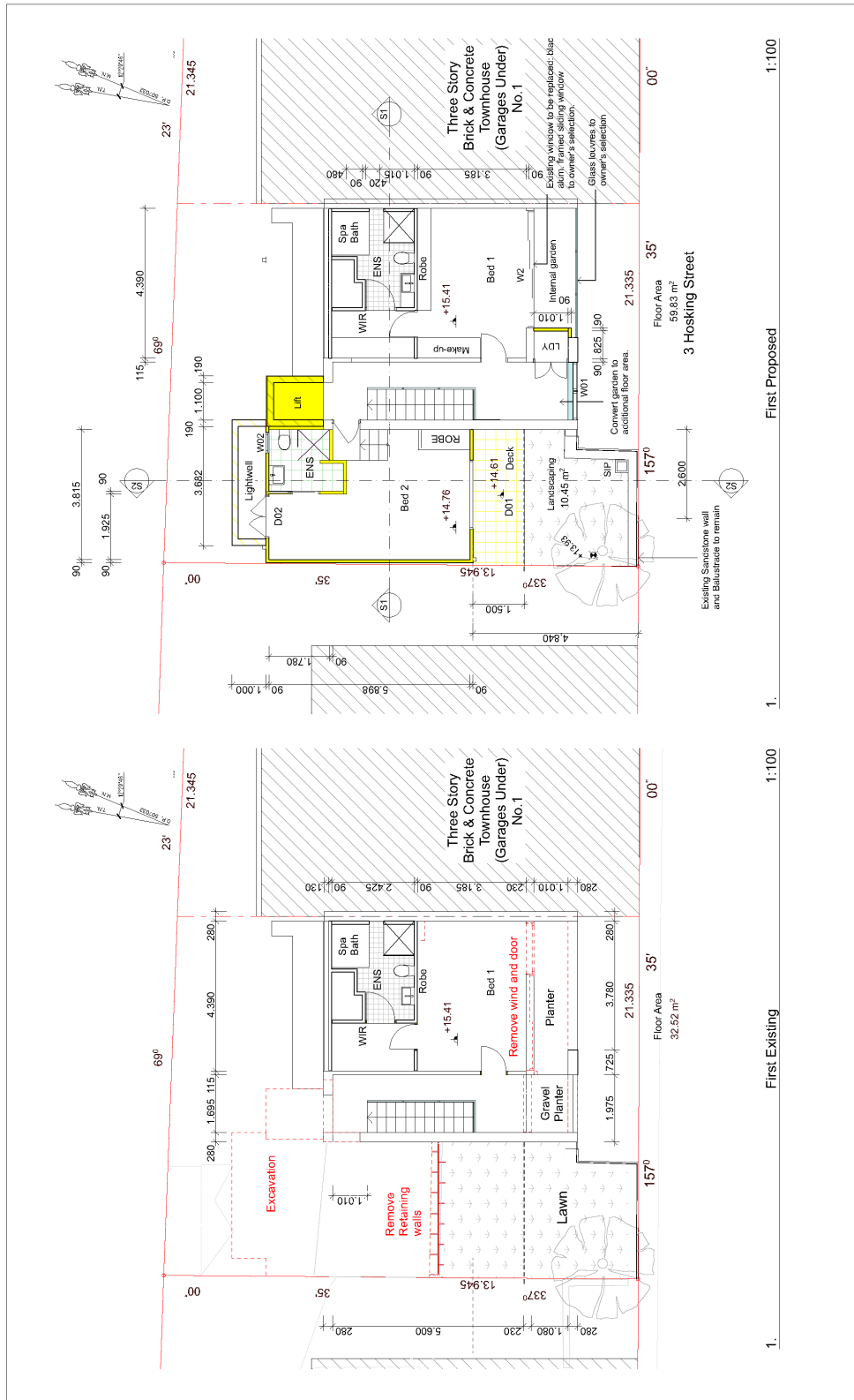


0. 1:100 Ground Existing 1:100 Ground Proposed

Plot Date: 13/12/19 Amendments: Rev: Detail: A Council Letter Dated 21.12.19		Project: Proposed Addition & Alterations in the Ground Floor Plan		client: Design4space S/O 3 Hosking Street Balmain East NSW 2041,		designed by: apwdesign Unit 17, 7-9 Redgrave Road Balmain NSW 2041 02 898 4377 02 281 6282 Sydney - Newcastle		status: DA scale: As noted (A3 sheet) revision: none drawn: [blank] checked: [blank] file: [blank]	
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02 281 GFPA of 16



Plot Date: 13/12/19	Project: Proposed Addition & Alterations to the First Floor Plan	client: Design4space	designed by: apwdesign	status: DA
Amendments: Rev: Detail	Site: 3 Hosking Street, Balmain East, NSW 2041.	Site: 3 Hosking Street, Balmain East, NSW 2041.	APR 21 058.574.907 Unit 17, 8 Bridgeway Road Balmain NSW 2041 02 23 411002 Sydney - Newcastle	scale: As noted (A3 sheet)
A Council Letter Dated 21.12.19				revision: nbg drawn: nbg designed: dfts file: 03_281_FFP_A OF 16

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Attachment C- Clause 4.6 Exception to Development Standards



3 Hosking Street, Balmain East

Proposed alterations and additions to existing dwelling
Inner West Council Development Application D/2019/371

Clause 4.6 written requests | Floor space ratio standard

Prepared for Design4Space
Issue A – J19150
8 February 2020

MB Town Planning Pty Ltd ACN 161 704 927 as Trustees for Durney Benson Family Trust trading as MB Town Planning
Suite 10, 895 Pacific Highway, PYMBLE NSW 2073 | PO Box 415, GORDON NSW 2072
www.mbtownplanning.com | info@mbtownplanning.com | (02) 9144-7968

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

1. Introduction

This is a written request to accompany an amended development application for alterations and additions to the existing dwelling at 3 Hosking Street, Balmain East. This written request seeks to justify the development’s contravention of the development standard within *Leichhardt Local Environmental Plan 2013* concerning floor space ratio.

This written request is based upon architectural details by APW Design, dated 21 December 2019, including:

01	Site plan and analysis plan	10	Shadows 9am
02	Ground floor plan	11	Shadows 10am
03	First floor plan	12	Shadows 11am
04	Second floor plan	13	Shadows 12 noon
05	Third floor plan	14	Shadows 1pm
06	North elevation	15	Shadows 2pm
07	South elevation	16	Shadows 3pm
08	Western elevation	1	Materials and finishes
09	Sections		

Part 2 describes the proposed contravention of the development standard and describes the key elements of clause 4.6 of SLEP2012. Part 3 sets out that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Part 4 sets out that there are sufficient environmental planning grounds to justify contravening the development standard. Part 5 sets out that the proposed development is in the public interest because it is consistent with the objectives of the particular standard and with the objectives for development within the zone within which the development is located. Part 6 provides a brief conclusion.

2. Proposed contravention of the development standards

The proposed development is the addition of a three storey element to the western side of an existing dwelling that is attached by the side to another dwelling to its east, along with associated demolition and site preparation works, other works and associated internal alterations.

The proposal extends into an existing unbuilt-upon area within the westernmost 4.0 metres (out of a 10.8 metre site width) along the 13.9 metre length of the site. The proposal leaves the front 2.5 metres of that area as a landscaped area, provides a rear 2.0 metre setback (although not a landscaped area because that area comprises a rock outcrop that does not support vegetation). The proposal also retains a 16.8 square metre existing landscaped area at the rear of the existing building. The proposed extension has a three storey scale, as does the existing part of the dwelling.

The existing gross floor area of the development is 111.55 square metres. The proposed gross floor area is 188.13 square metres. The site area is 145.4 square metres.

The existing floor space ratio is 0.80:1. The proposed floor space ratio is 1.29:1.

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

Clause 4.4(2) of *Leichhardt Local Environmental Plan 2013* (LLEP2013) relates to floor space ratios and makes reference to the *Floor Space Ratio Map*. That map shows the subject site as subject to a maximum permissible floor space ratio of 0.5:1 and as being bordered in red and labelled "Area 3". Clause 4.4(2B) provides that:

...despite subclause (2), the floor space ratio for development for the purpose of residential accommodation –

...

(b) *on land shown edged red or green on the Floor Space Ratio Map is not to exceed –*

(i) *in the case of development on a lot with an area of less than 150 square metres – 1.0:1, or*

(ii) *...*

...

The proposal exceeds a floor space ratio of 1.0:1 by 0.29:1, which is 29 percent of a compliant amount.

3. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It would be unreasonable for the development to comply with the development standard because the proposed development results in a significantly better urban planning outcome than the existing circumstance whereby the western area of the subject site is an undeveloped, inaccessible, poorly managed and practically unused area and because the proposed development is the optimal way for that area of the site to be properly used. It would also be unreasonable for the development to comply because the form of development that is proposed is consistent with the most recent forms of development that are established in the streetscape.

It would be unnecessary for the development to comply with the development standard because the proposal does not cause unacceptable impacts but does cause positive impacts.

In relation to the better urban planning outcome that would be created, Figure 1 below shows the existing building on the subject site, and Figure 2 below shows the undeveloped area of the site. Figure 3 show that same undeveloped area from a raised position at the back of the site. That undeveloped area is formed by a 2.2 metre high sandstone retaining wall across the street boundary, with a glazed balustrade on top of it. There is a tree approximately 1.0 metre back from the inner edge of that retaining wall.

The proposed development would be set back 2.5 metres from the front boundary within that area and would retaining the sandstone wall and the tree and landscaping in that area. The lowest level of the proposed extension would have a front balcony facing onto that landscaped area so that it could be properly maintained and cared for.

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East



Figure 1: Existing dwelling on the subject site, marked up to indicate the other dwelling in the pair. The view is from Hosking Street.

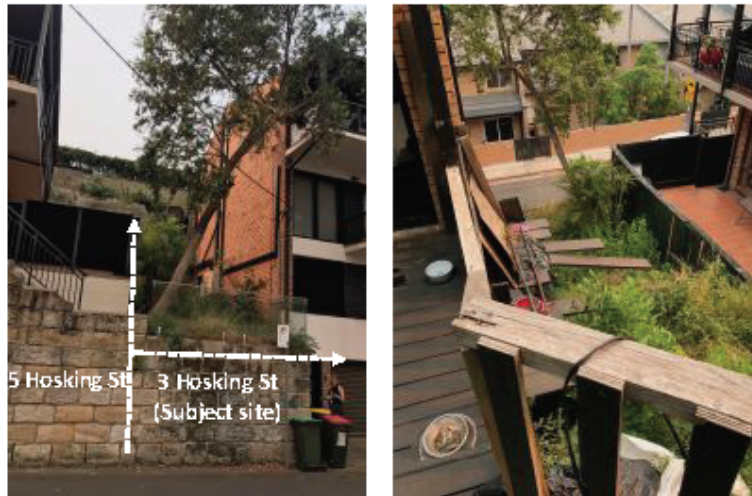


Figure 2: Undeveloped area of the site as viewed from Hosking Street (left) and from a raised position at the rear of the site (right)

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

The adjoining development to the west of the subject site, at 5 Hosking Street, has a similar semi-detached form, but its eastern side setback area presents a rendered masonry retaining wall to the street with a colourbond fence on top.

The predominant character of developments, including more recently constructed developments, along Hosking Street are built up to the side boundaries. That includes developments at 11, 13 and 15 Hosking Street (Figures 3, 4 and 5).

Those, more recent, high quality developments reflect the expected, appropriate form of development for this locality. They have a strong streetscape presence, defining the street edge and avoiding the presence of ambiguous, leftover spaces.



Figure 3: Existing dwelling at 11 Hosking Street

Revised clause 4.6 written request | Floor space ratio | 3 Hasking Street, Balmain East



Figure 4: Existing dwelling at 13 Hasking Street



Figure 5: Existing dwelling at 15 Hasking Street

b

Revised clause 4.6 written request | Floor space ratio | 3 Hasking Street, Balmain East

The existing undeveloped area of the site supports soft landscaping, and that is positive for the streetscape. However, that streetscape benefit is provided by the existing tree near to the front of that area. Areas further to the rear don't make a further positive streetscape contribution. All that they contribute to is a lack of spatial definition of the streetscape. They present ambiguously as to their ownership and they also present as neglected areas. Those areas will tend to be neglected, and have the potential to accumulate rubbish and to be overgrown and hazardous, because they are very difficult to access from the subject site. The existing access to the area is non-compliant with appropriate building standards and is inconsistent with proper occupational health and safety requirements (Figure 6).



Figure 6: Access points from the existing dwelling house to the unbuilt upon area to the eastern side

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

The proposed development complies with the LLEP2013 landscaped area and site coverage development standards. Therefore, the reduction in the extent of the landscaped area is not in any way inconsistent with the expected amount of landscaped area under the town planning controls.

Given that the proposal provides the required landscaped area and does not exceed the site coverage standard, and noting that the development complies with the height standard (although the existing development exceeds that standard) the proposed departure from the floor space ratio standard must reflect a greater scale than generally anticipated by the standard. An objection to the proposed contravention of the floor space ratio standard would be to the scale of the development rather than to landscaped area or site coverage. However, the scale of the proposed development is consistent with that of other developments along the northern side of Hosking Street. The proposed ridge level, adjacent to 5 Hosking Street, is at RL23.68, stepping down from the ridge level of the adjacent existing part of the dwelling at RL24.34. The ridge level of the dwelling at 5 Hosking Street is at RL23.88 and the proposed development is below that ridge level, albeit only marginally. The ridge level at 5 Hosking Street is for a low pitching roof form. Given those comparative ridge levels, the scale of the proposed addition clearly is consistent with the scale of 5 Hosking Street, as well as having a stepping-down scale from that of the existing building on the subject site.

When that comparative scale is considered in the context of the whole northern side of Hosking Street, it is evident that the scale of the proposal is consistent with that streetscape. That is evident from Figure 6, which provides an oblique aerial photograph of the streetscape. Figure 6 is marked up to show the subject site and to show the part of 5 Hosking Street that has a ridge level of RL23.68 – which is higher than the ridge level of the proposed development. From that image, it can be seen that the scale of the development at 5 Hosking Street is consistent with the scale of other developments along the northern side of Hosking Street, except that developments at the western end of Hosking Street are massed at their upper levels more towards the street.

The proposed uppermost level is set back 4.84 metres from the street, but with a flat, front upper verandah roof presenting its fascia 2.7 metres from the street, below the ridge level. The proposed addition is considerably lower than the existing building on the site that is being added to and is recessed back from the street, with landscaping provided in front to provide visual softening. The main difference between the existing and proposed buildings is that the proposed development provides clarity in the streetscape, with the building properly addressing the street and providing for ownership of what is currently a leftover, neglected space. The proposal does not have as hard a street edge or as great a scale as the predominant developments within the streetscape. However, it still achieves an appropriate streetscape presence and definition. It does so at the same time as providing soft landscaping in presentation to the street and retaining the existing tree. In those respects, the proposal provides the optimal streetscape outcome for the subject site.

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East



Figure 6: Oblique image of 5 Hosking Street, marked up to indicate the ridge level of 5 Hosking Street that is higher than that of the proposed development. The view is in a northwest direction (Source: NearMap)

On the foregoing grounds, it may be determined that the proposed development results in a better streetscape outcome than exists and that the proposed development provides for better utilisation of the part of the site that is presently unbuilt-upon.

As set out in the submitted statement of environmental effects, the proposal complies with the applicable solar access standards in terms of impacts to adjoining properties. The proposal casts most of its shadowing onto Hosking Street rather than to adjoining properties, which have their main usable areas of open space either as street-facing balconies or within rear north-facing areas. The proposal does not cause any overlooking impacts as the proposed western side wall would be nil set back. The proposal does cause positive impacts by utilising and properly managing an area that is not able to be properly managed at present and that has the tendency to be neglected and hazardous. The proposal also has positive internal amenity impacts by improving the usability of internal spaces within the dwelling house. In that regard, the existing building on the site occupies four levels, because of the difficult nature of the steep site where it is located. That means that internal spaces are awkward in terms of their dimensions. The proposal introduces a lift, which improves accessibility for the residents as they will age over time, and also improves the internal dimensions and usability of rooms.

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

Given the foregoing, it would be unreasonable and unnecessary for the proposed development to be required to comply with the density standard. In that regard, the departure from the development standard arises from the construction of the extension that is described above, which includes floor areas the inclusion of which cause the contravention.

4. Environmental planning grounds to justify contravening the development standard

The following objects of the *NSW Environmental Planning and Assessment Act, 1979*, set out in Section 1.3, are of relevance to the present consideration:

(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,

(b) ...

(c) to promote the orderly and economic use and development of land,

(d) ...

(e) ...

(f) ...

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) ...

(j) ...

In relation to (a) above, approval of the proposal would be sound because it would represent proper management of scarce land resources. In that regard, the area where the proposed development is to be constructed is a poorly utilised area that will tend to become neglected and to detract from the amenity and safety of residents. The proposal is for a form that steps down from the scale of the existing development on the site and that complies with the applicable landscaped area and site coverage controls. That form fits in appropriately to the streetscape and is an appropriate, proper use of land in a high demand, highly accessible location. It is therefore consistent with the social and economic welfare of the community for the land to be used in the way that is proposed.

In relation to (c) above, the current inaccessible character of the area of land concerned represents a disorderly and uneconomic outcome and the proposal provides for orderly and economic use and development of land.

In relation to (g) above, the proposal creates an excellent streetscape outcome and also improves the internal amenity of the existing dwelling without causing significant

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

detriment to the amenity of adjoining properties or to the public domain. The proposal therefore represents a good design and amenity outcome for the built environment.

In relation to (h) above, the proposal provides for appropriate access to the unbuilt upon area of the site, which is presently unable to be appropriately accessed and managed. The proposal therefore facilitates appropriate protection of the health and safety of the residents of the development.

The above outcomes are facilitated by an appropriate form of development on the unbuilt area of the site – a form that steps down in scale from the form of the main dwelling. The proposal also provides for appropriate proportions of rooms within the dwelling so that the dwelling will have a functional internal configuration. The achievement of those outcomes relies upon the proposed form of development and the proposed amount of floor space. The achievement of those outcomes therefore requires a form of development such as is proposed exceeding the maximum permissible floor space ratio for the site.

Having regard to the foregoing, the proposed development achieves the outcomes intended by the NSW environmental planning system and therefore there are substantial environmental planning grounds that justify the proposed contravention of the floor space ratio standard.

5. Consistency with the objectives of the standard and of the zone

The objectives of the floor space ratio development standard are set out in clause 4.4(1)(a) of LLEP2013 and are to ensure that residential accommodation –

- (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
- (ii) *provides a suitable balance between landscaped areas and the built form, and*
- (iii) *minimises the impact of the bulk and scale of buildings.*

In relation to the desired future character of the area, Part C2.2.2.2 of *Leichhardt Development Control Plan 2013* (LLDCP2013) describes the existing and desired future character of East Balmain. For the purposes of that part, the site is within the “South of Darling Street” sub-area. It is also noted that the site is part of the *Balmain East Heritage Conservation Area* which also describes what is intended for the area.

The description of the area notes that whilst the area includes extensive landscaped edges and parks which give a sense of the natural environment, the landscape is largely a constructed one. The key matters relevant to the desired future character are responded to as follows:

- C1 Development in the neighbourhood should step with the contour of the land.*

Comment: The nature of stepping with the topography of the site is already established by the existing development on the site and the proposal responds accordingly.

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

C2 The rarity of the early Victorian, but Georgian in style, nucleus of buildings in Balmain East requires stricter controls than elsewhere on the peninsula. As a representation of early Sydney, it is of great importance to the history of the City as a whole, alongside other historic precincts such as the Rocks, and the Colonial precincts of Parramatta. While the later phases of buildings contribute to its character, and represent the phases of development, the earliest layer needs the most careful treatment. Accordingly, the scope for new development is limited and the task is largely conservation of the existing fabric while allowing complementary and incremental change.

Comment: The subject site does not contain such buildings.

C3 Maintain the individual patterns of architectural style along each street.

Comment: The northern side of Hosking Street is characterised by substantial, traditionally proportioned buildings of three to four storeys. The existing building on the subject site is of a 1980s or 1990s style and is less substantially and less traditionally proportioned than the characteristic buildings in the street. There is limited opportunity for the proposed development, which is an extension, to redefine the architectural style of the building. However, the proposal improves upon the existing architecture by better addressing and defining the street, as do the characteristic buildings of the street. The proposal is therefore consistent with the maintenance of individual patterns of architectural style along the street.

C4 Preserve view lines for existing development.

Comment: Development to the rear, which may have water views to the south, is raised up high enough that the proposed development will not impact those views.

C5 The predominant scale of development is two storeys.

Comment: As discussed elsewhere in this written request, the proposal is consistent with the predominant scale within the street.

C6 Maintain the character of the area by keeping development consistent in architectural style, building form and materials.

Comment: The proposal maintains consistency with the established materials for the building.

C7 Prevent the disruption of footpaths by discouraging additional driveway crossings.

Comment: The proposal does not disrupt footpaths through any new vehicle crossings.

C8 All development is to be sympathetic to the historic and conservation values of the neighbourhood.

Comment: The street is not characterised by historic buildings.

C9 Maintain mature trees on public and private land.

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Comment: The proposal maintains the existing tree at the front.

C10 Preserve the integrity of the escarpments. Development around escarpments is to avoid cutting, changing the topography or removing associated vegetation around the escarpment. Buildings and structures are to avoid dominating the escarpment.

Comment: The proposal does not disturb any escarpment. The top of the building is below the escarpment.

C11 This area is sensitive to overshadowing and view loss. All development activity should avoid overshadowing and blocking views.

Comment: Overshadowing is principally to the street and does not affect residential amenity. The proposal does not block views.

C12 New or altered buildings should be sympathetic to the conservation values of the area.

a. in this regard all structures built prior to 1850 are rare and should be conserved...

Comment: The proposal does not affect any buildings built prior to 1850.

b. additional driveway crossings are discouraged;

Comment: The proposal does not involve any new driveway crossings.

c. new development is to step with the land contours and to respect the view lines of surrounding properties;

Comment: The proposal is consistent with established stepping down the site.

d. development visible from the water is to be designed to preserve the conservation values of the area when viewed from the water. Photomontage details of the proposal, as viewed from the water are to be submitted with development applications;

Comment: The subject site is not highly visible from the water because downslope buildings tend to obscure it.

e. new development is to reflect the side setbacks established in the immediate vicinity of the site (eg freestanding or terrace form). This control seeks to encourage the provision of sight and water views between buildings. This may require side gates to be of an open nature to permit the maintenance of side walls; and

Comment: The proposal reflects the predominant pattern of developments along the northern side of Hosking Street which have nil side setbacks. The proposed elimination of the side setback on the subject site does not affect any views from the adjoining property to the west at 5 Hosking Street. There are no views obtained along the western side setback area of the subject site.

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f. front setbacks shall be generally 0-2m, except where the particular context requires a deeper setback. Narrow verandahs built to the street frontage are generally appropriate to narrow streets such as Datchett, Little Nicholson and Union Streets.

Comment: The proposed front setback to the addition is appropriate to allow retention of the existing tree.

C13 Appropriate materials are shaped sandstone, painted timber, and rendered or bagged masonry. Steel roofing in a 'gull grey' is the appropriate roof material in most circumstances, with slate replacing slate otherwise.

Comment: The proposal matches established materials for the existing building.

C14 Fencing and balustrading shall be generally vertical metal or timber picket style, without ornamentation. Front fencing shall be open and not more than 1.2m high.

Comment: The proposal does not involve new front fencing.

C15 Verandah and balcony structures shall be timber or metal or a mix of both, and not include masonry elements.

Comment: The proposed front verandah uses a glazed balustrade which is appropriate because it is set well back from the street and is in a raised position – and is consistent with other materials used in the street.

C16 Mature trees and other significant vegetation between development and the waterfront is to be preserved.

Comment: The proposal retains the existing tree at the front of the site.

C17 Escarpments and stone walls are to be preserved. Construction on escarpments or cutting into stone walls (or into rock faces) is to be avoided.

Comment: The proposal does not affect any escarpment. The proposal involves limited excavation, but will not discernibly affect the perception of the topography of the locality.

C18 Development overlooking open space...

Comment: Not applicable.

C19 Development is to be consistent with any relevant Sub Area objective(s) and condition(s).

Comment: That matter is discussed below.

The relevant controls for the South of Darling Street Sub Area are responded to as follows:

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

C1 Any development in this area is to respect the tight knit and modest urban fabric consisting primarily of timber cottages and narrow streets. Where the predominant scale of development is two storey, then new development is to maintain the existing scale.

Comment: As discussed elsewhere in this written request, the proposal maintains a consistent scale with that of other buildings in the streetscape.

C2 Recognise and preserve the amenity value for local residents of the green corridor formed by the rear yards in this area.

Comment: The proposal does not affect any rear yard green corridor.

C3 Recognise the limitations on future development caused by narrow roads, extremely limited parking and inadequate turning circles for vehicles as well as the lack of footpaths in this area. Such limitations will render some otherwise acceptable developments unsuitable for this area.

Comment: The proposal does not give rise to any difficulties associated with vehicular access.

C4 The maximum building wall height is 3.6 m with pitched roofs allowing modest first floor additions within the roof form. Development is to step closely with the topography.

Comment: The established scale on the subject site and in the locality is greater than that and the proposal is therefore consistent with that greater scale. The proposed addition has a lower, stepping down scale in comparison to the existing building on the subject site.

C5 On the lower slopes a maximum building wall height of 6m is permissible, where the existing scale is greater than single storey. All developments are subject to limitations based on obstructions to views.

Comment: As for the preceding matter.

C6 The established rear building line between 14B and 20 Union Street...

Comment: Not applicable.

C7 Datchett, Little Nicholson, Union and Vernon Streets are very...

Comment: Not applicable.

C8 Development is to be consistent with any relevant objectives and controls within the Balmain East Distinctive Neighbourhood.

Comment: Those are discussed elsewhere in this written request.

Having regard to the foregoing, the proposal is compatible with the desired future character for the locality. The proposal is therefore compatible with objective (i) of the development standard.

Revised clause 4.6 written request | Floor space ratio | 3 Hosking Street, Balmain East

In relation to item (ii), the proposal complies with the applicable landscape area and site coverage development standards.

In relation to item (iii), the bulk and scale of the building does not cause unacceptable streetscape or amenity impacts for the reasons set out elsewhere in this written request. The proposal therefore satisfies that objective.

The site is within the R1 General Residential zone. The objectives of that zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposal provides for a more appropriate internal configuration for the existing dwelling which currently has constrained internal dimensions. The proposal also facilitates the installation of a lift into the building and provides appropriate accessibility within the dwelling which will facilitate aging in place. The proposal therefore contributes to the first objective.

The proposal is not inconsistent with the provision of a variety of housing densities and is therefore consistent with the second objective.

The third objective is not relevant to the proposal.

The proposal is not inconsistent with the fourth zone objective.

The proposed housing is compatible with the character, style and orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas as discussed elsewhere in this written request.

The proposal complies with the required landscaped area provision and is therefore consistent with the sixth objective.

The proposal does not affect the established allotment pattern in relation to the seventh zone objective.

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The proposal does not adversely affect the amenity of surrounding residents or the streetscape, as discussed elsewhere in this written request.

Having regard to the foregoing, the proposed development is consistent with the objectives of the standard and of the zone in which the site is located.

6. Summary and conclusion

The proposed development exceeds the maximum permissible floor space ratio standard. However, it is demonstrated in this written request that compliance with the standard is unreasonable and unnecessary in the circumstances of the case. It is demonstrated that there are environmental planning grounds supporting the proposed contravention. Approval is in the public interest because the proposal is consistent with the objectives of the standard and for the zone within which the subject site is located.



Matthew Benson
Principal - MB Town Planning

Attachment D - Statement of Significance - Balmain East Conservation Area

