





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA201900427
Address	353 Marrickville Road MARRICKVILLE NSW 2204
Proposal	To carry out alterations and additions to existing dwelling. Construction of a first floor attached secondary dwelling.
Date of Lodgement	10 December 2019
Applicant	Mr Robert Gsbn Studio
Owner	Felicity M Fenner Rodney B Pople
Number of Submissions	2
Value of works	\$271,000
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	<ul style="list-style-type: none"> • Non-compliance with gross floor area for secondary dwellings • Non-compliance with Clause 4.4 Floor space ratio
Recommendation	Approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
	
LOCALITY MAP	
Subject Site	  
Notified Area	 

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the existing dwelling, and construction of a first floor attached secondary dwelling at 353 Marrickville Road, Marrickville. The application was notified to surrounding properties and 2 submissions were received in response to the notification.

The main issues that have arisen from the application include:

- Non-compliance with the maximum floor space ratio per Clause 4.4 of *MLEP 2011*; and,
- Non-compliance with the maximum floor area for secondary dwellings per Clause 5.4(9) of *MLEP 2011*.

The total FSR non-compliance is considered acceptable given the proposal meets the relevant objectives of the R2 Low Density Residential zone and Clause 4.4, and is unlikely to result in any significant adverse impacts to adjoining properties. The application can be supported in this regard.

The non-compliance relating to the floor area of the secondary dwelling is a result of the applicant not calculating the gross floor area in accordance with the definitions contained in *MLEP 2011*; the stair at the first floor has been incorrectly excluded from the gross floor area. Notwithstanding, subject to the recommended condition, which requires 6.6m² of gross floor area from the secondary dwelling to be deleted to ensure compliance with Clause 5.4(9), the application can be supported.

2. Proposal

The application seeks development consent for alterations and additions to the existing dwelling and the construction of a new first floor attached secondary dwelling. The secondary dwelling contains two bedrooms, a bathroom, kitchen, dining, living area, and balcony. Minor alterations are proposed at the ground floor of the existing principal dwelling to provide stair access to the secondary dwelling.

3. Site Description

The subject site is located on the northern side of Marrickville Road, close to the intersection of Woodbury Street, Marrickville. The site consists of one allotment which is generally rectangular in shape. The site has a frontage to Marrickville Road of 12.19 metres and a total area of 490.2m².

The site supports a single storey detached dwelling and a detached shed in the rear yard. To the east and west are single storey detached dwellings, while to the north is a two storey detached dwelling.



Figure 1: zoning map (R2 Low Density Residential)

4. Background

4(a) Site history

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

Subject Site

Not applicable.

Surrounding properties

Property	Application	Proposal	Decision & Date
1-3 Woodbury Street	CDC201400062	Two storey residential dwelling and secondary dwelling	Approved 18 June 2014

4(b) Application history

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

Date	Discussion / Letter / Additional Information
10 December 2019	Application lodged.
18 December 2019 to 24 January 2020	Application notified.
25 February 2020	Council requested that additional information and amended plans

	be submitted addressing the following issues: <ul style="list-style-type: none"> • Gross floor area • Building envelope • Private open space
17 March 2020	Amended plans were submitted by the applicant, which addressed the building envelope and private open space concerns. However, the amended proposal remained over the maximum floor area requirement for the secondary dwelling component and over the total FSR for the site.
16 April 2020	Council requested that plans be submitted demonstrating how the gross floor area had been calculated for the proposal.
20 April 2020	Gross floor area calculation plans were submitted by the applicant.
22 May 2020	Council requested that the gross floor area of the secondary dwelling be reduced by 7.5m ² to comply with the maximum permissible per <i>MLEP 2011</i> . It was requested that a Clause 4.6 variation request also be submitted to address the total FSR non-compliance.
15 June 2020	A Clause 4.6 variation request was submitted by the applicant.

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 (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

The following provides further discussion of the relevant issues:

5(a)(v) *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. MDCP 2011 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)(vi) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(vii) Marrickville Local Environment Plan 2011 (MLEP 2011)

The site is zoned R2 Low Density Residential under the *MLEP 2011*. *MLEP 2011* defines the development as:

“**dwelling house** means a building containing only one dwelling”,

and,

“**secondary dwelling** means a self-contained dwelling that—
 (a) is established in conjunction with another dwelling (the principal dwelling), and
 (b) is on the same lot of land as the principal dwelling, and
 (c) is located within, or is attached to, or is separate from, the principal dwelling.”

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R2 Low Density Residential zone.

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.4 – Controls relating to miscellaneous permissible uses
- Clause 6.5 – Development in areas subject to aircraft noise

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

Standard	Proposal	Non-compliance	Complies
Height of Building Maximum permissible: 9.5m	7.9m	–	Yes
Floor Space Ratio Maximum permissible: 0.5:1 (245.1m ²)	0.6:1 (293m ²)	20% (48m ²)	No

Clause 4.6 Exceptions to Development Standards

As outlined in the table above, the proposal results in a breach of Clause 4.4 – Floor space ratio of *MLEP 2011*.

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of *MLEP 2011* by 12.4% (30.3m²).

It is noted that the variation being sought by the applicant differs from that calculated by Council as demonstrated in the table above as the applicant’s calculation of gross floor area has excluded the stairs at the first floor of the secondary dwelling, and the existing shed located in the rear yard.

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 *MLEP 2011* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of *MLEP 2011* justifying the proposed contravention of the development standard, which is summarised as follows:

- The proposal is consistent with the objectives of the zone and provides high quality internal and external amenity for the occupants.
- The proposal will have minimal visual, amenity, privacy, and overshadowing impacts on the surrounding buildings and is of a bulk, scale, and form that is in keeping with the character of the area.
- The proposal complies with the applicable building height, setback, and private open space requirements, and results in an acceptable intensification of the land.
- The proposed addition has been massed and sited in an appropriate location on the site so as to reduce adverse impacts on the streetscape character, and adjoining properties in terms of amenity and visual bulk impacts.
- The proposal comprises a well-designed addition that is sensitive to the amenity of the surrounding area. Strict compliance with the FSR requirements would not yield a better planning outcome for the site or surrounding area.

Irrespective of the difference between the applicant's and Council's calculations of the degree of variation, the applicant's written rationale does adequately demonstrate that compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R2 Low Density Residential zone, in accordance with Clause 4.6(4)(a)(ii) of *MLEP 2011*, which read:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.
- To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.
- To provide for retail premises in existing buildings designed and constructed for commercial purposes.

The proposal is considered to be consistent with the zone objectives for the following reasons:

- The proposal provides new housing within an existing urban environment that is an acceptable utilisation of a large residential lot.
- The proposal provides additional living spaces that will meet the needs of the community within a low density context.
- The proposal is compatible with the character and style of surrounding buildings and the mixed architectural styles and varied built form of dwellings on the streetscape.

- The proposal is compatible with the orientation and pattern of surrounding buildings and results in a development that will provide visual continuity and consistency with the adjoining dwellings.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of *MLEP 2011*, which read:

- (1) The objectives of this clause are as follows—
 - i. to establish the maximum floor space ratio,
 - ii. to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,
 - iii. to minimise adverse environmental impacts on adjoining properties and the public domain.

The proposal is considered to be consistent with the development standard objectives for the following reasons:

- The proposal provides residential development that is of a bulk and scale that is compatible with the low density character of the area.
- The proposal results in a bulk and scale that is consistent with the draft provisions of Draft Inner West Local Environmental Plan 2020, which proposes a FSR of 0.6:1 for the site.
- The proposal complies with the *MLEP 2011* and MDCP 2011 built form requirements with regard to building height, setbacks, and private open space.
- The proposal has been appropriately designed and located so as to reduce any adverse environmental impacts on adjoining properties in terms of overshadowing, visual and acoustic privacy, and visual bulk.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of *MLEP 2011*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio development standard and it is recommended the Clause 4.6 exception be granted.

(ii) Clause 5.4(9) Secondary dwellings

Clause 5.4(9) of *MLEP 2011* states that the gross floor area (GFA) of a secondary dwelling must not exceed (a) 60 square metres, or (b) 35% of the total floor area of the principal dwelling, whichever of (a) or (b) is the greater.

The existing principal dwelling has a total GFA of 204m². Per Clause 5.4(9)(b), a secondary dwelling with a maximum GFA of 71.4m² is permitted on the site.

Council has calculated the GFA of the proposed secondary dwelling to be 78m² (i.e. 38% of the floor area of the principal dwelling); therefore, the proposal exceeds the maximum permissible by 6.6m². The figure below demonstrates the areas that were included in Council's calculation of GFA. Per the *MLEP 2011* definition of 'gross floor area', the stairs providing access from the ground to the first floor are not considered common to both the principal and secondary dwelling, and as such the stairs have been included in Council's calculation of the GFA of the secondary dwelling.

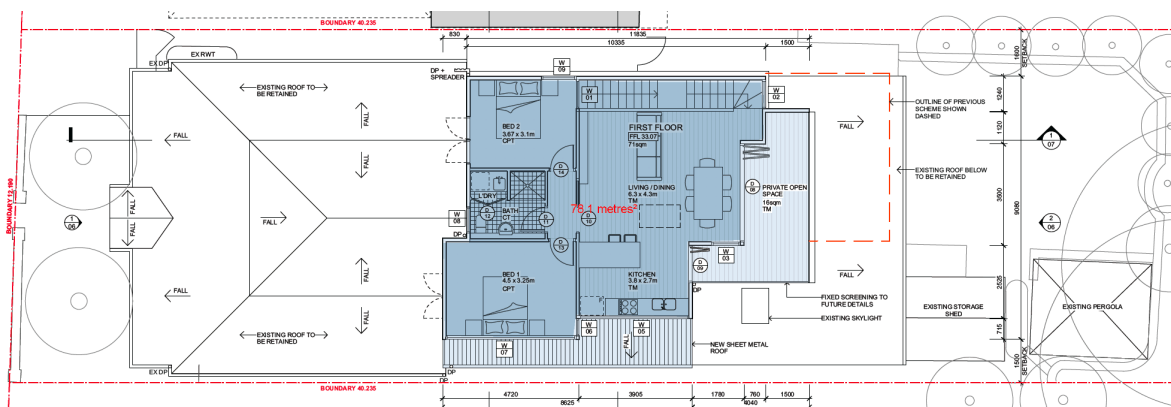


Figure 1: Council's gross floor area calculation of the proposed first floor secondary dwelling.

The applicant has calculated the GFA of the secondary dwelling to be compliant at 71.4m². However, as demonstrated in the figure below, the applicant has excluded the area of the stairs at the first floor from the calculation of GFA.

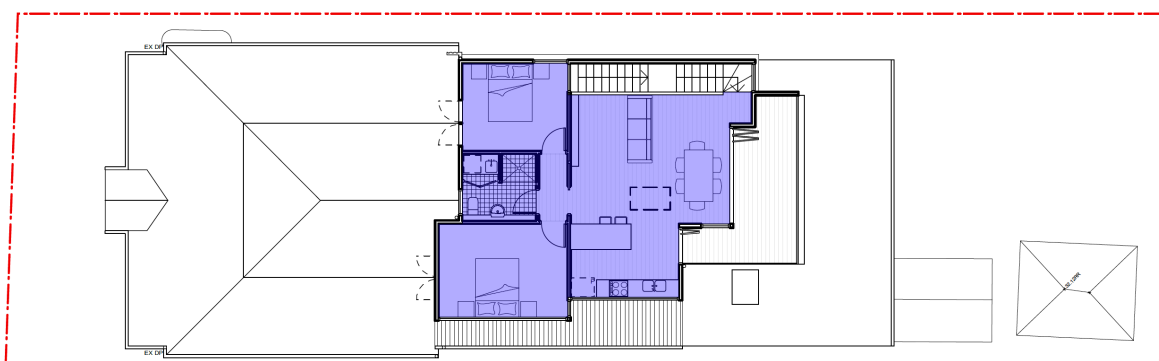


Figure 2: Applicant's gross floor area calculation of the proposed first floor secondary dwelling.

Clause 4.6(8)(c) precludes the application of Clause 4.6 to (vary) any of the provisions of Clause 5.4(9), and as such the proposal cannot be supported in its current form. However, despite the numerical non-compliance, the general bulk, scale, and design of the proposed secondary dwelling is considered acceptable and unlikely to result in any significant adverse impacts to the streetscape or adjoining properties.

As such, it is recommended that the application be approved subject to the imposition of a condition of consent requiring the GFA of the secondary dwelling be reduced by 6.6m² (i.e. the area of the stairs) such that it complies with Clause 5.4(9) of *MLEP 2011*.

5(b) Draft Environmental Planning Instruments

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

- Draft Marrickville Local Environmental Plan 2011 (Amendment 4)
- Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

5(b)(i) Draft Marrickville Local Environment Plan 2011 (Amendment 4)

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 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*.

Draft LEP Amendment contains provisions for the amendment of Clause 4.4(2A), which would increase the maximum floor space ratio (FSR) of sites with a total area greater than 400m² from 0.5:1 to 0.6:1.

As noted above, the subject site has an area of 490.2m², and as such has a maximum FSR of 0.5:1 per *MLEP 2011*. Draft LEP Amendment would increase the FSR applicable to this site to 0.6:1. The proposal results in a maximum FSR of 0.6:1, which is consistent with the draft provisions of the Draft LEP Amendment. As such, the proposal is considered acceptable and can be supported in this regard.

5(b)(ii) Draft Inner West Local Environment Plan 2011 (Draft IWLEP 2020)

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*.

Draft IWLEP 2020 contains provisions for amendments to the zone objectives of the R2 Low Density Residential zone, as well as new objectives of Clause 4.4 Floor space ratio. The application proposes a bulk and scale that is unlikely to cause any significant adverse impacts to adjoining properties, and that is consistent with the existing and desired future character of the area. The proposal is therefore considered acceptable with regard to the draft provisions.

Draft IWLEP 2020 also contains provisions for a new clause, Clause 4.4(2C), which would see the FSR applicable to this site increase from 0.5:1 to 0.6:1. As the application proposes a FSR of 0.6:1, it is considered acceptable with regard to the provisions of Draft IWLEP 2020 and can be supported.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

MDCP 2011 Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes
Part 2.18 – Landscaping and Open Space	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 4.1 – Low Density Residential Development	Yes
Part 9 – Strategic Context	Yes

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with Marrickville Development Control Plan 2011 for a minimum of 14 days to surrounding properties. Two (2) submissions were received in response to the notification.

The following issues raised in submissions have been discussed in this report:

- The height, bulk, and scale of the proposal is inconsistent with the streetscape character – see Section 5(c);
- Overshadowing and solar access – see Section 5(c);
- Acoustic and visual privacy impacts and loss of amenity – see Section 5(c);
- No rainwater retention proposed per the BASIX Certificate – see Section 5(c); and,
- Secondary dwelling does not provide casual street surveillance – see Section 5(c).

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue	Comment
Unapproved works	Concern was raised that existing structures in the rear yard were constructed without consent. Ancillary structures can generally be constructed without Council approval under the Codes SEPP as exempt or complying development. As no works are proposed to the existing ancillary structures they are not a matter for consideration as part of the subject application.
Car parking	MDCP 2011 requires only one on-site car parking space to be provided for the principal and secondary dwelling combined. There is currently one on-site parking space provided. No changes are proposed to the existing parking and as such the proposal is considered acceptable in this regard.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

6. Referrals

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

- Development Engineer.

7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$20,000 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011* to vary Clause 4.4 Floor space ratio of the *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA201900427 for to carry out alterations and additions to existing dwelling. Construction of a first floor attached secondary dwelling at 353 Marrickville Road Marrickville NSW 2204 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

Attachment A – Recommended conditions of consent

FEES

1. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$20,000 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 15 June 2020.

*NB Contribution rates under Marrickville Section 94/94A Contributions Plan 2014 are indexed quarterly (for the method of indexation refer to Section 2.15 of the Plan).

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Public Amenities Type:	Contribution \$
Recreation Facilities	17,039.78
Community Facilities	2,318.97
Traffic Facilities	249.10
Plan Administration	392.16
TOTAL	20,000

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at: <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card*. Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.

*NB A 0.75% credit card transaction fee applies to all credit card transactions.

2. Long Service Levy

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

3. Security Deposit - 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:	\$2,152.50
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

4. 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
1816 DA01 Rev C	Site & Roof Plan	17/3/20	GSBN Studio
1816 DA02 Rev C	Existing Floor Plan	17/3/20	GSBN Studio
1816 DA03 Rev C	Ground Floor Plan	17/3/20	GSBN Studio
1816 DA04 Rev C	First Floor Plan	17/3/20	GSBN Studio
1816 DA05 Rev C	Elevations – Sheet 1	17/3/20	GSBN Studio
1816 DA06 Rev C	Elevations – Sheet 2	17/3/20	GSBN Studio
1816 DA07 Rev C	Sections	17/3/20	GSBN Studio
1816 DA08 Rev C	External Finishes Schedule	17/3/20	GSBN Studio
1816 DA10 Rev C	Concept Stormwater Plan	17/3/20	GSBN Studio

1816 Rev C	DA11	Sediment & Erosion Control Plan	17/3/20	GSBN Studio
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As amended by the conditions of consent.

5. Design Change

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

- a. The gross floor area of the secondary dwelling must be reduced by a minimum of 6.6m².

6. Waste Management Plan

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

7. Erosion and Sediment Control

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

8. Standard Street Tree Protection

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

9. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

10. 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

11. 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.

12. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine

whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

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

13. Acoustic Report – Aircraft Noise

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

14. Dilapidation Report – Pre-Development – Minor

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

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

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

PRIOR TO OCCUPATION CERTIFICATE

17. Aircraft Noise – Alterations and Additions

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with a report from a suitably qualified person demonstrating that each of the commitments listed in Aircraft Noise Assessment Report required by this consent has been satisfied.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

18. No Encroachments

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

19. Protect Sandstone Kerb

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

ADVISORY NOTES**Prescribed Conditions**

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

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.

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;

- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent; or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

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.

Noise

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

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information

1300 650 908 weekdays 2:00pm - 5:00pm

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.dialpriortoyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation NSW Government	131441 www.lspc.nsw.gov.au www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Street Numbering

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Attachment B – Plans of proposed development

DRAWING REGISTER:

DWG No:	DWG Name:	SCALE:
DA00	COVER SHEET	N/A
DA01	SITE & ROOF PLAN	1:200
DA02	EXISTING FLOOR PLAN	1:100
DA03	GROUND FLOOR PLAN	1:100
DA04	FIRST FLOOR PLAN	1:100
DA05	ELEVATIONS - SHEET 1	1:100
DA06	ELEVATIONS - SHEET 2	1:100
DA07	SECTIONS	1:100
DA08	EXTERNAL FINISHES SCHEDULE	1:100
DA09	SITE ANALYSIS PLAN	1:100
DA10	STONEWATER CONCEPT PLAN	1:100
DA11	EROSION & SEDIMENT CONTROL PLAN	1:100
DA12	SHADOWS 21 JUNE - 19AM	1:200
DA13	SHADOWS 21 JUNE - 3PM	1:200
DA14	SHADOWS 21 SEPTEMBER - 12PM	1:200
DA15	SHADOWS 21 SEPTEMBER - 3PM	1:200
DA16	SHADOWS 21 SEPTEMBER - 12PM	1:200
DA17	SHADOWS 21 SEPTEMBER - 3PM	1:200
DA18	PERSPECTIVES	N/A
DA19	NOTIFICATION PLAN	1:200

BASIS COMMITMENTS

REF BASIS No. 19734HS 02

THERMAL COMFORT COMMITMENTS:

GENERAL:

- THE DWELLINGS MUST NOT HAVE MORE THAN 2 STOREYS
- THE CONDITIONED FLOOR AREA OF THE DWELLING MUST NOT EXCEED 200 SQUARE METRES.
- THE DWELLING MUST NOT EXCEED 100 SQUARE METRES OF UNCONDITIONED FLOOR AREA.
- THE DWELLING MUST NOT CONTAIN THIRD LEVEL HABITABLE FLOOR.
- FLOOR, WALLS AND CEILING ROOF.

THE APPLICANT MUST CONSIDER THE GLASS, WALLS, AND CEILING ROOF OF THE DWELLING IN ACCORDANCE WITH THE SPECIFICATIONS LISTED IN THE TABLE BELOW.

CONSTRUCTION	ADDITIONAL INSULATION REQUIREMENT (R-VALUE)	OTHER SPECIFICATIONS
floor above habitable rooms or mezzanine, basement (Rf: current wall)	- nil	
ceiling and roof - above ceiling / related to habitable rooms	3.00 (or 3.00 including ventilation)	Insulated medium density fibre cement wall (Acceptance 5.17.5.17)
ceiling, 4.5 m/a, roof, full height		

LOCATION PLAN:



SUBJECT SITE

LEGEND:

- SITE BOUNDARY
- EXISTING TO BE DEMOLISHED
- EXISTING WALL TO REMAIN
- NEW WALL
- EXISTING RELATIVE LEVEL
- NEW RELATIVE LEVEL

DA COMPLIANCE TABLE:

ITEM	EXISTING	PROPOSED	STANDARD	COMPLIANT
SITE AREA	460.2m ²	-	-	-
GROSS FLOOR AREA (GROUND FLOOR)	204m ²	204m ²	204m ²	YES
GROSS FLOOR AREA (SECONDARY DWEL.)	-	71.4m ²	71.4m ²	YES
TOTAL GROSS FLOOR AREA	204m ²	275.4m ²	275.4m ²	YES
FSR* (MUEP 2011)	0.421	0.681	0.681	YES
SITE COVERAGE	221.2m ²	221.2m ²	245.1m ² (50%)	YES
LANDSCAPED AREA	114.9m ²	114.9m ²	-	YES
PRIVATE OPEN SPACE (GROUND FLOOR)	136.9m ² (28%)	136.9m ² (28%)	98m ² (20%)	YES
PRIVATE OPEN SPACE (SECONDARY DWEL.)	-	16m ²	16m ²	YES

*MUEP 2011 CLAUSE 5.4(9) PERMITS 35% FLOOR SPACE FOR SECONDARY DWELLINGS
35% OF 204sqm = 71.4sqm

WINDOWS, GLAZED DOORS AND SKYLIGHTS:

- THE APPLICANT MUST INSTALL THE WINDOWS, GLAZED DOORS AND SHADING DEVICES DESCRIBED IN THE TABLE BELOW.
- THE APPLICANT MUST INSTALL THE SKYLIGHTS DESCRIBED IN THE TABLE BELOW.
- THE APPLICANT MUST INSTALL THE SKYLIGHTS DESCRIBED IN THE TABLE BELOW, IN ACCORDANCE WITH THE SPECIFICATIONS LISTED IN THE TABLE BELOW.
- THE APPLICANT MUST NOT INCLUDE THE OPTIONAL ADDITIONAL SKYLIGHT OF LESS THAN 0.7 SQUARE METRES THAT DOES NOT HAVE TO BE LISTED IN THE TABLE.

ENERGY:

- HOT WATER:
 - THE APPLICANT MUST INSTALL THE FOLLOWING HOT WATER SYSTEM IN THE DEVELOPMENT OR A SYSTEM WITH A HIGHER ENERGY RATING AND INSTANTANEOUS WITH A PERFORMANCE OF 4 STARS.
- NATURAL LIGHTING:
 - THE APPLICANT MUST INSTALL A WINDOW AND/OR SKYLIGHT IN THE KITCHEN OF THE DWELLING FOR NATURAL LIGHTING.
 - THE APPLICANT MUST INSTALL A WINDOW AND/OR SKYLIGHT IN 2 BATHROOMS/TOILETS IN THE DEVELOPMENT FOR NATURAL LIGHTING.

INSULATION:

- ALUMINIUM DOUBLE (AP) CLEAR
- TIMBER/KPVC/BR/BRASS DOUBLE (AP) CLEAR
- CERTIFICATION SYSTEM VALUE IN GROUND FLOOR WINDOW (TO LISTED AND ALSO BE GREAT COMPACT (R100) WITHIN THE RANGE OF THOSE LISTED). TOTAL SYSTEM VALUES AND SHGC MUST BE CALCULATED IN TYPES SHOWN IN THE TABLE BELOW ARE FOR REFERENCE ONLY. (INFO) CONDITIONS: FRAME AND GLASS WHICH THEY ARE SITUATED INHERENTLY DRAWN AND CLOSED.
- OPERATING BUILDINGS SEPARATION MUST BE OF THE HEIGHT AND DISTANCE FROM THE CENTRE AND THE WINDOW OR GLAZED DOOR AS SPECIFIED IN THE TABLE BELOW.
- THE APPLICANT MUST NOT INCLUDE THE OPTIONAL ADDITIONAL SKYLIGHT OF LESS THAN 0.7 SQUARE METRES THAT DOES NOT HAVE TO BE LISTED IN THE TABLE.

FOR THE FOLLOWING GLASS AND FRAME TYPES, THE CERTIFIER CHECK CAN BE PERFORMED BY VISUAL INSPECTION:

- ALUMINIUM DOUBLE (AP) CLEAR
- TIMBER/KPVC/BR/BRASS DOUBLE (AP) CLEAR

FOR THE FOLLOWING GLASS AND FRAME TYPES, THE CERTIFIER CHECK CAN BE PERFORMED BY VISUAL INSPECTION:

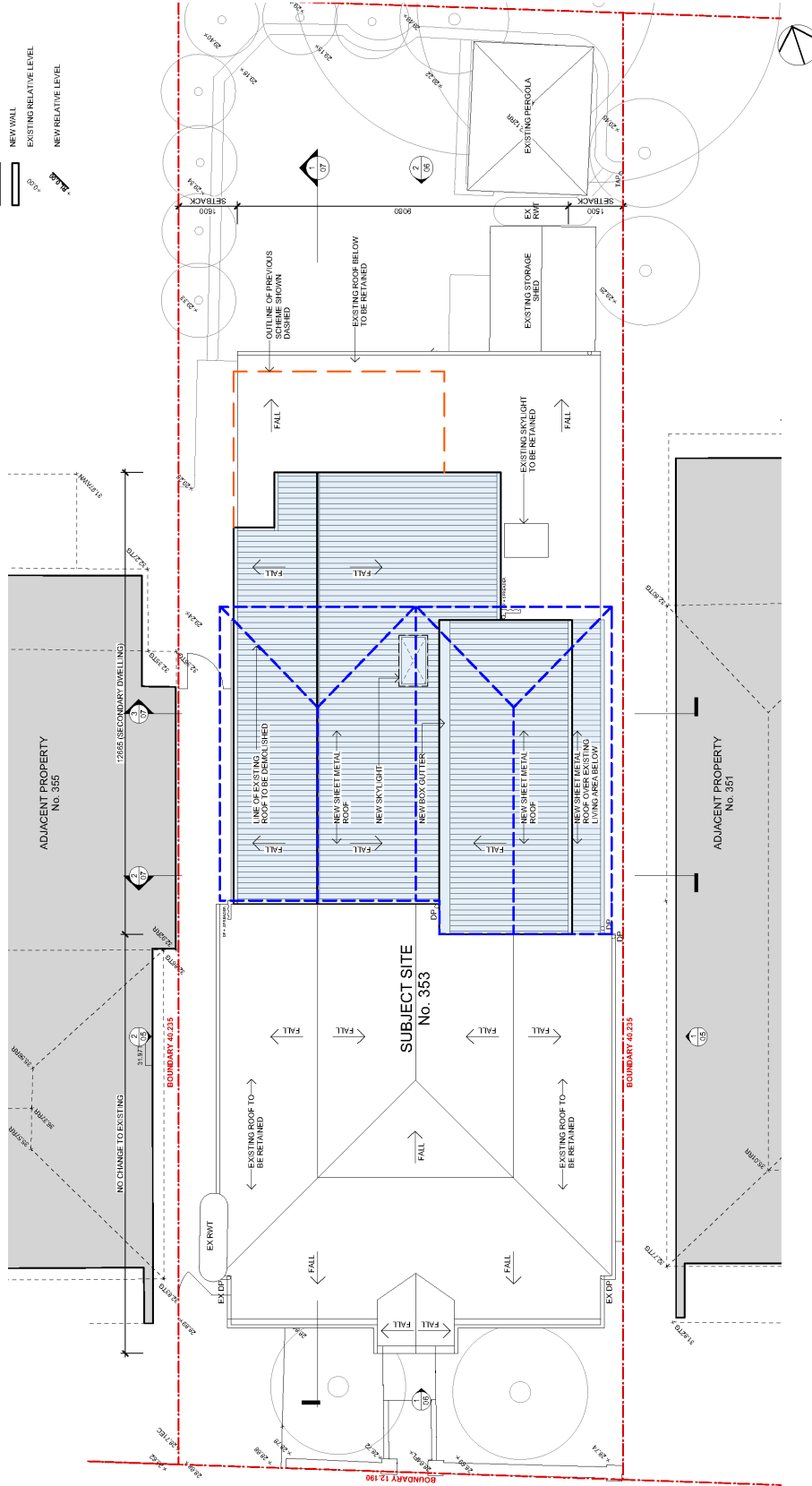
- ALUMINIUM DOUBLE (AP) CLEAR
- TIMBER/KPVC/BR/BRASS DOUBLE (AP) CLEAR



<p>17320 - RESUBMISSION TO COUNCIL</p> <p>25/11/19 - ISSUE FOR DEVELOPMENT APPLICATION</p> <p>13/11/19 - ISSUE FOR CLIENT APPROVAL</p>	<p>41 James Street, Marrickville NSW 2040 02 9437 3072 p. 0481 346 648 e. carmine@gsbn.com.au www.gsbn.com.au</p>	<p>project MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p> <p>drawn HG</p> <p>checked RS</p> <p>date MAR 2020</p> <p>scale N/A</p>	<p>sheet no COVER SHEET</p>	<p>sheet</p>
				<p>scale 1:100</p>

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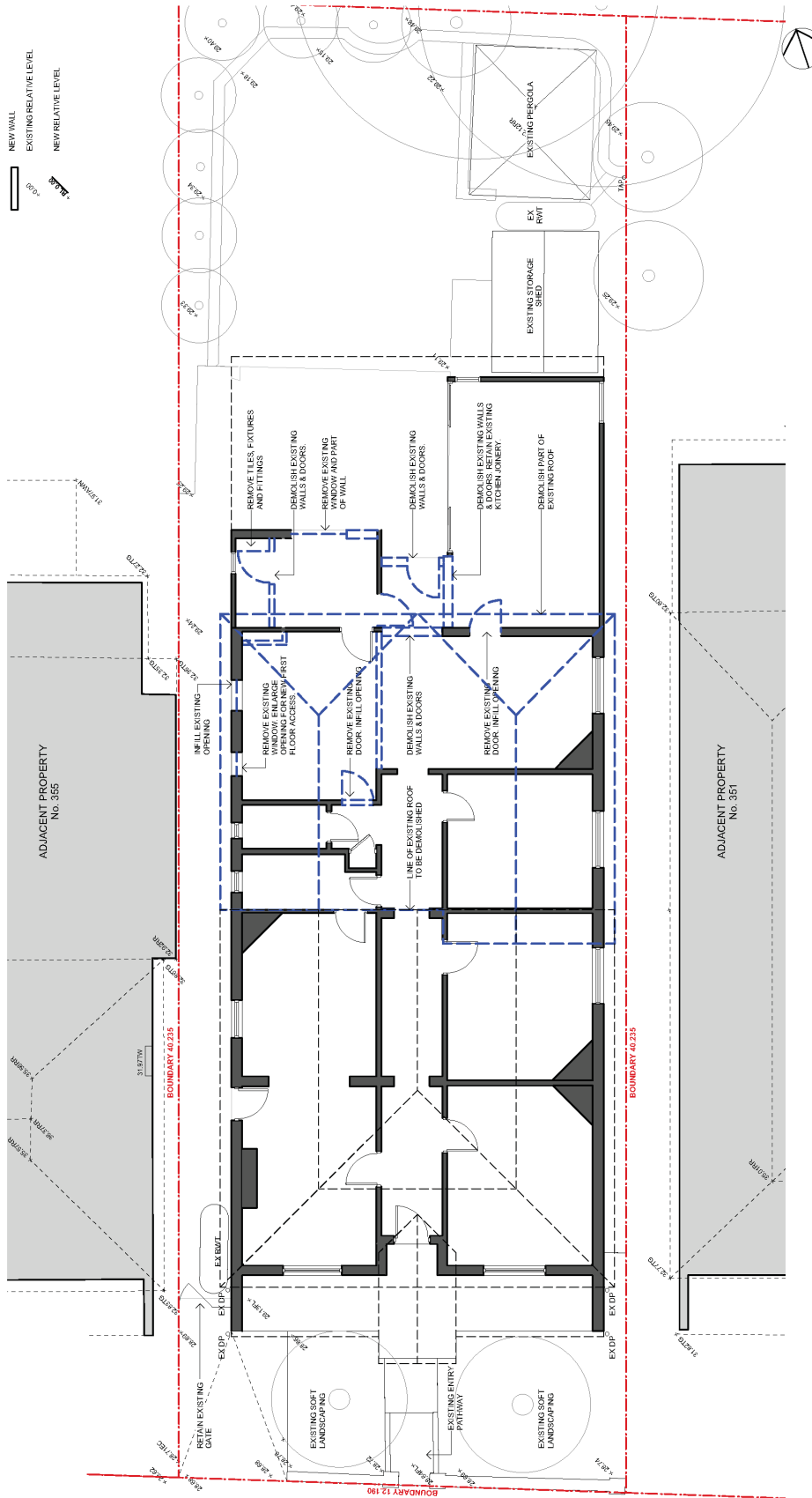
- SITE BOUNDARY
- - - EXISTING TO BE DEMOLISHED
- EXISTING WALL TO REMAIN
- NEW WALL
- EXISTING RELATIVE LEVEL
- NEW RELATIVE LEVEL



<p>41 James Street, MARRICKVILLE NSW 2160 p. 021 463 5911 p. 021 463 5999 e. enquiries@gsbn.com.au www.gsbn.com.au</p>	<p>Project MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSWProject No. 1816</p>		<p>Site & Roof Plan Scale 1:100 @ A3 Date MAR 2020 Checked RS Drawn HG</p>		<p>Issue DA01 C</p>
	<p>17/200 25/11/19 13/11/19</p>	<p>RESUBMISSION TO COUNCIL ISSUE FOR DEVELOPMENT APPLICATION ISSUE FOR CLIENT APPROVAL</p>	<p>Scale 1:100 @ A3</p>	<p>Date MAR 2020</p>	<p>Checked RS</p>

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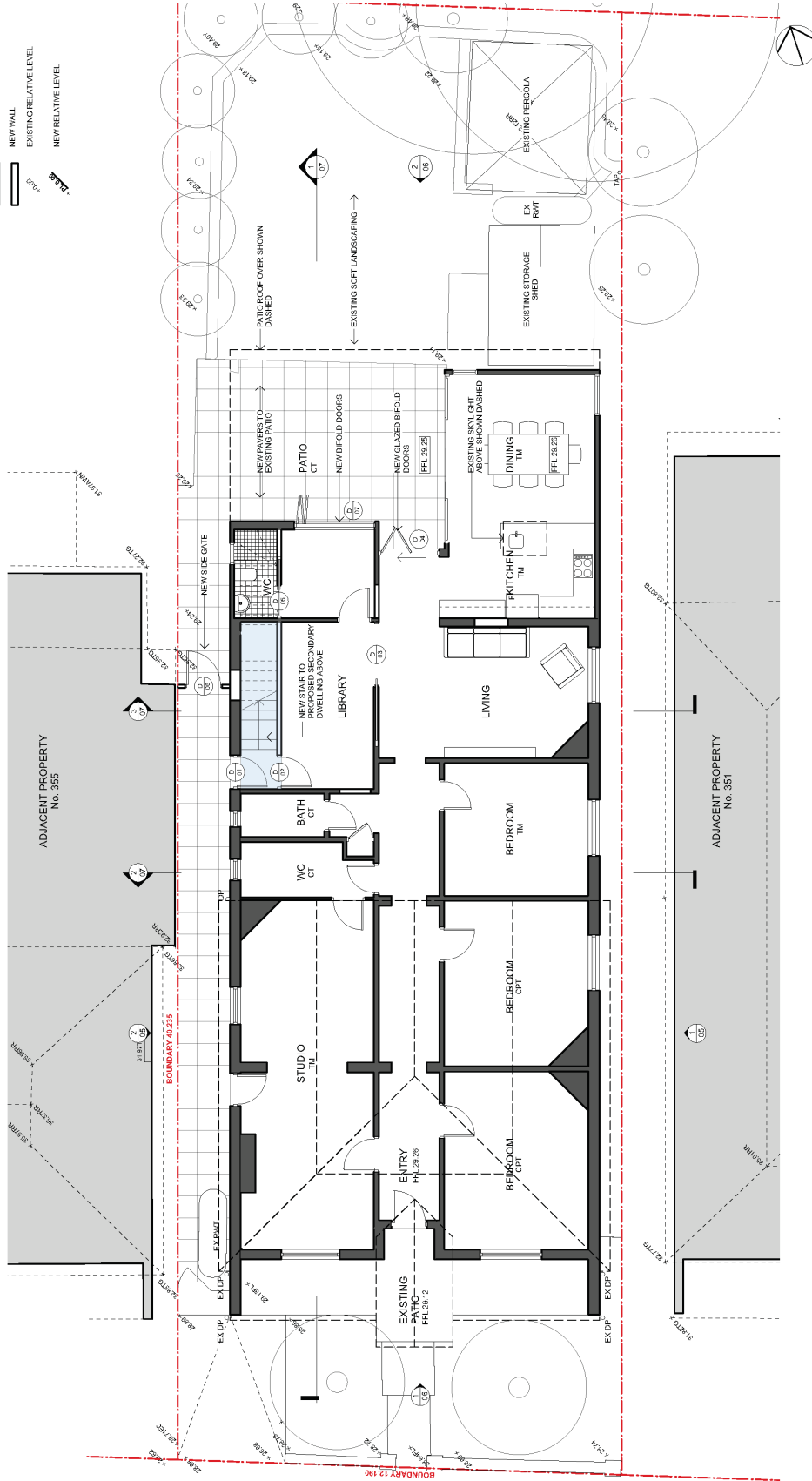
-  SITE BOUNDARY
-  EXISTING TO BE DEMOLISHED
-  EXISTING WALL TO REMAIN
-  NEW WALL
-  EXISTING RELATIVE LEVEL
-  NEW RELATIVE LEVEL



GSBN		GSBN		GSBN	
41 Hume Street Parramatta NSW 2150 Ph: (61) 02 9638 4000 E: info@gsbn.com.au W: www.gsbn.com.au		Project No. 1816		Project Name MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW	
SUBMITTED 17/3/20 RESUBMISSION TO COUNCIL 26/1/19 ISSUE FOR DEVELOPMENT APPLICATION 13/1/18 ISSUE FOR CLIENT APPROVAL 05/05/17 amendment		Drawing HG	Checked RS	Date MAR 2020	Scale 1:100 @ A3
SHEET DA02		TITLE C		DRAWING DA02	

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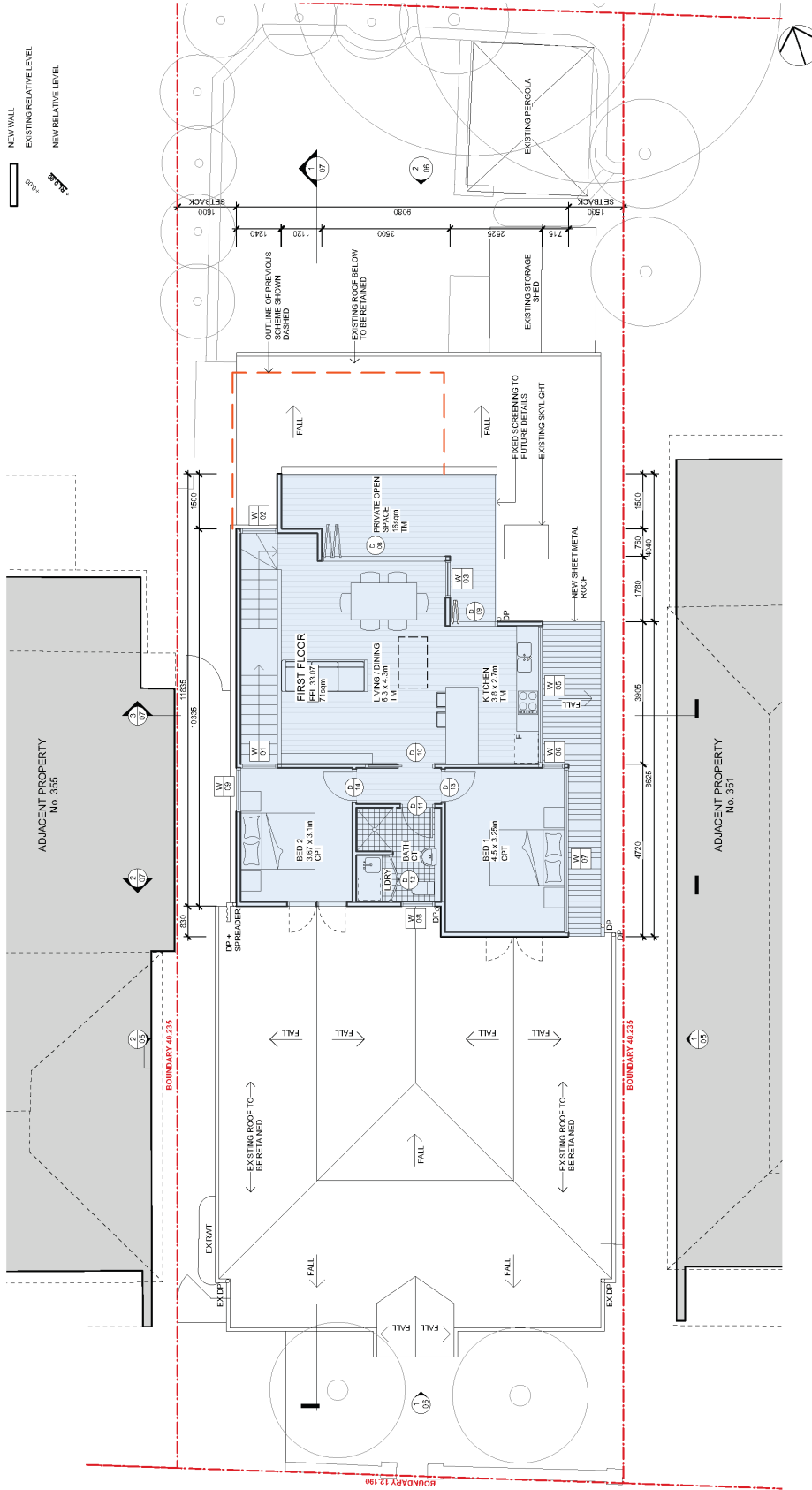
- SITE BOUNDARY
- - - EXISTING TO BE DERELIQUISHED
- EXISTING WALL TO REMAIN
- NEW WALL
- EXISTING RELATIVE LEVEL
- NEW RELATIVE LEVEL



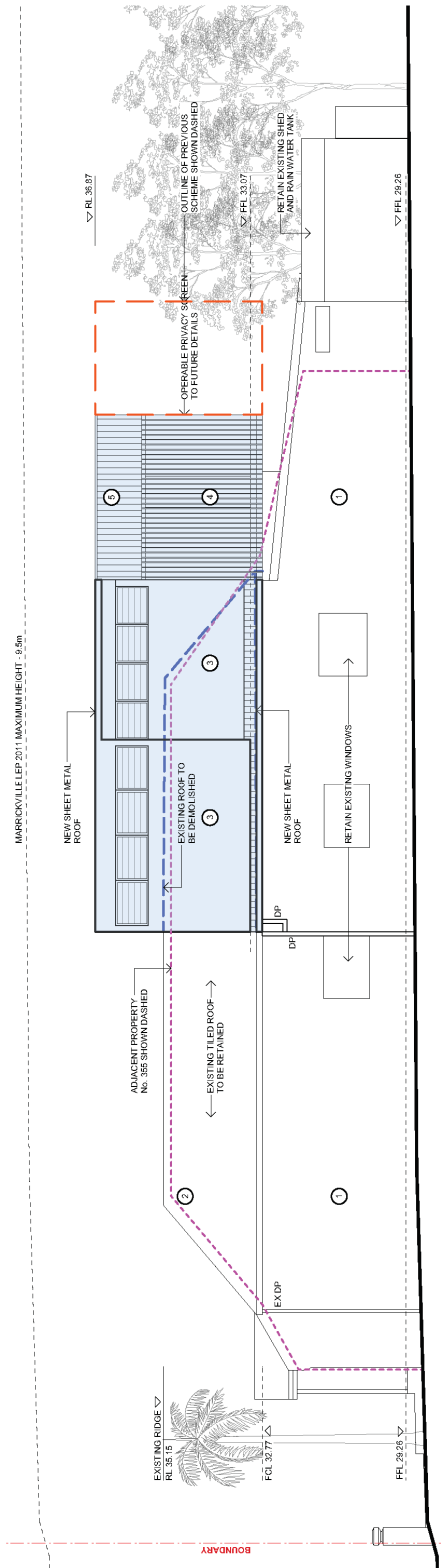
<p>C 17/20 RESUBMISSION TO COUNCIL</p> <p>B 25/11/19 ISSUE FOR DEVELOPMENT APPLICATION</p> <p>A 13/11/19 ISSUE FOR CLIENT APPROVAL</p> <p>Date: 20/03/20</p>	<p>G S T U D I O B N I O</p> <p>41 Jones Street, Marrickville NSW 2160 tel: 0411 241 047/22 tel: 0411 241 948 e: info@gstudiobnio.com.au www.gstudiobnio.com.au</p>	<p>project</p> <p>MARRICKVILLE RESIDENCE 355 MARRICKVILLE ROAD, MARRICKVILLE NSW</p>	<p>drawn</p> <p>HG</p>	<p>checked</p> <p>RS</p>	<p>date</p> <p>MAR 2020</p>	<p>scale</p> <p>1:100 @ A3</p>	<p>sheet no</p> <p>DA03</p>	<p>scale bar</p> <p>0 5m 10m 15m 20m</p>	<p>sheet title</p> <p>GROUND FLOOR PLAN</p>	<p>scale</p> <p>C</p>
		<p>1816</p>	<p>drawn</p> <p>HG</p>	<p>checked</p> <p>RS</p>	<p>date</p> <p>MAR 2020</p>	<p>scale</p> <p>1:100 @ A3</p>	<p>sheet no</p> <p>DA03</p>	<p>scale bar</p> <p>0 5m 10m 15m 20m</p>	<p>sheet title</p> <p>GROUND FLOOR PLAN</p>	<p>scale</p> <p>C</p>

LEGEND:

- SITE BOUNDARY
- - - EXISTING TO BE DEMOLISHED
- EXISTING WALL TO REMAIN
- NEW WALL
- EXISTING RELATIVE LEVEL
- NEW RELATIVE LEVEL

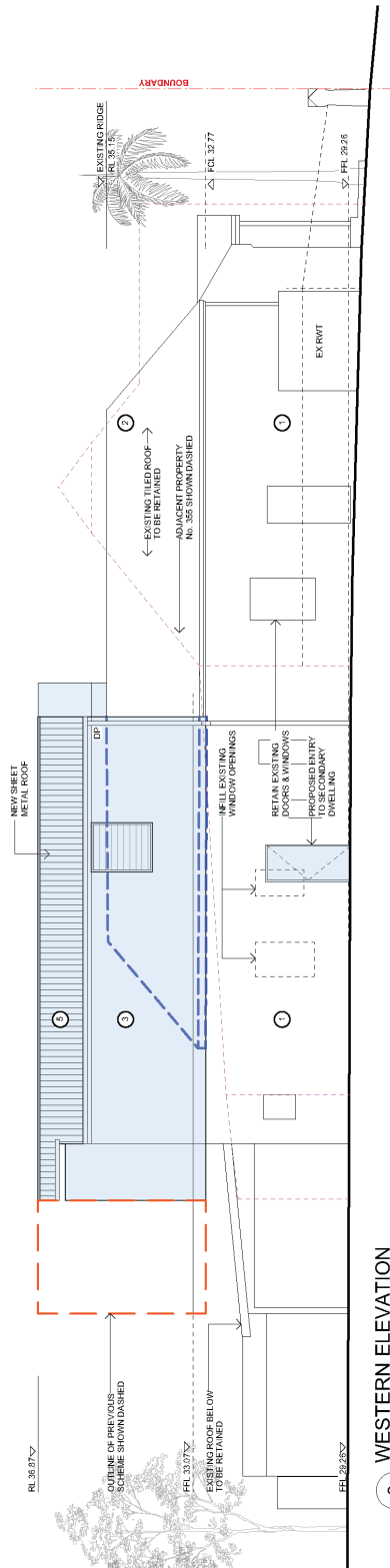


17/320		RESUBMISSION TO COUNCIL		61 James Street Sydney NSW 2000 Tel: 02 9550 2100 Fax: 02 9550 2101 www.gstbn.com.au		PROJECT MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW		sheet title FIRST FLOOR PLAN	
26/11/19		ISSUE FOR DEVELOPMENT APPLICATION		GST BNB O		project no. 1816		scale 1:100 @ A3	
13/11/19		ISSUE FOR CLIENT APPROVAL		checked RS		date MAR 2020		scale bar	
Issue		date		drawn HG		checked RS		sheet DA04	
C		A		B		A		C	



1 EASTERN ELEVATION
Scale: 1:100

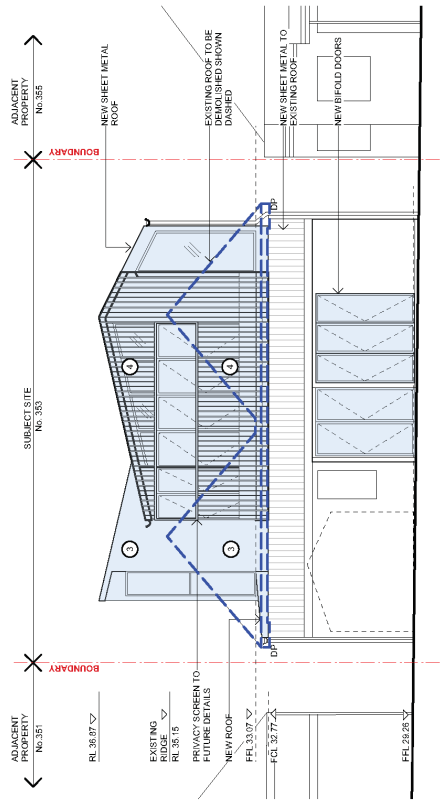
- EXTERIOR FINISHES:**
- 1 EXISTING MASONRY WALL - PAINT FINISH
 - 2 EXISTING TILED ROOF
 - 3 TIMBER CLADDING
 - 4 SCREENING
 - 5 SHEET METAL



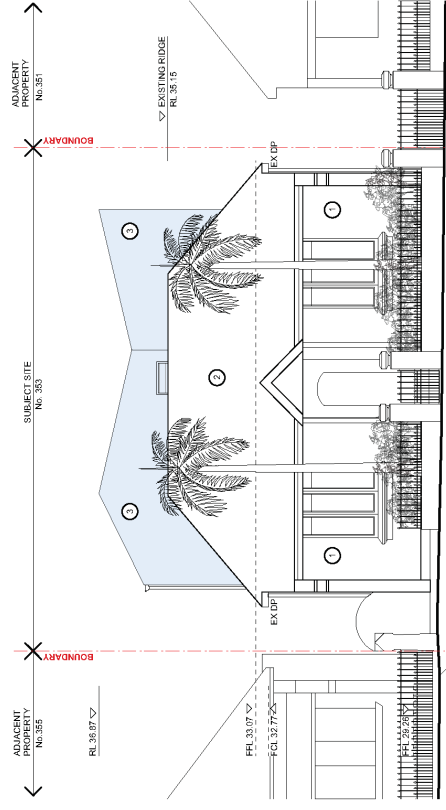
2 WESTERN ELEVATION
Scale: 1:100

<p>17/20 RESUBMISSION TO COUNCIL</p> <p>28/11/19 ISSUE FOR DEVELOPMENT APPLICATION</p> <p>13/11/19 ISSUE FOR CLIENT APPROVAL</p>		<p>41 James Street LEWISBURD NSW 2040 p. 0481 346 568 e. enquiries@louisburd.com.au www.louisburd.com.au</p>		<p>Project MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p> <p>Project No. 1816</p>		<p>Sheet Title ELEVATIONS - SHEET 1</p>	
<p>DATE: 13/11/19</p>		<p>SCALE: 1:100 @ A3</p>		<p>DATE: MAR 2020</p>		<p>SCALE: 1:100</p>	
<p>ISSUE FOR CLIENT APPROVAL</p>		<p>ISSUE FOR DEVELOPMENT APPLICATION</p>		<p>ISSUE FOR CLIENT APPROVAL</p>		<p>ISSUE FOR DEVELOPMENT APPLICATION</p>	

- EXTERIOR FINISHES:**
- ① EXISTING MASONRY WALL - PAINT FINISH
 - ② EXISTING TILED ROOF
 - ③ TIMBER CLADDING
 - ④ SCREENING
 - ⑤ SHEET METAL

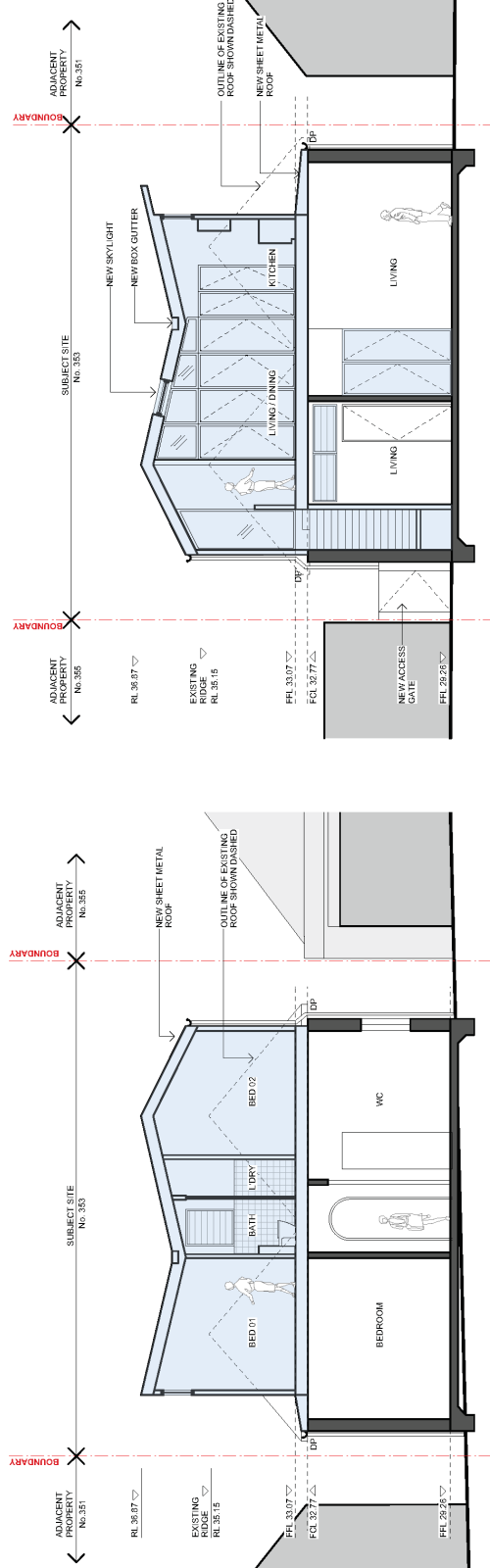
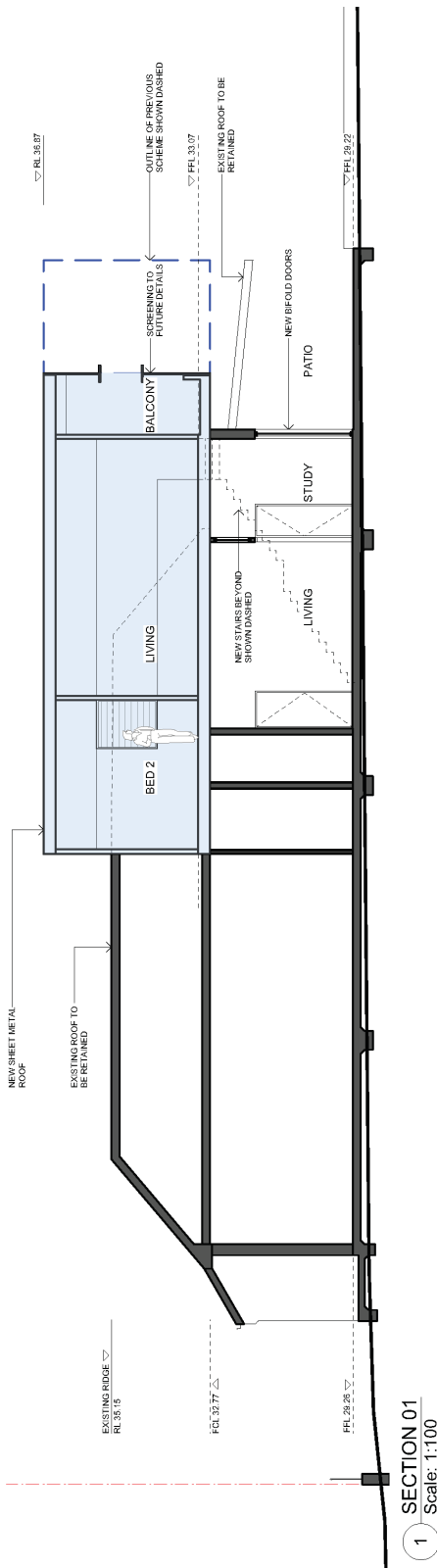


2 NORTHERN ELEVATION
Scale: 1:100



1 SOUTHERN ELEVATION (MARRICKVILLE RD)
Scale: 1:100

<p>GS BN</p>	<p>61 James Street, Leahurst NSW 2040 02 9439 5411 (M-F) 02 9439 5488 e: enquiries@gsbn.com.au www.gsbn.com.au</p>	<p>project MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p>				<p>sheet title ELEVATIONS - SHEET 2</p>					
		<p>17/320 RESUBMISSION TO COUNCIL</p>	<p>25/11/19 ISSUE FOR DEVELOPMENT APPLICATION</p>	<p>13/11/19 ISSUE FOR CLIENT APPROVAL</p>	<p>date</p>	<p>comment</p>	<p>project no. 1816</p>	<p>drawn HG</p>	<p>checked RS</p>	<p>date MAR 2020</p>	<p>scale 1:100 @ A3</p>

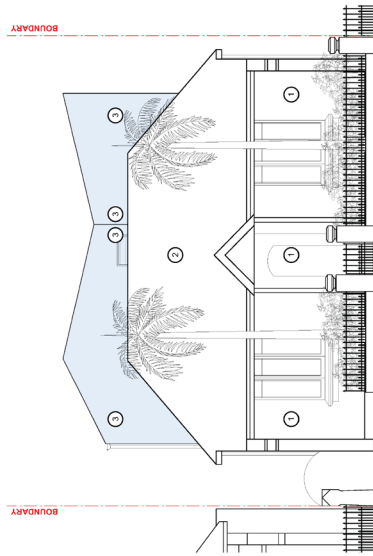
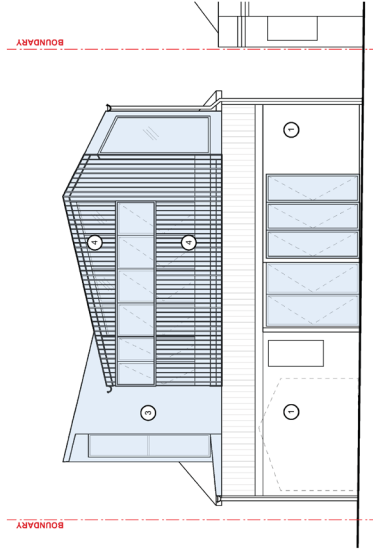
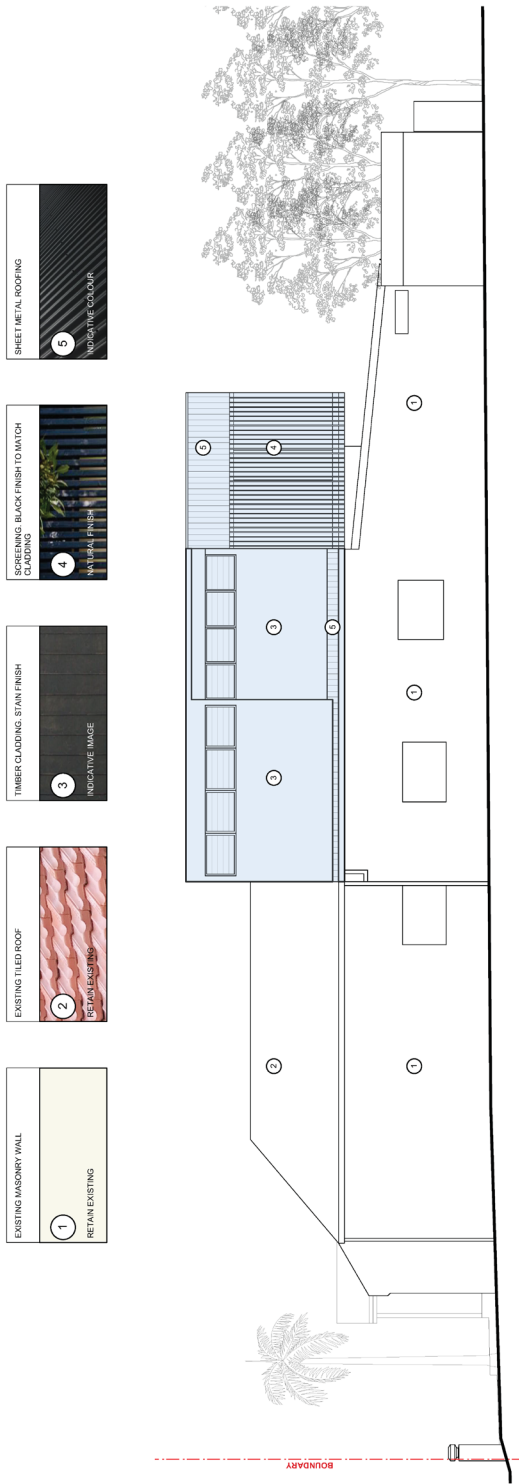


1 SECTION 01 Scale: 1:100

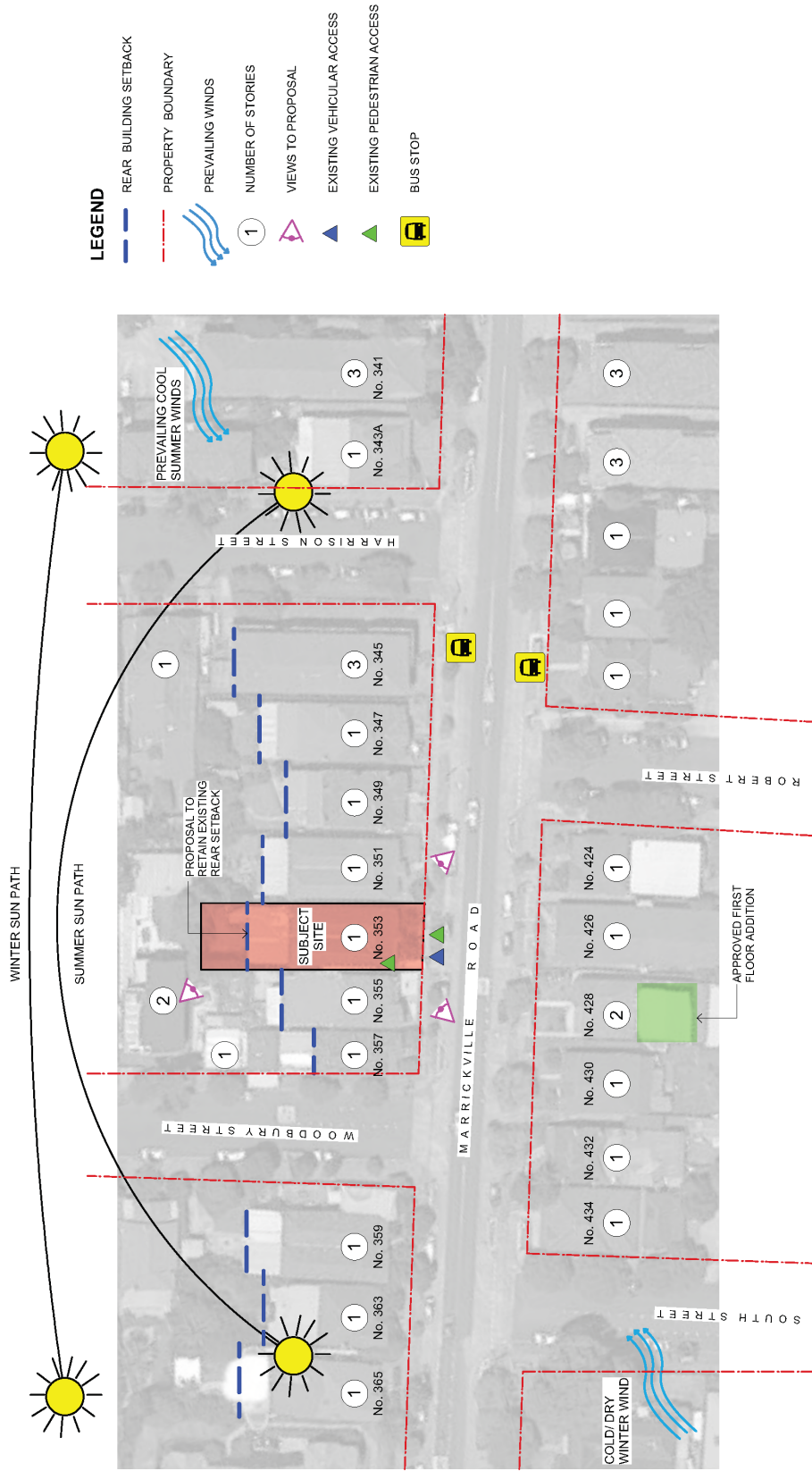
2 SECTION 02 Scale: 1:100

3 SECTION 03 Scale: 1:100

<p>17020 REBUBMISSION TO COUNCIL</p> <p>25/11/19 ISSUE FOR DEVELOPMENT APPLICATION</p> <p>13/11/19 ISSUE FOR CLIENT APPROVAL</p>		<p>GS BN STUDIO</p> <p>41 James Street, Lakemba NSW 2040 02 9452 3072 02 9452 3072 p. 0451 346 848 e. james@gsbnstudio.com.au www.gsbnstudio.com.au</p>		<p>project</p> <p>MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p>		<p>sections</p> <p>scale 1:100 @ A3</p> <p>date MAR 2020</p> <p>checked RS</p> <p>drawn HG</p> <p>project no. 1816</p>		<p>sheet title</p> <p>SECTIONS</p> <p>scale 1:100</p> <p>date</p> <p>checked</p> <p>drawn</p> <p>project no.</p>		<p>DA07</p> <p>sheet</p> <p>scale</p>	
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<p>17/020 RESUBMISSION TO COUNCIL</p> <p>25/11/19 ISSUE FOR DEVELOPMENT APPLICATION</p> <p>13/11/19 ISSUE FOR CLIENT APPROVAL</p>	<p>GS BN</p> <p>G S T U D I O</p> <p>1 James Street Crows Nest NSW 1585 02 9439 6000 02 9439 6002 02 9439 6008 02 9439 6009 02 9439 6010 02 9439 6011 02 9439 6012 02 9439 6013 02 9439 6014 02 9439 6015 02 9439 6016 02 9439 6017 02 9439 6018 02 9439 6019 02 9439 6020 02 9439 6021 02 9439 6022 02 9439 6023 02 9439 6024 02 9439 6025 02 9439 6026 02 9439 6027 02 9439 6028 02 9439 6029 02 9439 6030 02 9439 6031 02 9439 6032 02 9439 6033 02 9439 6034 02 9439 6035 02 9439 6036 02 9439 6037 02 9439 6038 02 9439 6039 02 9439 6040 02 9439 6041 02 9439 6042 02 9439 6043 02 9439 6044 02 9439 6045 02 9439 6046 02 9439 6047 02 9439 6048 02 9439 6049 02 9439 6050 02 9439 6051 02 9439 6052 02 9439 6053 02 9439 6054 02 9439 6055 02 9439 6056 02 9439 6057 02 9439 6058 02 9439 6059 02 9439 6060 02 9439 6061 02 9439 6062 02 9439 6063 02 9439 6064 02 9439 6065 02 9439 6066 02 9439 6067 02 9439 6068 02 9439 6069 02 9439 6070 02 9439 6071 02 9439 6072 02 9439 6073 02 9439 6074 02 9439 6075 02 9439 6076 02 9439 6077 02 9439 6078 02 9439 6079 02 9439 6080 02 9439 6081 02 9439 6082 02 9439 6083 02 9439 6084 02 9439 6085 02 9439 6086 02 9439 6087 02 9439 6088 02 9439 6089 02 9439 6090 02 9439 6091 02 9439 6092 02 9439 6093 02 9439 6094 02 9439 6095 02 9439 6096 02 9439 6097 02 9439 6098 02 9439 6099 02 9439 6100</p>	<p>RESUBMISSION TO COUNCIL</p> <p>ISSUE FOR DEVELOPMENT APPLICATION</p> <p>ISSUE FOR CLIENT APPROVAL</p>	<p>DATE</p> <p>02/03/20</p>	<p>PROJECT</p> <p>MARRICKVILLE RESIDENCE</p> <p>353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p>	<p>PROJECT NO.</p> <p>1816</p>	<p>OWNER</p> <p>HG</p>	<p>CHECKED</p> <p>RS</p>	<p>DATE</p> <p>MAR 2020</p>	<p>SCALE</p> <p>1:100 @ A3</p>	<p>SCALE BAR</p>	<p>SHEET</p> <p>DA08</p>	<p>TITLE</p> <p>C</p>
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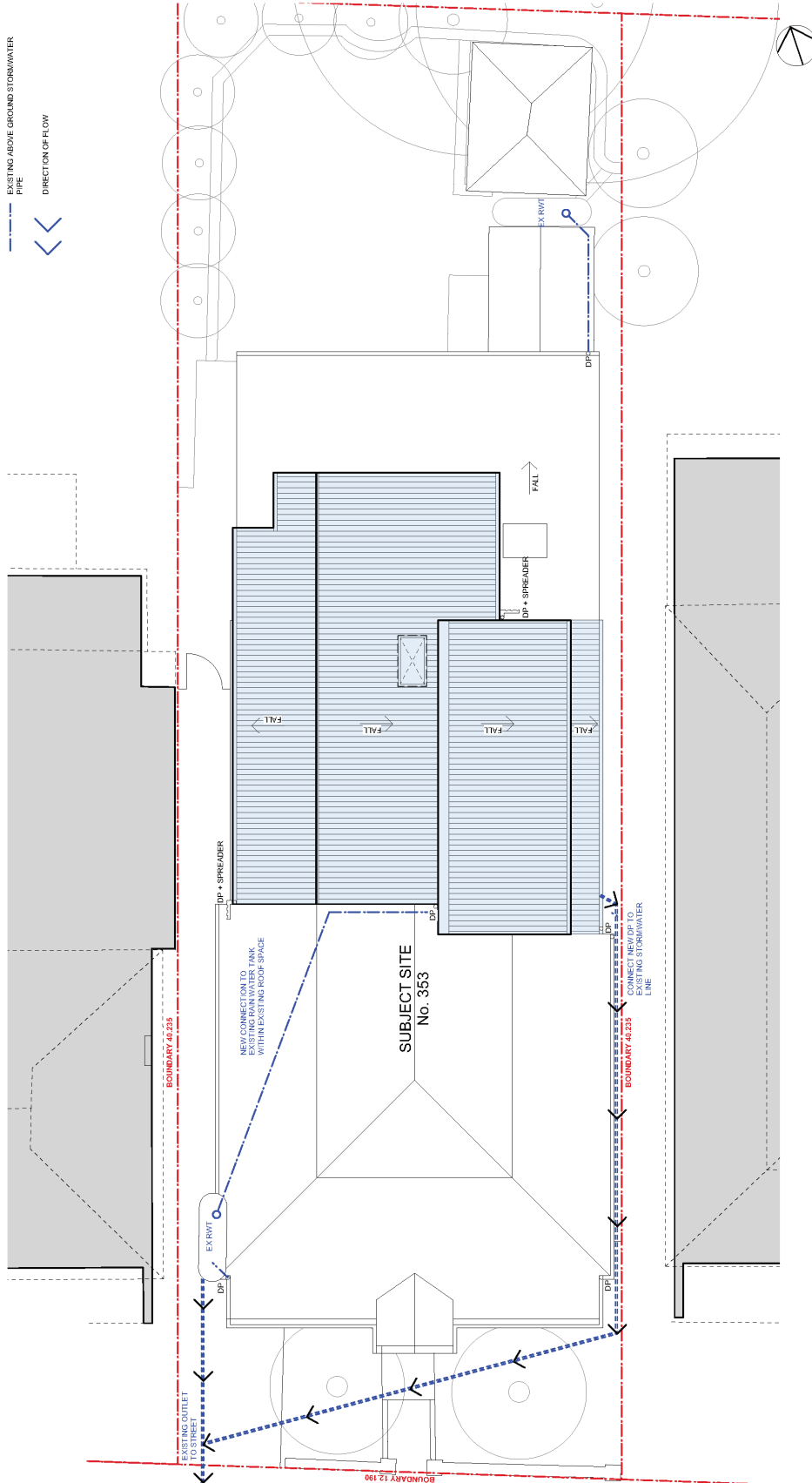


LEGEND

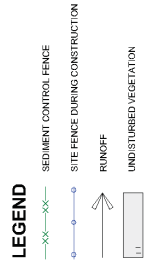
- REAR BUILDING SETBACK
- PROPERTY BOUNDARY
- PREVAILING WINDS
- NUMBER OF STORIES
- VIEWS TO PROPOSAL
- EXISTING VEHICULAR ACCESS
- EXISTING PEDESTRIAN ACCESS
- BUS STOP

<p>17/20/21 RE-SUBMISSION TO COUNCIL</p> <p>25/1/19 ISSUE FOR DEVELOPMENT APPLICATION</p> <p>13/1/18 ISSUE FOR CLIENT APPROVAL</p>		<p>61 James Street, Leichhardt NSW 2040 02 9439 2411 (M-F) 02 9439 2416 e: caroline@gsbn.com.au www.gsbn.com.au</p>		<p>GSBN</p>		<p>All references made herein to the Act and/or the Rules shall be construed as references to the Act and/or the Rules as they apply at the time of the making of the application for approval. The applicant shall be responsible for ensuring that the Act and/or the Rules are up to date at the time of the making of the application for approval.</p> <p>© GSBN is a registered business name of GSBN Pty Ltd. All rights reserved. GSBN Pty Ltd is a company registered in NSW. GSBN Pty Ltd is a company registered in NSW. GSBN Pty Ltd is a company registered in NSW.</p>		<p>project no. 1816</p> <p>drawn HG</p> <p>checked RS</p> <p>date MAR 2020</p> <p>scale 1:100 @ A3</p>		<p>sheet title SITE ANALYSIS PLAN</p> <p>scale bar</p>		<p>DA09</p> <p>C</p>
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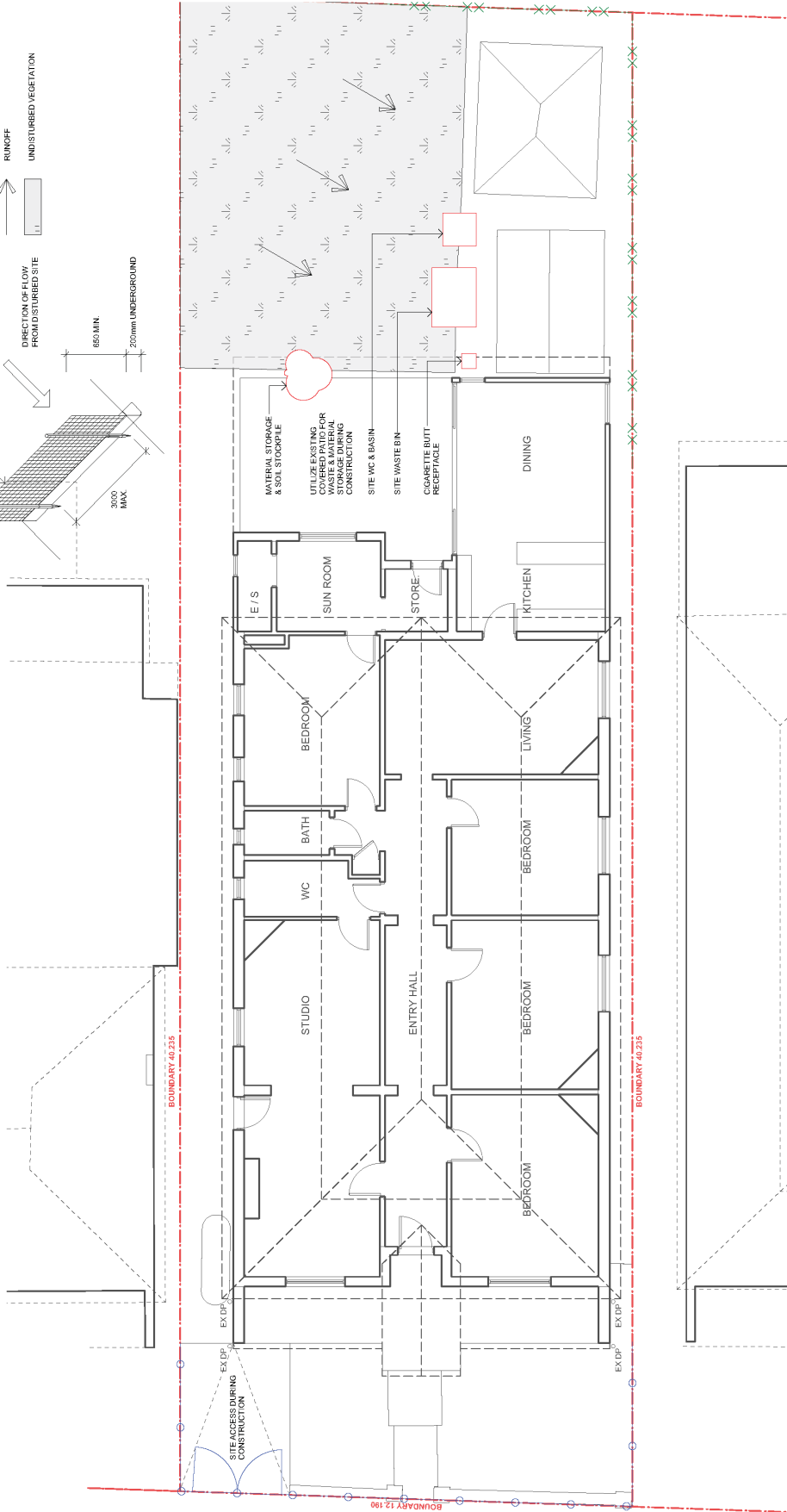
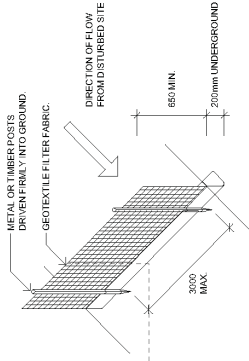
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 - - - - - EXISTING ABOVE GROUND STORMWATER PIPE
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C 17/20 B 25/1/19 A 13/1/19	RESUBMISSION TO COUNCIL ISSUE FOR DEVELOPMENT APPLICATION ISSUE FOR CLIENT APPROVAL	G S T U D I O B N I O 61 James Street, Leichhardt NSW 2040 Ph: 041 348 545 E: contact@gsstudio.com.au W: www.gsstudio.com.au				project MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW				sheet title CONCEPT STORMWATER PLAN	
		date 13/1/19	date 17/2/20	checked RS	drawn HG	project no. 1816	date MAR 2020	scale 1:100 @ A3	scale bar 0 5 10 15 20 25 30 35 40 45 50	sheet no. DA10	of no. of sheets C

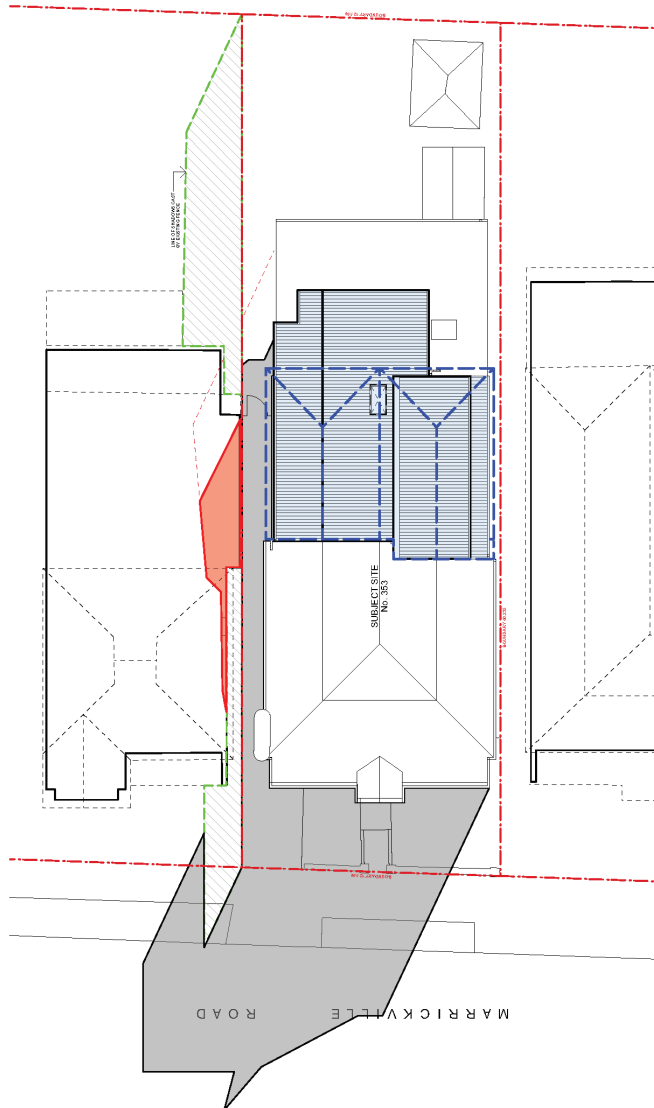
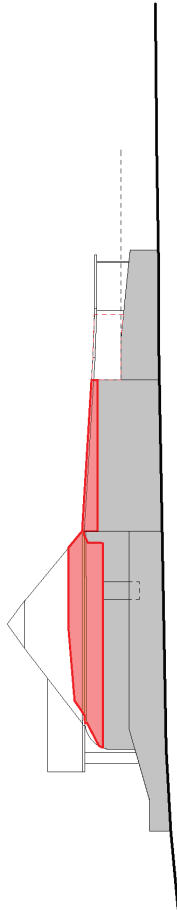


SEDIMENT CONTROL FENCE



<p>sheeting SEDIMENT & EROSION CONTROL PLAN</p>		<p>sheet DA11</p>	<p>issue C</p>
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<p>Approved, under the Building Act 2016 and / or related codes, commencement of work - 20/02/2020. Approved, under the Environmental Planning and Assessment Act 1979 (as amended) - 20/02/2020. This information is provided for information only and does not constitute a guarantee of any kind or any responsibility under any law.</p> <p>© GSI Design. Building, engineering, or other services provided by GSI Design are for the use of the client only and are not to be used for any other purpose without the written consent of GSI Design. GSI Design is not responsible for any errors or omissions in this document. GSI Design is not responsible for any consequences arising from the use of this document. GSI Design is not responsible for any consequences arising from the use of this document. GSI Design is not responsible for any consequences arising from the use of this document.</p>			
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<p>C 17/20 RE-SUBMISSION TO COUNCIL</p>	<p>B 25/1/19 ISSUE FOR DEVELOPMENT APPLICATION</p>	<p>A 13/1/19 ISSUE FOR CLIENT APPROVAL</p>	<p>date amendment</p>

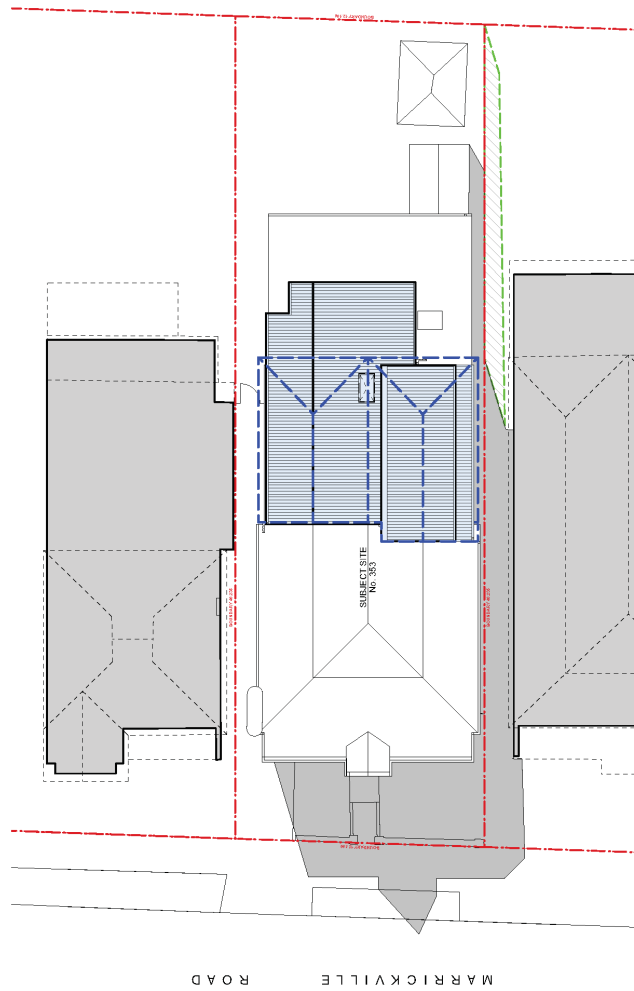
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 - SHADOWS CAST BY EXISTING FENCE
 - OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED
 - SHADOWS CAST BY PREVIOUS PROPOSAL



1 SHADOWS: 21 JUNE - 9AM
Scale: 1:200

17/2021	RESUBMISSION TO COUNCIL	<p>GS BN</p> <p>41 James Street, Lidcombe NSW 2040 021 843 241 347 22 P. 041 348 548 E. carnegie@gsbn.com.au www.gsbn.com.au</p>	<p>project MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p> <p>project no. 1816</p>	<p>drawn HG</p>	<p>checked RS</p>	<p>date MAR 2020</p>	<p>scale 1:100 @ A3</p>	Sheet title SHADOW ANALYSIS - JUNE 21 9AM	<p>Scale bar 0 1 2 3 4 5 6 7 8 9 10</p>	<p>Sheet no. DA12</p>	<p>Issue C</p>
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13/17/18	ISSUE FOR CLIENT APPROVAL										
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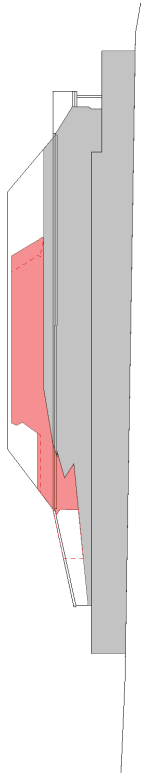


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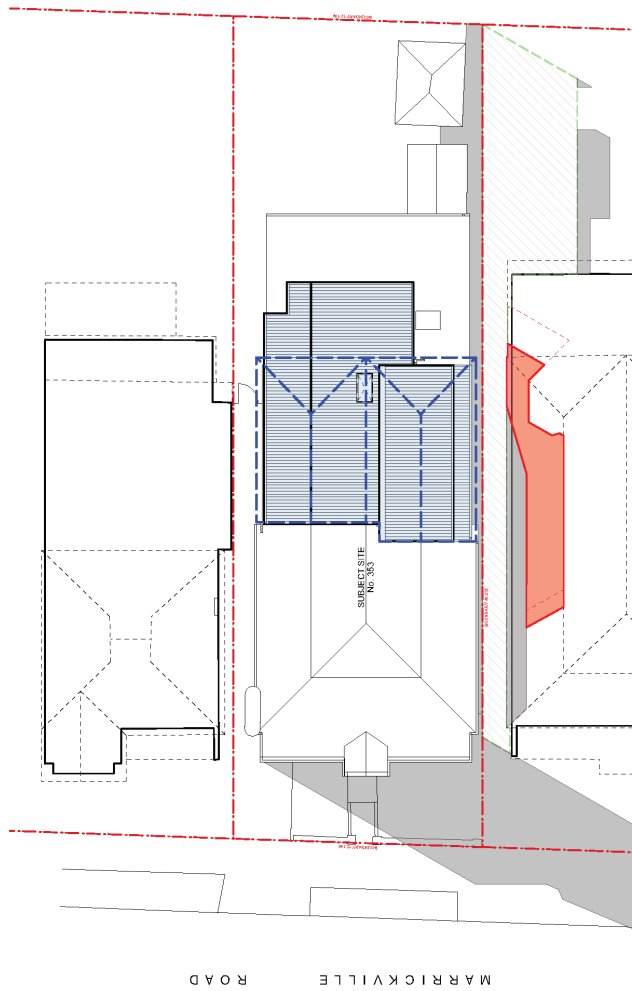


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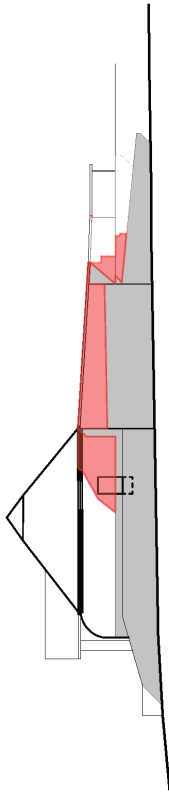


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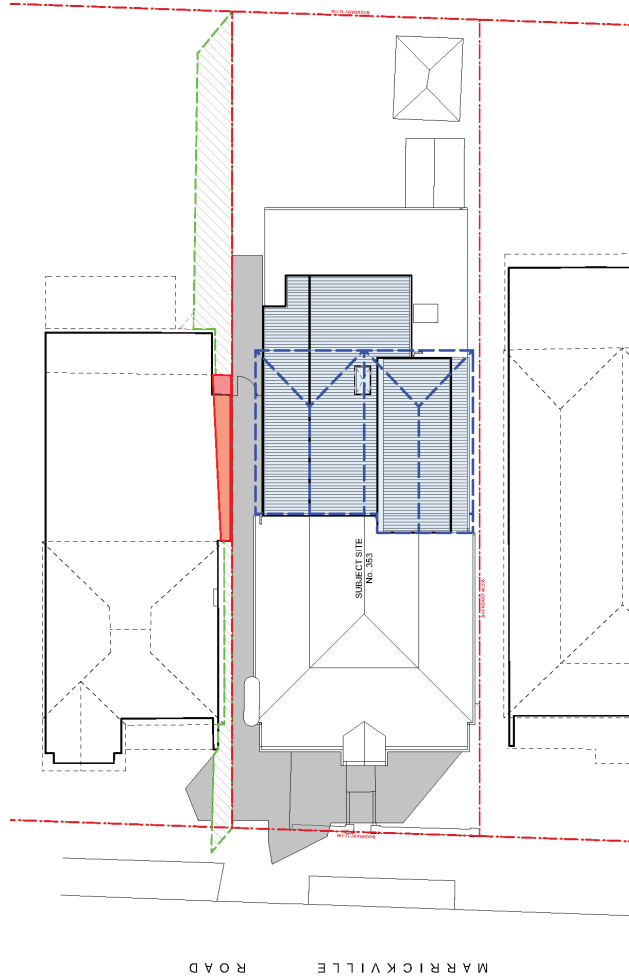


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- LEGEND:**
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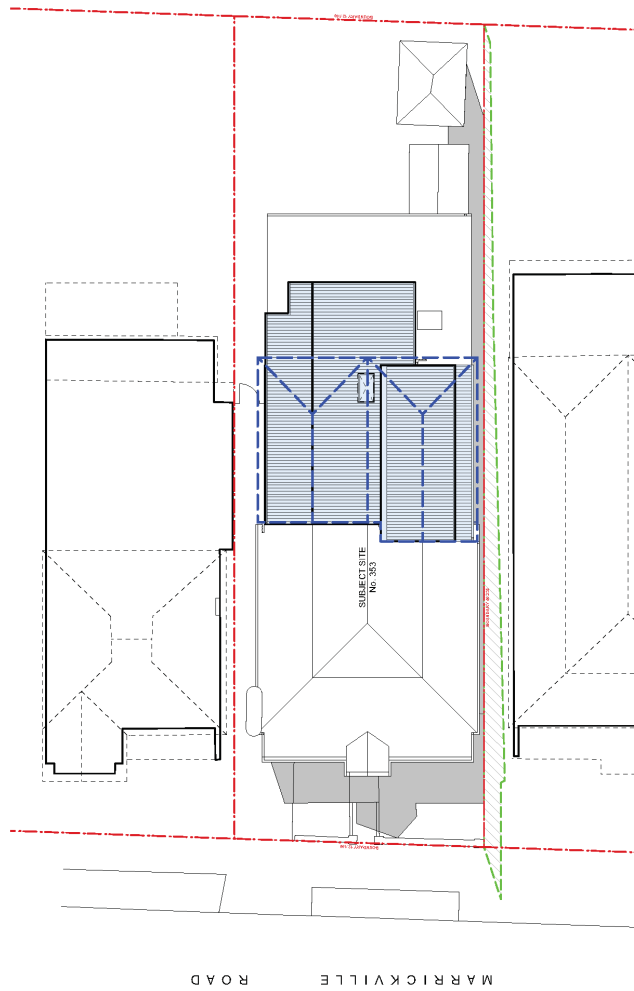


1 SHADOWS: 21 SEPTEMBER - 9AM
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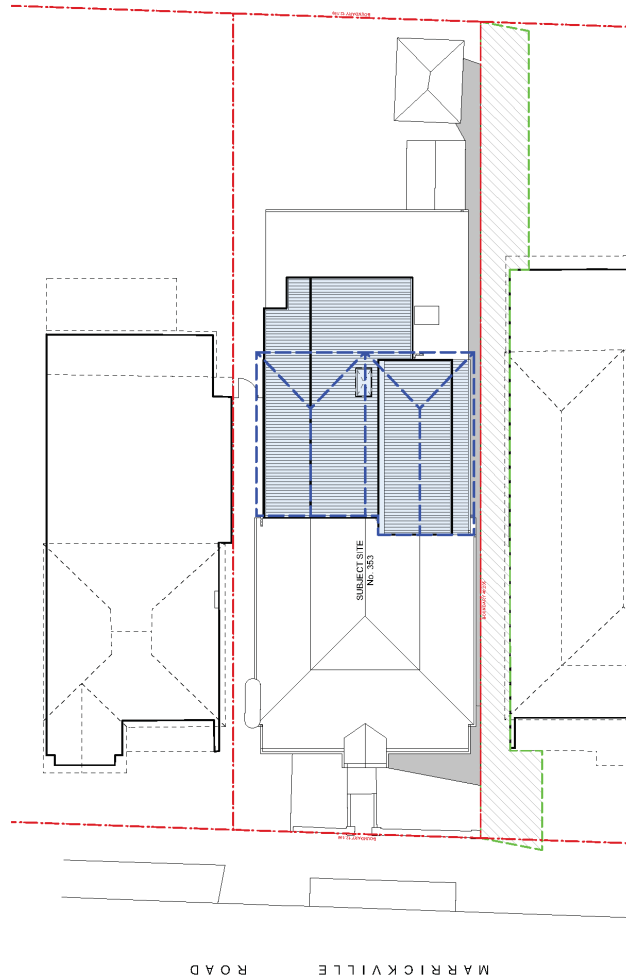


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<p>17/3/20 RESUBMISSION TO COUNCIL</p> <p>B 25/1/19 ISSUE FOR DEVELOPMENT APPLICATION</p> <p>A 13/1/19 ISSUE FOR CLIENT APPROVAL</p> <p>date amendment</p>		<p>GS BN</p> <p>S T U D I O</p> <p>41 James Street Leichhardt NSW 2040 02 9439 4100 p. 0431 346 648 e. info@gsbnstudio.com.au www.gsbnstudio.com.au/</p>		<p>Name: MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p> <p>Project No. 1816</p> <p>Drawn: HG</p> <p>Checked: RS</p> <p>Date: MAR 2020</p> <p>Scale: 1:100 @ A3</p>		<p>Sheet Title: SHADOW ANALYSIS - SEPTEMBER 21 12PM</p> <p>Scale: 1:200</p> <p>DATE: 21/09/20</p>		<p>DA16</p> <p>DA16</p> <p>C</p>
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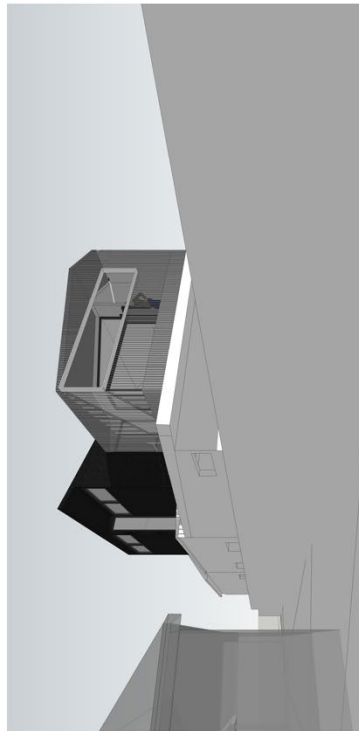
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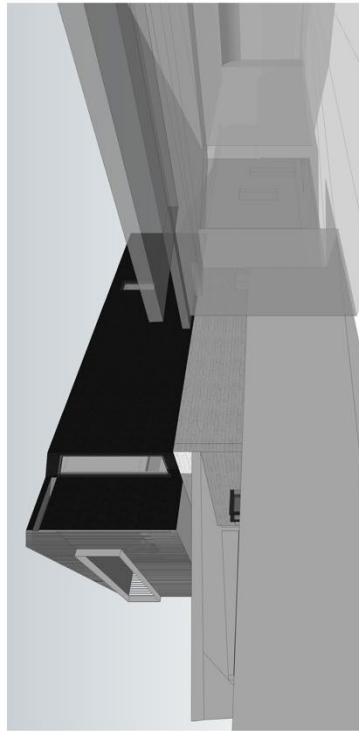
1 VIEW SOUTH FROM REAR YARD



3 VIEW NORTH FROM PROPOSED LIVING AREA



2 VIEW FROM No. 355 MARRICKVILLE RD



4 VIEW FROM No. 351 MARRICKVILLE RD

<p>17/2/20 RESUBMISSION TO COUNCIL 25/1/19 ISSUE FOR DEVELOPMENT APPLICATION 13/1/19 ISSUE FOR CLIENT APPROVAL</p>		<p>41 GORME STREET LUTHERBURGH NSW 2500 02 944 311 02 02 P 021 248 448 E admin@gsbn.com.au www.gsbn.com.au</p>		<p>PROJECT MARRICKVILLE RESIDENCE 353 MARRICKVILLE ROAD, MARRICKVILLE NSW</p>		<p>SHEET TITLE PERSPECTIVES</p>	
<p>GS BN IO</p>		<p>DATE 03/03/20</p>		<p>CHECKED RS</p>		<p>SCALE 1:100 @ A3</p>	
<p>DATE 03/03/20</p>		<p>PROJECT NO. 1816</p>		<p>DRAWN HG</p>		<p>SHEET NO. DA18</p>	
<p>SCALE BAR</p>		<p>SCALE 1:100 @ A3</p>		<p>DATE MAR 2020</p>		<p>SHEET C</p>	

Attachment C- Clause 4.6 Exception to Development Standards



CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS (CLAUSE 4.4) MAXIMUM FLOOR SPACE RATIO - MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011

DEVELOPMENT APPLICATION FOR THE PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING INCLUDING THE CONSTRUCTION OF AN ATTACHED SECONDARY DWELLING AT FIRST FLOOR LEVEL

353 MARRICKVILLE ROAD, MARRICKVILLE (LOT 5 DP 4055)

JUNE 2020

1. Introduction

The subject site (the site) is located at 353 Marrickville Road, Marrickville and comprises of one lot legally described as Lot 5 DP 4055.

The site is located on the northern side of Marrickville Road, east of Woodbury Street and west of Harrison Street. The site is rectangular in shape with a total area of 490.2m². The site has a 12.19m frontage to Marrickville Road.

The site currently accommodates a single storey detached residential dwelling with a storage shed and a detached pergola located at the rear yard. The existing dwelling has a north/south orientation facing private open space at the rear.

This Clause 4.6 Exceptions to Development Standards related to Clause 4.4(2) Floor Space Ratio outlined within Marrickville Local environmental Plan 2011 (LEP 2011). This Clause 4.6 Exceptions to Development Standards request accompanies a Development Application to Inner West Council (Council) for the construction of an attached secondary dwelling at the first floor level.

This Development Standard Variation Request has been prepared in accordance with the NSW Department of Planning, Industry and Environment's "*Varying development standards: A Guide*" (August 2011) and relevant decisions in the New South Wales Land and Environment Court (Court). The following two recent Court judgements provide a clear outline of the matters require to be addressed under the Clause 4.6 including the structure of such requests:

- *Brigham v Canterbury-Bankstown Council [2018] NSWLEC 1406*; and
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

The Court has established principles that are to be addressed in relation to whether a development standard variation should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79*. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*. Although the *Winten Property Group* and *Wehbe* refer to variations to development standards submitted under *State Environmental Planning Policy 1 - Development Standards (SEPP 1)* the principles and tests contained therein remain applicable to Clause 4.6 of the Standard Instruments as confirmed by the Court in the following judgements:

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five)*;
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386*;
- *Moskovich v Waverley Council [2016] NSWLEC 1015*; and
- *SARM Architects Pty Ltd v Wollongong City Council [2015] NSWLEC 1101*

It has been established in case law that the quantum of the numerical variation does not form part of the tests required to be conducted under Clause 4.6. For instance, the Court's decision with regards to *Moskovich v Waverley Council* (65% exceedance of FSR) and *Micaul Holdings Pty Limited v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) attest to this.

2. Details of Current and Proposed Floor Space Ratio

A maximum Floor Space Ratio of 0.5:1 applies to the site under Clause 4.4(2) of LEP 2011. Based on a site area of 490.2m², a maximum Gross Floor Area (GFA) of 245.1m² is permitted on the site.

Clause 4.4(2A) of the LEP states,

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

...>400 square metres 0.5:1"

On this basis, the proposed development will result in a total GFA of 275.4m² which equates to an FSR of 0.56:1 and is 30.3m² of GFA above the maximum floor space of 245.1m².

In response to the proposed FSR non-compliance, the following Clause 4.6 Variation Request is provided. This Variation is well founded and is worthy of support by Council Officers.

2.1 Increased FSR Under Proposed Inner West LEP 2020

2.1.1 Proposed 0.6:1 FSR

The draft Inner West LEP 2020 was publically exhibited from 16 March to 24 April 2020. Clause 4.4(2C) of the draft Inner West LEP 2020 is proposed to be amended to increase the maximum FSR for the subject site from 0.5:1 to 0.6:1 as follows:

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

> 350 square metres 0.6:1"

The proposed development results in a total FSR of 0.56:1 and therefore will comfortably comply with the proposed FSR of 0.6:1 under the draft Inner West LEP 2020.

In accordance with the requirements of the Gateway Determination issued on 11 March 2020 by the Department of Planning, Industry and Environment, the draft Inner West LEP 2020 must be completed and made by 11 December 2020. Given the Gateway Determination has not altered any aspect of the proposed Clause 4.4 amendments to increase FSR, it is considered to be generally certain that the increased FSR is likely to be included as part of the new LEP that will apply to the Inner West Local Government Area. It is noted the following draft objectives are proposed to apply to Clause 4.4:

- (a) to appropriately regulate the density of development, built form and land use intensity based on the capacity and location of existing and planned infrastructure,*
- (b) to ensure that development is compatible with the desired future character,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse environmental and amenity impacts on adjoining properties, the public domain, heritage conservation areas and heritage items,*
- (e) to provide a suitable balance between landscaping, open space, and built form to increase the tree canopy and to protect the use and enjoyment of private properties and public domain."*

The proposed development satisfies the relevant objectives noted above, in particular the proposed FSR is of an appropriate bulk and scale that is located at the rear of the site to minimise any impacts on the public domain and adjoining properties. The proposed FSR will also provide for a development that has a suitable transition between the adjoining dwellings fronting Marrickville Road which have a mainly single storey form and the larger two storey residential development directly abutting the site's northern boundary.

2.1.2 Consideration of Draft Inner West LEP 2020 Required

In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 (the Act), Council (and the Inner West Local Planning Panel (the Panel)) must consider the provisions of any draft LEP when determining a DA:

"(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)".

On this basis, the consideration of the proposed increased FSR for the site under the draft Inner West LEP 2020 as outlined above, and the compliance of the proposal with the proposed FSR, must form part of any decision of Council and the Panel for this DA. There is no obstacle to Council (or the Panel) granting approval of the proposed FSR of the site under the Act.

2.2 Clarification of Gross Floor Area and Exclusion of Stair Void

In the past there has been inconsistency regarding whether stairs in dwellings should be counted as Gross Floor Area under the NSW Planning System. This matter was definitively addressed in the *Dwyer vs Sutherland Shire Council* in a Land and Environment Court Case in October 2018 and of relevance are paragraphs 58 and 59 of the judgement of Commissioner Sarah Bish which states the following:

"I agree with Mr Minto that the area created above the stairs that leads to the attic and studio is a void, and should be excluded from the GFA (and FSR) calculation. There is no floor above the upper (3rd) level stairs to the ceiling, and therefore a void is created. This approach is consistent with exclusion (j) in the definition of GFA, in the SSLEP 2015, as follows:

but excludes:

*...
(j) voids above a floor at the level of a storey or storey above.*

59 Therefore, in answer to the key contention of Council of whether the area above the attic/garage stairs is not a void and should be included in the GFA, I disagree. I consider that the areas above the stairs in the primary dwelling leading to the attic and in the garage leading to the studio form a void, and should not be included in the GFA for the purposes of calculating FSR."

For reference the definition for "Gross Floor Area" in LEP 2011 is as follows (emphasis added):

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

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

but excludes:

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

The definition is clear and cannot be misconstrued as to result in the void above the proposed stair being counted as GFA. As noted in the Commissioner Sarah Bish's judgement, there is *no floor above the first floor level stairs to the ceiling, and therefore a void is created.*

¹ <https://www.caselaw.nsw.gov.au/decision/5bbfe30ee4b06629b6c62a13>

In light of the above, the GFA of the proposed secondary dwelling is 71.4m² and the overall GFA of the site is 275.4m² and therefore the proposal is compliant with Clause 5.4(9) of the MLEP 2011 in regards to the maximum floor area permitted for secondary dwellings and the maximum FSR for the site overall (0.56:1).

2.3 Inner West Planning Panel Decision Regarding Excluding Voids above Stairs

On 21 April 2020 the Inner West Local Planning Panel consented to Development Application DA201900412 for the property located at 255 King Street, Newtown. For that DA, the proposal resulted in an increase in the total FSR of the site from 1.64:1 to 1.86:1. The plans submitted to Council Officers and approved by the Panel did not include the void at the topmost level of the stairs of the building. This decision is consistent with the established caselaw and the definition for GFA (as noted in Section 2.1 above).

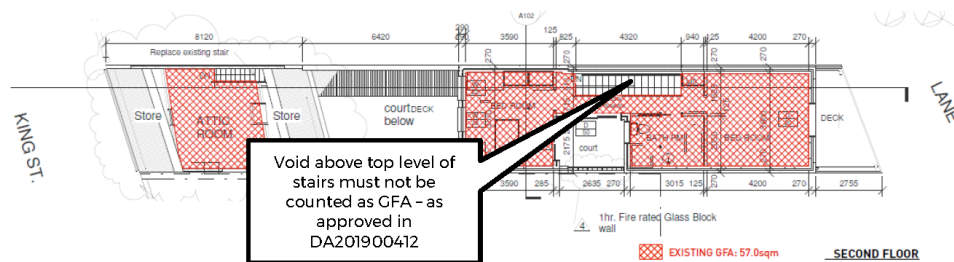


Figure 1: Cross Floor Plan calculation diagram supported by the Inner West Local Planning Panel
 Source: DA201900412, 255 King Street, Newtown

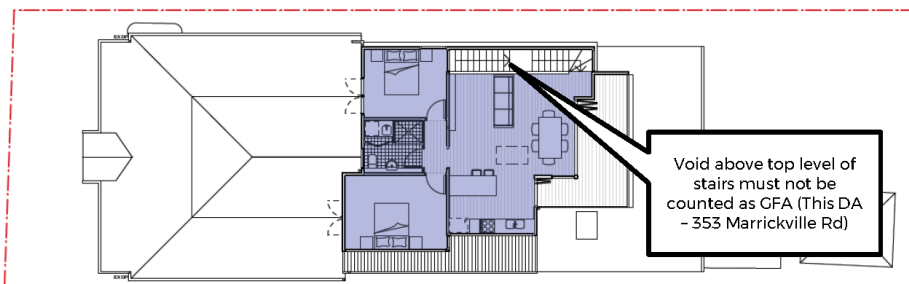


Figure 2: Cross Floor Plan calculation diagram for this DA (353 Marrickville Road, Marrickville)

To ensure transparency and consistency of decisions made by the Panel, we request the Panel supports the exclusion of the void above the topmost level of stairs and approves the proposed overall GFA of the proposed development at 353 Marrickville Road, Marrickville being 275.4m².

3. What are the Objectives of Clause 4.6 and Is the proposal consistent with them?

The objectives of Clause 4.6 of LEP 2011 are:

“(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”

As outlined in the assessment below, that the proposed variation is consistent with the objectives of Clause 4.6 of LEP 2011. These variations allow flexibility in the application of the maximum FSR development standards by improved amenity and achieve better planning outcomes.

4. Are the standards to be varied Development Standards to which Clause 4.6 applies?

Clause 4.4 are in Part 4 "Principal Development Standards" of LEP 2011. The wording of Clause 4.4 is consistent with previous decisions of the Court in relation to matters which constitute development standards. It is noted that Clause 4.6 does not contain a provision which specifically excludes Clause 4.4 from being able to be varied. On this basis Clause 4.4 are development standards for which Clause 4.6 applies.

5. Is compliance with the Development Standards unreasonable or unnecessary in the circumstances of this case?

The Court's decision in the *Wehbe* case provides guidance by nominating the five separate methods in which compliance to a development standard can be demonstrated as being unreasonable and unnecessary subject to a variation request. The five methods specified in the *Wehbe* case include the following:

- Method No. 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- Method No. 2: The underlying objective or purpose of the standard is not relevant to the development with the consequence that compliance is unnecessary.
- Method No. 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- Method No. 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
- Method No. 5: *"The zoning of the particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning is also unreasonable and unnecessary as it applied to that land"* and hence compliance with the standard would be unreasonable or unnecessary (i.e. the subject allotment should not have been included in the zone it is located in).

This Development Standard Variation Request will rely upon Method No.1 as set out the *Wehbe* case. Method Nos. 2, 3, 4 and 5 are not considered relevant to the current proposal and therefore this Development Standard Variation Request relies upon Method No. 1 in *Wehbe*, only. This approach is consistent with the findings of Dixon SC in *Brigham v Canterbury - Bankstown Council [2018] NSWLEC 1406* who notes *'you do not need to list all five tests from Wehbe if the first test is relied upon and said to be satisfied'*.

On the basis of the above, compliance with the requirements of Clause 4.4 "FSR" is deemed both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- The proposal is consistent with the objectives of the zone and provides a high quality internal and external amenity for the occupants.
- The proposal will have minimal visual, amenity, privacy and overshadowing impacts on the surrounding buildings.
- The proposal will be in keeping with the diverse character of the area in relation to building bulk, form, and scale.
- The proposal complies with the applicable Council building height, boundary setback and private open space requirements. Compliance with these key planning and design criteria reinforce the reasonableness of the proposal in terms of overall built form. The proposal is not an unacceptable intensification of the development on the site.
- The proposal comprises a compact and well designed addition that is sensitive to the amenity of the surrounding area. The internal areas are minimal in size for the proposed secondary dwelling and to require strict compliance with the FSR requirements would not yield a better planning outcome for the site or surrounding area.

There are no unreasonable environmental or amenity impacts on any nearby properties which will arise as a result of the maximum FSR being reduced in this case.

6. Are there sufficient environmental planning grounds to justify contravening the Development Standard?

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6.

The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2011 to justify that there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 variation request must be specific to the circumstances of the proposed development on that site.

In this instance, there are sufficient environmental planning and design grounds to justify the contravention of the maximum FSR development standards as it relates to the proposed development in context to the existing building on the consideration of the following:

- The proposed development whilst non-compliant with the Council's numerical maximum FSR control, achieves compliance with the objectives of Clause 4.4.
- There are no adverse amenity impacts on the neighbouring properties as a result of these non-compliances.
- The proposal has no impacts on the visual privacy, acoustic privacy, solar access and views on any neighbouring properties or the surrounding properties in the area.
- The proposal overall is of high architectural design quality that will positively contribute to the host building character.
- The proposed works are set back behind the roof ridge and have limited visibility from Marrickville Road.
- Potential adverse amenity impacts in relation to views and visual bulk to neighbouring dwellings are minimised through the low pitch roof design, keeping the maximum ridge height well below the maximum 9.5m building height control, and locating additional floor space and bulk at the rear in order to minimise overshadowing and visual imposition impacts on neighbouring properties.
- The proposed side boundary setbacks of the secondary dwelling comply with relevant DCP 2011 controls and ensures impacts associated with visual bulk at the rear of the dwelling when viewed from adjoining properties are minimised.

The proposed development whilst non-compliant with the Council's numerical FSR control achieves compliance with the objectives of Clause 4.4 to minimise bulk and scale impacts of new development as well as being of a comparable bulk, scale and height to adjoining developments.

7. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The proposal is consistent with the objectives of the development standard in LEP 2011 and for development in the R2 Low Density Residential Zone under LEP 2011. The proposed development is in the public interest as it is compliant with the zone objectives and the objectives of the particular standard (Clause 4.4(1) in LEP 2011).

7.1 R2 Low Density Residential Zone Objectives

The objectives for development in the R2 General Residential Zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.*
- *To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.*
- *To provide for retail premises in existing buildings designed and constructed for commercial purposes."*

The proposal will meet the objectives for development in the R2 Low Density Residential Zone for the following reasons:

- Provides new housing within an existing urban environment that is an acceptable utilisation of a large residential lot.
- Provides additional living spaces that will meet the needs of the community within a low density context.
- Is compatible with the character and style of surrounding buildings and the mixed architectural styles and varied built form of dwellings on the streetscape.
- Is compatible with the orientation and pattern of surrounding buildings and results in a development that will provide visual continuity and consistency with the adjoining dwellings.

The proposal will achieve a high level of compliance and consistency with the above objectives by providing residential development that are of bulk and scale, compatible with the desired future character of the area in relation to building bulk, form and scale.

Further to the above, it is considered any reduction in the GFA of the proposal will result in one proposed bedroom being made unviable for bedroom use (resulting in a study room) and thus making the proposed secondary dwelling and overall FSR of the proposed DA less aligned with R2 Low Density Residential Zone objectives in terms of providing housing needs of the community.

7.2 Clauses 4.4 Floor Space Ratio Objectives

Clause 4.4 outlines the following objectives for Floor Space Ratio:

- (a) to establish the maximum floor space ratio,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) to minimise adverse environmental impacts on adjoining properties and the public domain.*

The proposal will achieve a high level of compliance and consistency with the above objectives by:

- Providing residential development that is of a bulk and scale, compatible with the low density desired future character of the area as proposed under the draft Inner West LEP 2020 which proposes an FSR of 0.6:1 for the site.
- Adhering to the built form controls under the Council's DCP and LEP in regard to building height, setbacks and private open space.
- Resulting in a modest rear addition to the dwelling that has carefully considered the amenity of adjoining properties and therefore will have minimal environmental impacts in relation to overshadowing, privacy, external materials, views and visual imposition.

8. Secretary's Concurrence

Under Clause 4.6(5) of LEP 2011, the Secretary's concurrence is required prior to any variation being granted, however it is noted under Planning Circular PS 18-003 "Variations to development standards" dated 21 February 2018 that the Secretary's concurrence is assumed by a delegate of Council if:

- The development contravenes a numerical standard by less than 10%, and
- The variation is a numerical standard.

Pursuant to the Minister's Direction under Section 9.1 of the Environmental Planning and Assessment Act 1979 dated 23 February 2018, the relevant Local Planning Panel is to determine development,

"that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards."

In light of above criteria, the Inner West Local Planning Panel is able to determine the DA with the proposed FSR as outlined in this Clause 4.6 submission. Notwithstanding the above, the following section provides a response to those matters set out in Clause 4.6(5) of the LEP 2011 which must be considered by the Secretary, and by extension, the delegate of Council.

8.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed variation will not be inconsistent with any objectives within State or Regional Planning policies. The proposal is consistent with the current metropolitan plan for Sydney including the Greater Sydney Region Plan: A Metropolis of Three Cities and the Eastern District Plan in that it:

- contributes to the development of a more accessible and walkable city;
- supports the economic sectors that contribute to investment and construction;
- contributes to the strengthening and competitiveness of the Inner West as a place supporting high quality residential accommodation; and
- promotes walkable neighbourhoods.

8.2 The public benefit of maintaining the development standard

The proposal will not result in any unreasonable adverse environmental impacts upon the amenity of the adjoining properties in terms of overlooking, provision of landscaped area, tree removal, solar access, visual amenity, view sharing, and satisfies the relevant objectives of LEP 2011 and achieves consistency with the desired future character provisions within Section 9.19.2 Marrickville Road, Central (Precinct 19) of DCP 2011.

Council's refusal to permit the proposed variation to the maximum FSR in this instance would not be in the public interest given the absence of any significant detrimental environmental impacts attributable to the proposed non-compliance and the fact that the proposal does not exceed the applicable building height and boundary setback controls.

9. Conclusion

Based upon the preceding assessment contained in this submission, a variation of the Floor Space Ratio control as required by Clause 4.4 of the Marrickville LEP 2011 is acceptable and strict adherence to a maximum FSR is not reasonable nor necessary in the circumstances.

A variation to the development standard is therefore considered to be acceptable on planning merit and environmental planning grounds under Clause 4.6 of LEP 2011.

MILESTONE (AUST) PTY LIMITED