





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/0768
Address	155 Illawarra Road MARRICKVILLE NSW 2204
Proposal	To torrens subdivide the land into 2 lots
Date of Lodgement	23 September 2020
Applicant	Mackenzie Pronk Architects
Owner	Ms Heidi A Pronk, Mr Neil A Mackenzie, Mr Thomas M Hume & Ms Joscelyn Tarr
Number of Submissions	0
Value of works	Nil
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Existing Use Rights, Subdivision & Parking
Recommendation	Refusal
Attachment A	Recommended conditions should the application be approved
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council to torrens subdivide the land into 2 lots at 155 Illawarra Road, Marrickville. The application was notified to surrounding properties and no submissions were received in response.

The application is referred to the Local Planning Panel for determination as the proposed new lots result in a breach to the Floor Space Ratio (FSR) development standard that exceeds 10%.

The main issues that have arisen from the application include:

- A portion of the development is not permissible under the zoning provisions applying to the land and the proposed subdivision is not consistent with the established existing use rights afforded to the site.
- The proposed subdivision is not consistent with the prevailing cadastral pattern within this portion of Illawarra Road.
- The need for fire separation triggered by the proposed subdivision results in an undersized carparking space for 1 lot.
- The proposal results in a dwelling on an isolated lot with insufficient private open space.
- Each new lot represents a breach to the FSR development standard of greater than 10%.

The proposed subdivision effectively severs the relationship between the approved southern dwelling (which relied on existing use rights for permissibility) and the remainder of the mixed use development. As a result, the proposal would result in a standalone lot which would not be permissible or consistent with the objectives of the zoning provisions applying to the land.

Additionally, the proposed subdivision would result in the smallest lots in this portion of Illawarra Road and is inconsistent with the prevailing subdivision pattern, contrary to Part 3.2.2 of MDCP 2011. The development also results in an undersized car parking space, generated by the need for fire separation of the garage and as such 1 lot does not have access to appropriate car parking, contrary to Part 2.10 of MDCP 2011.

The application is therefore recommended for refusal.

2. Proposal

Approval is sought to Torrens title subdivide the land into 2 lots, which includes the following:

- Creation of 1 new lot of 123.55sqm at the corner of Illawarra Road and Sydenham Road containing an office premises with dwelling above. (Lot A)
- Creation of 1 new lot of 122.4sqm fronting Illawarra Road containing a dwelling. (Lot B)
- Construction of a wall within the garage on the boundary of the proposed lots to provide fire separation.

3. Site Description

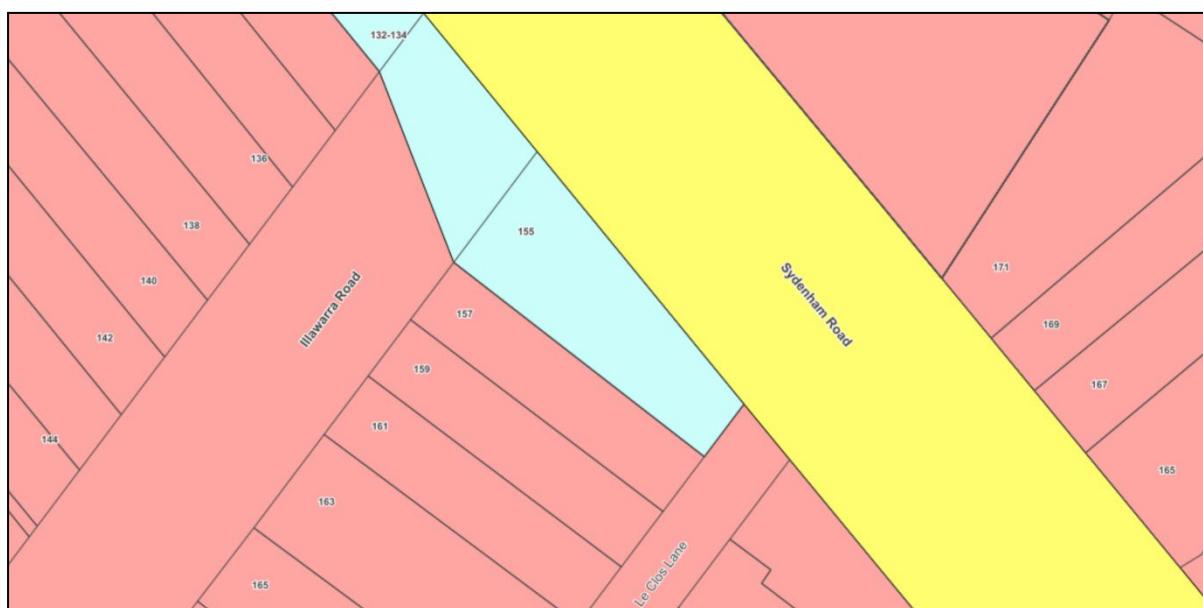
The subject site is located on the southern side of the intersection of Illawarra Road and Sydenham Road, Marrickville. The site consists of 1 allotment that is irregular in shape. The site has a total area of 246.1sqm and is legally described as Lot 287 of DP 740295.

The site has primary a frontage to Illawarra Road of 12.22 metres and a secondary frontage to Sydenham Road of approximate 28.26 metres.

The site supports a mixed use development under construction which will provide a commercial tenancy on the ground floor to be used as an architect’s office, 2 dwellings and a double garage at the rear of the site.

The adjoining properties generally support single and two storey dwelling houses. The properties adjacent to the site presenting to the intersection generally support buildings of slightly greater scale including 132-134 Illawarra Road to the west of the site which supports mixed use building with commercial use on the ground floor and residential above and 151 Illawarra Road to the north of the site which supports a three storey residential flat building.

The subject site is zoned B1 Neighbourhood Centre.



4. Background

4(a) Site history

The following outlines the relevant development history of the subject site.

Application	Proposal	Decision & Date
DA201800448.01	Section 4.55(1A) application to DA201800448 to modify/delete a number of conditions and provide a new window to the northern elevation.	Approval – 30 March 2020 This modification made DA20180448 operative.
DA201800448	To demolish part of the premises and carry out ground and first floor alterations and additions so as to	Deferred Commencement – 4 July 2019

	provide a commercial tenancy on the ground floor to be used as an architect's office and to provide 2 dwellings and a double garage at the rear of the site	
DA 454/98	To use the premises for the retail of auto spare parts and mobile motor mechanic office and to erect associated signs	Approval – 22 September 1998
DA 432/82	To use the existing shop premises for sewing and pressing operation	Approval – 8 December 1982
Permit 7630	Installation of a take-away food bar in the existing mixed business	Approval – 21 June 1979

4(b) Application history

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

Date	Discussion / Letter / Additional Information
16 November 2020	<p>Council wrote to the applicant raising the following concerns:</p> <ul style="list-style-type: none"> • The proposed would not be consistent with the existing use rights previously established and may not be permissible under the zoning provisions applying to the land. • The subdivision would not be consistent with the prevailing subdivision pattern. • The subdivision would result in a dwelling with limited private open space given the separation of uses. • The development would require alterations to the garage to achieve fire separation.
10 December 2020	The applicant provided an amended plan showing a wall within the garage for fire separation and provided a written response to the other matters.

5. Assessment

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

5(a) Existing Use Rights

5(a)(i) *Environmental Planning and Assessment Act 1979*

Division 4.11 (Part 4.65 – 4.68) of the *Environmental Planning and Assessment Act 1979* contains provisions that provide a framework for the definition of an 'existing use' and provides further limitations and regulation for the continuation and development of existing uses.

Part 4.65 of the Act provides a definition of an existing use. In plain terms an existing use is defined in the following manner:

- It is a use that was lawfully commenced
- It is a use that is currently prohibited
- It is a use that has not been abandoned since the time that it became a prohibited use

The property is zoned B1 – Neighbourhood Centre under the zoning provisions applying to the land. The mixed use development under construction at the site and approved by DA201800448 includes a dwelling which provides residential accommodation at the ground floor with further residential accommodation above at the first floor. Such a development is not permissible in the B1 zone as that portion of the development cannot be defined as *shop top housing* and the development is not a purpose built dwelling house, rather being a dwelling used in conjunction with a commercial use.

As part of DA201800448, existing use rights were established for the prohibited portion of the development. The assessment report for DA20180448 provided the following comments:

“The applicant has supported the application with discussion and documentation to demonstrate the site benefits from existing use rights and that the use has not been abandoned. The main points are summarised below:

- *Research of the property history indicates a long use as a shop and residence with several owners living and working at the site in the late 1800s and early 1900s according to the Sands Directory;*
- *Under the previous environmental planning instruments applying to the land, being the County of Cumberland Planning Scheme Ordinance, the Marrickville Planning Scheme Ordinance and the Marrickville Local Environmental Plan 2001, residential uses on the ground floor were permissible at the site;*
- *The Marrickville Local Environmental Plan 2011 came into force in 2011, at which time the ground floor residential use became prohibited and became an existing use;*
- *Building and development approvals issued in 1979, 1982 and 1998 all provide evidence the site was used as a shop and residence;*
- *DA 454/98 approved the use of the commercial premises for the purpose of retail sale of auto parts under the Marrickville Local Environmental Plan 2001 and included plans which confirm the ground floor residence was in existence at that time and being used for residential purposes; and*
- *The applicant provided a statutory declaration from the previous property owner who owned the site from 2008 to 2018 confirming that the site was continuously used as a residence and shop since 2011 when the ground floor residential use became prohibited.*

Given the above, it is considered that the ground floor residential use of the premises is a use that was lawfully commenced on the site which is prohibited under the current planning controls and has not been abandoned since 2011 when the use became prohibited.”

The existing use provisions established that the site had been used as a commercial premises and dwelling operating in conjunction with one another. This had been the case in many previous approvals and the last approval before the use became prohibited, DA454/98.

DA201800448 approved a continuation of this existing use, being a mixed use development with residential components operating in conjunction with a commercial premises. The approved development included shared car parking facilities and as such a relationship between the uses remained.

However, the proposed subdivision would effectively excise the southern dwelling from the remainder of the development, severing the relationship between the ground and first floor dwelling and the commercial premises. The proposed subdivision results in Lot B containing

a dwelling with associated parking and Lot A containing shop top housing with associated parking. While the uses remain physically attached, they would have no shared facilities or services as a result of the subdivision and therefore no association.

As such, the subdivision results in uses on each lot that would operate independently of one another which is inconsistent with the existing use of the site. It is considered that the dwelling being on its own lot of land with no association to the remainder of the development and the commercial usage effectively results in a use akin to a *dwelling house*, rather than a mixed use development as was approved by DA201800448.

As such, it is considered that the subdivision does not allow for the continuation of the existing use of the site, being a commercial premises and residence operating in conjunction with each other. A two storey dwelling with residential accommodation on the ground floor operating independently of any commercial use was not approved prior to 2011 (when a ground floor residential use became prohibited) and as such was not lawfully commenced. Put in other terms, the proposal would sever an independent, prohibited residential part of the development in the business zone from its supporting commercial part, and enshrine it as a permanent feature which is out of keeping with the planned zoning of the land, extending the limits of existing use rights beyond their statutory threshold.

Within the B1 zone the only residential accommodation permitted with consent are *dwelling houses* and *shop top housing*. These uses are defined as follows:

“dwelling house means a building containing only one dwelling”

“shop top housing means one or more dwellings located above ground floor retail premises or business premises”

The commercial premises with a dwelling above on Lot A is a permissible form of development, being *shop top housing*. The dwelling on Lot B cannot be defined as *shop top housing* as the dwelling is not located above a commercial premises. The dwelling could be defined as a *dwelling house* however the building was not constructed as purpose built dwelling house, rather a mixed use building and therefore is a new, impermissible use virtue of Clause 6.11 of MLEP 2011.

As such, in the absence of existing use rights it is considered the development is not permissible in the B1 zone and the provisions of MLEP 2011 and MDCP 2011 apply to the development.

5(b) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Infrastructure) 2007.*
- *Marrickville Local Environmental Plan 2011.*

The following provides further discussion of the relevant issues:

5(a)(ii) State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)

Development with frontage to classified road (Clause 101)

The site has a frontage to Sydenham Road, a classified road. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

Vehicular access to the property is provided from Le Clos Lane and as such is provided by a road other than the classified road. It is considered that the proposed development would not affect the safety, efficiency and ongoing operation of the classified road.

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

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

- Clause 1.8A – Savings provision relating to development applications
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.6 – Subdivision
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.11 – Use of dwelling houses in business and industrial zones

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

Standard	Proposal	Non Compliance	Complies
Lot A			
Height of Building Maximum permissible: 9.5 metres	7 metres	NA	Yes
Floor Space Ratio Maximum permissible: 0.85:1 or 105sqm	0.98:1 or 121.4sqm	16.4sqm or 15.6%	No
Lot B			
Height of Building Maximum permissible: 9.5 metres	7 metres	NA	Yes
Floor Space Ratio Maximum permissible: 0.85:1 or 104sqm	1.09:1 or 113.7sqm	9.7sqm or 9.3%	No

The following provides further discussion of the relevant issues:

(i) Clause 1.8A – Savings provision relating to development applications

During the assessment of this application MLEP 2011 was amended and Amendment 4 was gazetted on 11 December 2020. It is considered that whilst not strictly applied to the application, as the application was made before the commencement of this Plan, the proposal satisfies the current Plan.

(ii) Clause 2.3 – Land Use Table and Zone Objectives

The site is zoned B1 Neighbourhood Centre under the *MLEP 2011*.

Within the B1 zone the only residential accommodation permitted with consent are *dwelling houses* and *shop top housing*. These uses are defined as follows:

“dwelling house means a building containing only one dwelling”

“shop top housing means one or more dwellings located above ground floor retail premises or business premises”

The commercial premises with a dwelling above on Lot A is a permissible form of development, being *shop top housing*. The dwelling on Lot B cannot be defined as *shop top housing* as the dwelling is not located above a commercial premises. As discussed above, the dwelling could possibly be defined as a *dwelling house* however the existing building was not constructed as purpose built dwelling house, rather a mixed use building, and is not permissible by virtue of Clause 6.11 of MLEP 2011.

As such, the development is not permitted with consent in the B1 zone.

Furthermore, the objectives of the B1 zone are as follows:

- *“To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.*
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.”*

The development is not consistent with the objectives of the B1 zone for the following reasons:

- The dwelling on Lot B is not type of housing compatible with the surrounding neighbourhood being a dwelling with no association to a commercial premises in the B1 zone.
- The dwelling on Lot B does not provide a suitable use at street level that would generate active street-fronts in the B1 zone.
- The dwelling on Lot B is not a purpose built dwelling house.

Overall, the development is considered to result in a non-conforming use in the B1 zone which fails to satisfy the objectives of that zone.

(iii) Clause 4.4 – Floor Space Ratio

A maximum floor space ratio (FSR) of 0.85:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

The development results in the following FSR on each lot:

- **Lot A:** 0.98:1 or 121.4sqm representing a 15.6% variation.
- **Lot B:** 1.09:1 or 113.7sqm representing a 9.3% variation.

The development does not comply with the FSR development standard. The application was accompanied by a written submission in relation to the contravention of the FSR development standard in accordance with Clause 4.6 of MLEP 2011.

(iv) Clause 4.6 – Exceptions to Development Standards

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

- Clause 4.4 - Floor space ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Marrickville Local Environmental Plan 2011 by 15.6% (16.4sqm) on Lot A and 9.3% (9.7sqm) on Lot B.

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

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

A written request has been submitted to Council in accordance with Clause 4.6(3) of MLEP 2011 justifying the proposed contravention of the development standard which is summarised as follows:

- The built form of the development has already been approved and this will not change as a result of the proposed subdivision.
- The approval for DA201800448 accepted a Clause 4.6 submission regarding floor space ratio
- The built form of the approved development is consistent with the desired future character of the surrounding residential properties, and this will not change as a result of the proposed subdivision.
- There are no adverse impacts on the adjoining property. The approved design provides a suitable presentation to the public domain which will not change as a result of the proposed subdivision.

The applicant considers the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the MLEP 2011 for the following reasons:

- The proposal presents a bulk and scale to the streetscape and neighbouring buildings that is consistent with the scale and form of surrounding development and is unaltered by the proposed development.

Given the built form at the site has already been approved and there will be no discernable change in the built form as a result of this application, a variation to the FSR development standard may be suitable when considering the objectives of Clause 4.4 of MLEP 2011.

However, in light of the land use mix, the development is not considered to be consistent with the objectives of the B1 zone and as such the development the applicant's written rationale has not adequately demonstrated compliance with the development standard is unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard

It is considered the development is not in the public interest because it is inconsistent with the objectives of the B1 zone, in accordance with Clause 4.6(4)(a)(ii) of the MLEP 2011 for the following reasons:

- The dwelling on Lot B is a building or land use type compatible with the surrounding neighbourhood being a dwelling with no association to a commercial premises in the B1 zone.
- The dwelling on Lot B does not provide a suitable use at street level that would generate active street-fronts in the B1 zone.
- The dwelling on Lot B is not a purpose built dwelling house as a result of the proposed subdivision, will independently operate as a dwelling on its own lot.

The proposal thereby does not accord with the objective in Clause 4.6(4)(a)(ii) of MLEP 2011 in that the development is not consistent with the objectives of the B1 zone.

For the reasons outlined above, it is recommended the Clause 4.6 exemption be refused.

(v) Clause 6.11 – Use of dwelling houses in business and industrial zones

The objective of this clause is to provide for the use of purpose built dwelling houses in business and industrial zones, for residential purposes, under particular circumstances and applies to the B1 zone.

The proposed dwelling on Lot B is not a purpose built dwelling house and as such this clause cannot be used to grant development consent in accordance with Clause 6.11(3)(a).

5(c) Draft Environmental Planning Instruments

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

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

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

The Draft IWLEP 2020 does not contain a clause equivalent to Clause 6.11 of MLEP 2011, amends the zone objectives of the B1 zone and introduces Clause 6.16 which would apply to the development.

The development would be inconsistent with the objectives of the draft B1 zone in that the development would result in a lot with residential accommodation at the ground floor and would not maintain an active retail, business or non-residential use at the street level of Lot B.

Additionally, draft Clause 6.16 relates to residential accommodation in certain business zones. This clause applies to land in the B1 zone. The clause requires buildings to have an active street frontage (implying no residential use at the ground floor at the primary street frontage) and that residential accommodation be part of a mixed use building. The development would result in Lot B containing a building with a dwelling only with no active frontage and the development would not be consistent with this clause.

The development is considered contrary to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

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

MDCP 2011 Part of MDCP 2011	Compliance
Part 2.10 – Parking	No – see discussion
Part 2.18 – Landscaping and Open Space	No – see discussion
Part 3 – Subdivision	No – see discussion
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

(i) Part 2.10 – Parking

The development requires 2 car parking spaces and DA201800448 required the development provide 2 car parking spaces.

As a result of the subdivision, the development includes a new dividing wall in the garage to provide the necessary fire separation. The inclusion of this wall result in a garage width does not comply with AS2890.1-2004 and cannot be supported. The provision of a diving wall results in the development only being able to accommodate 1 parking space which complies with AS2890 as the lot width is not sufficient to accommodate 2 fire separated spaces. The failure to provide adequate parking demonstrates the proposal is not appropriate for Torrens subdivision.

(ii) Part 2.18 – Landscaping and Open Space

Part 2.18 of MDCP 2011 provides objectives and controls relating to the provision of private open space and landscaping.

As part of DA201800448, the private open space provided to the residential components of the mixed use development was considered acceptable. However, the level of private open space provided was considered in the context of a mixed use development, applying the controls within Part 2.18.11.7 of MDCP 2011.

As part of a mixed use development, the dwelling on proposed Lot B provided a courtyard area of 20sqm, which was in excess of the 8sqm required by Control 26 within Part 2.18.11.7.

However, as a result of the proposed subdivision the dwelling on Lot B will effectively become a single dwelling with no association to the remainder of the development. The proposed Lot B containing only a dwelling would obtain its own development potential and the level of private open space achieved on the lot is lacking in terms of the applicable controls and in the context of surrounding development.

For a dwelling, Part 2.18.11.1 would require an area of private open space of 45sqm or 20% of the site, which ever is greater. In this case, 45sqm would be required. The dwelling on Lot B achieves an area of only 20sqm which is significantly less than the required 45sqm. Nor does this area meet the lesser requirement of 20% of site, representing only 16.3% of the proposed site area of Lot B, being 122.4sqm. It is noted that the balcony on the first floor has dimension of less than 3 metres and as such is not included in the calculation of private open space for a dwelling only.

The level of private open space provided is also not commensurate with the private open space achieved by surrounding development, which exhibit reasonably sized areas of private open space that would represent at least 20% of the site area in most circumstances. It also noted that other new development in the area has been required to achieve the private open space requirements of MDCP 2011, notably a new dwelling under construction at 165 Illawarra Road which provides a private open space of approximately 56sqm, being 25% of that site area (DA201900091).

Overall, it is considered that the subdivision results in a dwelling on its own lot that does not exhibit a suitable level of private open space for future occupants of the dwelling and does not comply with Part 2.18 of MDCP 2011. This also indicates that the proposed subdivision is not suitable, and this is discussed in further detail below.

In the assessment of DA201800448, the private open space of the development was considered acceptable in the context of a mixed use development in a commercial zone that also was subject to existing use rights. However, the proposed subdivision results in a fundamental change in the arrangement of the development and would result in a dwelling on its own Torrens title lot which would no longer form part of the mixed use development, having no association to the remainder of the development on Lot A.

As such, it is considered that a single dwelling on a standalone Torrens lot would require a greater level of private open space and a greater level of amenity provided to the future occupants of the dwelling. This would be consistent with surrounding development and the envisaged level of private open space for single dwelling within Part 2.18 of MDCP 2011.

(iii) Part 3.2 – Torrens title subdivision and amalgamation

Part 3.2 of MDCP 2011 contains objectives and controls relating to subdivision which include general provisions and provisions relating to the prevailing cadastral pattern.

The following objectives and controls relevant to the development are reproduced below:

- O1** *To ensure site features and constraints are considered as part of the subdivision.*
- O2** *To ensure subdivision relating to existing uses is appropriately considered.*
- O3** *To retain the prevailing cadastral character of the street.*
- O4** *To ensure that the size of new allotments caters for a variety of dwelling and household types and permits adequate solar access, areas for open space, landscaping and car parking.*
- O5** *To ensure that the subdivision or amalgamation of sites reflects and reinforces the predominant subdivision pattern of the street.*
- C4** *When a proposal involves boundary adjustment or excision of land where it is proposed to continue existing uses:*
 - i. Development consent, by way of a new application must be sought for any continuing use on the newly proposed lots;*
 - ii. The new lot boundaries must relate appropriately to the boundary of existing and any new separate occupancies and any associated spaces; and*
 - iii. The arrangement of new lot boundaries must not create any non-compliances with any controls within this DCP that the property currently complies with, reduce from the existing extent of compliance, or otherwise impact on the functioning of the existing uses.*

- C5** *The proposed subdivision or amalgamation must have characteristics similar to the prevailing cadastral pattern of the lots fronting the same street, in terms of area, dimensions, shape and orientation. For the purpose of this control, Council generally considers the 'prevailing cadastral pattern' to be the typical characteristics of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site, if applicable."*

The proposed subdivision does not relate well to the existing uses at the site. The subdivision would effectively result in a dwelling on Lot B which operates independently of the remainder of the development, which is inconsistent with the existing use rights previously established for the site and the approval of DA201800448 and the zoning of the land.

The site features a mixed use building that includes commercial and residential components operating in conjunction with each other and the proposed subdivision would sever that relationship by isolating a dwelling on Lot B. The isolation of the dwelling use on Lot B creates non-compliances with MLEP 2011 and MDCP 2011 and is not consistent with the objectives of the B1 zone.

The development is considered contrary to Objectives 1 and 2 and Control 4(iii) of Part 3.2 of MDCP 2011.

Part 3.2 of MDCP 2011 does not contain minimum lot width or area requirements for subdivisions, but rather relies on performance based controls that aim to ensure that new lots facilitate development that is compatible with the immediate area.

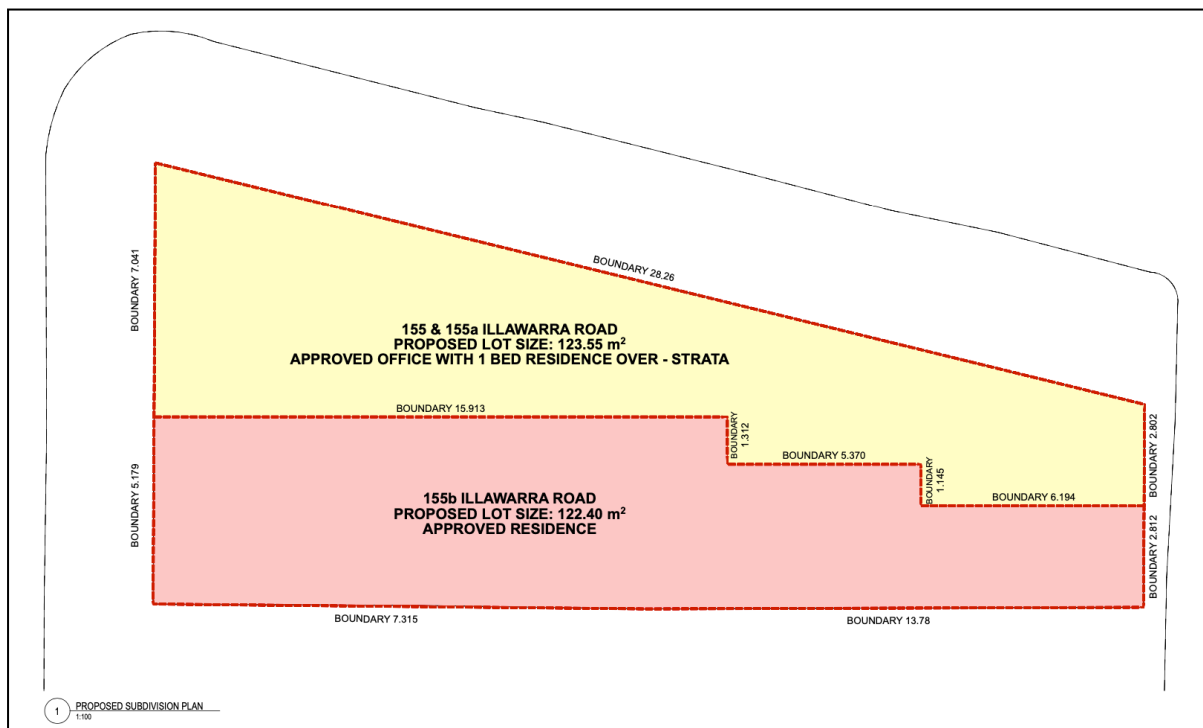
The application proposes to subdivide the property into 2 lots. The streetscape and immediate locality is generally characterised by a mix of single and two storey dwellings, with a two storey commercial building opposite the site. The following table illustrates the proposed lot dimensions and the approximate dimensions of lots within the street:

Number	Site Area	Frontage	Number	Site Area	Frontage
Lot A	123.55sqm	7.04 metres	132	187.6sqm	6.3 metres
Lot B	122.4sqm	5.18 metres	134	186.4sqm	6.4 metres
157	166.2sqm	6.2 metres	136	182.4sqm	6.1 metres
159	165.4sqm	6.1 metres	136	189.4sqm	6.2 metres
161	171.4sqm	6.3 metres	138	181.6sqm	6.1 metres
163	275.3sqm	10.1 metres	140	180.9sqm	6.2 metres
165	225.9sqm	8.0 metres	142	184.8sqm	6.2 metres
167	161.7sqm	6.0 metres	144	182.3sqm	6.0 metres
167A	177.4sqm	6.4 metres	144	181.0sqm	6.1 metres
169	306.2sqm	11.3 metres	146	189.2sqm	6.3 metres
171	246.5sqm	6.0 metres	148	185.3sqm	6.4 metres
173	368.7sqm	16.2 metres	150	186.1sqm	6.3 metres

As the above table demonstrates, the frontages of adjoining properties range between 6 metres at the lower end of the range up to 16.2 metres at the higher end and the areas of adjoining properties range between 161.7sqm at the lower end of the range up to 368.7sqm at the higher end. The lots in surrounding streetscape are generally rectangular in shape.

The subdivision would result in 2 lots which are inconsistent with the adjoining and prevailing subdivision pattern in this part of the streetscape with regards to both frontage measurements and area. Lot B would result in a frontage of 5.18 metres, being 0.8 metres lesser than the

prevailing frontage pattern. Both Lots A and B exhibit an area less than 124sqm which is approximately 37sqm less than the minimum lot area in this streetscape. Both Lots A and B are also of an irregular shape in order to adapt to the existing/approved building and use on the site while most lots in prevailing cadastral pattern are rectangular in shape. The irregular subdivision proposed is shown below.



As such, the proposed lots do not have characteristics similar to lots fronting the same street in terms of width, area and shape and do not reinforce the prevailing cadastral pattern of the street, contrary to Objective 3 and Control 5 of Part 3.2 of MDCP 2011.

It is noted that in response to Council’s request for additional information on 10 December 2020, the applicant provided a response siting smaller lot areas on Sydenham Road, Holmesdale Street, Garners Avenue, Silver Street, Gorman Street and Petersham Road as justification for the small lot size. The DCP is clear that the proposed subdivision must be similar to the prevailing cadastral patterns of lots fronting the same street. In this case, the street is Illawarra Road and lots in other streets that form part of other streetscapes are irrelevant for determining if the development reinforces the predominant subdivision pattern of the street.

Additionally, the applicant put forward that the subdivision is acceptable as there will be no visible changes to the approved development (DA201800448) or changes to the built form and street presentation of the building.

The DCP does not require consideration of the built form or street presentation when considering the suitability of subdivision, only the characteristics in relation to the prevailing cadastral pattern of lots fronting the same street. This approach has been adopted in two recent cases before the Land and Environment Court that have considered the application of the subdivision controls of MDCP 2011, being *Fuller v Inner West Council* [2019] NSWLEC 1506 and *Trinity Investments Australia Pty Ltd v Inner West Council* [2021] NSWLEC 1033.

In both cases, it was considered that the resultant built form was not a matter for consideration when considering the appropriateness of the subdivision and the relevant consideration is the

prevailing cadastral pattern. As demonstrated, the proposed lots do not have characteristics similar to lots fronting the same street in terms of width, area and shape and do not reinforce the prevailing cadastral pattern of the street and as such cannot be supported.

The proposed subdivision also generates the need for a new dividing wall in the garage between the new lots. As a result, the garage on Lot B will be undersized and will not comply with AS 2890.1-2004.

Lastly, the proposed subdivision results in a dwelling with insufficient private open space on Lot B. As discussed above under Part 2.18 of MDCP 2011, the level of private open space expected for a dwelling on its own lots is greater than that for a dwelling within a mixed use development. It is considered that the proposed subdivision has not provided an allotment with sufficient private open space. Nor can the allotment support a greater level of private open space given the small lot size, which is inconsistent with the prevailing cadastral pattern in this portion of Illawarra Road.

As such, the subdivision does not ensure the new Lot B has adequate car parking or private open space, contrary to Objective 4 of Part 3.2 in MDCP 2011.

(iv) Part 9.20 – Marrickville Town Centre North (Precinct 20)

The site is located within the Marrickville Town Centre North Planning Precinct (Precinct 20) under Part 9 of MDCP 2011.

The desired future character for this area includes the requirement *“to protect significant streetscapes and/or public domain elements within the precinct including landscaping, fencing, open space, sandstone kerbing and guttering, views and vistas and prevailing subdivision patterns”*.

The proposed lots do not have characteristics similar to lots fronting the same street in terms of width, area and shape and do not reinforce the prevailing cadastral pattern of the street and as such do not protect the prevailing subdivision pattern.

As such, the development is not consistent with the desired future character of Precinct 20 and is recommended for refusal.

5(e) The Likely Impacts

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

- The development would be inconsistent with the B1 zone and would result in a independent ground floor use with no active commercial frontage.
- The subdivision would result in lots that are undersized in the context of the prevailing subdivision pattern of the immediate Illawarra Road streetscape.
- The development would result in a lot without adequate car parking.
- The development would result in a lot without adequate private open space.
- The development would result in a dwelling on a Torrens lot with inadequate private open space; and
- The development would not be consistent with the desired future character of Precinct 20.

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

It is considered that the proposal will have an adverse impacts and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(g) Any submissions

The application was notified in accordance with Council's Community Participation Plan for a period of 14 days to surrounding properties. No submissions were received in response to the initial 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 contrary to the public interest.

6 Referrals

6(a) Internal

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

- Engineering (non-compliant parking)

7. Section 7.11 Contributions/7.12 Levy

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

8. Conclusion

The proposal is contrary to a number of aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and *Marrickville Development Control Plan 2011*.

The proposed subdivision effectively severs the relationship between the southern dwelling and the remainder of the mixed use development which is not consistent with the existing use rights that have previously been established for the site. As a result, it is considered that the development would not be permissible or consistent with the objectives of the zoning provisions applying to the land.

The proposed subdivision would result in the smallest lots by area in this portion of Illawarra Road and is inconsistent with the prevailing subdivision pattern, contrary to Part 3.2.2 of MDCP 2011. The development also results in an undersized car parking space, generated by the need for fire separation in the garage and as such 1 lot does not have access to appropriate car parking, contrary to Part 2.10 of MDCP 2011.

The development would result in significant impacts on the streetscape and is not considered to be in the public interest.

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011*. After considering the request, the Panel considers that the proposed development will not be in the public interest because the exceedance is not consistent with the objectives of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2020/0768 to torrens subdivide the land into 2 lots at 155 Illawarra Road MARRICKVILLE NSW 2204 for the following reasons:
1. The application has failed to demonstrate that the proposed land use is permissible or that the proposed Torrens Title subdivision is consistent with the previously established existing use right on the land.
 2. The development is inconsistent with the objectives of the B1 Neighbourhood Centre zone under the Marrickville Local Environmental Plan 2011.
 3. The request under Clause 4.6 of the Marrickville Local Environmental Plan 2011 seeking to vary the applicable Floor Space Ratio development standard is not adequately justified under as the development is inconsistent with the objectives of the B1 Neighbourhood Centre zone.
 4. The proposed lots do not have characteristics similar to lots fronting the same street in terms of width, area and shape and do not reinforce the prevailing cadastral pattern of the street, contrary to Part 3.2 of the Marrickville Development Control Plan 2011.
 5. The proposal is not consistent with the desired future character of the area as the subdivision does not protect the prevailing subdivision pattern, contrary to Part 9.20 of the Marrickville Development Control Plan 2011.
 6. The proposal results in a garage and car parking space that does not comply with AS2890.1-2004, contrary to Part 2.10 of the Marrickville Development Control Plan 2011.
 7. The proposal results in a lot which does not provide a suitable level of private open space for future occupants being less than the quantum required, contrary to Part 2.18 of the Marrickville Development Control Plan 2011.

Attachment A – Recommended conditions should the application be approved

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA02 Rev CC-01	Site Plan	22.08.2020	Mackenzie Pronk Architects
DA03 Rev CC-01	Subdivision Plan	22.08.2020	Mackenzie Architects Pronk
DA04 Rev A	Ground Floor Plan	10.12.2020	Mackenzie Architects Pronk
DA05 Rev CC-01	First Floor Plan	22.08.2020	Mackenzie Architects Pronk
DA06 Rev CC-01	Roof Plan	22.08.2020	Mackenzie Pronk Architects

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

- a. The garage to Lot B (being the southern most lot containing only a dwelling) be amended to comply with AS 2890.1-2004.

GENERAL CONDITIONS**3. Waste Management Plan**

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

4. Erosion and Sediment Control

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

5. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**6. Advising Neighbors Prior to Excavation**

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

7. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**8. Sydney Water – Tap In**

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

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

DURING DEMOLITION AND CONSTRUCTION**9. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm 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 out of hours 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 must be limited to:

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

The person acting on this consent must not undertake such activities for more than three continuous hours and must 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.

PRIOR TO OCCUPATION CERTIFICATE

10. Road Widening/Splay

The Plan of Subdivision shall include road widening at no cost to Council at the corner of Illawarra and Sydenham Roads along the line of the existing splayed corner of the building.

11. Registration of New Lots

Prior the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence of the subdivision of the land into 2 lots being registered at the NSW Lands Registry Services.

PRIOR TO SUBDIVISION CERTIFICATE

12. Separate Drainage Systems

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing separate stormwater drainage systems for each proposed Lot. If separate drainage systems cannot be provided that the plan shall detail the location of the proposed drainage easements.

13. Subdivision Plan Amendment

Prior to the issue of a Subdivision Certificate, the Principal Certifier must verify that:

- a. A common drainage easement in favour of the parcels of land to be drained (If required) have been created over the full length of all existing and proposed inter-allotment drainage systems within the site of the proposed development; and
- b. Proof of registration of the easement and a written statement signed by the Registered Surveyor that the as-built pipeline is totally within the proposed easement.

14. Section 73 Certificate

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

ADVISORY NOTES**Permits**

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

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

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

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and

- ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

- i. The name of the owner-builder; and
- ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660

			To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments	131441	www.lspc.nsw.gov.au
NSW Food Authority		1300 552 406	www.foodnotify.nsw.gov.au
NSW Government			www.nsw.gov.au/fibro www.diysafe.nsw.gov.au
			Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	www.environment.nsw.gov.au
Sydney Water		13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)			www.waterrating.gov.au
WorkCover Authority of NSW		13 10 50	www.workcover.nsw.gov.au
			Enquiries relating to work safety and asbestos removal and disposal.

Asbestos Removal

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

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

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

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Street Numbering

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

Attachment B – Plans of proposed development

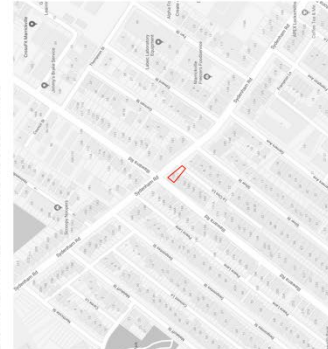
DEVELOPMENT APPLICATION
SUBDIVISION FOR DEVELOPMENT APPROVAL AT
155 ILLAWARRA ROAD
MARRICKVILLE NSW 2204



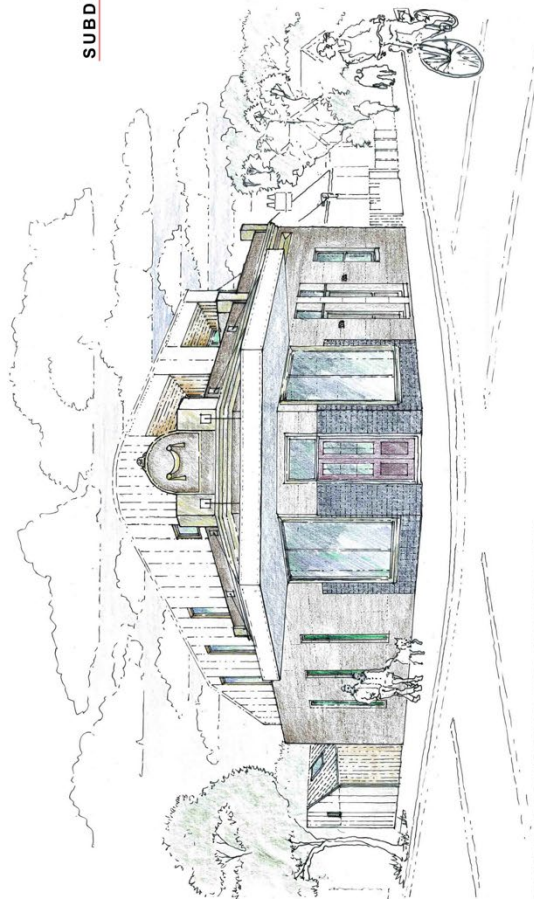
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DA01	CONTEXT ANALYSIS PLAN
DA02	SITE PLAN
DA03	PROPOSED SUBDIVISION PLAN
DA04	APPROVED GROUND FLOOR PLAN
DA05	APPROVED FIRST FLOOR PLAN
DA06	APPROVED ROOF PLAN



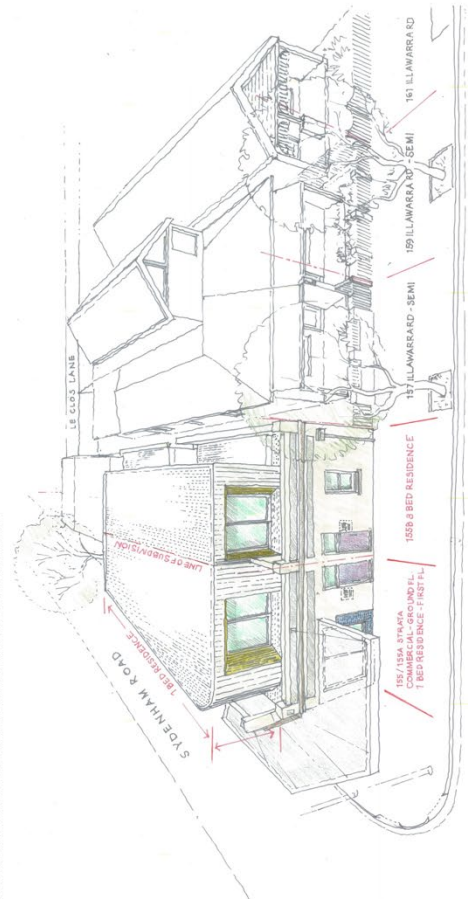
EXISTING VIEW FROM ILLAWARRA ROAD AND STOENHAM ROAD



LOCATION MAP - NOT TO SCALE



PROPOSED VIEW FROM THE CORNER OF ILLAWARRA ROAD AND STOENHAM ROAD



PROPOSED SUBDIVISION DIAGRAM

PROPOSED SUBDIVISION DIAGRAM

A FOR CONSTRUCTION
THIS DRAWING IS NOT VALID FOR CONSTRUCTION UNLESS IT IS ACCOMPANIED BY THE RELEVANT CONSTRUCTION CERTIFICATE OR OTHER PERMITTING DOCUMENTATION.

3

DATE: 23/09/20
 BY: NMHP-JT
 PROJECT: 155 ILLAWARRA ROAD MARRICKVILLE NSW 2204

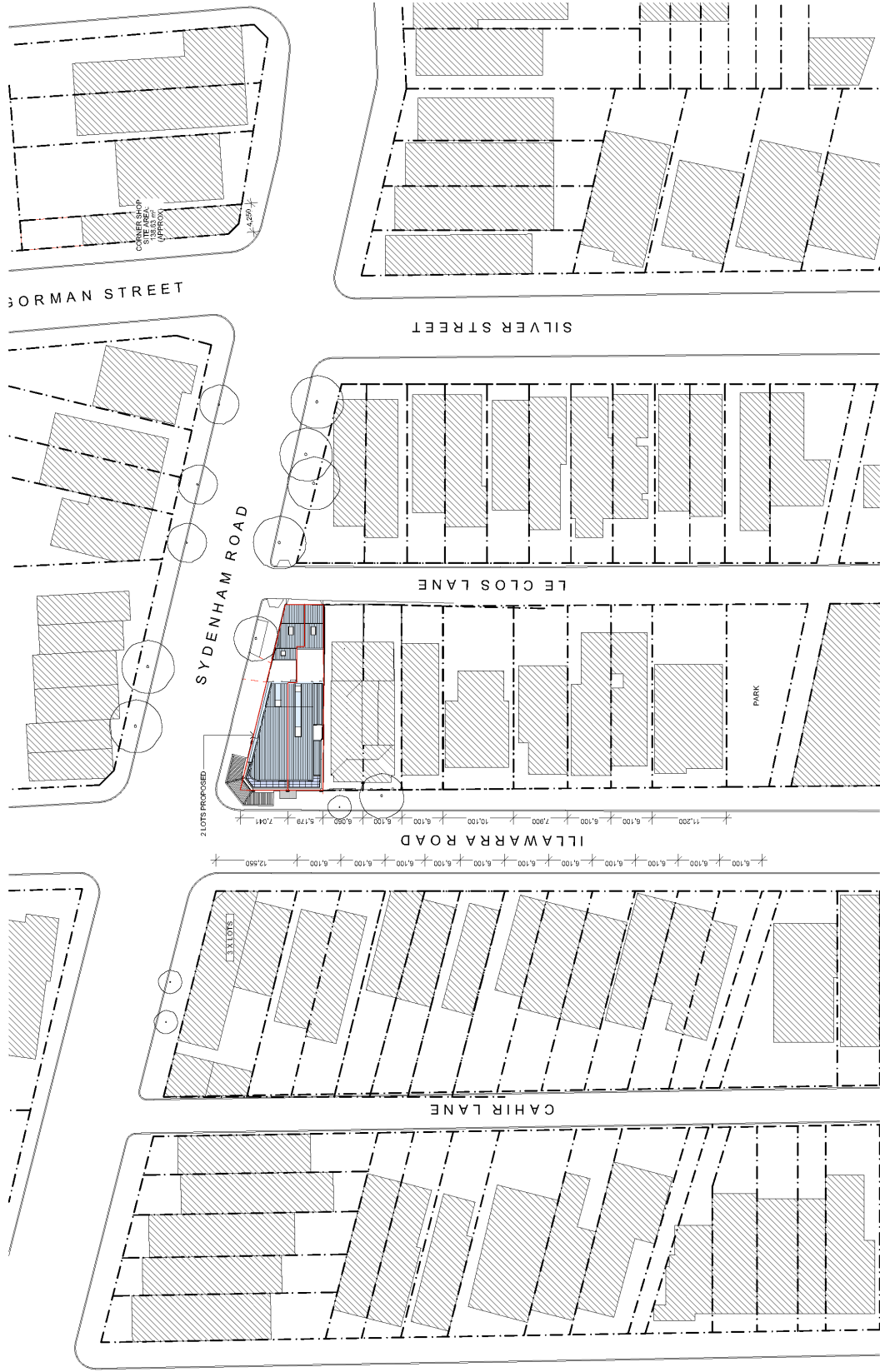
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 NEW ADDITIONS
 EXISTING WALL
 EXISTING FLOOR
 EXISTING ROOF
 EXISTING DRIVEWAY
 EXISTING FENCE
 EXISTING LANDSCAPE
 EXISTING UTILITIES

PROJECT LEGEND
 RECYCLED BRICKWORK
 RECYCLED CONCRETE
 RECYCLED INSULATION
 RECYCLED TIMBER
 RECYCLED GLASS
 RECYCLED METAL
 RECYCLED PLASTERBOARD
 RECYCLED PAINT
 RECYCLED GLASS BLOCKS
 RECYCLED POLYURETHANE INSULATION

CLIENT: CROSSROADS PARTNERS
 PROJECT: ILLAWARRA ROAD MARRICKVILLE NSW 2204
 ARCHITECT: mackenzieprank architects
 155 ILLAWARRA ROAD MARRICKVILLE NSW 2204
 T: 02 8558 4585 F: 02 8558 4582
 E: david@mackenzieprank.com.au
 W: www.mackenzieprank.com.au
 C: 155 ILLAWARRA ROAD MARRICKVILLE NSW 2204

DRAWING TITLE: TITLE PAGE
 SCALE: 1:1
 DRAWING NO.: DA00
 REVISION NO.: CC-01

DATE: 23/09/20
 DRAWN BY: NMHP-JT
 CHECKED BY: JT



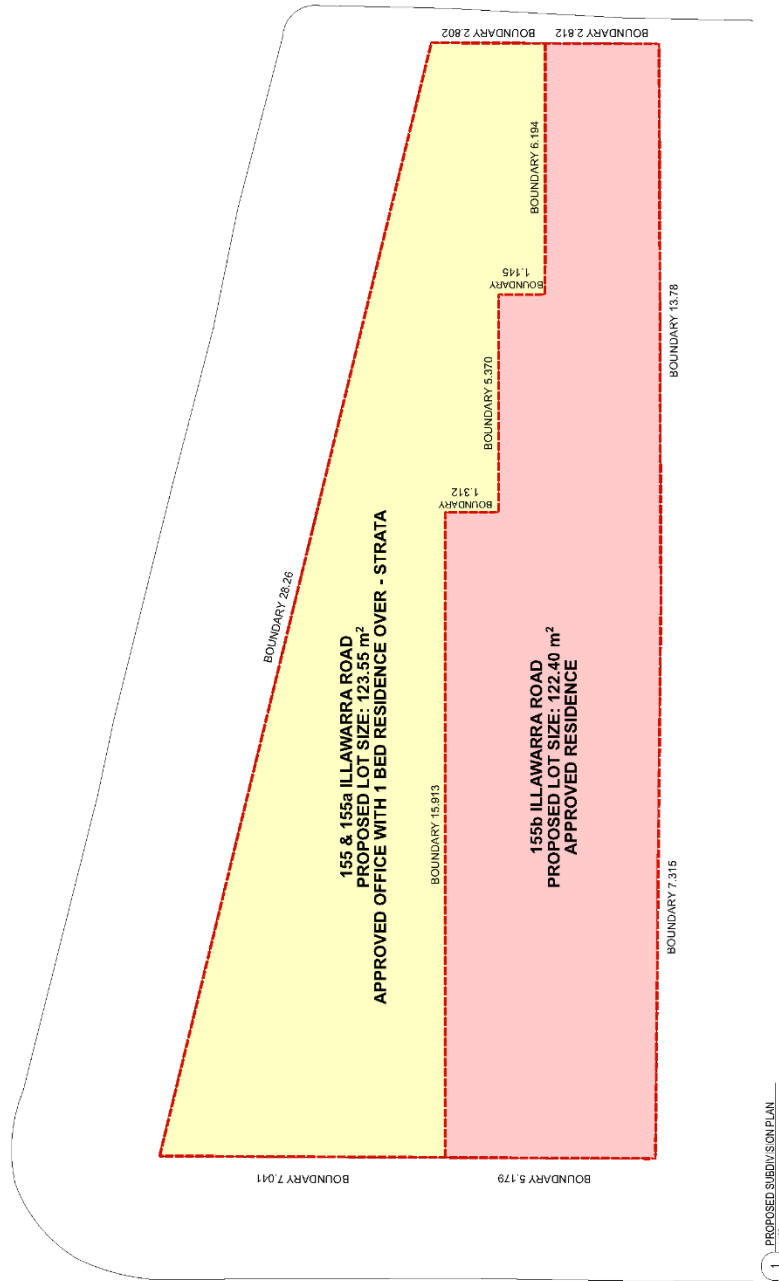
A **FOR CONSTRUCTION**
 ALL INFORMATION CONTAINED HEREIN IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR CONSTRUCTION. THE DESIGNER DOES NOT WARRANT THAT THE INFORMATION CONTAINED HEREIN IS ACCURATE OR COMPLETE. THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF THE DESIGNER AND IS NOT TO BE REPRODUCED, COPIED, OR DISTRIBUTED IN ANY FORM OR BY ANY MEANS WITHOUT THE WRITTEN PERMISSION OF THE DESIGNER.

REV	DESCRIPTION	DATE	BY	PROJECT LEGEND
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PROJECT LEGEND	AREA	RECYCLED BRICKWORK	RECYCLED BRICKWORK
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	DS	DS	DS
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	FS	FS	FS
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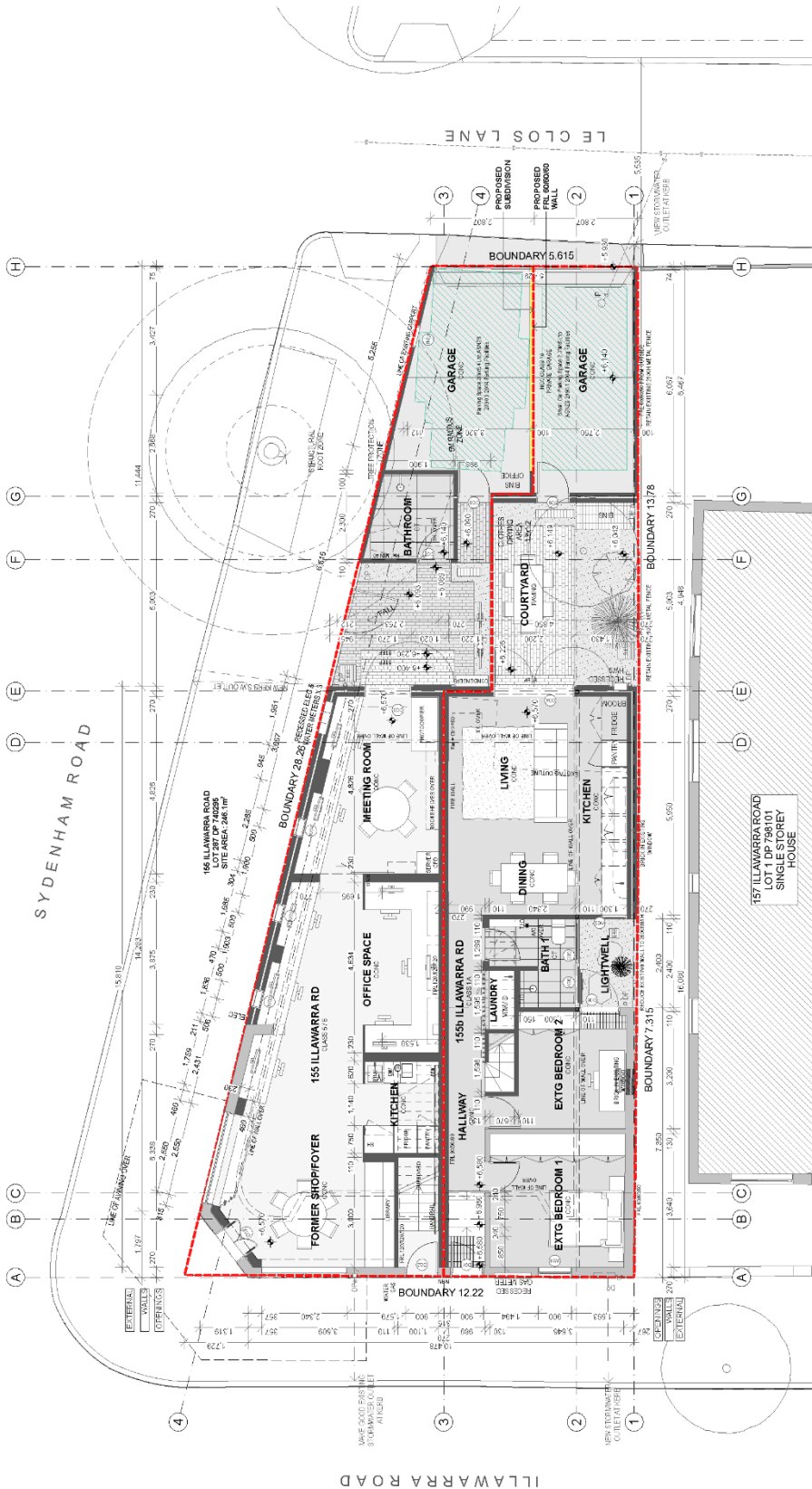
CROSSROADS PARTNERS
mackenzipsank architects
 112/114 WILKINSON STREET
 SYDNEY NSW 2011
 T 02 9558 4855 F 02 9558 4852
 WWW.MACKENZIPSANK.COM.AU
 G @MACKENZIPSANK

CONTEXT ANALYSIS PLAN
 PROJECT: ILLAWARRA ROAD
 MARRICKVILLE NSW 2204
 DATE: 23/08/23
 DRAWN BY: JP
 CHECKED BY: CC
 SCALE: 1:500



1 PROPOSED SUBDIVISION PLAN
1:100

A FOR CONSTRUCTION ALL INFORMATION ON THIS PLAN IS UNLESS OTHERWISE SPECIFICALLY STATED THE PROPERTY OF THE ARCHITECT AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. THE ARCHITECT ACCEPTS NO LIABILITY FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS PLAN FOR ANY OTHER PURPOSE.	1. SITE DESCRIPTION 1.1. ADDRESS TO BE DEVELOPED 1.2. PROJECT NAME 1.3. PROJECT LOCATION 1.4. PROJECT TYPE 1.5. PROJECT VALUE 1.6. PROJECT STATUS 1.7. PROJECT DATE 1.8. PROJECT AREA 1.9. PROJECT PERMITS 1.10. PROJECT CONTACTS	2. DATE BY PROJECT LEADER 2.1. DATE 2.2. PROJECT LEADER 2.3. PROJECT LEADER CONTACT 2.4. PROJECT LEADER PHONE 2.5. PROJECT LEADER EMAIL 2.6. PROJECT LEADER ADDRESS	3. KEY DESCRIPTION 3.1. SITE DESCRIPTION 3.2. PROJECT NAME 3.3. PROJECT LOCATION 3.4. PROJECT TYPE 3.5. PROJECT VALUE 3.6. PROJECT STATUS 3.7. PROJECT AREA 3.8. PROJECT PERMITS 3.9. PROJECT CONTACTS	4. DATE BY PROJECT LEADER 4.1. DATE 4.2. PROJECT LEADER 4.3. PROJECT LEADER CONTACT 4.4. PROJECT LEADER PHONE 4.5. PROJECT LEADER EMAIL 4.6. PROJECT LEADER ADDRESS	5. PROJECT LEGEND 5.1. SITE DESCRIPTION 5.2. PROJECT NAME 5.3. PROJECT LOCATION 5.4. PROJECT TYPE 5.5. PROJECT VALUE 5.6. PROJECT STATUS 5.7. PROJECT AREA 5.8. PROJECT PERMITS 5.9. PROJECT CONTACTS	6. RISK REGISTER 6.1. RISK REGISTER 6.2. RISK REGISTER 6.3. RISK REGISTER 6.4. RISK REGISTER 6.5. RISK REGISTER 6.6. RISK REGISTER 6.7. RISK REGISTER 6.8. RISK REGISTER 6.9. RISK REGISTER 6.10. RISK REGISTER	7. CROSSROADS PARTNERS 7.1. CROSSROADS PARTNERS 7.2. CROSSROADS PARTNERS 7.3. CROSSROADS PARTNERS 7.4. CROSSROADS PARTNERS 7.5. CROSSROADS PARTNERS 7.6. CROSSROADS PARTNERS 7.7. CROSSROADS PARTNERS 7.8. CROSSROADS PARTNERS 7.9. CROSSROADS PARTNERS 7.10. CROSSROADS PARTNERS	8. PROPOSED SUBDIVISION PLAN 8.1. PROPOSED SUBDIVISION PLAN 8.2. PROPOSED SUBDIVISION PLAN 8.3. PROPOSED SUBDIVISION PLAN 8.4. PROPOSED SUBDIVISION PLAN 8.5. PROPOSED SUBDIVISION PLAN 8.6. PROPOSED SUBDIVISION PLAN 8.7. PROPOSED SUBDIVISION PLAN 8.8. PROPOSED SUBDIVISION PLAN 8.9. PROPOSED SUBDIVISION PLAN 8.10. PROPOSED SUBDIVISION PLAN
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A FOR CONSTRUCTION

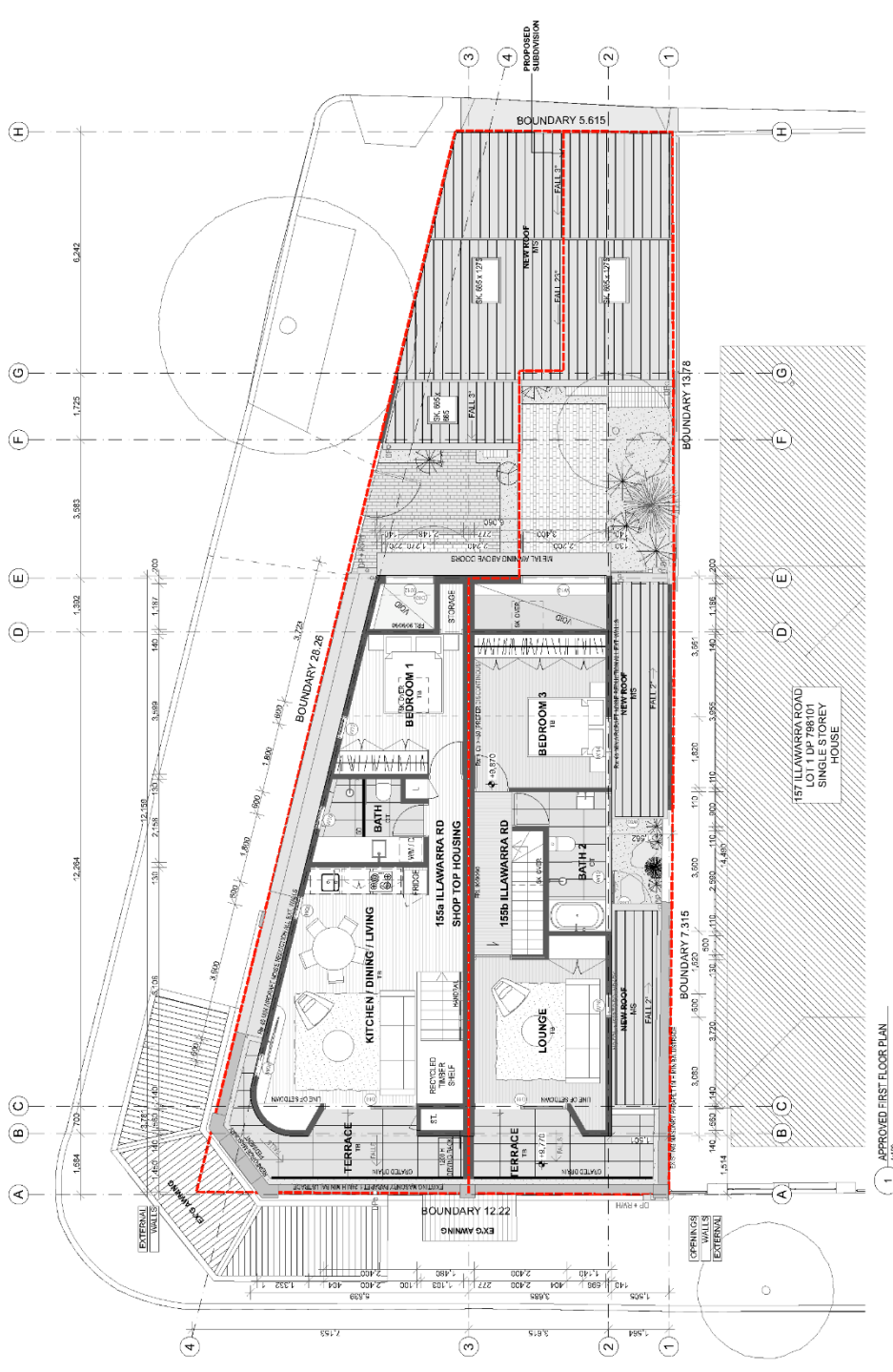
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REV	DESCRIPTION	DATE	BY	PROJECT/LEGEND	PROJECT LEGEND
01	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	1. EXISTING
02	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	2. PROPOSED
03	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	3. EXISTING
04	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	4. PROPOSED
05	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	5. EXISTING
06	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	6. PROPOSED
07	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	7. EXISTING
08	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	8. PROPOSED
09	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	9. EXISTING
10	FOR CONSTRUCTION	2024/07/10	MM	155 ILLAWARRA RD	10. PROPOSED

DATE 2024/07/10
BY MM
PROJECT/LEGEND 155 ILLAWARRA RD
PROJECT LEGEND 1. EXISTING 2. PROPOSED 3. EXISTING 4. PROPOSED 5. EXISTING 6. PROPOSED 7. EXISTING 8. PROPOSED 9. EXISTING 10. PROPOSED

APPROVED GROUND FLOOR PLAN
 1:100
 10/07/2020
 MM JP JT
 155 ILLAWARRA ROAD
 MARRICKVILLE NSW 2204
 DA04
 DEVELOPMENT APPLICATION

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 155 ILLAWARRA ROAD
 MARRICKVILLE NSW 2204
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 WWW.MACKENZIEPRANK.COM.AU
 6/04/2018



1 APPROVED FIRST FLOOR PLAN

KEY	DESCRIPTION	DATE	BY	PROJECT LEADER	PROJECT NUMBER	PROJECT LEGEND	CLIENT	CROSSROADS PARTNERS	APPROVED FIRST FLOOR PLAN
01	EXISTING WALLS	23/10/18	JT	ILLAWARRA ROAD	157 ILLAWARRA ROAD LOT 1 DP 788101 SINGLE STOREY HOUSE	W: WALLS S: SKY LINING T: TERRAZZO B: BATHS K: KITCHEN D: DINING L: LIVING R: RECYCLED BRICKS N: NEW ROOF F: FACE BRICK P: PAVED DRIVEWAY G: GARAGE ST: STAIRS R: RECYCLED BRICKS W: WALLS S: SKY LINING T: TERRAZZO B: BATHS K: KITCHEN D: DINING L: LIVING R: RECYCLED BRICKS N: NEW ROOF F: FACE BRICK P: PAVED DRIVEWAY G: GARAGE ST: STAIRS	PROJECT LEADER 02 8558 4525 02 8558 4522 info@mackenziesprank.com.au www.mackenziesprank.com.au	CROSSROADS PARTNERS 157 ILLAWARRA ROAD MARRICKVILLE NSW 2204 (02) 8558 4522 info@crossroads.com.au www.crossroads.com.au	APPROVED FIRST FLOOR PLAN DATE: 23/10/18 BY: JT PROJECT NO: CC-01

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Attachment C- Clause 4.6 Exception to Development Standards

155 Illawarra Road, Marrickville – Statement of Environmental Effects

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CLAUSE 4.6 SUBMISSION - EXCEPTION TO DEVELOPMENT STANDARD (FLOOR SPACE RATIO)

Criteria

Clause 4.6 allows consent to be granted for development that would contravene a development standard if

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard and*
 the consent authority is satisfied that
 - (4)(a)(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- the concurrence of the Director-General has been obtained

In accordance with the guidelines provided by decisions of the Land and Environment Court and in particular the judgments in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, the submission in this Statement addresses the requirements of clause 4.6 in turn.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. The subsequent cases referred to above have confirmed that these ways are equally applicable under the clause 4.6 regime. The 5 matters to consider are whether:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The objective is not relevant to the development.*
3. *The objective would be defeated or thwarted if compliance was required.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*
5. *The zoning of the land is unreasonable or inappropriate.*

Burrell Threlfo Pagan Pty Limited

Town Planning Consultants

These 5 matters are discussed below.

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of the FSR development standard are

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

These objectives are achieved despite the con-compliance with the numerical control because:

- The built form of the development has already been approved and this will not change as a result of the proposed subdivision.
- The approval for DA 2018 00 448 accepted a clause 4.6 submission regarding floor space ratio
- The built form of the approved development is consistent with the desired future character of the surrounding residential properties, and this will not change as a result of the proposed subdivision.
- There are no adverse impacts on the adjoining property. The approved design provides a suitable presentation to the public domain which will not change as a result of the proposed subdivision.

2. The objective is not relevant to the development.

This contention is not relied upon.

3. The objective would be defeated or thwarted if compliance was required.

This contention is not relied upon.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.

This contention is not relied upon.

5. The zoning of the land is unreasonable or inappropriate.

This contention is not relied upon.

Compliance with the development standard is unreasonable or unnecessary in the circumstances because

- The built form of the development has already been approved and this will not change as a result of the proposed subdivision.
- The built form of the approved development is consistent with the desired future character of the surrounding residential properties, and this will not change as a result of the proposed subdivision.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- The built form of the development has already been approved and this will not change as a result of the proposed subdivision.
- The built form of the approved development is consistent with the desired future character of the surrounding residential properties, and this will not change as a result of the proposed subdivision.

Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

The objectives of the FSR standard have been addressed above. The proposal is consistent with the objectives.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

The objectives for the B1 zone are

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.*
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house*

To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

The proposal will provide for an architect's office to accommodate an existing Marrickville practice.

To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.

The proposed FSR of 1.01:1 complies with the FSR standard that applies to the surrounding properties.

To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.

The active street frontage will be rejuvenated by the proposed office use.

To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house

The retention and extension of the existing dwelling is consistent with this objective.

Concurrence of the Director-General

The concurrence of the Director-General may be assumed by Council.

Council must also consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning*
- (b) *the public benefit of maintaining the development standard*

Any matter of significance for State or regional environmental planning

There are no matters of significance for State or regional environmental planning

Public interest

The proposal is considered to be neutral in terms of the public interest.