





# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	MOD/2020/0215
<b>Address</b>	59 Warren Road MARRICKVILLE NSW 2204
<b>Proposal</b>	Modification to mixed use building to delete the requirement to provide easement for access to neighbouring properties
<b>Date of Lodgement</b>	29 June 2020
<b>Applicant</b>	Burrell Threlfo Pagan Pty Ltd Mr Bruce Threlfo
<b>Owner</b>	Newbury Ventures Pty Ltd
<b>Number of Submissions</b>	0
<b>Value of works</b>	\$3,576,399.00
<b>Reason for determination at Planning Panel</b>	Modification proposes to delete a condition imposed by the Panel
<b>Main Issues</b>	Vehicular Access for adjoining properties
<b>Recommendation</b>	Approval
<b>Attachment A</b>	Recommended modified conditions of consent
<b>Attachment B</b>	Approved Plans (DA201800235)
<b>Attachment C</b>	Traffic Report & Legal Advice submitted with application



### LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the modification submitted to Council under s4.55(1a) of the Environmental Planning and Assessment Act 1979 to modify Determination No. 201800235 dated 27 November 2018 to delete the requirement to provide easement for access to neighbouring properties.

The application was notified to surrounding properties and no submissions were received in response to the notification.

The application is reported to the Panel as the applicant seeks to delete a condition 5 which was imposed by the Panel and requires the mixed-use development to provide a break through wall and easement to the adjoining property.

The modification sought is not opposed by Council staff and is recommended for approval.

## 2. Proposal

On 27 November 2018, the Inner West Local Planning Panel approved DA201800235, to demolish existing improvements and construct a 5-storey mixed use building containing a shop and 20 boarding rooms with associated car parking.

The following is an extract of the meeting minutes in relation to the approved development:

*“The Panel supports the findings contained in the Assessment Report and resolves that the application be approved as per the recommendation contained in that report, subject to the following additional conditions:*

- 1. The wall on the south west ground floor corner is to be set back 2m from the front alignment of the property.*
- 2. In order to facilitate the orderly redevelopment of the adjoining properties at 55 and 57 Warren Road, an easement for access 3m wide with a height of 2.5m to allow for cars and a breakthrough wall construction on the western boundary is to be provided from Stinson Lane in alignment with the approved driveway at 59 Warren Road in favour of 57 and 55 Warren Rd, Marrickville. Details of the proposed wall are to be provided on the construction certificate plans and the easement is to be provided prior to the issue of an occupation certificate.*

*The decision of the panel was unanimous.”*

The subject modification seeks deletion of the condition listed in the extract above as point 2 of the recommendation of the Panel and condition 5 in the notice of determination. The condition requires an easement for access and construction of the western elevation wall being able to facilitate a ‘break through’ to the adjoining properties at Nos.57 and 55 Warren Road through the subject site and that details of this be provided prior to Construction Certificate and evidence of the easement prior to Occupation Certificate being issued.

### 3. Site Description

The subject site is located on the northern side of Warren Road on the corner of Stinson Lane between Illawarra Road and Stinson Lane. The site consists of 3 allotments and is generally rectangular shaped with a total area of 394sqm and is legally described as Lots 1, 2 and 3 in Deposited Plan 1080937

The site has a frontage to Warren Road of 12.42 metres and a secondary frontage of approximately 35.05 metres to Stinson Lane.

The site supports a single storey federation style brick dwelling house. The adjoining property at No.57 Warren Road contains a single storey brick dwelling house. On the opposite side of Stinson Lane at No. 61 Warren Road is a heritage listed two storey dwelling house with studio outbuilding. The surrounding context of the site is highly varied including single and 2 storey dwelling houses along Warren Road, with a number of 3 storey residential flat buildings to the east, to the south on the opposite side of Warren Road is the loading dock for Marrickville Woolworths and to the north-west along Illawarra Road are mixed use shop top housing varying up to 7 storeys in height.



*Figure 1: Front of existing dwelling at No.59 Warren Road.*



Figure 2: Side elevation of existing dwelling No.59 Warren Road on Stinson Lane



Figure 3: Zoning Map

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
Pre-DA (PDA201200122) – 55,57 & 59 Warren Road Marrickville	Demolition of the existing structures, amalgamation of three lots into one lot, the construction of a 5 storey mixed use development containing 3 commercial tenancies and 36 dwellings (shop top housing) and basement car parking	Meeting – 9 November 2012 Letter Issued - 28 February 2013
Pre –DA (PDA201600094)	Demolition of the existing improvements and construct a 5 part 6 storey mixed use building containing a shop and 31 boarding rooms	Meeting – 19 October 2016 File note issued
Pre-DA (PDA201700054)	Demolition of the existing improvements and construct a 5 part 6 storey mixed use building containing a shop and 20 boarding rooms with associated car parking.	Meeting – 24 August 2017, Letter issued – 6 September 2017
DA201800235	To demolish existing improvements and construct a 5-storey mixed use building containing a shop and 20 boarding rooms with associated car parking	Approved by LPP - 27 November 2018

#### Surrounding properties

Application	Proposal	Decision & Date
DA201200486 - 415 -421 Illawarra Road Marrickville	Demolition of the existing improvements and erect a six (6) storey mixed use development containing four (4) ground floor commercial/retail tenancies, 32 dwellings with basement level providing parking for 22 cars	Deferred Commencement – 12 June 2013, activated and amended under modified determination No.201200486.02 dated 22 December 2014
DA2016001221 – 392-396 Illawarra Road Marrickville	Partial demolition of the existing improvements, consolidation of 3 allotments into 1 allotment, retention and restoration of 2 storey traditional commercial shopfronts and construction of a 6 storey mixed use development containing 1 ground floor commercial tenancy, 17 dwellings with associated car parking and landscaping	Approved – 14 November 2016
DA201600228 – 61 Warren Road Marrickville	Demolition of the existing garage and construction of a studio and carport at the rear of the site.	Approved – 22 August 2016

## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.55 and 4g.15 of the *Environmental Planning and Assessment Act 1979*.

### 5(a) Environmental Planning Instruments

The application has been assessed against the *State Environmental Planning Policy (Affordable Rental Housing) 2009* and *Marrickville Local Environment Plan 2011 (MLEP)*. The proposed modifications relating to the removal of the condition imposed by the Panel relating to the requirement for an easement and break through wall to the adjoining property does not result in any substantial change to the development's assessed permissibility, or compliance with applicable development standards, controls or objectives.

Having regard to the relevant Environmental Planning Instruments the application as recommended to be modified is considered acceptable.

### 5(b) Draft Marrickville Local Environmental 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*.

The amended provisions contained in the Draft LEP Amendment are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft LEP Amendment.

### 5(c) 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*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

### 5(d) Development Control Plans

The application has been assessed against the relevant provisions of Marrickville Development Control Plan 2011 with the issues discussed below:

#### **Part 2.11 - Parking**

The application seeks the deletion of condition 5 which was imposed as a condition of consent under DA201800235 which reads as follows:

5. *In order facilitate the orderly redevelopment of the adjoining properties at 55 and 57 Warren Road, the following is to be implemented:*
  - a) *An easement for access 3m wide with a height of 2.5m to allow for cars and a breakthrough wall construction on the western boundary is to be provided from*

*Stinson Lane in alignment with the approved driveway at 59 Warren Road in favour of 57 and 55 Warren Rd, Marrickville.*

- b) *Documentary evidence of the easement being registered with NSW LRS in accordance with the above terms is required prior to the issue of an Occupation Certificate.*

The applicant states in the SEE submitted with the modification that the deletion of Condition 5 is requested on the following basis:

1. *Condition 5 is legally invalid as addressed in the legal submission from Bruno Nesci, Solicitor*
2. *Condition 5 is unsuitable on traffic management grounds as addressed in the report prepared by TRAFFIX (Traffic and Transport Consultants) 9 June 2020.*

Council does not agree that the imposition of the condition by the Panel was legally invalid in principle. However, having regard to the traffic implications of the condition, the following commentary is offered:

Objective O7 of Part 2.10 of MDCP 2011 is *“To ensure all parking facilities are safe, functional and accessible to all through compliance with design standards.”*

Council’s Development Engineer has reviewed the approved plans, condition 5 and the traffic report submitted with the modification and is in agreeance with the TRAFFIX report conclusion that the 3 metre width of the easement detailed in condition 5 is insufficient in width for manoeuvrability to enter and exit the site. The inadequacy would require vehicles utilising the easement to access the adjoining properties to encroach outside the easement to enter and exit the site as highlighted in the swept diagrams shown in figure 4 below. Essentially every movement required to access No.55 and 57 Warren Road would require traversing over private property. Council’s Development Engineer is in agreeance with the submission from the applicant that Stinson Lane is narrow in width making it difficult for vehicles to pass one another and the increase of traffic on this laneway is undesirable.

Having regard to the width of Stinson Lane, the lane could not adequately accommodate increased traffic movements as envisaged by the requirement to provide vehicular access for both 55 and 57 Warren Road combined with the vehicles generated by the approved development, the lane is not sufficient in width to cope with the additional vehicular movements in a safe manner.

It is considered that the most safe, functional and accessible method for vehicular access to the properties known as No.55 and 57 Warren Road would be from the existing driveways serving the allotments or a consolidated driveway (if applicable under a future development) from Warren Road rather than Stinson Lane. Council would be unlikely to raise objection for a future DA where vehicular access to be provided from Warren Road (for a combined development of an appropriate scheme). It was also noted that the easement width and height would prohibit heavy vehicle access to the site or adjoining properties that may be required for the commercial components of that future development.

Given the easement width does not allow compliance with the objectives or controls under Part 2.10 of MDCP and that Council’s Development Engineer is supportive of the modification it is recommended that condition 5 be deleted from Determination No 201800235.

#### 5(e) The Likely Impacts

The assessment of the modification application demonstrates that, subject to the recommended modified conditions, the proposed modification will have minimal impact.

#### 5(f) 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(g) Any submissions

The application was notified in accordance with Marrickville Development Control Plan 2011 for a period of 14 days to surrounding properties. No submissions were received in response to the notification.

#### 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.

The proposal is not contrary to the public interest.

### 6 Referrals

#### 6(a) Internal

The application was referred to Council's Development Engineer, issues raised in the referral has been discussed in section 5 above.

### 7. Section 7.11 Contributions

The modification does not alter the Section 7.11 Contribution imposed on the original development application.

### 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 modification of the development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest. The deletion of condition 5 will ensure that the vehicular access to the site is maintained solely for the future occupants of the subject site in a safe, functional and accessible manner.

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



## 9. Recommendation

- A. 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 Modification No. MOD/2020/0215 under s4.55(1A) of the *Environmental Planning and Assessment Act 1979* to delete the requirement to provide easement for access to neighbouring properties subject to a modified Determination being issued with condition 5 being deleted as shown in attachment A.

## Attachment A – Recommended modified conditions of consent

### Attachment A – Recommended modified conditions of consent

#### GENERAL

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
A100, Issue C	Lower Parking Pit Floor Plan	25.09.2018	MGA Architects	7.11.2018
A101, Issue C	Ground Floor Plan Option 1	25.09.2018	MGA Architects	7.11.2018
A102, Issue C	Level 1	25.09.2018	MGA Architects	7.11.2018
A103, Issue C	Level 2	25.09.2018	MGA Architects	7.11.2018
A104, Issue C	Level 3	25.09.2018	MGA Architects	7.11.2018
A105, Issue C	Level 4	25.09.2018	MGA Architects	7.11.2018
A106, Issue C	Roof Plan	25.09.2018	MGA Architects	7.11.2018
A200, Issue B	Elevations East and West	27.08.2018	MGA Architects	7.11.2018
A201, Issue B	Elevation South	27.08.2018	MGA Architects	7.11.2018
A202, Issue B	Elevation North	27.08.2018	MGA Architects	7.11.2018
A400, Issue B	Materials and Finishes Schedule	31.05.2018	MGA Architects	22.10.2018
A401, Issue B	Materials and Finishes Schedule	27.08.2018	MGA Architects	22.10.2018
A402, Issue B	Material and Finishes Schedule – Elevation Thru Warren Road (West)	27.08.2018	MGA Architects	22.10.2018
A403, Issue B	Material and Finishes Schedule – East Elevation	27.08.2018	MGA Architects	22.10.2018
A404, Issue B	Material and Finishes Schedule – North Elevation	27.08.2018	MGA Architects	22.10.2018
A405, Issue B	Material and Finishes Schedule- South Elevation	27.08.2018	MGA Architects	22.10.2018
A300, Issue C	Section	25.09.2018	MGA Architects	22.10.2018
A303, Issue B	Detailed Section through C-C	27.08.2018	MGA Architects	22.10.2018
A302	Detailed Section through B-B	11.05.2018	MGA Architects	22.10.2018

A002, Issue C	Photomontage Streetscape Elevation	25.09.2018	MGA Architects	22.10.2018
A003, Issue C	3D Views	25.09.2018	MGA Architects	22.10.2018
20180174.1/1804A /RO/MF	DA Acoustic Assessment	18.4.2018	Acoustic Logic	31.05.2018
Pages 1-6	Car Stacker Specifications Data Sheet Wohn Parklift 450	05.2018	WOHR Autoparksysteme GmbH	25.09.2018
954525M	BASIX Certificate	20.08.2018	Brian Teplicanec Consultancy	21.08.2018
LSDA-201, Issue C	Landscape Concept Plan Ground	28.02.2018	greenplan	21.08.2018
LSDA-202, Issue C	Landscape Concept Plan Level 1	21.08.2018	greenplan	21.08.2018
LSDA-203, Issue C	Landscape Concept Plan Level 3	21.08.2018	greenplan	21.08.2018
LSDA-301, Issue B	Landscape Details Planting and Construction	21.08.2018	Greenplan	21.08.2018
-	Management Plan	August 2018	Bruce Threlfo	7.11.2018

and details submitted to Council on 31 May 2018, 20 & 21 August 2018, 25 & 27 September 2018, 22 October 2011, 7 November 2018 with the application for development consent and as amended by the following conditions.

Reason: To confirm the details of the application submitted by the applicant.

2. Where any plans and/or information forming part of a construction certificate issued in relation to this consent are inconsistent with:

- (a) the plans and/or information approved under this consent; or
- (b) any relevant requirements of this consent,

the plans, information and/or requirements of this consent (as the case may be) shall prevail to the extent of the inconsistency.

All development approved under this consent shall be carried out in accordance with the plans, information and/or requirements of this consent taken to prevail by virtue of this condition.

3. In order to ensure the architectural and urban design excellence of the development is retained:
  - i) The design architect is to have direct involvement in the design documentation, contract documentation and construction strategies of the project;



- g) Not more than 1 lodger must occupy boarding rooms 4, 5, 10, 11, 14 and 18, not more than 2 adult lodgers must occupy all other rooms;
  - h) The premises must not be adapted for use as backpacker's accommodation, serviced apartments or a residential flat building;
  - i) All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and
  - j) Each self contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.
9. All rooms within the boarding house must be connected to a centralised electricity, water and gas (if installed) service and room tariffs must not include a separate charge for those services.
10. Separate Development Consent or Complying Development Certificate must be obtained for the use of the ground floor shops/commercial suites prior to the occupation of that part of the premises.
11. The ongoing use of the ground floor commercial tenancy complying with the following requirements at all times:
- a) The area to be used as a shop/office must be restricted to the ground floor commercial tenancies;
  - b) The shop window display areas must be maintained at all times with no roller shutters being installed across the shop fronts;
  - c) The hours of operation are restricted to between the hours of 7.00am to 7.00pm Monday to Saturday and not at any time on Sundays or public holidays;
  - d) All loading and unloading in connection with the use must be carried out wholly within the property from the commercial parking space at the rear of the site, during the approved hours of operation and in such a manner so as to not cause an inconvenience to the public;
  - e) No storage of goods or equipment external to any building on the site is permitted; and
  - f) No signs or goods must be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.
12. A total of 8 off-street car parking spaces must be provided, paved, line marked and must be maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking prior to the commencement of the use. The car parking spaces must be allocated as follows:
- a) 6 car parking spaces being provided for lodgers, with 2 of these being provided for persons with a disability and marked as disabled car parking spaces;
  - b) 1 car parking space being provided for on-site manager; and
  - c) 1 car parking spaces being provided for the commercial tenancy staff.

All parking spaces and turning area thereto must be provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site.

13. A minimum of 4 off-street bicycle storage spaces must be provided, paved, line marked and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking prior to the commencement of the use.
14. A minimum of 4 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking prior to the commencement of the use.
15. A minimum of 4 accessible rooms must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.
16. No injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, particulate matter, the exposure to view of any unsightly matter or otherwise.
17. The use of any plant and equipment must not give rise to:
  - a) transmission of unacceptable vibration to any place of different occupancy;
  - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level must be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).
18. Noise and vibration from the use and operation of any plant and equipment and/or building services associated with the premises must not give rise to "offensive noise" as defined by The Protection of the Environment Operations Act 1997 (NSW).
19. Separate Development Consent or Complying Development Certificate must be obtained prior to the erection of any advertisements or advertising structures. The shop windows must not be painted with advertisements and no flashing lights are to be installed on the premises.
20. All prescribed trees shall be retained and protected in accordance with these conditions and with the Australian Standard *Protection of Trees on Development Sites* AS 4970—2009 unless their removal, pruning or other works is explicitly approved under the terms of this consent. The street tree in front of the subject property may be removed in accordance with these conditions.
21. The proposed awning shall be of cantilever type and be set back at least 600mm from the kerb line. The proposed awning shall be designed so as to be easily removed if required in future. The awning shall include pedestrian lighting (Category P3-AS1158) and shall be maintained and owned by the property owner(s). The owner shall maintain, modify or remove the structure at any time if given notification by Council to do so. All works shall be at no cost to Council.

22. Owners and occupants of the proposed building shall not be eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this consent shall advise any purchaser or prospective tenant of this condition. In addition the by-laws of any future residential strata plans created for the property shall reflect this restriction.
23. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2015 'Stormwater Drainage' and Marrickville Council Stormwater and On Site Detention Code. Pipe and channel drainage systems shall be designed to cater for the twenty (20) year Average Recurrence Interval (A.R.I.) storm in the case of low and medium residential developments, the twenty (20) year A.R.I. storm in the case of high density residential development and commercial and/or industrial developments and the fifty (50) year A.R.I. storm in the case of heavy industry. In all cases the major event surface flow paths shall be designed to cater for the one hundred (100) year A.R.I. storm.
24. Should the proposed development require the provision of an electrical substation, such associated infrastructure shall be incorporated wholly within the development site. Before proceeding with your development further, you are directed to contact Ausgrid directly with regard to the possible provision of such an installation on the property.
25. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively the basement or any below ground structure shall be design to be "tanked" preventing the ingress of seepage or groundwater.
26. 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.
27. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).

**BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK**

28. No work must commence until:
  - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
  - b) A minimum of 2 days written notice must be given to Council of the intention to commence work.
29. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.
30. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each

toilet must be connected to the sewer, septic or portable chemical toilet before work commences.

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

31. All demolition work must:
  - a) Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
  - b) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.
32. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
33. Before commencing works the person acting on this consent must provide a contact number for a designated person to be available during the demolition and construction for residents to contact regarding breaches of consent or problems relating to the construction.
34. A waste management plan must be prepared in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and submitted to and accepted by the PCA before work commences.
35. The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before work commences.
36. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign is to include:
  - a) The name, address and telephone number of the PCA;
  - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
  - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
37. A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, "Urban Construction Sites") and submitted to and accepted by the PCA. A copy of this document must be submitted to and accepted by PCA before work commences. The plan must indicate:
  - a) Where the builder's materials and waste are to be stored;
  - b) Where the sediment fences are to be installed on the site;
  - c) What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
  - d) How access to the site will be provided.



All devices must be constructed and maintained on site while work is carried out.

38. The person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to include colour photographs and must be submitted to the Certifying Authority's satisfaction, with a copy being provided to Council and the property owner of the identified property, before work commences, on the buildings on the adjoining property at No.57 Warren Road, Marrickville, if the consent of the adjoining property owner can be obtained. In the event that the consent of the adjoining property owner cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.
39. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:
- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
  - b) A concrete pump across the roadway/footpath
  - c) Mobile crane or any standing plant
  - d) Skip bins
  - e) Scaffolding/Hoardings (fencing on public land)
  - f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
  - g) Awning or street verandah over footpath
  - h) Partial or full road closure
  - i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity

40. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
41. The person acting on this consent shall ensure the site is secured with temporary fencing prior to any works commencing.

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

Separate approval is required from Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

42. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities.
43. The person acting on this consent shall apply for a Work Zone along the site frontage for construction vehicles. A minimum of 2 months should be allowed for the processing of the application.
44. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.
45. The landscape plan and detail shall be amended to provide two new street trees in front of the subject property and shall be submitted to and approved by council before work commences. The species of trees shall be *Elaeocarpus eumundii* (Eumundi quandong). They shall be planted in an expanded soil vault that extends the length of the property frontage and from boundary to the road. WSUD principles shall be incorporated to irrigate the two trees.  
Reason: To compensate for the street tree that is removed and to ensure that local amenity and urban forest canopy is sustained.
46. The citrus tree in the back yard of the neighbouring property, 57 Warren Road, shall be plotted on all relevant working plans. A 2.0 metre radius Tree Protection Zone (TPZ) shall be shown around the tree.

#### **BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE**

47. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.  
Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:
  - Quick Check agents details - see Plumbing, building and developing then Quick Check agents and
  - Guidelines for Building Over/Adjacent to Sydney Water Assets – see Plumbing, building and developing then Plan submissions or telephone 13 20 92.

The stamped plans must be submitted to Certifying Authority satisfaction before the issue of a Construction Certificate.

48. The separate lots comprising the development must be consolidated into one lot and under one title and registered at the NSW Department of Lands before the issue of a Construction Certificate.
49. Amended Plans demonstrating the following are required to be submitted to the Principal Certifying Authority's satisfaction prior to the Issue of a Construction Certificate:
  - a) An increase in wall height to minimum of 1.5 metres above floor level on the western side elevation balcony walls for Room 15 ; and
  - b) Conversion of the storage room on level 1 to a communal laundry containing a minimum of 2 washing machines and 2 dryers.
50. All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council before the issue of a Construction Certificate. Any variation to this requirement requires Council approval.
51. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
52. Adequate outdoor clothes drying areas must be provided for the development in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
53. Lighting details of the pedestrian areas, parking areas and all entrances must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
54. Plans fully reflecting the selected commitments listed in BASIX Certificate submitted with the application for development consent must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

**NOTE:** The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate (Refer to Clause 6A of Schedule 1 to the Regulation).

55. a) This condition is imposed in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979.
- b) Before the issue of a Construction Certificate, the Council must be paid a monetary contribution of \$335,648.47 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 05 November 2018.

**\*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.

**(CONTRIBUTION PAYMENT REFERENCE NO. DC002453)**

- c) 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:
- |                       |              |
|-----------------------|--------------|
| Community Facilities  | \$35,561.44  |
| Plan Administration   | \$6,581.41   |
| Recreation Facilities | \$292,743.28 |
| Traffic Facilities    | \$762.34     |
- d) A copy of the CP can be inspected at Council's offices at 2-14 Fisher Street, Petersham or online at <http://www.marrickville.nsw.gov.au>.
- e) The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\*.

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

Reason: To ensure provision is made for the increase in demand for public amenities and services required as a consequence of the development being carried out.

56. Before the issue of a Construction Certificate an amended plan must be submitted to the Certifying Authority's satisfaction addressing the requirements of The Disability (Access to Premises – buildings) Standards 2010 (the Premises Standards).
57. Evidence of payment of the building and construction industry Long Service Leave Scheme must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).

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

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation. [www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

58. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence

of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit	\$24,000
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 Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

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

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

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

- 59. The stormwater drainage concept plans 6065-C4, 6065-C5, 6065-C6, 6065-C7, 6065-C8 and 6065-C9 (Rev A) shall be amended and/or additional information provided as follows;
  - i. Detailed calculations for sizing of the OSD system to be provided for assessment;
  - ii. Details of the 1 in 100 year overflow route/paths in case of failure/blockage of the drainage system shall be provided, This shall include any existing overland flow routes from upstream;
  - iii. The plans shall be amended so as to exclude all charged lines;

The above additional information shall be shall be submitted to and approved by Council before the issue of a Construction Certificate.
  
- 60. a) To provide for sight-distance for vehicles and pedestrians at intersections a 2m x 2m splay must be created at the property corner of Warren Road and Stinson Lane, and dedicated to the public for road widening before the issue of an Occupation Certificate.
- b) Amended Architectural plans must be submitted to and approved by Council before the issue of a Construction Certificate demonstrating the following:
  - i. incorporating the splay corner;

- ii. deleting all encroachments above and below the 2m x 2m splay. This will require the balcony serving room 3 on level 1 and room 9 on level 2 to be amended to have a maximum length of 1.9 metres (so as to maintain a square shape and not a splayed edge).
61. In order to provide satisfactory vehicular and pedestrian access, drainage, landscaping and aesthetic improvements to the public domain adjacent to the site, the following works shall be undertaken at no cost to Council:
- a) The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, landscaping, street furniture, etc. shall be reconstructed and upgraded in accordance with the Street Tree Masterplan and the Marrickville Public Domain Design Guide;
  - b) The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
  - c) New kerb and gutter along the frontage of the site. The kerb type (concrete or stone) shall be consistent with the majority of kerb type at this location. Council may be able to assist with the supply of stone if required. Please contact Council's Infrastructure Services Division on 9335 2000; and
  - d) Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath shall be set at 2.5%. These sections will set the alignment levels at the boundary.

Full detailed construction plans and specifications shall be submitted to Council for approval under Section 138 of the Roads Act 1993 before the issue of a Construction Certificate with all works completed before to the issue of an Occupation Certificate.

62. The vehicular access and associated vehicle standing areas shall be designed in accordance with Australian Standard AS/NZS 2890.1-2004 *Parking Facilities: Off-street car parking*, AS/NZS 2890.6-2009 *Parking facilities: Off-street parking for people with disabilities* so that. In addition the vehicle egress must be designed such that there are no obstructions to sight lines. Amended plans shall be submitted to and approved by Council before the issue of a Construction Certificate.
63. The design of the car stacker shall address the following criteria:
- a) Ensure operating noise and vibration levels are limited to acceptable levels in accordance with appropriate standards and any plant equipment is housed in noise attenuating housing as required/appropriate;
  - b) Provide manufacturer specifications;
  - c) Provide operational details/management plan of the entire facility, demonstrating safe and functional access for all users; including details of safety protection systems for users and non-users.

The design shall be certified by a suitably qualified Civil Engineer and be provided to the Principal Certifying Authority before the issue of a Construction Certificate.

**SITE WORKS**

64. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and  
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

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

65. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
66. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy - 'Placement of Waste Storage Containers in a Public Place'.

67. All demolition work must be carried out in accordance with the following:
- a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
  - b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
  - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
  - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
  - e) the generation of dust and noise on the site must be controlled;
  - f) the site must be secured to prohibit unauthorised entry;
  - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
  - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
  - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
  - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
  - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
68. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another Certifying Authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
- a) At the commencement of the building work;
  - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
  - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
  - d) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.

You are advised to liaise with your PCA to establish if any additional inspections are required.

69. If the development involves an excavation that extends below the level of the base of the footings of a building on the adjoining allotments, including a public place such as a footway and roadway, the person acting on the consent, at their own expense must:



- a) protect and support the adjoining premises from possible damage from the excavation, and
- b) where necessary, underpin the adjoining premises to prevent any such damage. Where the proposed underpinning works are not "exempt development", all required consents must be obtained prior to the required works commencing; and
- c) at least 7 days' notice must be given to the owners of the adjoining land of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

Where a dilapidation report has not been prepared on any building adjacent to the excavation, the person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report must be submitted to and accepted by the PCA before works continue on site, if the consent of the adjoining property owner can be obtained.

Copies of all letter/s that have been sent via registered mail to the adjoining property owner and copies of any responses received must be forwarded to the PCA before work commences.

70. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
71. Satisfactory methods and/or devices must be employed on the site to prevent the tracking of mud/dirt onto the surrounding streets from vehicles leaving the site.
72. A certificate of survey from a registered land surveyor must be submitted to the PCA upon excavation of the footings and before the pouring of the concrete to verify that the structure will not encroach on the allotment boundaries.
73. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. For vehicular access off rear laneways the level at the boundary shall match the invert level of the adjacent gutter plus 150mm at both sides of the vehicle entry. Note: This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the above alignment levels. Failure to comply with this condition will result in vehicular access being denied.
74. The applicant shall, within fourteen (14) days of notification by Council, execute any and all maintenance works required by Council. In the event that the applicant fails to undertake such work, Council may undertake the required maintenance works, utilising part or all of the maintenance security bond and Council may recover any costs in excess of the security from the applicant.
75. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.

76. A 2.0-metre radius area around the citrus tree in the back yard of the neighbouring property, 57 Warren Road, shall be designated Tree Protection Zone (TPZ). The TPZ need not be fenced but the activities listed in Section 4.2 of the Australian Standard *Protection of Trees on Development Sites AS 4970—2009* shall not be permitted within the designated TPZs. No excavation is permitted within the 2.0 metre radius TPZ.  
Note: Australian Standards can be purchased via the Standard Australia publisher SAI Global Limited at [www.saiglobal.com](http://www.saiglobal.com).
77. The street tree approved to be removed shall be removed no earlier than one week prior to the commencement of works. It shall be removed by a practicing arborist who has a minimum qualification of Certificate 3 in Arboriculture, in compliance with the Safe Work Australia *Guide to Managing Risks of Tree Trimming and Removal Work*, July 2016.
78. Following completion of construction and prior to the issue of the Occupation Certificate, two new street trees shall be planted.
79. The two new trees shall be planted in accordance with the following criteria:
- The new trees shall be located in accordance with the approved amended landscape plan.
  - The species of the new tree shall be *Elaeocarpus eumundii* (Eumundi quandong) or as otherwise approved in writing by Council's Coordinator Public Trees.
  - The planting stock size shall be at least 75 litres.
  - The planting stock shall comply with the Australian Standard *Tree Stock for Landscape Use AS 2303-2015*.
  - The new trees shall be planted in accordance with the tree planting detail submitted to and approved by Council before the start of works. The trees shall be planted in a soil vault that extends the width of the frontage of the subject property and from the street to the boundary. Irrigation shall be provided for the trees utilising Water Sensitive Urban Design (WSUD) principles.
  - The soil vault shall be installed and the new trees shall be planted by a qualified and suitably experienced horticulturist, arborist, or landscape contractor approved by Council's Coordinator Public Trees.
  - The new trees shall be maintained in a healthy and vigorous condition in accordance with a maintenance schedule approved by Council's Coordinator Public Trees for two years after planting.
  - If either tree dies or needs to be removed before that time it shall be replaced with a similar tree in accordance with these conditions at the expense of the applicant.

#### **BEFORE OCCUPATION OF THE BUILDING**

80. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
- A copy of the determination;

- b) Copies of any documents that were lodged with the Occupation Certificate application;
  - c) A copy of Occupation Certificate, if it was issued;
  - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
  - e) A copy of any missed inspections; and
  - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
81. Occupation of the building must not be permitted until such time as:
- a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
  - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
  - c) An Occupation Certificate has been issued.
82. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
  - b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).
- Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.
83. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.
- a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.
  - b) Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.
84. The landscaping of the site must be carried out before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate) in accordance with the approved details and must be maintained at all times to Council's satisfaction.
85. The Principal Certifying Authority shall certify in writing before the issue of the Occupation Certificate that the conditions relating to tree protection and tree planting have been complied with, or if not, detail the nature of any departure from the conditions and shall report breaches of the conditions to Inner West Council.

86. Prior to the issue of the occupation certificate, Council shall be notified in writing that the new trees have been planted in accordance with these conditions and an inspection of the new trees shall be facilitated at any future date thereafter if council wishes to inspect the new tree.
87. Before the issue of an Occupation Certificate, a street number and identifier of separate occupancies (if applicable) must be clearly displayed in a readily visible location (numbers having a height of not less than 75mm). If any new street numbers or change to street numbers (this includes unit and shop numbers) are required they must have the prior approval of council before being displayed.
88. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
89. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au).
90. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
91. Heavy duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" must be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council.
92. All redundant vehicular crossings to the site shall be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue of the Occupation Certificate and at no cost to Council. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb shall also be in stone.
93. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
94. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. 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 shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
95. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the

damaged individual stone units before the issue of the Occupation Certificate. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled. Non-compliance with this condition will result in loss of your security deposit.

96. The existing damaged or otherwise defective kerb and gutter, footpath and/or road pavement adjacent to the site shall be restored in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications", at no cost to Council and before the issue of the Occupation Certificate.
97. The existing unsatisfactory road pavement in Stinson lane Street shall be repaired using a 30mm Mill and Fill treatment for the full frontage of the site. Any failed section shall be boxed out and replaced with deeplift asphalt before the Mill and Fill treatment.
98. Before the issue of the Occupation Certificate written verification from a suitably qualified competent person, stating that all stormwater *drainage, re-use and quality measures* have been constructed in accordance with the approved plans shall be submitted to and accepted by Council. In addition, full works-as-executed plans, prepared and signed by a registered surveyor, shall be submitted to Council. These plans must include levels for all drainage structures, buildings (including floor levels), finished ground levels and pavement surface levels.
99. With the regard to the On Site Detention System (OSD), a Positive Covenant in accordance with supplement 7 of Marrickville Council Stormwater and On Site Detention Code shall be placed on the Title in favour of Council before the issue of the Occupation Certificate.
100. All instruments under Section 88B of the Conveyancing Act used to create positive covenants, easements or right-of-ways shall include the condition that such easements or right-of-ways may not be varied, modified or released without the prior approval of Marrickville Council.
101. To provide for sight-distance for vehicles and pedestrians at intersections a 2m x 2m splay must be created at the property corner of Warren Road and Stinson Lane, and dedicated to the public for road widening before the issue of an Occupation Certificate.
102. All works required to be undertaken on public roads shall be designed and constructed in accordance with Council's standard plans and specifications. The works shall be supervised and certified by a qualified civil engineer who is listed under the Institution of Engineers, Australia "National Professional Engineers Register" (NPER) and shall state that the works have been constructed in accordance with the approved plans and specifications before the issue of the Occupation Certificate. In addition, full works-as-executed plans in PDF or CAD format (dwg or dxf files), prepared and signed by a registered surveyor, shall be submitted to Council upon completion of the works.
103. The applicant shall provide security, in a manner satisfactory to Council for the proper maintenance of the public domain works in an amount of \$3,000 for a period of twelve (12) months from the date of completion of the public domain works as surety for the proper maintenance of these works.

104. The Principal Certifying Authority shall ensure that an Operation and Management Plan has been prepared and implemented for the car stacker. The Plan shall set out the following, at a minimum:
- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners;
  - b) The proposed method of management of the facility, including procedures, directions to users, safety protection systems, emergency response plan in the event of mechanical failure, etc.; and
  - c) Any person required to operate the parking system must be trained to do so.

The Plan shall be prepared by a suitably qualified professional and provided to the Principal Certifying Authority before the issue of an Occupation Certificate. The Operation and Management Plan for the car stacker shall be implemented and kept in a suitable location on site at all times.

105. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.

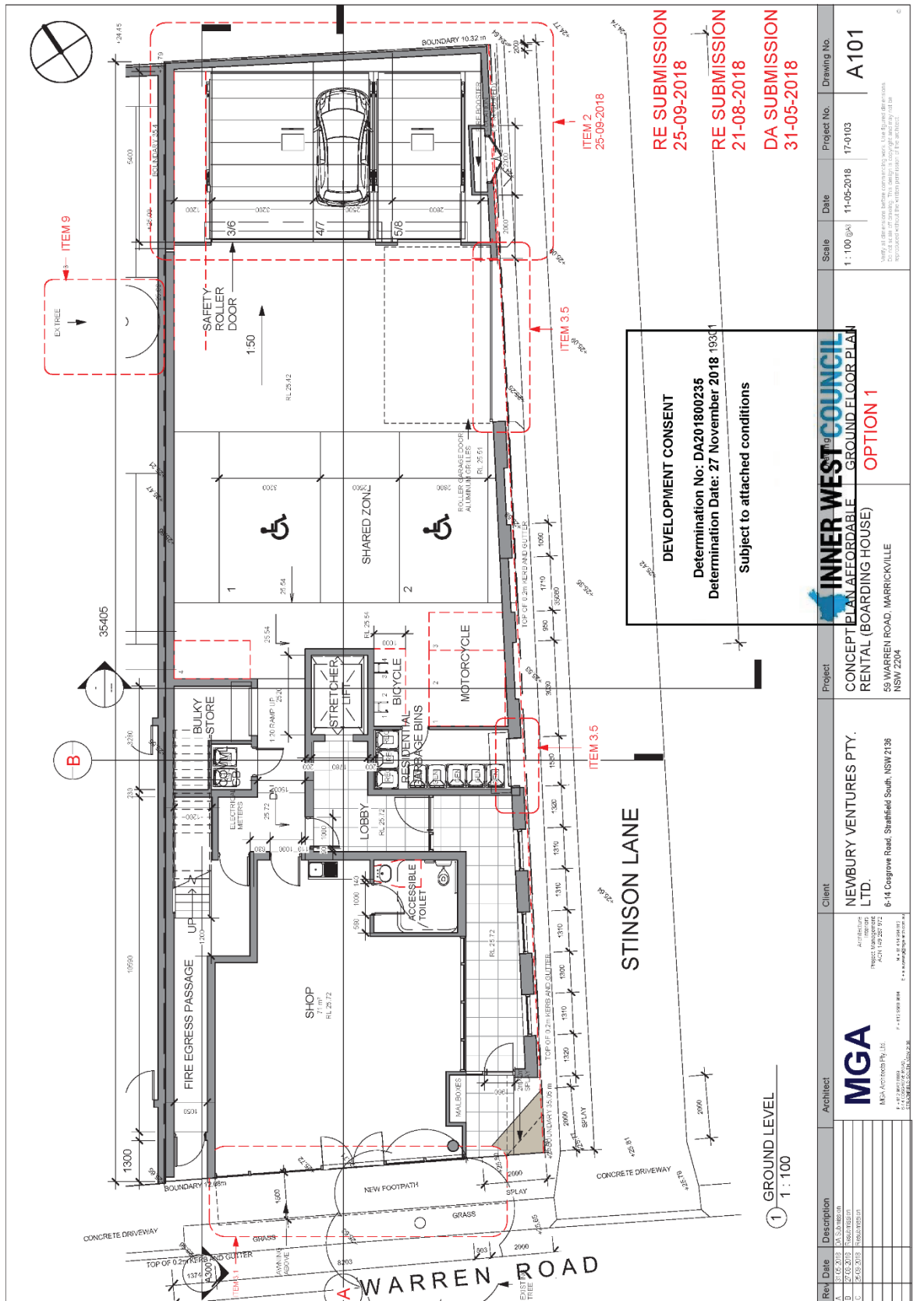
#### **ADVISORY NOTES**

- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- 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, before commencement of works.
- Contact "Dial Before You Dig" before commencing any building activity on the site.

- Useful Contacts

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

Attachment B – Approved plans (DA201800235)



**RE SUBMISSION**  
25-09-2018

**RE SUBMISSION**  
21-08-2018

**DA SUBMISSION**  
31-05-2018

**DEVELOPMENT CONSENT**  
Determination No: DA201800235  
Determination Date: 27 November 2018 193311  
Subject to attached conditions

**INNER WEST of COUNCIL**  
CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE) OPTION 1  
59 WARREN ROAD, MARRICKVILLE  
NSW 2204

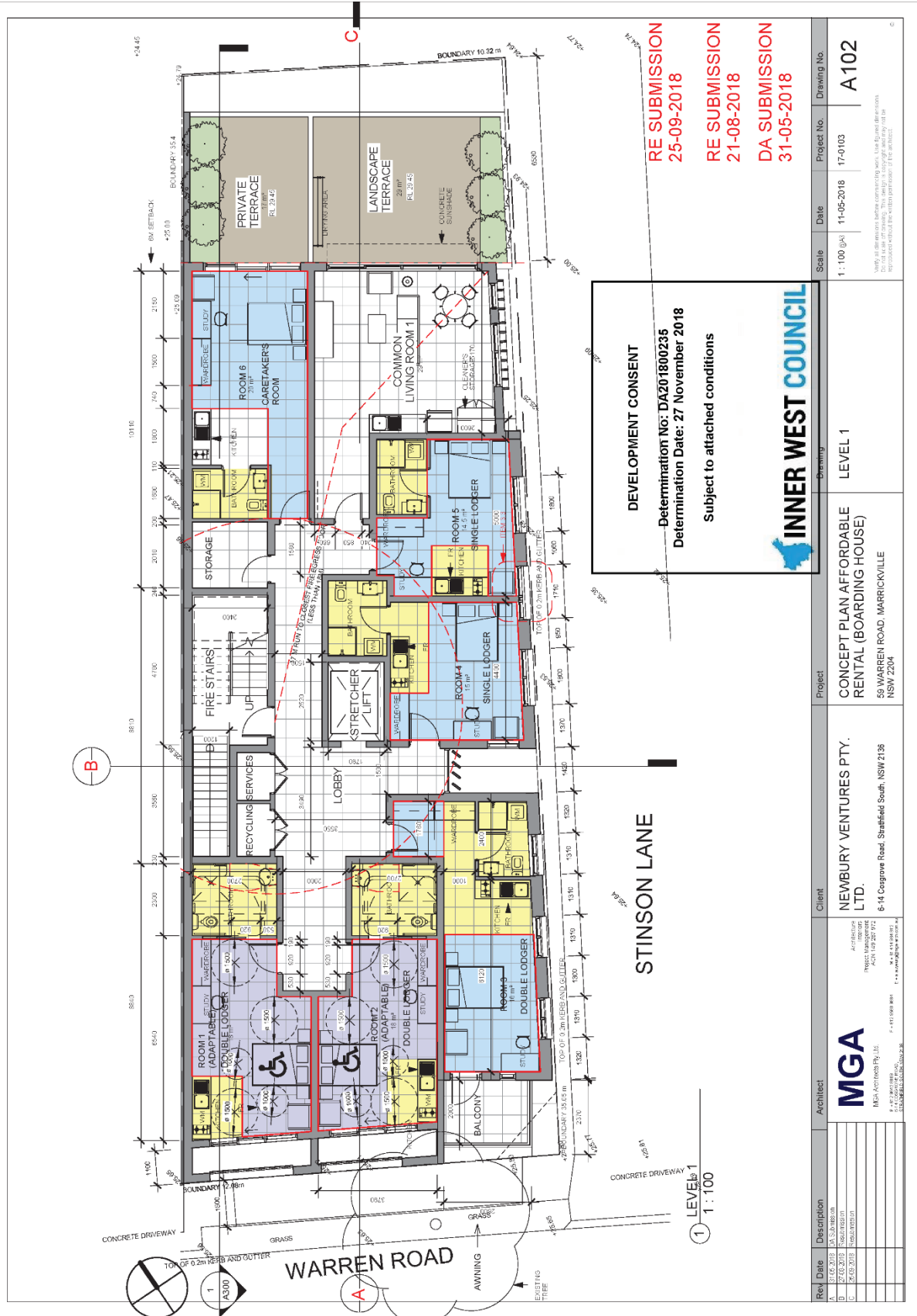
1 GROUND LEVEL  
1 : 100

Rev	Date	Description	Architect	Client	Project	Scale	Date	Project No.	Drawing No.
A	21.05.2018	AS 2211.00		NEWBURY VENTURES PTY. LTD.	CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE) OPTION 1	1:100 (A4)	11-05-2018	17-0103	A101
B	27.02.2018	Revised							
C	24.02.2018	Revised							

**MGA**  
MGA Architecture Pty. Ltd.  
6/11 Green St.  
Sydney NSW 2000

Note: This plan is a preliminary drawing and is not to be used for construction purposes without the written approval of the architect.





**DEVELOPMENT CONSENT**  
 Determination No: DA201800235  
 Determination Date: 27 November 2018  
 Subject to attached conditions

**INNER WEST COUNCIL**

**RE SUBMISSION**  
 25-09-2018

**RE SUBMISSION**  
 21-08-2018

**DA SUBMISSION**  
 31-05-2018

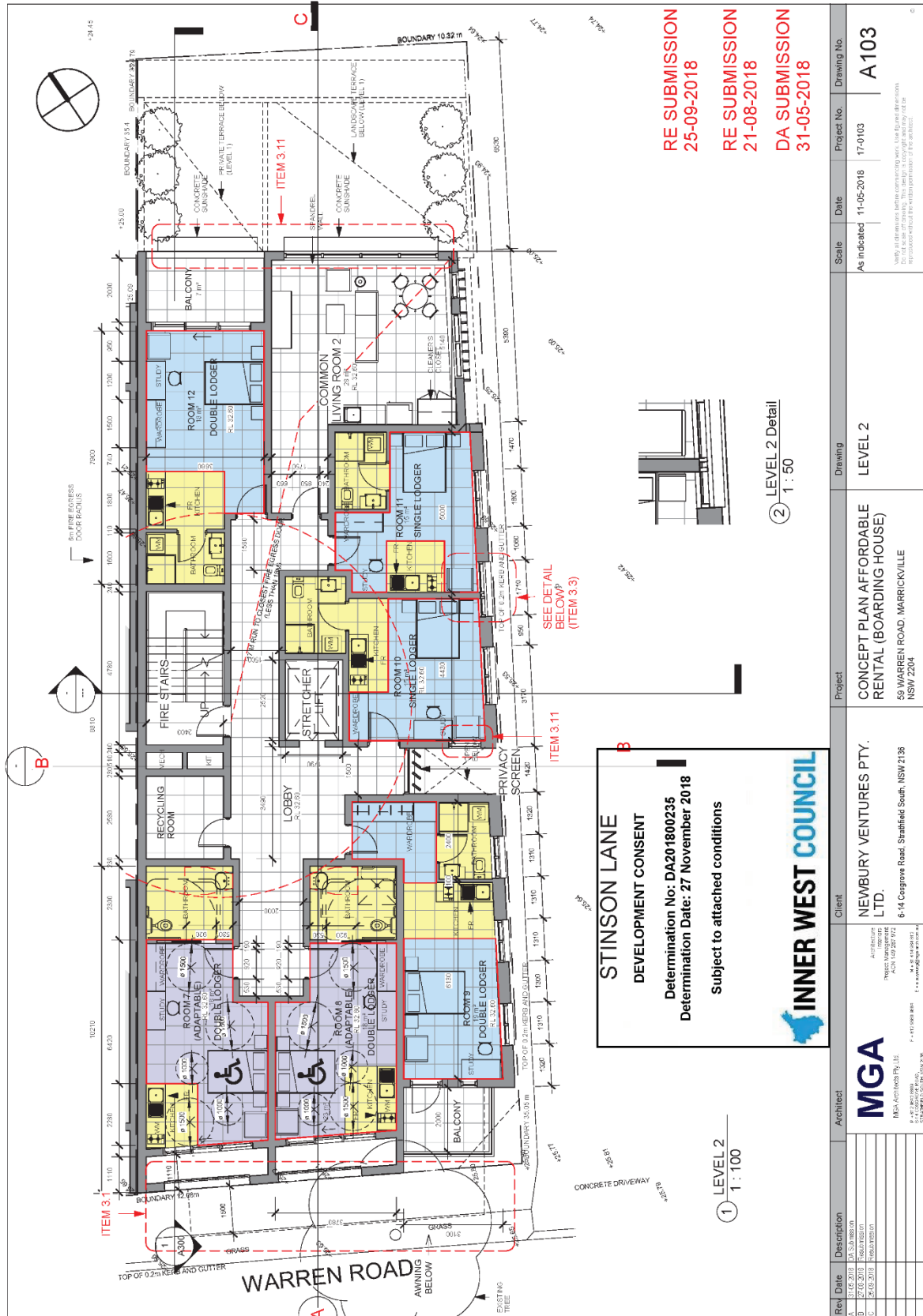
Scale	Date	Project No.	Drawing No.
1 : 100 @A	11-05-2018	17-0103	A102

Project	Drawing
CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE) 59 WARREN ROAD, MARRICKVILLE NSW 2204	LEVEL 1

Client
NEWBURY VENTURES PTY. LTD. 6-14 Cogswode Road, Strathfield South, NSW 2136

Architect
<b>MGA</b> Architectural Project Management Level 10, 100 Pitt Street Sydney NSW 2000 P + 61 2 9239 9000 F + 61 2 9239 9001 www.mga.com.au

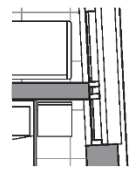
Rev	Date	Description
A	31.05.2018	DA Submission
B	27.09.2018	Re-submission
C	24.08.2018	Re-submission



**STINSON LANE**  
**DEVELOPMENT CONSENT**  
 Determination No: DA201800235  
 Determination Date: 27 November 2018  
 Subject to attached conditions



**RE SUBMISSION**  
 25-09-2018  
**RE SUBMISSION**  
 21-08-2018  
**DA SUBMISSION**  
 31-05-2018

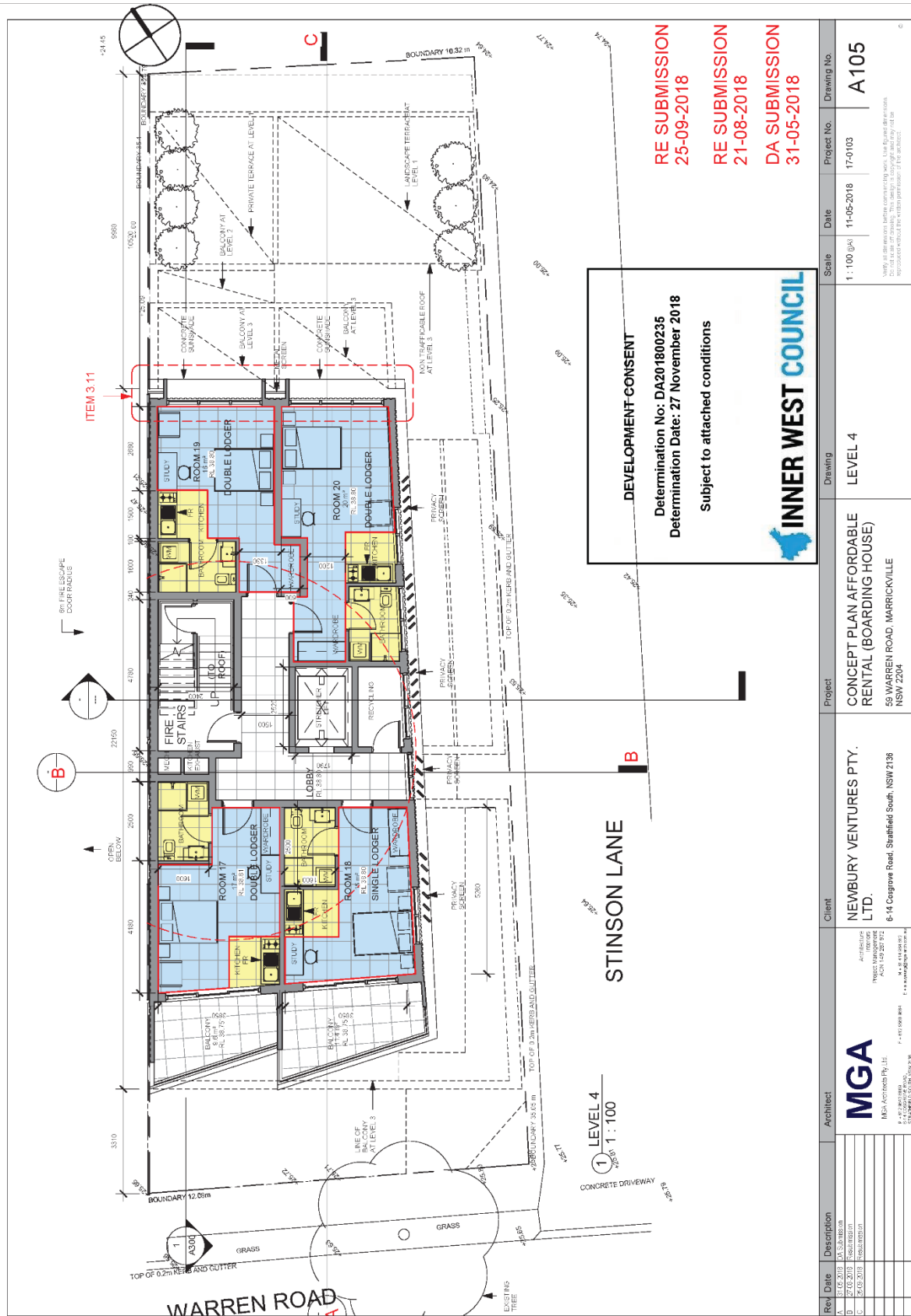


② LEVEL 2 Detail  
 1 : 50

① LEVEL 2  
 1 : 100

Rev	Date	Description	Architect	Client	Project	Drawing	Scale	Date	Project No.	Drawing No.
A	31.05.2018	DA Submission	MGA	NEWBURY VENTURES PTY. LTD.	CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE)	LEVEL 2	As indicated	11-05-2018	17-0103	A103
B	27.05.2018	Re-submission		6-14 Coogee Road, Stratfield South, NSW 2138	59 WARREN ROAD, MARRICKVILLE NSW 2204					
C	24.09.2018	Re-submission								





**DEVELOPMENT CONSENT**  
 Determination No: DA201800236  
 Determination Date: 27 November 2018  
 Subject to attached conditions

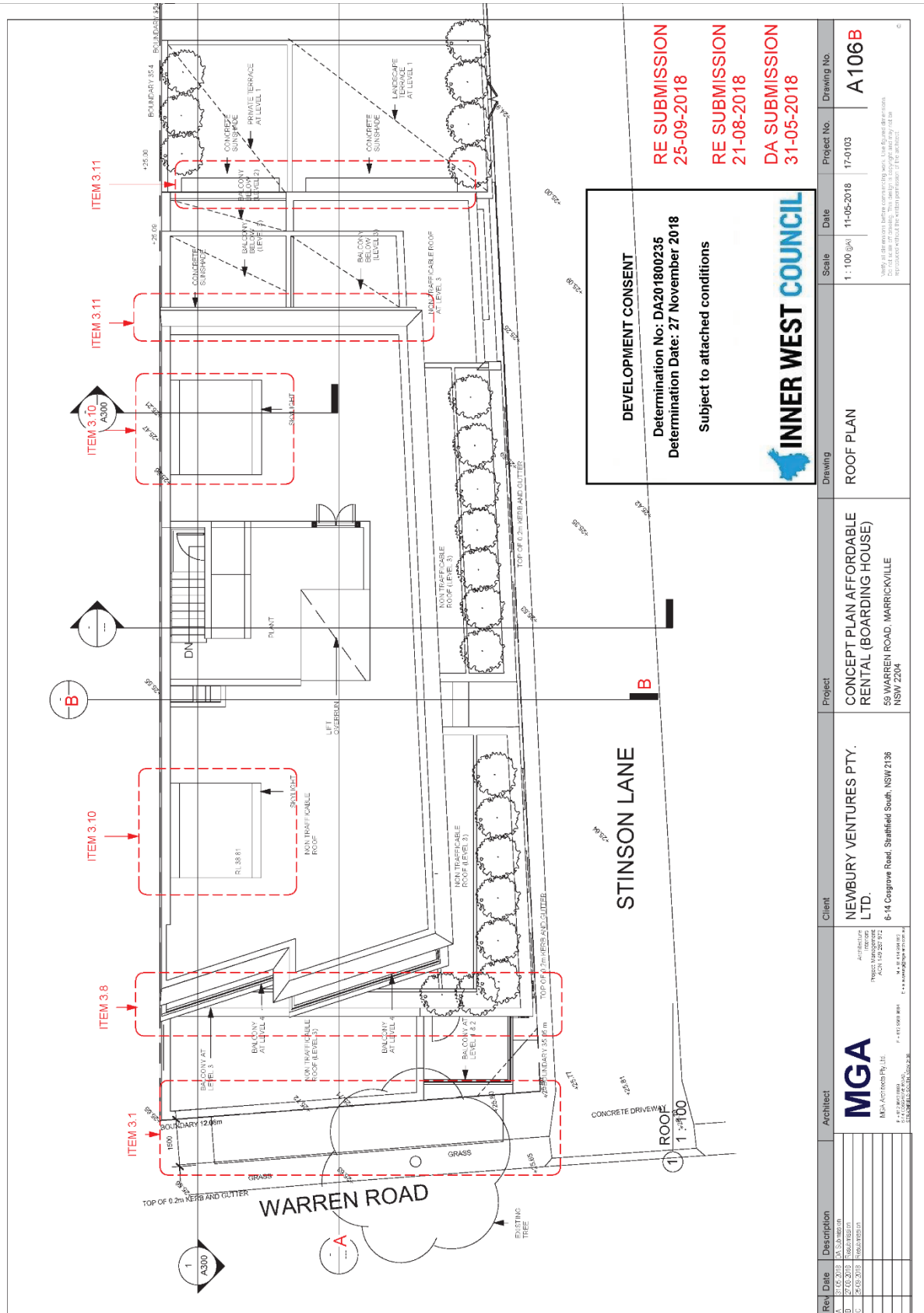
**INNER WEST COUNCIL**

**RE SUBMISSION**  
 25-09-2018

**RE SUBMISSION**  
 21-08-2018

**DA SUBMISSION**  
 31-05-2018

Rev	Date	Description	Architect	Client	Project	Drawing	Scale	Date	Project No.	Drawing No.
A	31.05.2018	DA Submission	MGA	NEWBURY VENTURES PTY. LTD.	CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE)	LEVEL 4	1 : 100 @A1	11-05-2018	17-0103	A105
B	27.03.2018	Re-submission	MGA	6-14 Cogswode Road, Stratfield South, NSW 2138	59 WARREN ROAD, MARRICKVILLE NSW 2204					
C	24.03.2018	Re-submission	MGA							



**DEVELOPMENT CONSENT**  
 Determination No: DA201800235  
 Determination Date: 27 November 2018  
 Subject to attached conditions

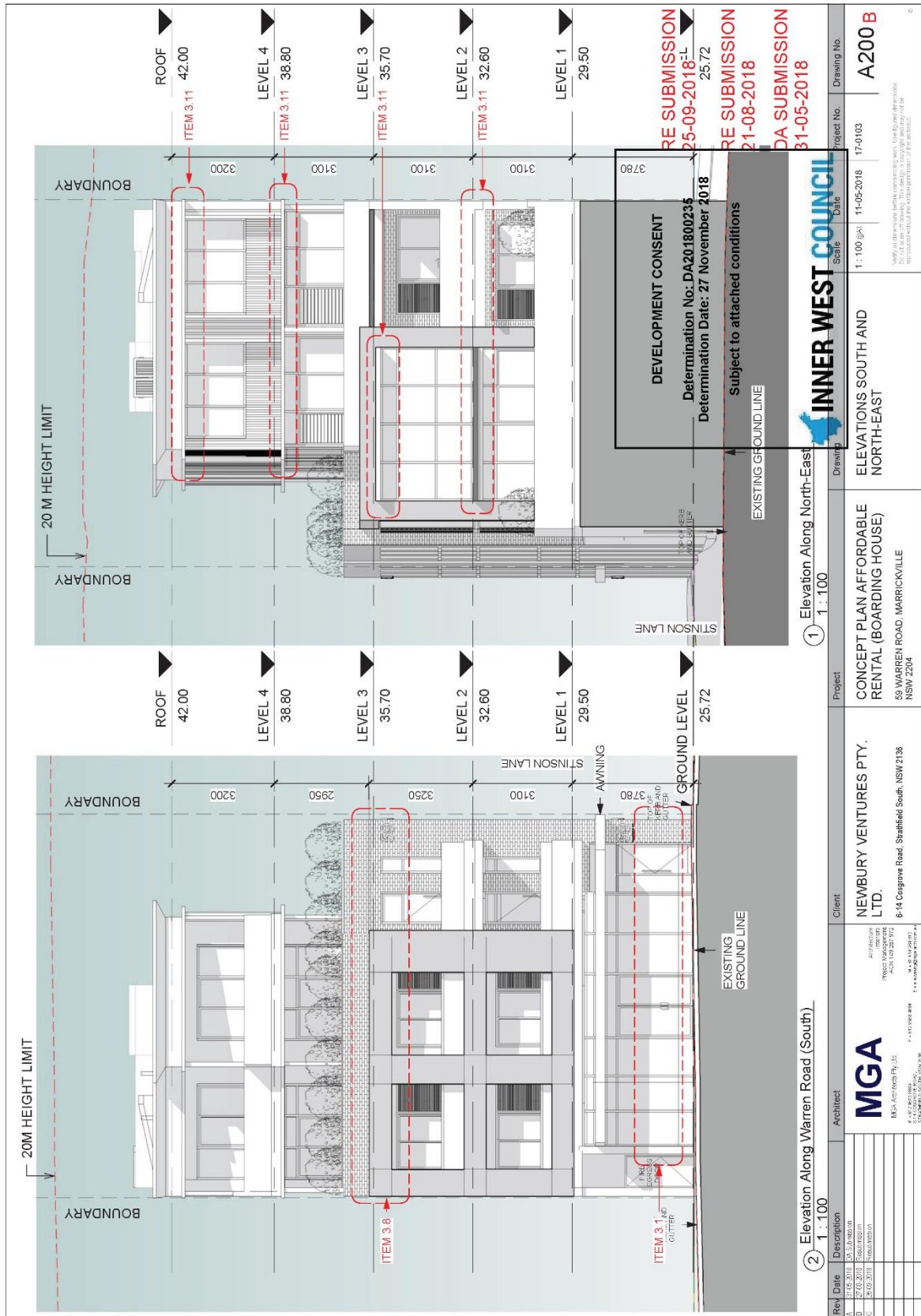
**INNER WEST COUNCIL**

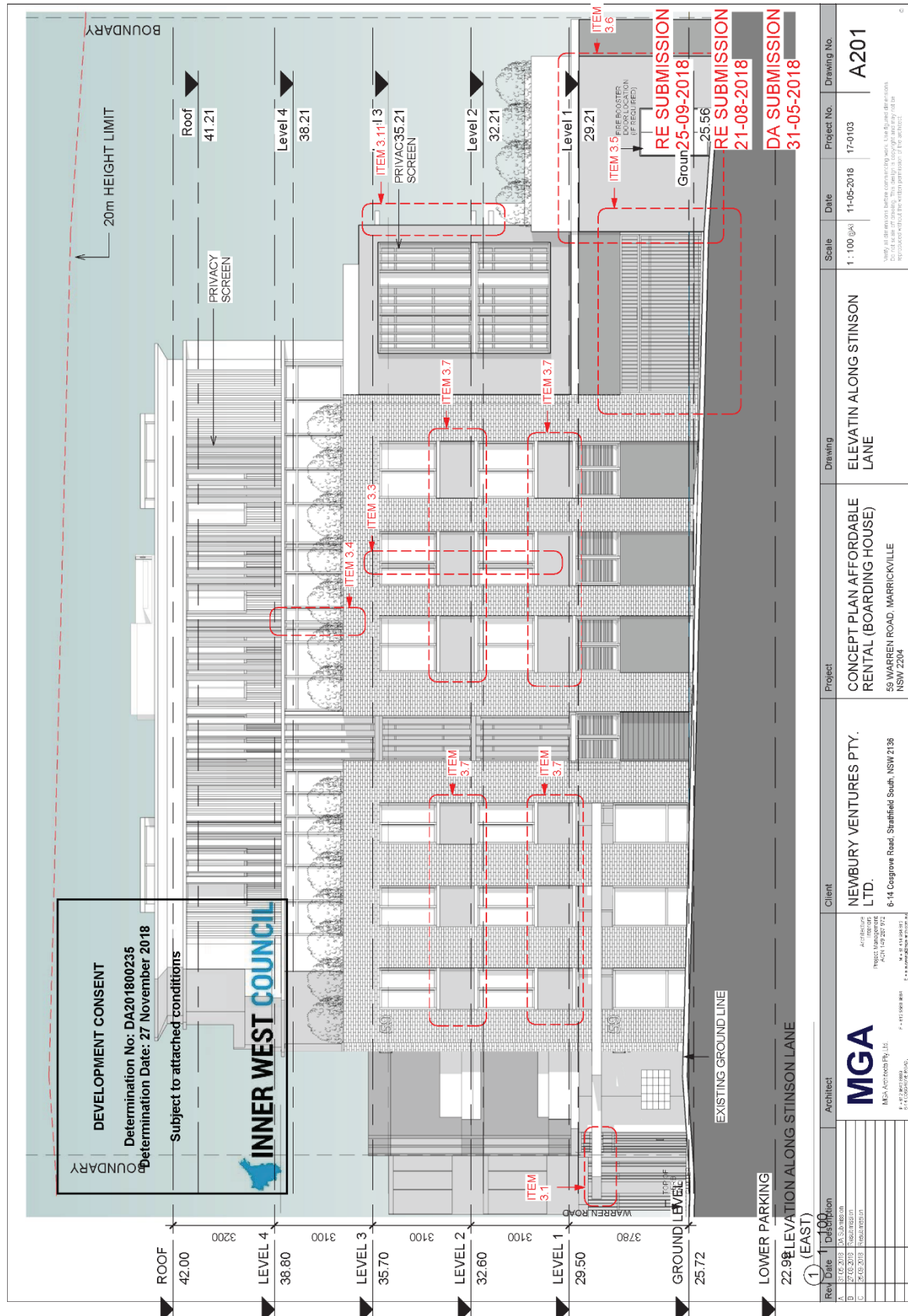
**RE SUBMISSION**  
 25-09-2018

**RE SUBMISSION**  
 21-08-2018

**DA SUBMISSION**  
 31-05-2018

Rev	Date	Description	Architect	Client	Project	Drawing	Scale	Date	Project No.	Drawing No.
A	31.05.2018	DA Submission	MGA	NEWBURY VENTURES PTY. LTD.	CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE)	ROOF PLAN	1 : 100 @A1	11-05-2018	17-0103	A106B
B	27.05.2018	Re-submission								
C	25.09.2018	Re-submission								

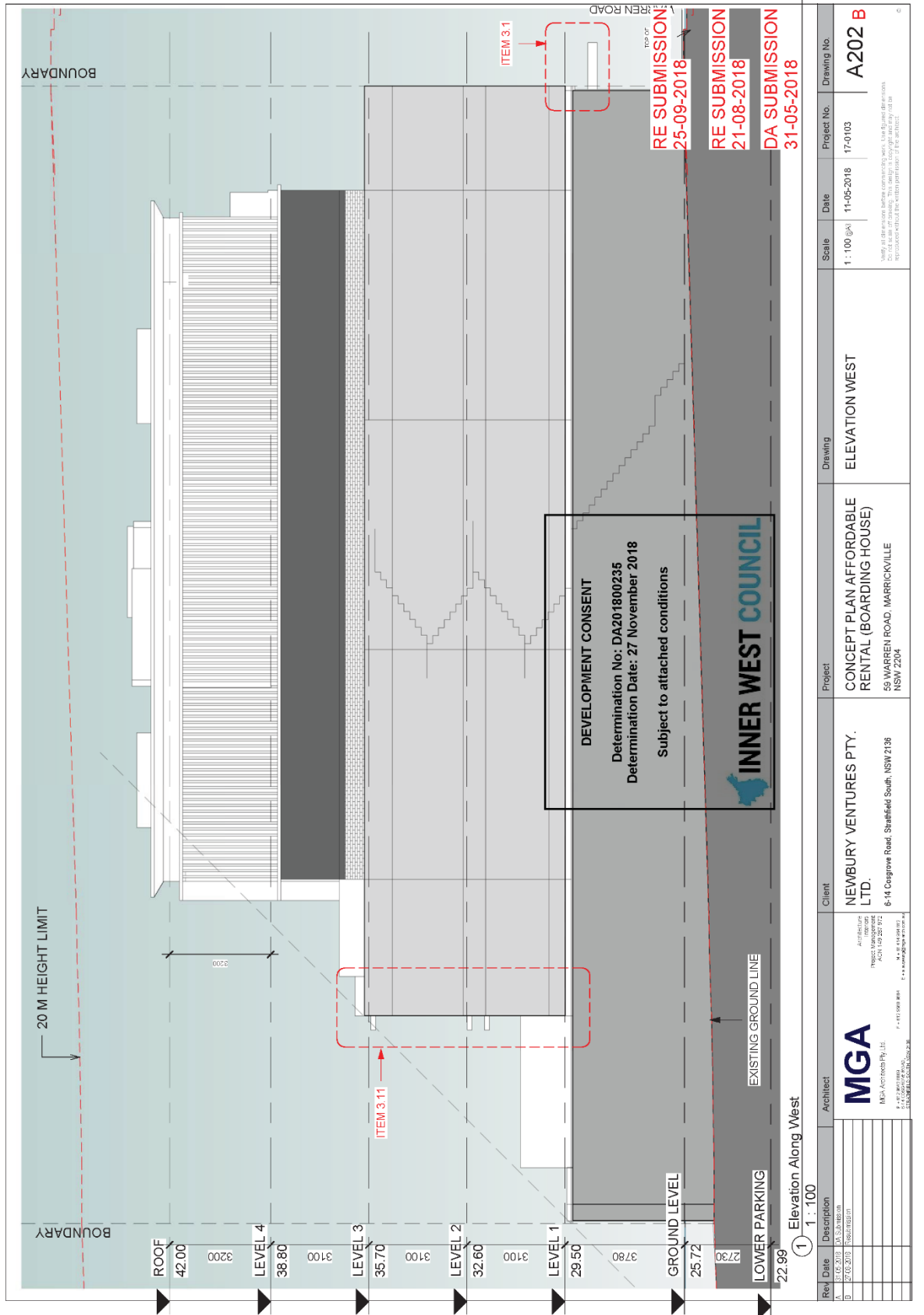




**DEVELOPMENT CONSENT**  
 Determination No: DA201800235  
 Determination Date: 27 November 2018  
 Subject to attached conditions

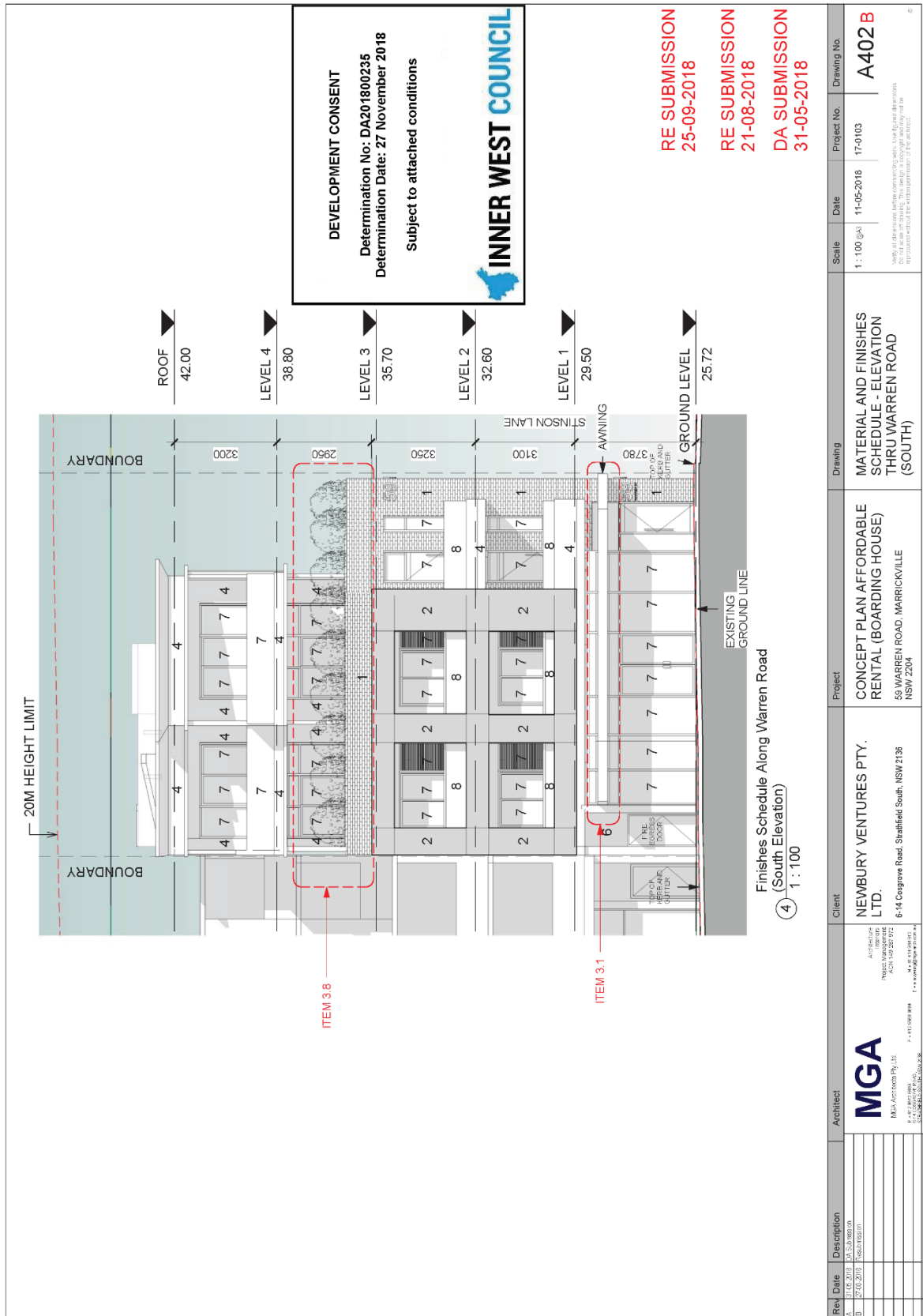
**INNER WEST COUNCIL**

Rev	Date	Description	Architect	Client	Project	Drawing	Scale	Date	Project No.	Drawing No.
1	11-05-2018	Issue for DA	MGA	NEWBURY VENTURES PTY. LTD.	CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE)	ELEVATION ALONG STINSON LANE	1:100 @A1	11-05-2018	17-0103	A201
A	27-03-2018	Revised								
B	27-03-2018	Revised								
C	28-03-2018	Revised								









**DEVELOPMENT CONSENT**  
 Determination No: DA201800235  
 Determination Date: 27 November 2018  
 Subject to attached conditions

**INNER WEST COUNCIL**

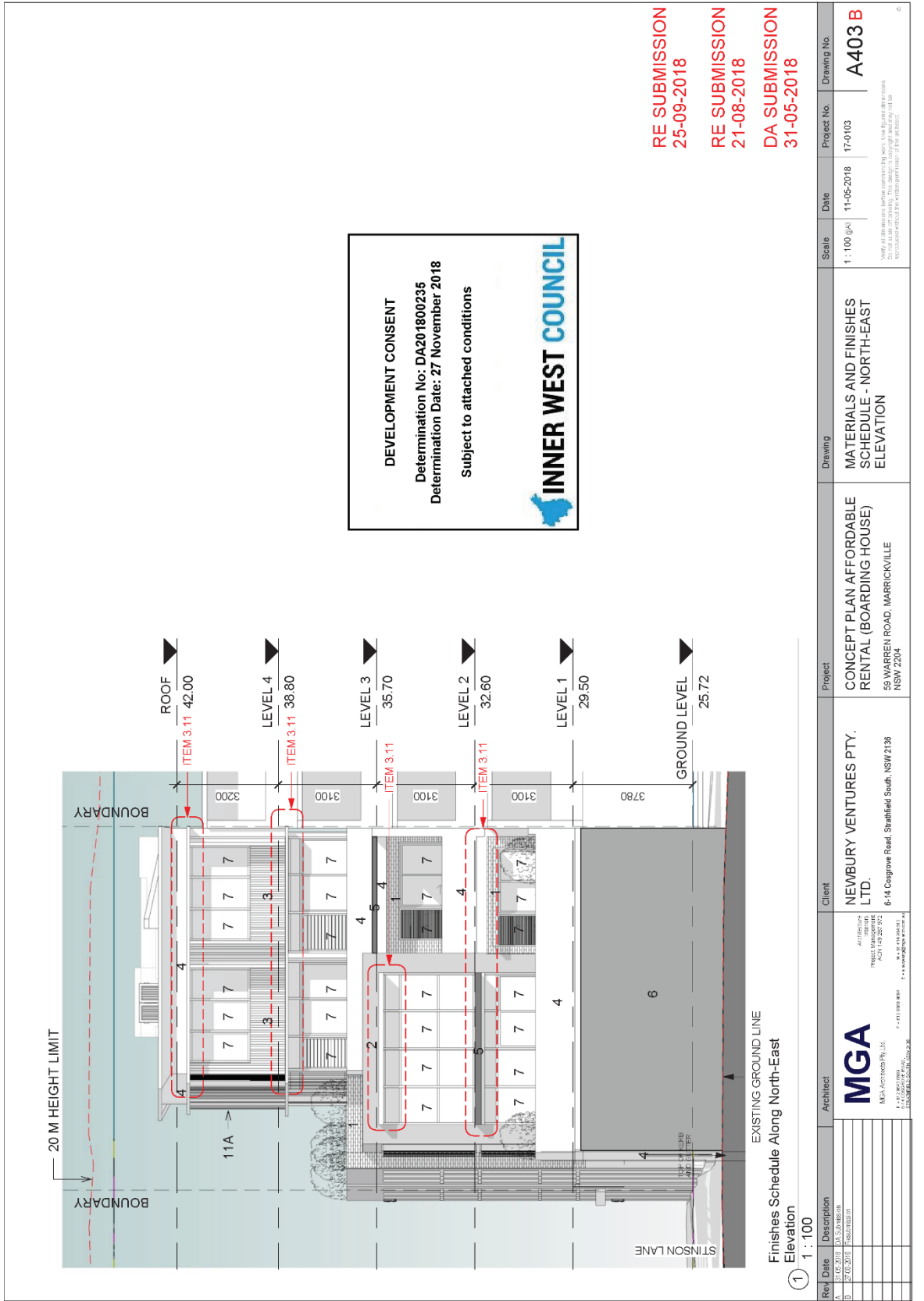
**RE SUBMISSION**  
 25-09-2018

**RE SUBMISSION**  
 21-08-2018

**DA SUBMISSION**  
 31-05-2018

Rev	Date	Description	Architect	Client	Project	Drawing	Scale	Date	Project No.	Drawing No.
A	31.05.2018	DA Submission	MGA	NEWBURY VENTURES PTY. LTD.	CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE)	MATERIAL AND FINISHES SCHEDULE - ELEVATION THRU WARREN ROAD (SOUTH)	1 : 100 @A	11-05-2018	17-0103	A402 B
B	27.05.2018	Re-submission	MGA	6-14 Cooagoo Road, Strathfield South, NSW 2138	59 WARREN ROAD, MARRICKVILLE NSW 2204					

**MGA**  
 ARCHITECTURE  
 PROJECT MANAGEMENT  
 6-14 COOAGOO ROAD, STRATHFIELD SOUTH, NSW 2138  
 P + 61 2 9510 6000 F + 61 2 9510 6001  
 WWW.MGASOUTHCOAST.COM.AU



**DEVELOPMENT CONSENT**  
 Determination No: DA201800235  
 Determination Date: 27 November 2018  
 Subject to attached conditions

**INNER WEST COUNCIL**

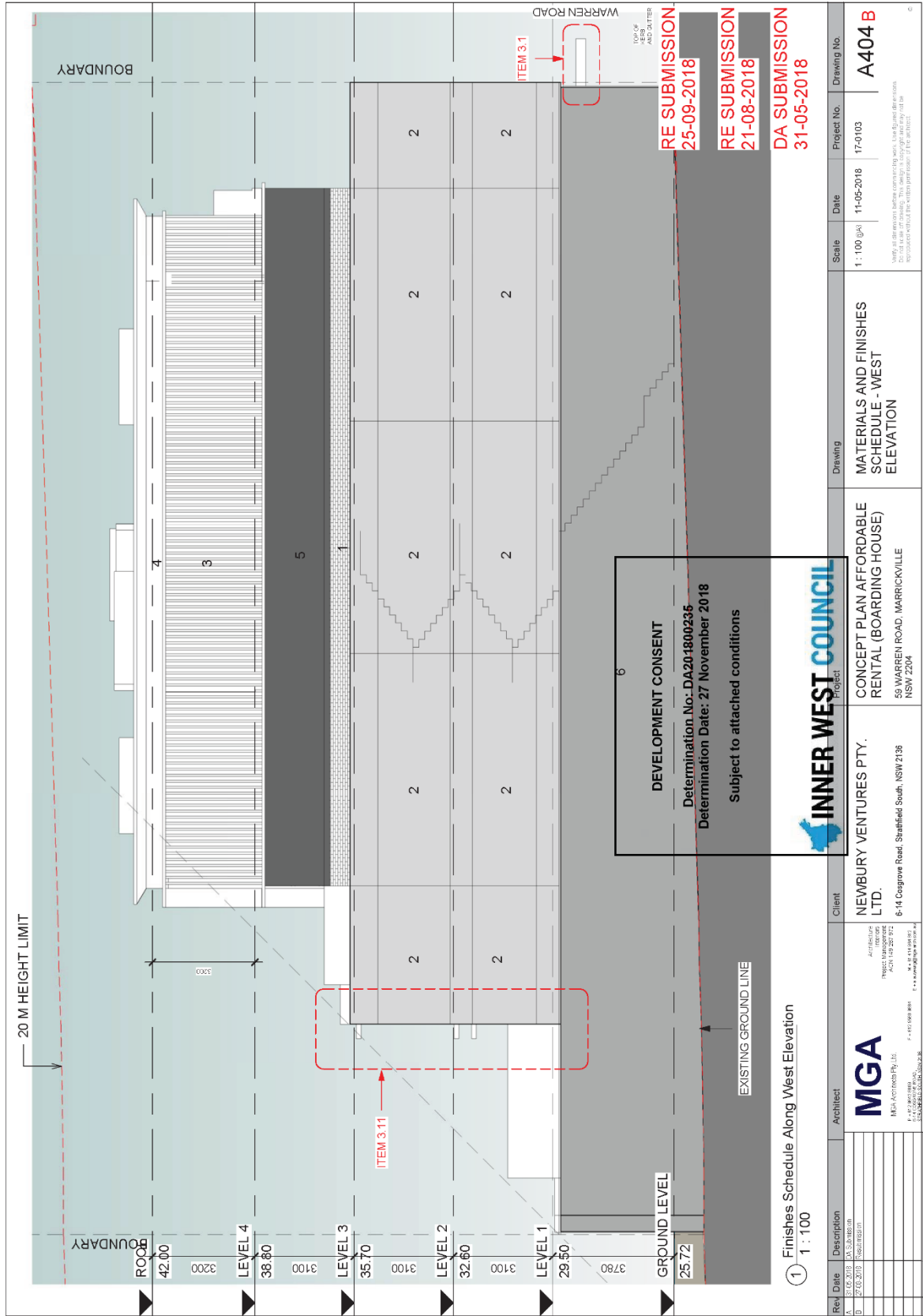
**RE SUBMISSION**  
25-09-2018

**RE SUBMISSION**  
21-08-2018

**DA SUBMISSION**  
31-05-2018

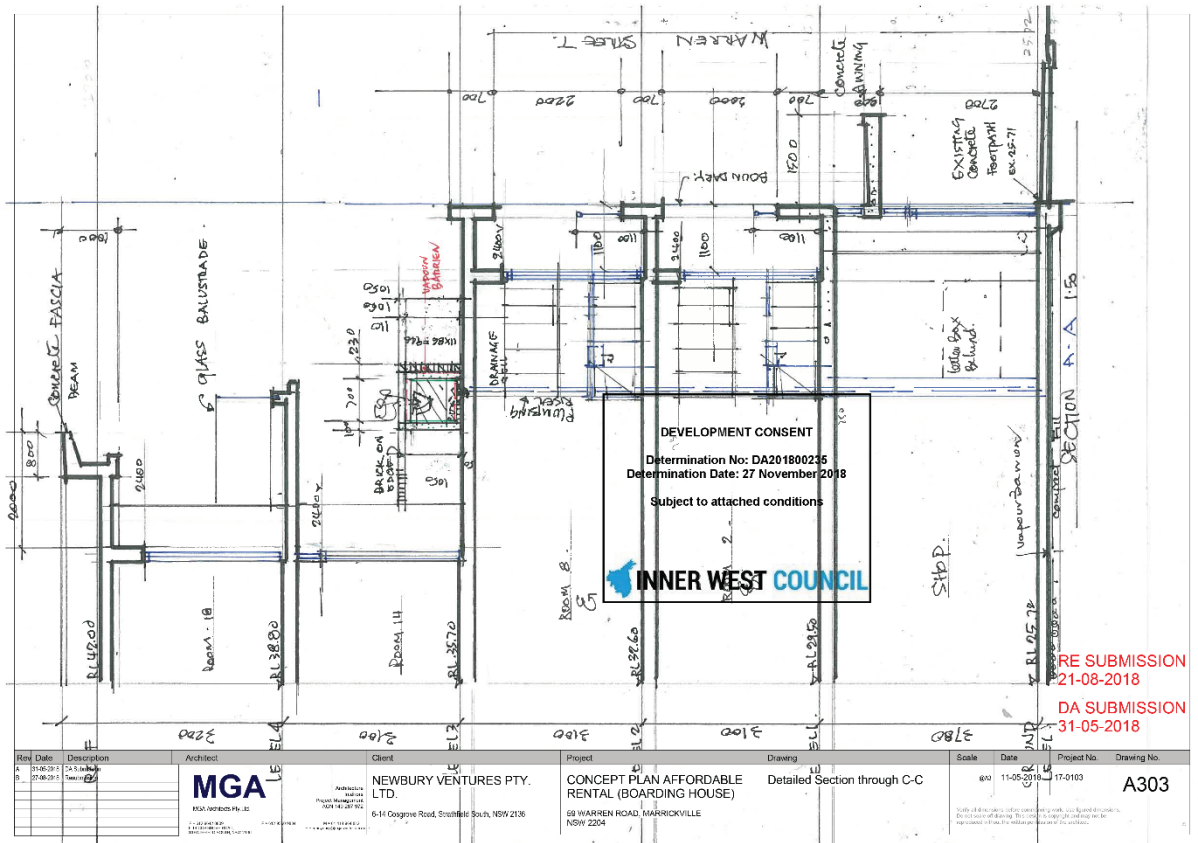
Rev	Date	Description	Architect	Client	Project	Drawing	Scale	Date	Project No.	Drawing No.
A	31-05-2018	DA Submission	<b>MGA</b> ARCHITECTURE PROJECT MANAGEMENT 6-14 COOGROVE ROAD, STRATHFIELD SOUTH, NSW 2136 P + 61 02 9510 6000 F + 61 02 9510 6001 WWW.MGASOCIAL.COM.AU	NEWBURY VENTURES PTY. LTD. 6-14 Coogrove Road, Strathfield South, NSW 2136	CONCEPT PLAN AFFORDABLE RENTAL (BOARDING HOUSE) 59 WARREN ROAD, MARRICKVILLE NSW 2204	MATERIALS AND FINISHES SCHEDULE - NORTH-EAST ELEVATION	1 : 100 @A1	11-05-2018	17-0103	A403 B
B	27-05-2018	Re-submission								
C	21-08-2018	Re-submission								

Notes: This drawing is for information only. It is not to be used for construction purposes without the written permission of the architect.

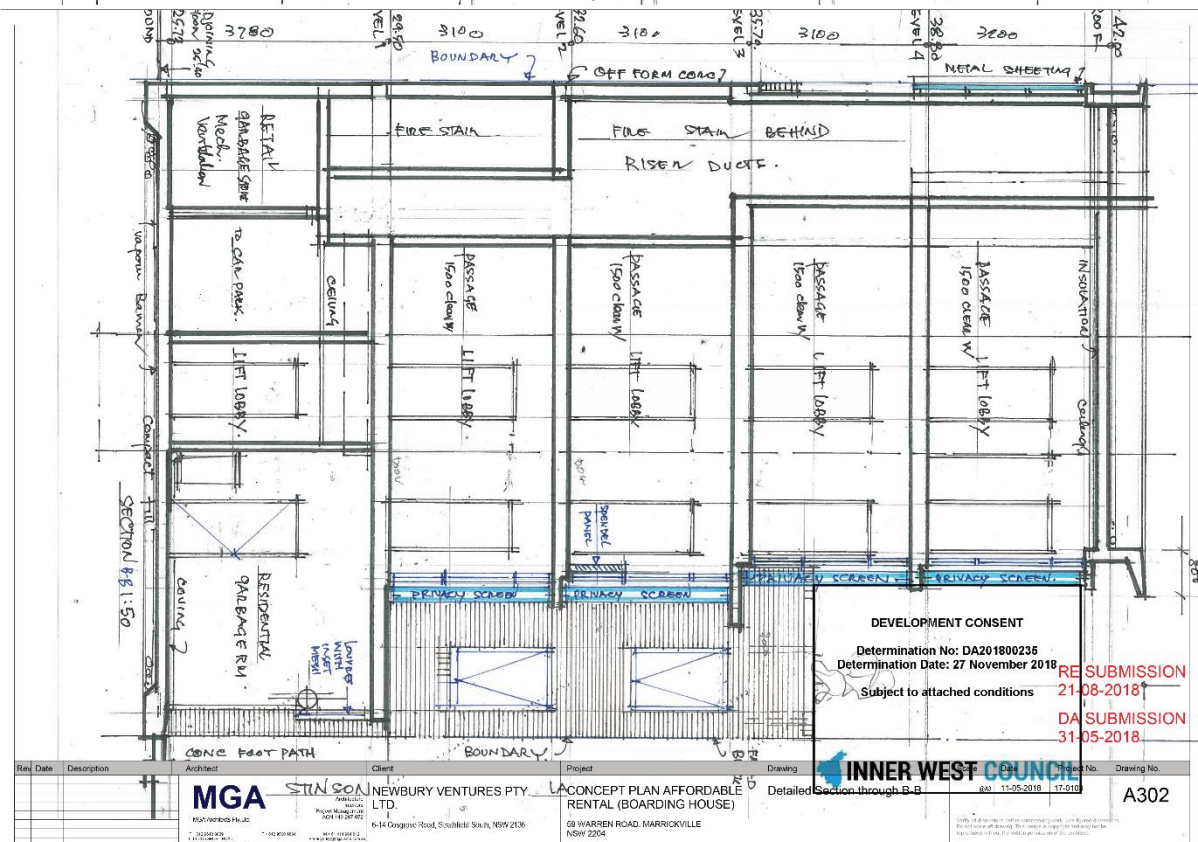








RE SUBMISSION  
21-08-2018  
 DA SUBMISSION  
31-05-2018



RE SUBMISSION  
21-08-2018  
 DA SUBMISSION  
31-05-2018



1 PHOTOMONTAGE



2 VIEW ALONG WARREN ROAD



3 VIEW ALONG STINSON LANE

4 VIEW FROM STINSON LANE

**DEVELOPMENT CONSENT**  
 Determination No: DA201800235  
 Determination Date: 27 November 2018  
 Subject to attached conditions

**INNER WEST COUNCIL**

RE-SUBMISSION  
 25-09-2018  
 RE-SUBMISSION  
 21-08-2018  
 DA SUBMISSION  
 31-05-2018

Rev	Description
1	Issue for comment
2	Issue for comment
3	Issue for comment
4	Issue for comment
5	Issue for comment

Architect	Client	Project	DRAWING	DATE	SCALE	DATE	SCALE
<b>MGA</b> MGA ARCHITECTURE 10/100 WILSON ROAD SYDNEY NSW 1585 PH: (02) 9550 1000 WWW.MGAARCHITECTURE.COM	RESIDENTIAL DEVELOPER 177 50/52/54 WILSON ROAD SYDNEY NSW 1585 PH: (02) 9550 1000	COLONY 2018 A 3-LEVEL RESIDENTIAL DEVELOPMENT	PHOTOMONTAGE CHARACTERISTIC SHILLINGHAM ELEVATION	25/09/2018	1:100	21/08/2018	1:100



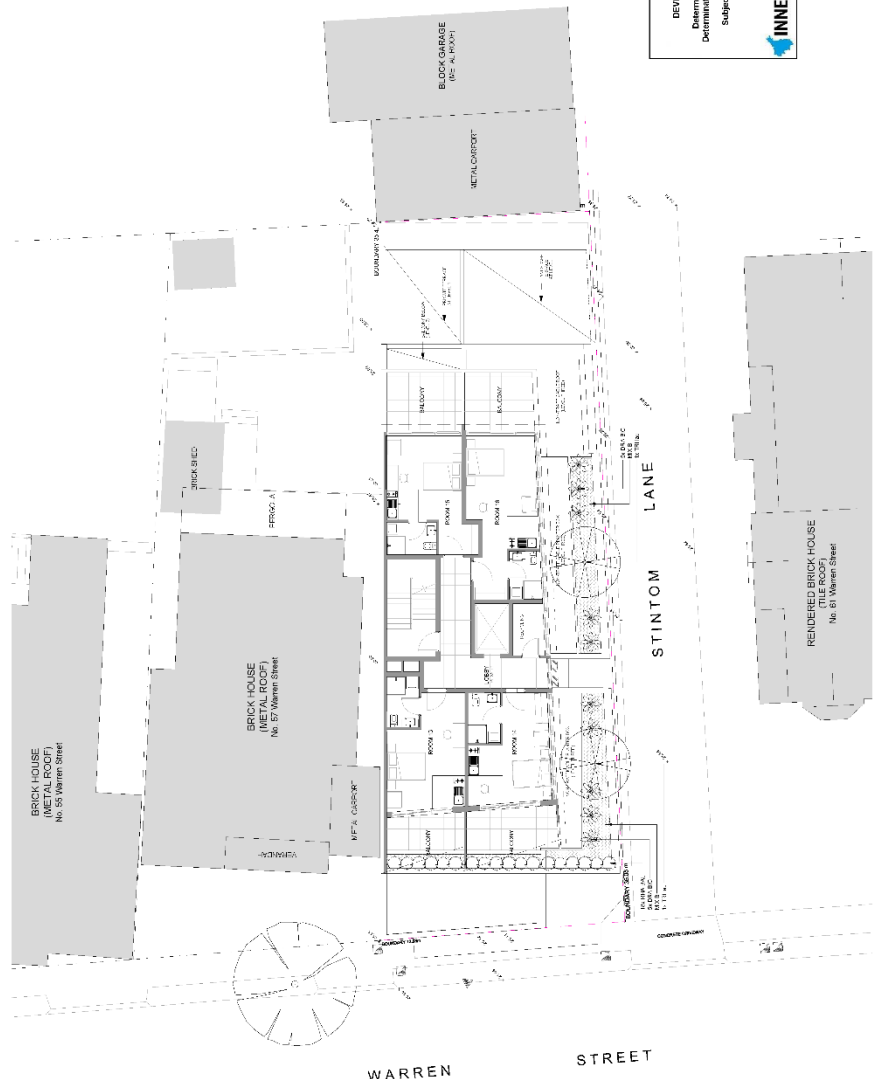






LEGEND

- 1. 10% SLOPE
- 2. 20% SLOPE
- 3. 30% SLOPE
- 4. 40% SLOPE
- 5. 50% SLOPE
- 6. 60% SLOPE
- 7. 70% SLOPE
- 8. 80% SLOPE
- 9. 90% SLOPE
- 10. 100% SLOPE
- 11. 110% SLOPE
- 12. 120% SLOPE
- 13. 130% SLOPE
- 14. 140% SLOPE
- 15. 150% SLOPE
- 16. 160% SLOPE
- 17. 170% SLOPE
- 18. 180% SLOPE
- 19. 190% SLOPE
- 20. 200% SLOPE
- 21. 210% SLOPE
- 22. 220% SLOPE
- 23. 230% SLOPE
- 24. 240% SLOPE
- 25. 250% SLOPE
- 26. 260% SLOPE
- 27. 270% SLOPE
- 28. 280% SLOPE
- 29. 290% SLOPE
- 30. 300% SLOPE
- 31. 310% SLOPE
- 32. 320% SLOPE
- 33. 330% SLOPE
- 34. 340% SLOPE
- 35. 350% SLOPE
- 36. 360% SLOPE
- 37. 370% SLOPE
- 38. 380% SLOPE
- 39. 390% SLOPE
- 40. 400% SLOPE
- 41. 410% SLOPE
- 42. 420% SLOPE
- 43. 430% SLOPE
- 44. 440% SLOPE
- 45. 450% SLOPE
- 46. 460% SLOPE
- 47. 470% SLOPE
- 48. 480% SLOPE
- 49. 490% SLOPE
- 50. 500% SLOPE
- 51. 510% SLOPE
- 52. 520% SLOPE
- 53. 530% SLOPE
- 54. 540% SLOPE
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- 79. 790% SLOPE
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- 88. 880% SLOPE
- 89. 890% SLOPE
- 90. 900% SLOPE
- 91. 910% SLOPE
- 92. 920% SLOPE
- 93. 930% SLOPE
- 94. 940% SLOPE
- 95. 950% SLOPE
- 96. 960% SLOPE
- 97. 970% SLOPE
- 98. 980% SLOPE
- 99. 990% SLOPE
- 100. 1000% SLOPE



DEVELOPMENT CONSENT  
 Determination No: DA201802235  
 Determination Date: 27 November 2018  
 Subject to attached conditions

**INNER WEST COUNCIL**

**greenplan**  
 1/250 Sturt Street, Marrickville NSW 1514  
 P: 1502 464 207 M: 0422 003 208  
 E: info@greenplan.nsw.gov.au W: www.greenplan.nsw.gov.au

**PROJECT INFORMATION**

PROJECT NAME: **GLOBAL PROJECT**  
 PROJECT ADDRESS: 59 WARREN STREET, MARRICKVILLE NSW 1514  
 PROJECT NUMBER: **LSDA 203**

CLIENT: **NEWBURY VENTURES**  
 ARCHITECT: **MGA Architects**  
 PROJECT NUMBER: **LSDA 203**

DATE: 27/11/2018  
 DRAWING NO: 1/250 STURT STREET, MARRICKVILLE NSW 1514  
 DRAWING TITLE: **LANDSCAPE CONCEPT PLAN LEVEL THREE**

SCALE: 1:100





## Attachment C – Traffic Report and Applicants' legal advice

**TRAFFIX**  
TRAFFIC & TRANSPORT PLANNERSSuite 2.08, 50 Holt St  
Surry Hills, NSW 2010  
PO Box 1124  
Strawberry Hills NSW 2012t: (02) 8324 8700  
w: [www.traffix.com.au](http://www.traffix.com.au)director: Graham Pindar  
acn: 065132961  
abn: 66065132961

Reference: 20.054r01v03

9 June 2020

Newbury Ventures Pty Limited  
c/o  
Fazzini Lawyers  
PO Box 1159  
Hunters Hill NSW 2110

Attention: Bruno Nesci - Consultant

**Re: 59 Warren Road Marrickville  
Section 4.55 Modification**

Dear Bruno,

TRAFFIX has been commissioned to assess the traffic issues arising under the proposed Modification to the Consent issued by Inner West Council in relation to Development Application No. 201800235 dated 27 November 2018. The development relates to the demolition of existing improvements and the construction of a 5 storey mixed use building containing a shop and 20 boarding rooms with associated car parking.

The Modification seeks to delete Condition 5 of the Consent which states as follows:

*"5. In order facilitate the orderly redevelopment of the adjoining properties at 55 and 57 Warren Road, the following is to be implemented:*

*a) An easement for access 3m wide with a height of 2.5m to allow for cars and a breakthrough wall construction on the western boundary is to be provided from Stinson Lane in alignment with the approved driveway at 59 Warren Road in favour of 57 and 55 Warren Rd, Marrickville.*

*b) Documentary evidence of the easement being registered with NSW LRS in accordance with the above terms is required prior to the issue of an Occupation Certificate."*

Our opinion has been sought in relation to specific legal questions relevant to the Modification by way of Condition 5. These responses outline our position in relation to each issue and is intended to form the basis of this Modification application. A Photographic Record is provided in Attachment 1 for ease of reference.

1. *Whether, on the approved development at 59, the dimensions of the driveway from Stinson Lane are adequate for the volume of traffic generated by the approved development on 59 and the expected traffic generation on 57 and 55.*

The entry and exit manoeuvres at the approved driveway crossing into and out of Stinson Lane from the subject site are provided in Attachment 2. The analysis shows the manoeuvres

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traffic impact studies | development feasibilities | planning proposals | construction traffic management plans | certification design statements | traffic management studies | parking studies | transport modelling | sustainable transport | government liaison

Document Set ID: 33757466

Version: 1, Version Date: 29/06/2020



undertaken from a central position within the internal aisle, aligned with an indicative 3,000mm wide easement as required. It is evident that the driveway onto Stinson Lane as approved has a width of 5163mm at the property boundary, which is readily able to accommodate the required movements, making full use of the available width of Stinson Lane, being 4,477mm from side property boundary to the fence opposite the site. This includes a 477mm wide verge adjacent to the site which traverses the full length of the lane on its western side (adjacent to the subject site), with a 4000mm wide carriageway. Clearly, the driveway has been designed to facilitate these manoeuvres and takes account of the narrow lane.

It is important to note that the access manoeuvres shown cannot be undertaken without encroaching beyond the 3000mm wide easement (that is the subject of Condition 5) at the property boundary. The easement would need to be widened locally as shown. This is reinforced by reference to Figure 5.4 of AS2890.1, which shows that for a 3000mm wide garage door width (equivalent to an easement), an aisle (apron) width of 5600mm is required and even then the Note to the figure states that any vehicle larger than a B85 may need to make multiple manoeuvres. The available width is only 4477mm, which is a significant deficiency and the required manoeuvre cannot be undertaken wholly within the easement.

The traffic capacity of this one-way 'system' would be a maximum of 30 veh/hr based on Clause 3.2.2 of AS2890.1 which states as follows:

*"As a guide, 30 or more movements in a peak hour (in and out combined) would usually require provision for two vehicles to pass on the driveway, i.e. a minimum width of 5.5 m. On long driveways, passing opportunities should be provided at least every 30m."*

This is indicatively the traffic capacity of the driveway itself. However, queuing analysis would be required to determine the probability of queuing at the driveway based on further analysis having regard for existing traffic volumes and also the cumulative traffic impacts that would arise from development on Nos. 55 and 57 Warren Road. If the probability of delay is more than 2%, then a waiting area is required for vehicles to pass. This can only be provided on-street in Warren Road which would be unacceptable.

Notwithstanding, the above driveway manoeuvres are largely secondary to the operation of Stinson Lane itself as discussed in the following section.

2. ***Whether the dimensions and construction of Stinson Lane are adequate to accommodate that expected traffic***

Condition 5 appears to inherently assume that cars can pass along Stinson Lane on approach to the driveway. With a carriageway width (kerb to kerb) of only 4000mm (but variable), passing of two cars along Stinson Lane is not a realistic proposition, even for two small cars. AS2890.1 requires a minimum width of 5500mm based on Clause 2.5.2(a)(ii) which is for a circulation roadway (or private land) but which would be similar for a two-way public laneway. Conversely, the 4000mm wide lane provided negligible clearances for two cars to pass. AS2890.1 requires that a B85 Car should be able to pass a B99 Car on a circulation roadway. These vehicles are 1870mm and 1940mm wide respectively, for a total width of 3810mm, such that clearances are essentially non-existent.

In summary, irrespective of the driveway width, the access route along Stinson Lane is itself flawed and incapable of safely accommodating two-way traffic flow. This is acceptable for very low volumes at the level of development already approved, but will likely breach the 2% threshold level with any further development associated with Nos. 55 and 57 Warren Road; ignoring and further development along the laneway.





In summary, the laneway capacity, involving one-way flow and waiting at either end, is in our view likely to be already reached and alternative access via Warren Road will be required; or the lane widened. Council thus seems to have overlooked the long term operational capacity of Stinson Lane which is sub-standard.

Finally, it is noted that Stinson Lane provides no visual splays for pedestrians and is hazardous, such that it is in the public interest to minimise traffic volumes along Stinson Lane. Conversely, the redevelopment of Nos. 55 and 57 will likely be conditioned to provide splays under AS2890.1 and will be safer. The opportunity to consolidate these sites may also be available.

3. *Whether there would be any conflicts between the traffic generated by the accumulated development on 55, 57 and 59, with parking and manoeuvring of traffic adjacent to the driveway;*

This will depend on the future generation from the adjoining sites, but the potential for delays remains, particularly given the need for drivers to focus full attention on manoeuvring when using the car stackers. Perhaps more significantly, it is noted that the easement will result in a 3000mm wide opening in the western wall adjacent to parking spaces. This will not provide the requisite visual splay and it is considered that a safety issue would be created. For safe operation, a wall opening that is the full width of the parking aisle would be required and it is assumed that cannot be delivered within the parameters of the current Condition.

4. *Insofar as condition number 5 of the development consent calls up an easement 3 metres wide and 2.5 m high, for cars only, is that dimension of an easement adequate to meet the accumulated traffic from the 59 development and the expected traffic generation from a 55 and 57 development;*

The constraints associated by the easement have been discussed at its eastern extent (adjacent to Stinson Lane). The opening within the western wall has also been discussed in terms of safety. In terms of operational efficiency, a 5.8 metre width would be required for two-way flow under AS2890.1 (as well as for safe visibility). These deficiencies would not in our view be overcome at any traffic volume level.

With regard to the issue of height, a clear height of 2,200mm is satisfactory and this is independent of traffic volumes.

5. *Insofar as the easement will be restricted to use by cars, what would be the expectation for larger vehicles – trucks, vans and similar which may be necessary for deliveries etc to 59, 57 and 55;*

All deliveries and servicing by any size truck including a 6.4m SRV will need to occur on-street for all three sites from within the existing Loading Zone adjacent to 55 Warren Road; or other kerbside parking as may be available. This would include garbage collection.

6. *If the answer to 5 is that Warren Road will be used for deliveries by larger vehicles, how would that be achieved, for example, loading zones, no parking zones and similar.*

Our expectation is that all deliveries and servicing will be limited to SRV's and that these would rely on all available on-street parking and loading spaces. It is possible that for a residential use, Council would consider on-street collection by Council's contractors using a standard (9.5m) garbage truck. Commercial uses would generally be required to use private contractors using a 6.4m SRV, but as this is not available on the subject site, this would also need to occur on street.



7. *Is Warren Road in its traffic counts and geometry capable of accommodating traffic generated by reasonable development of 55 and 57;*

The traffic capacity of Warren Road is considered satisfactory and the addition of traffic associated with all three development sites is unlikely to be a threshold issue. All sites are assumed to accommodate low order traffic generating uses, with moderate parking provision,

8. *Does the council have any policy about restricting entrance/exit use of roads such as Warren Road;*

Warren Road is a local road and its primary function as a local road is to provide direct access to properties, based on RMS Guidelines, as well as Austroads which is a National guideline. It is assumed that Council is pursuing the policy whereby access should generally be to the lowest order road available (in this case Stinson lane), which is also consistent with RMS policy. However, this should only be pursued if the alternate access is practicable and creates no adverse impacts. We consider that Council has not fully appraised the impacts of further development on Stinson Lane beyond current approvals, such that adherence to this policy is considered flawed, particularly in view of the fact that access to Warren Road delivers a superior outcome. As an aside, Council should have considered widening Stinson Lane between Warren Road and the subject driveway (or even beyond) if it's strategic intention is to facilitate ongoing development that relies on Stinson Lane generally, not only the subject site and the two adjoining sites via the easement.

9. *Can Warren Road accommodate, without rear entrance as required by condition 5, traffic and parking generated by reasonable development of 55 and 57.*

Warren Road is considered very suitable for direct access. The existing developments on 55 and 57 Warren Street already have driveways and these appears to be satisfactory. The operation of these driveways is considered safer and more efficient than reliance on Stinson Lane, with its attendant unacceptable queuing effects due to the one-way operation and lack of splays for pedestrians.

There are also numerous precedents for driveway accesses on Warren Road, including commercial driveways, with the loading dock access to Coles being one such example to the immediate west (opposite side) of the subject site that accommodates articulated trucks. Sight distance from Stinson Lane is also inferior to/from the east, as Warren Road widens opposite No. 57 Warren Street, extending to Illawarra Road.

10. *Other Matters*

It is noted that Council has obtained in principle support from TfNSW to convert Warren Road from two-way flow to one-way flow between Carrington Road and Illawarra Road. This is intended to improve safety along Warren Road generally and also to permit the removal of existing No Parking restrictions (9am to 4,30pm on weekdays) along the southern side of Warren Road, resulting in the provision of a net additional 24 parking spaces.

No changes to existing parking conditions in the vicinity of the subject site/s is evident, as on street parking controls along the southern side are No Parking from 6.30am to 6.30pm on weekdays, which will remain. This is presumably due to the need to provide queuing capacity in Warren Road on approach to the traffic signals in Illawarra Road, with this proposed in two lanes, rather than a single lane as presently occurs. It is not presently known whether parking controls will be changes on the northern side of Warren Road adjacent to (and west of) the subject site and at this stage it is assumed that on street loading spaces immediately west of 55 Warren Road (on which Nos, 55, 57 and 59 will rely) will be retained.



Importantly, the one-way scheme, should it proceed, will likely lead to a 50% reduction in existing traffic volumes on Warren Road through the removal of all eastbound traffic approaching from Illawarra Road. In this regard, the ability of Nos. 55 and 57 Warrant Road to retain their existing driveway accesses (under a redevelopment scenario) is expected to be significantly improved, even though it is supportable under present conditions.

Finally, the sight distance issues raised above in relation to on traffic exiting from Stinson Lane are unchanged, as this issue relates to westbound approaching traffic, which will remain. The issue of pedestrian visibility at the laneway will also remain.

➤ **Conclusion**

On the basis of the above, we consider that the access to the adjoining sites via the current easement is flawed on traffic planning and safety grounds. The deletion of Condition 5 is therefore supported.

We trust the above is of assistance and request that you contact the undersigned should you have any queries or require any further information.

Yours faithfully,

**Traffix**

Graham Pindar  
Director

Encl: Attachment 1 – Photographic Record  
Attachment 2 – Swept Path Analysis

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## ATTACHMENT 1

Photographic Records



View west along Warren Road across Stinson Lane



View west of site frontage



View north along Stinson Lane showing effective one-way operation



View west along Warren Road showing limited visibility from Stinson Lane, to cars and pedestrians



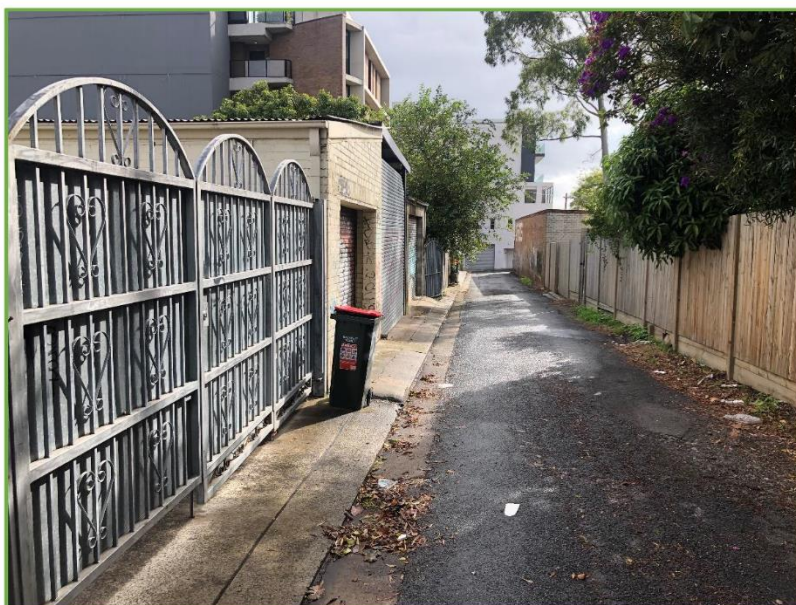
View east along Warren Road from Stinson Lane



View west along Warren Street from Stinson lane. Note widened carriageway, existing driveway to No.57, loading zone (white truck) and articulated truck at Woolworths dock opposite



View south along Stinson Lane from site access showing one-way traffic movement



Reverse view looking north, showing other candidate redevelopment sites





View south from Stinson Lane across Warren Road. Note absence of pedestrian visual splays



View west across frontage to 57 Warren Road showing existing driveway to this premises and to No.55 beyond

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## ATTACHMENT 2

### Swept Path Analysis





**fazzini** | LAWYERS & CONSULTANTS

The Secretary  
Newbury Ventures Pty Ltd  
6 Cosgrove Road,  
Strathfield South 2136  
16 June 2020.

Dear Sir

**Re:DA 201800235- 59 Warren Road, Marrickville**

I have been asked to express an opinion as to the validity of condition 5 attaching to DA 201800235 dated 27 November 2018 namely:

In order facilitate the orderly redevelopment of the adjoining properties at 55 and 57 Warren Road, the following is to be implemented:

- a) An easement for access 3m wide with a height of 2.5m to allow for cars and a breakthrough wall construction on the western boundary is to be provided from Stinson Lane in alignment with the approved driveway at 59 Warren Road in favour of 57 and 55 Warren Rd, Marrickville.
- b) Documentary evidence of the easement being registered with NSW LRS in accordance with the above terms is required prior to the issue of an Occupation Certificate.

**Summary.**

For the reasons set out below, it is my opinion that Condition 5 is invalid:

- a) the imposition of condition 5 is contrary to section 4.17 of the EP&A Act;
- b) the imposition of condition 5 does not satisfy Principle 2 of the *Newbury Principles*;
- c) the imposition of condition 5 deprives the owner of 59 Warren Road of a proprietary right in land for the benefit of the adjacent owners of 55 and 57 Warren Road without consideration and is not reasonably necessary within the meaning of sec.88 K of the Conveyancing Act, 1919.

**Lucia Fazzini** Dip.Law, Principal

**Bruno Nesca** BA MA LLB LLM(Syd), Public Notary, Consultant

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This opinion submission should be read in conjunction with the submission prepared by Bruce Threlfo from Burrell Threlfo Pagan PL in support of the deletion of Condition 5.

**Condition 5 is contrary to section 4.17 of the E.P. & A. Act**

The Council has no power under the Act to impose such a condition.

Sections 4.17 and 4.15 of the Act relevantly provide (emphasis added)

*4.17 Imposition of Conditions*

*(1) Conditions – generally*

*A condition of development consent may be imposed if:*

- (a) it relates to any matter referred to in section 4.15(1) of relevance to the development the subject of the consent, or ...*

*4.15 Evaluation*

*(1) Matters for consideration – general*

*In determining a development application, a consent authority is to take into consideration such of the following matters **as are of relevance to the development the subject of the development application:***

*(a) the provisions of*

- (i) any environmental planning instrument, and ...*  
*(iii) any development control plan, and ...*

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments ...*

The threshold issue is whether the terms of condition 5 are encompassed by the specific requirements of sec. 4.15. The approach is to see whether each of the elements in subsections (a) and (b) are relevant to the development.

The legislation envisages an analysis of the planning instruments relating to the land and considering their relevance to the development.

1. Marrickville LEP 2011 does not require the creation of the easement in favour of 57 and 55 Warren Rd, Marrickville;
2. Marrickville DCP 2011 does not require the creation of the easement in favour of 57 and 55 Warren Rd, Marrickville
3. The provision of an easement in favour of 57 and 55 Warren Rd, Marrickville is not required to mitigate any environmental impact arising from the approved development on the subject site.

**Condition 5 contrary to *Newbury* Principles**

Further, for reasons set out below, it is my opinion that the imposition of condition 5 of the Consent fails to satisfy the *Newbury* Principles, in particular Principle 2.

In *Newbury DC v Secretary of State for the Environment* [1981] AC78 at 599-600, the House of Lords held that, in order for a condition imposed on a development consent to be valid, it must:

1. be for a planning purpose;
2. fairly and reasonably relate to the development; and
3. be not so unreasonable that no consent authority would have imposed it.

The courts in NSW have held that the *Newbury* test applies in New South Wales to conditions imposed on a development consent; see for example the Court of Appeal's decisions in *Lake Macquarie City Council v Hammersmith Management Pty Limited* (2003) 132 LGRA 225, and *Ashton Coal Operations Pty Limited v Hunter Environment Lobby Inc* [2015] NSWCA 358.

In the present case, the proposed development does not isolate the properties at 55 and 57 Warren Road from future development. A concept plan was prepared for the redevelopment of these 2 properties. The concept plan was assessed by Council staff as being acceptable as discussed in the Development Assessment Report. The concept plan made provision for vehicle access from Warren Road

Further the approved development at 59 Warren Road does not preclude future vehicle access being provided to the properties at 55 and 57 Warren Road from Warren Road. In fact both these properties currently have driveways from Warren Road.

Accordingly, I am of the opinion that the imposition of condition 5 of the Consent is not reasonably necessary and indeed contrary to evidence. does not satisfy the *Newbury* Principles and is invalid.

**Is the Easement Reasonably Necessary within the meaning of Sec.88K of the Conveyancing Act,1919.**

Condition 5 of the Consent is unreasonable in that it deprives the owner of a proprietary interest in land and grants it to the adjacent owners of 57 and 55 Warren Road without just compensation. The imposition of an easement imposes a burden on otherwise unencumbered land and therefore results in a diminution in the value of the burdened land and therefore in the absence of

compensation is unreasonable as it deprives the owner of 59 of a proprietary interest in land.

In essence what is envisaged is that Council without any demand on the part of the owners of 57 and 55 unilaterally compels the owner of 59 to grant an easement.

Further the evidence discloses that 57 and 55 can be developed without the need of an easement over 59. The recommendation to the Planning Panel did not refer nor see the need for the easement.

The Land and Environment Court has power to impose an easement over land under Sec.40 of the Court Act and sec.88K of the Conveyancing Act.

The power can only be exercised if the circumstances under S.40 exist.

Even on the assumption that they did exist what Sec.40 does is to adopt Sec.88K of the Conveyancing Act so that the Court may make an order if “the easement is reasonably necessary for the effective use or development of the land that will have the benefit of the easement.” *Rainbowforce Pty Limited v Skyton Holdings Pty Limited and Ors* [2010] NSWLEC 2 at [16].

The test of reasonable necessity is not whether the easement is reasonably necessary for the development to have effect in accordance with that consent (which was the old test under the previous Sec.40) but whether the easement is reasonably necessary for the effective use or development of other land that will have the benefit of the easement. (that is 57 and 55). The test is also objective and not subjective.

*Giles JA* in the decision of *ING Bank (Australia) Ltd v O’Shea* [2010] NSWCA 71 indicated that it was imperative to consider the impact that the easement would have on the servient tenement namely 59 Warren Road which in my view was not considered. His Honour said at [49]:

“...Qualification whereby the necessity must be reasonable is apt to, and in my opinion does, permit regard to matters beyond the relatively absolute necessity for the effective use or development of the dominant tenement. It calls for an assessment of that necessity having regard to all relevant matters, according to the criterion of reasonableness. The impact of the easement on the servient tenement, and the fact that ordering an easement detracts from the property rights of the owner of the servient tenement, are matters readily to be taken into account in that assessment. It is difficult to see how reasonable necessity for an easement for the use or development of a dominant tenement, as distinct from necessity, can be arrived at without regard to the effect on the enjoyment of the servient tenement and on the property rights of the owner of the servient tenement.”

In my view where the right to land is taken away without compensation cannot be held to be reasonable where the dominant tenement has other possibilities to develop its land without causing detriment to the servient tenement.

There is no evidence and in fact the evidence is to the contrary that 57 and 55 cannot be developed without the benefit of an easement. They are not land



locked and presently enjoy access to Warren Road and this can continue if they are developed, The expert report of Traffix supports this view. The owners of 57 and 55 were given opportunities to buy 59 and vice versa with no fruitful conclusion to the negotiations.

They have made no representations that they cannot develop their land without the easement.

#### **condition 5 can be severed from the Consent**

There is a long history of caselaw as to whether a condition could be severable from a development Consent. Whereas early case law dealt with a test to consider whether the condition under challenge was fundamental or went to the root of the development consent itself, that test has been superseded by reason of section 32(2) of the *Interpretation Act 1987*, which provides:

- (2) *If any provision of an instrument or the application of any such provision to any person, subject-matter or circumstance, would, but for this section, be construed as being in excess of the power conferred by the Act under which it is made:*
  - (a) *it shall be a valid provision to the extent to which it is not in excess of that power, and*
  - (b) *the remainder of the instrument, and the application of the provision to other persons, subject-matters or circumstances, shall not be affected.*

The question has become whether the severance of a condition would result in a development operating differently from the manner in which it would have operated with the condition.

In the present case, both 59 and 57 and 55 can be developed without the easement as it does not go to the root of the development and therefore it can be severed without impacting on the remainder of the development.

No good purpose would be served if the owners (and Council) were put to the additional expense and inconvenience of appeal to the Land and Environment Court.

Yours faithfully

  
Bruno Nesci