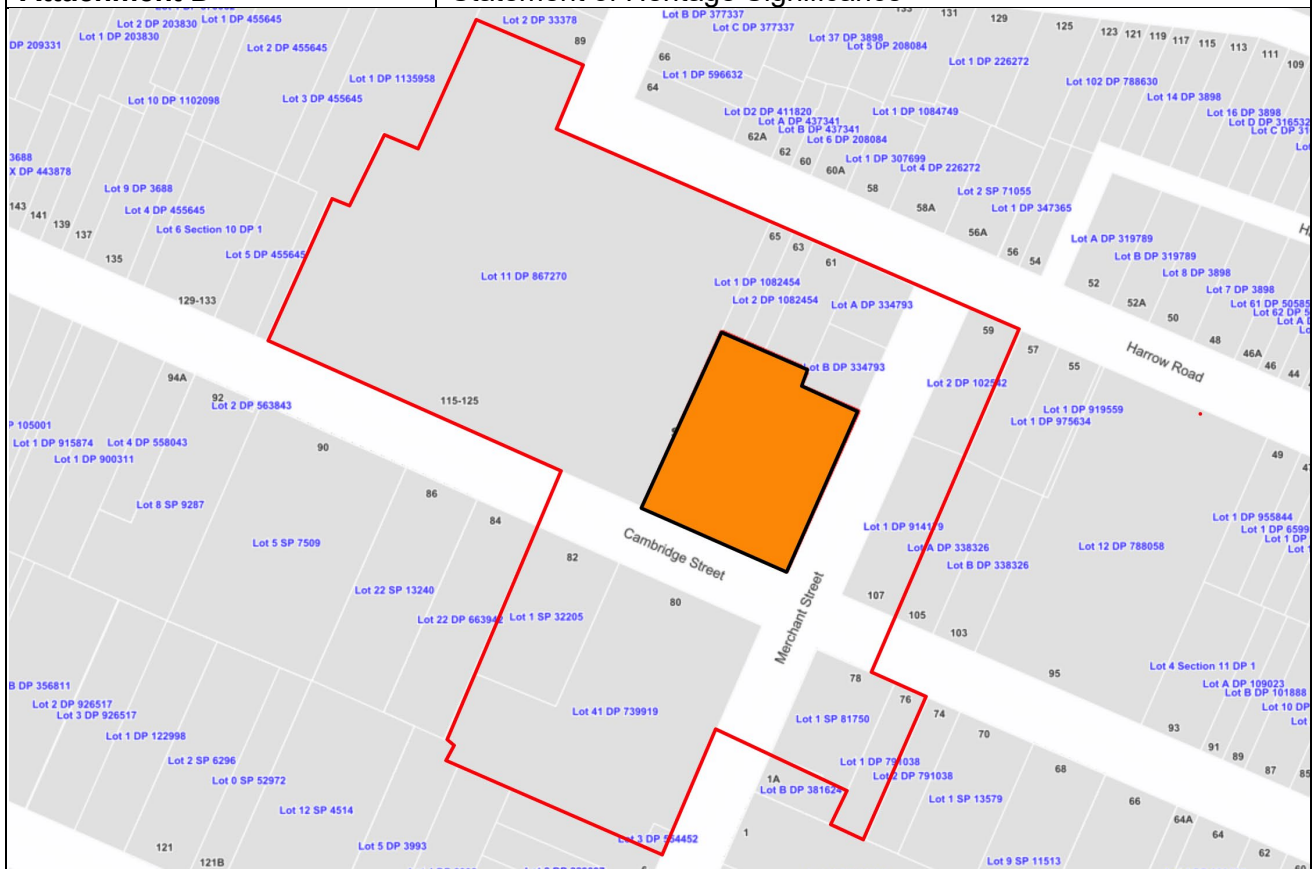







# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2020/1124
<b>Address</b>	109-111 Cambridge Street STANMORE NSW 2048
<b>Proposal</b>	Subdivision of the land into 2 Torrens title lots and to undertake fire safety upgrade works
<b>Date of Lodgement</b>	18 December 2020
<b>Applicant</b>	Ian Phillips
<b>Owner</b>	The Registered Proprietors Of SP 81388
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$20,000.00
<b>Reason for determination at Planning Panel</b>	FSR exceeds 10%
<b>Main Issues</b>	Fire Safety
<b>Recommendation</b>	Approval with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
<b>Attachment D</b>	Statement of Heritage Significance



### LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for subdivision of the land into 2 Torrens title lots and to undertake fire safety upgrade works at 109-111 Cambridge Street, Stanmore.

The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the assessment of the application include:

- The proposal results in new lots that breach the Floor Space Ratio (FSR) development standard by more than 10%.
- Fire safety upgrade works are required as a result of the proposed subdivision.

The proposal generally complies with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable given the context of the site and the desired future character of the precinct.

A variation to the FSR development standard is considered acceptable on environmental planning grounds in this circumstance and therefore the application is recommended for approval.

## 2. Proposal

Approval is sought for subdivision of the land into 2 Torrens title lots and to undertake fire safety upgrade works which includes the following:

- Creation of 1 new lot of 1092sqm fronting Cambridge Street containing an existing residential flat building and associated parking (Lot 1).
- Creation of 1 new lot of 846.6sqm fronting Cambridge Street with secondary frontage to Merchant Street containing an existing boarding house (Lot 2).
- Creation of a number of easements across the proposed lots to allow for drainage, vehicle access and other services.
- Works in between the two existing buildings, including protection of existing openings which will be within 3 metres of the proposed property boundaries.

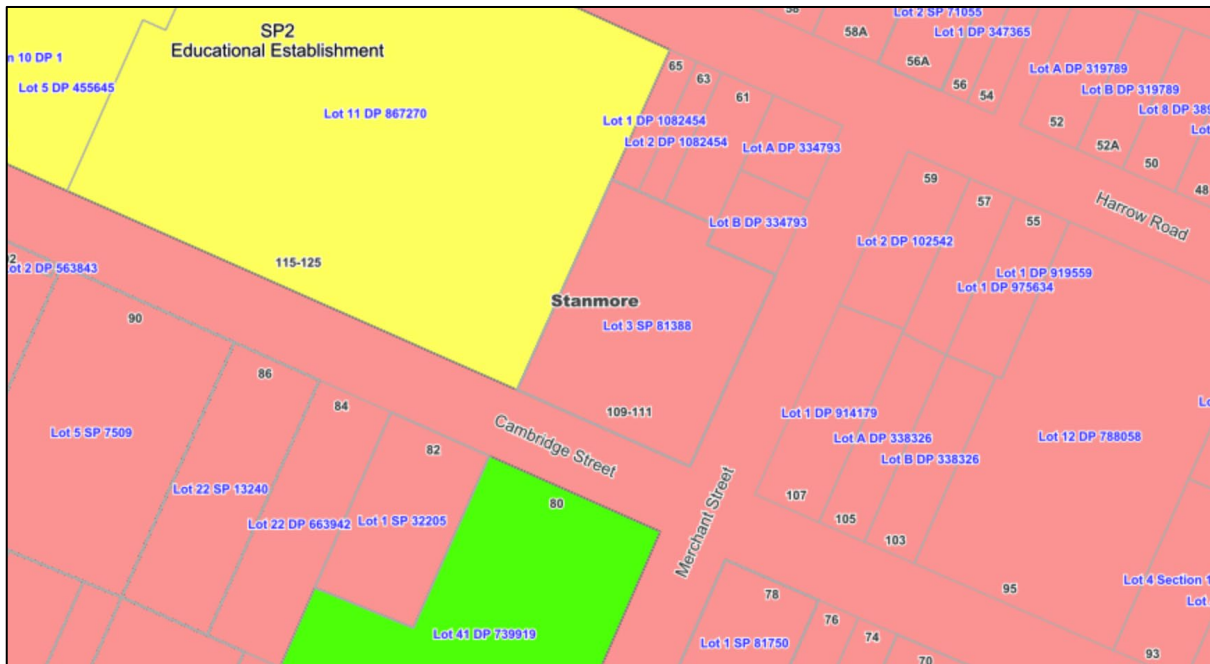
## 3. Site Description

The subject site is located on the northern side of Cambridge Street at the intersection with Merchant Street. The site consists of 1 allotment and is generally rectangular shaped with a total area of 1938.6sqm and is legally described as Strata Plan 81388.

The site has a frontage to Cambridge Street of 40.66 metres and a secondary frontage of approximately 45.05 metres to Merchant Street.

The site supports a two storey residential flat building containing 7 apartments and a two storey boarding house. The existing buildings are both on a single lot, with the boarding house forming Lot 8 in the existing Strata Plan. The property is located within a heritage conservation area.

The adjoining properties support single and two storey dwelling houses and a school.



## 4. Background

### 4(a) Site history

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

Application	Proposal	Decision & Date
DA200200443	To carry out alterations to the existing building to upgrade the boarding house accommodation and convert the existing office building into a boarding house at 109 Cambridge Street Stanmore	Approved – 30 December 2002
DA200200444	To convert the boarding house into a residential flat building containing 7 dwellings and to strata subdivide the premises into 7 lots at 111 Cambridge Street Stanmore	Deferred Commencement – 30 December 2002 Made active on 23 May 2007
DA201900392	To Torrens title the property into 2 lots	Refused – 23 January 2020

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
15 February 2021	Council wrote to the applicant requesting the following additional information: <ul style="list-style-type: none"> <li>• An amended subdivision that is consistent with the prevailing cadastral pattern.</li> <li>• Details demonstrating the windows within 3 metres of the proposed property boundaries would remain operable to address amenity concerns.</li> <li>• A site plan showing the existing buildings, car parking, landscaping and other elements in relation to the proposed subdivision.</li> <li>• Ensuring accuracy of the plans provided.</li> </ul>
8 March 2021	The applicant provided amended plans and details addressing these above. These amendments did not require notification in accordance with Council's notification policy.

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- *Marrickville Local Environmental Plan 2011*

The following provides further discussion of the relevant issues:

#### 5(a)(i) *Marrickville Local Environment Plan 2011 (MLEP 2011)*

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.6 - Subdivision
- Clause 2.7 - Demolition
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1- Earthworks
- Clause 6.5 - Development in areas subject to aircraft noise

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

Standard	Proposal	Non Compliance	Complies
<b>Lot 1 (RFB)</b>			
<b>Floor Space Ratio</b> Maximum permissible: 0.6:1 or 655.2sqm	0.68:1 or 748.7sqm	93.5sqm or 14.2%	No
<b>Lot 2 (Boarding House)</b>			
<b>Floor Space Ratio</b> Maximum permissible: 0.6:1 or 508sqm	0.77:1 or 653.75sqm	145.75sqm or 28.6%	No

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

The site is zoned R2 under the *MLEP 2011*. The *MLEP 2011* defines the development as a residential flat building and a boarding house.

Residential flat buildings are not permitted in the R2 zone. Boarding houses with more than 12 rooms are also not permitted in the R2 zone by virtue of State Environmental Planning Policy (Affordable Rental Housing) 2009. However, this proposal relates to subdivision and fire upgrade works only and does not seek to alter the existing uses. Both uses have been lawfully approved as a result of DA200200443 and DA200200444.

(v) Clause 4.4 – Floor Space Ratio

A maximum floor space ratio (FSR) of 0.6:1 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 1:** 0.68:1 or 748.7sqm representing a 14.2% variation.
- **Lot 2:** 0.77:1 or 653.75sqm representing a 28.6% 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.

(vi) 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 MLEP 2011 by 14.2% of Lot 1 and 28.6% on Lot 2.

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

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

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

- The existing buildings at the site are not being expanded or substantially altered by the proposal and the non-compliant FSR is a result of the proposed subdivision only.
- There is no change to the existing gross floor area as a result of the proposal.
- The existing buildings currently breach the FSR development standard applicable to the existing lot.
- The proposal will maintain amenity to the existing buildings and will not have any streetscape impacts.
- A reduction in FSR to achieve compliance would have no material planning benefit and would only be to achieve numerical compliance.

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

It is considered the development is in the public interest because it is consistent with the objectives of the R2 zone, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011 for the following reasons:

- The proposal maintains a variety of housing needs for the community through the retention of the existing residential flat building and boarding house uses on the site.

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

- The proposal will maintain the existing buildings which are compatible in scale to the surrounding area.
- The proposal maintains the existing amenity to the buildings for current and future occupants of the dwellings.
- The proposal maintains the existing building form, scale and presentation to the street and will not result in streetscape impacts.

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

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

(vii) Clause 5.10 – Heritage Conservation

The site is located within the Kingston South Heritage Conservation Area (C17).

The proposal will have no discernible additional impact on the surrounding streetscape or character of the area and is generally acceptable from a heritage conservation perspective. Any works required between existing buildings to address fire safety will not be highly visible

from the streetscape or require major intervention into the existing buildings. However, to ensure the fire treatments are sympathetic to the buildings within the conservation area, a condition is including requiring any screening to have colours similar to the existing colour scheme of the buildings.

5(b) 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 especially relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(c) Development Control Plans

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

The following provides discussion of the relevant issues:

Part of MDCP 2011	Compliance
Part 2.10 – Parking	Yes – see discussion
Part 3 – Subdivision	Yes – see discussion
Part 8 – Heritage	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

(i) Part 2.10 – Parking

Applying current parking rates to the subject site is considered onerous having regard to the approvals previously granted for each use.

DA200200443 and DA200200444 required car parking for both existing uses, being 9 car parking spaces for the RFB and 5 car parking spaces for the boarding house. The proposed subdivision has been able to retain the car parking required by the current consents.

As such, the development is considered acceptable with regards to car parking.

(ii) Part 3.2 – Torrens title subdivision and amalgamation

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 storey dwellings, residential flat buildings and educational establishments on a mix of narrow and wide lots. 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
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133	809sqm	20 metres	94A	364sqm	9 metres
129	465sqm	11 metres	92	1259sqm	19 metres
115-125	8608sqm	106 metres	90	2438sqm	41 metres
<b>Lot 1</b>	<b>1092sqm</b>	<b>22.8 metres</b>	86	1199sqm	20 metres
<b>Lot 2</b>	<b>846.6sqm</b>	<b>17.8 metres</b>	84	1015sqm	17 metres
107	663sqm	15 metres	82	937sqm	23 metres
105	465sqm	11 metres	80	3085sqm	40 metres
103	512sqm	12 metres	78	649sqm	22 metres
95	3721sqm	47 metres	76	373sqm	9 metres
93	665sqm	17 metres	74	361sqm	9 metres

As the above table demonstrates, the frontages of adjoining properties range between 9 metres at the lower end of the range up to 106 metres at the higher end. The subdivision would result in two (2) lots which are considered to be consistent with the adjoining and prevailing subdivision pattern in this part of the streetscape.

It is noted that the proposed lots are irregular in shape. However, this not inconsistent with the surrounding cadastral pattern which includes a number of irregular shaped lots. Additionally, this irregularity in lots shapes will not have any impact on the streetscape or the arrangements of existing buildings on the site. It should also be noted that previously the site was two separate lots and DA200200443 and DA200200444 required the consolidation of the lots to address fire safety issues. These matters have been resolved by the applicant and are discussed later in this report.

It is considered the application complies with the parts as indicated and ultimately achieves the aims and objectives of the Marrickville Development Control Plan 2011.

It is considered that the proposal will have no significant detrimental effect relating to the environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### 5(d) Other Matters

##### (i) Fire Safety

As a result of the proposed subdivision, both existing buildings will have openings (windows and doors) within 3 metres of the property boundary. These openings need to be adequately fire rated. The application is supported with a Performance Based Design Brief completed by Code Performance which demonstrates suitable options for fire treatment of the openings.

However, to ensure the existing apartments and boarding rooms affected by the fire treatments maintain suitable amenity, all windows need to remain operable. As such, a plan indicating screening or mesh to be provided to the affected windows has been provided which will allow the windows to remain operable. This is considered an acceptable solution. Conditions are included in the recommendation to ensure any fire treatments do not result in inoperable windows to maintain the amenity of the existing dwellings.



### 5(e) The Likely Impacts

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

### 5(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 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 not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- Development Engineering
- Building Certification

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable for the proposal as they have already been levied as part of the original applications relating to the use of the site as a boarding house and residential flat building.

## 8. Conclusion

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

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

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

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011* to vary Clause 4.4 of the LEP. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental planning grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/1124 for subdivision of the land into 2 Torrens title lots and to undertake fire safety upgrade works at 109-111 Cambridge Street STANMORE NSW 2048 subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### 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
Sheet 1 of 1	Proposed Subdivision Plan	undated	John Walton
DA-1000 Rev 02	Site Plan	03.03.2021	Place Studio
DA-2001 Rev 02	Ground Floor Plan (RFB)	03.03.2021	Place Studio
DA-2002 Rev 02	First Floor Plan (RFB)	03.03.2021	Place Studio
DA-3001 Rev 02	Elevations	03.03.2021	Place Studio
DA-3001 Rev 02	Elevations with Proposed Fire Treatments	03.03.2021	Place Studio

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. That any screening to windows and doors need to comply with fire safety requirements have a colour that is similar to the existing colour scheme of the buildings.

**FEES**

**3. Security Deposit - Custom**

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

<b>Security Deposit:</b>	\$2,209.00
<b>Inspection Fee:</b>	\$236.70

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

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

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

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

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

**GENERAL CONDITIONS**

**4. Car Parking**

The development must provide and maintain within the site:

- a. 9 car parking spaces must be paved and line marked on Lot 1 for use in conjunction with the residential flat building.
- b. 5 car parking spaces must be paved and line marked on Lot 2 for use in conjunction with the boarding house.

#### **5. Waste Management Plan**

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

#### **6. Erosion and Sediment Control**

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

#### **7. Standard Street Tree Protection**

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

#### **8. Works Outside the Property Boundary**

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

#### **9. Protection of Openings**

The development must provide and maintain operable windows and doors to the existing buildings that are located within 3 metres of the new property boundaries. In this regard, any openings that require fire protection must remain operable and the method of fire rating these openings must not render the openings inoperable and shall maintain light and ventilation to the rooms the openings serve.

#### **10. Use of Existing Buildings**

The existing uses at the site must continue to operate in accordance with the relevant consents which are as follows:

- a. Boarding House (Lot 2) - Modified Determination No. 200200443 dated 4 June 2003.

- b. Residential Flat Building (Lot 1) - Determination No. 200200444 dated 30 December 2002.

### **PRIOR TO ANY DEMOLITION**

#### **11. 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.

#### **12. 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**

#### **13. Dilapidation Report – Pre-Development – Minor**

Prior to the commencement of any works, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

#### **14. Structural Certificate for retained elements of the building**

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

**15. 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*

**16. Fire Safety Upgrade**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report and plans detailing how the buildings, which are subject to the consent, will be brought into full or partial conformity with the Building Code of Australia. The report must include:

- a. A fire safety audit which shall cover Sections C, D and E of Building Code of Australia and to identify general areas of non-compliance against the deemed to satisfy fire safety provisions, and address the performance requirements of the BCA where relevant. The recommendations for the fire safety upgrade shall be indicated on amended plans;
- b. Review the current on site fire safety measures including their relevant standard of performance;
- c. The report shall include an updated Fire safety schedule stipulating the existing and proposed essential fire safety measures, including their relevant standards of performance; and
- d. That any fire treatments required to openings allow the windows and/or doors to remain operable.

**DURING DEMOLITION AND CONSTRUCTION****17. 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**

##### **18. Protect Sandstone Kerb**

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

##### **19. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.



**PRIOR TO SUBDIVISION CERTIFICATE****20. Release of Subdivision Certificate**

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

**21. Subdivision Plan to Show Easements and Right of Ways**

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with evidence that all instruments under Section 88B of the *Conveyancing Act 1919* used to create easements or right-of-ways are shown.

**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.

**Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover

of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

**Prescribed Conditions**

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

**Notification of commencement of works**

At least 7 days before any demolition work commences:

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

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

**Disability Discrimination Access to Premises Code**

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

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

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

**Notification of commencement of works**

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

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

**Dividing Fences Act**

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

**Permits from Council under Other Acts**

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

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

- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

#### **Noise**

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

#### **Amenity Impacts General**

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

#### **Fire Safety Certificate**

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.

#### **Construction of Vehicular Crossing**

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

**Lead-based Paint**

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

**Dial before you dig**

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

**Useful Contacts**

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

NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.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.

**Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

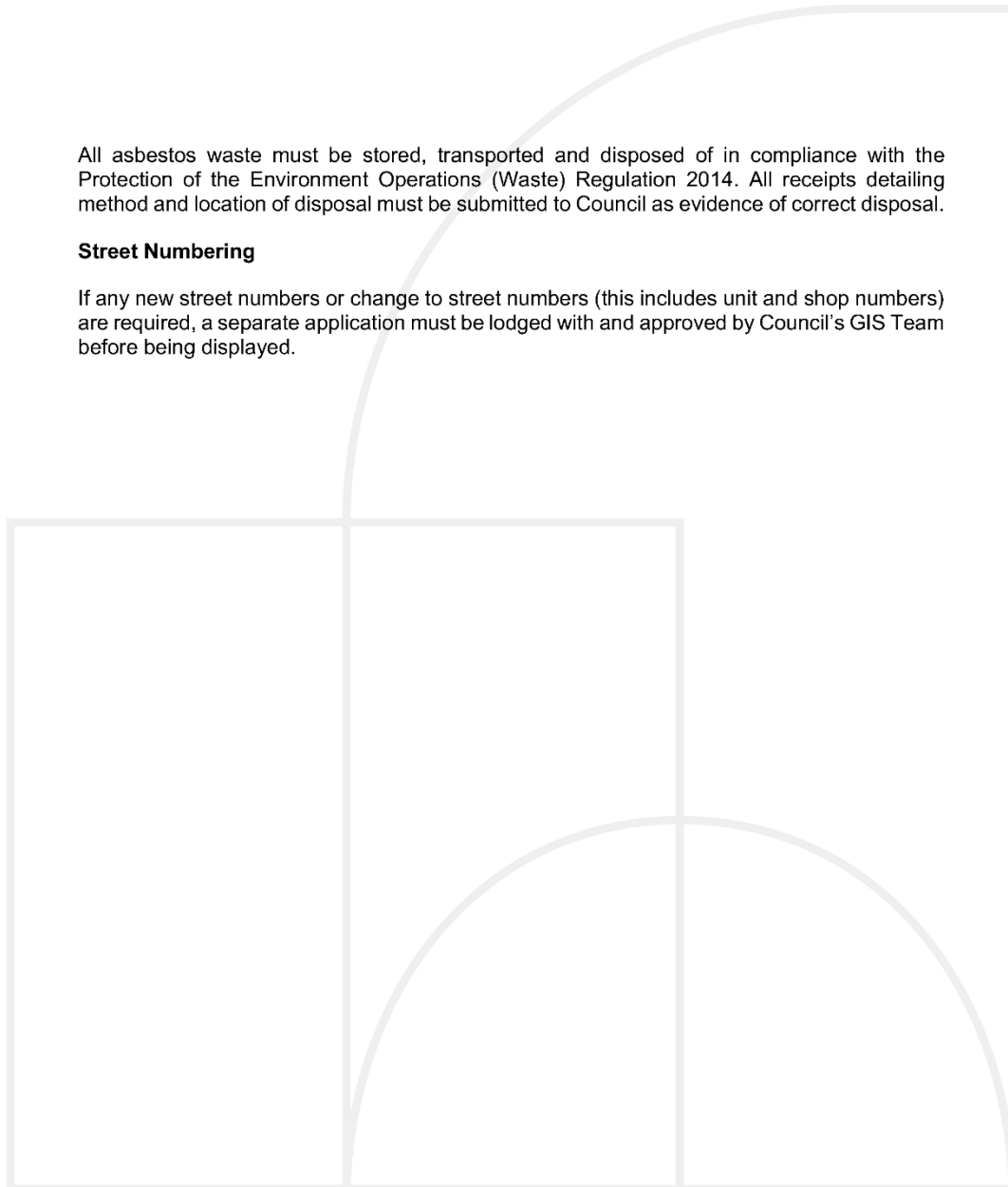
Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

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.

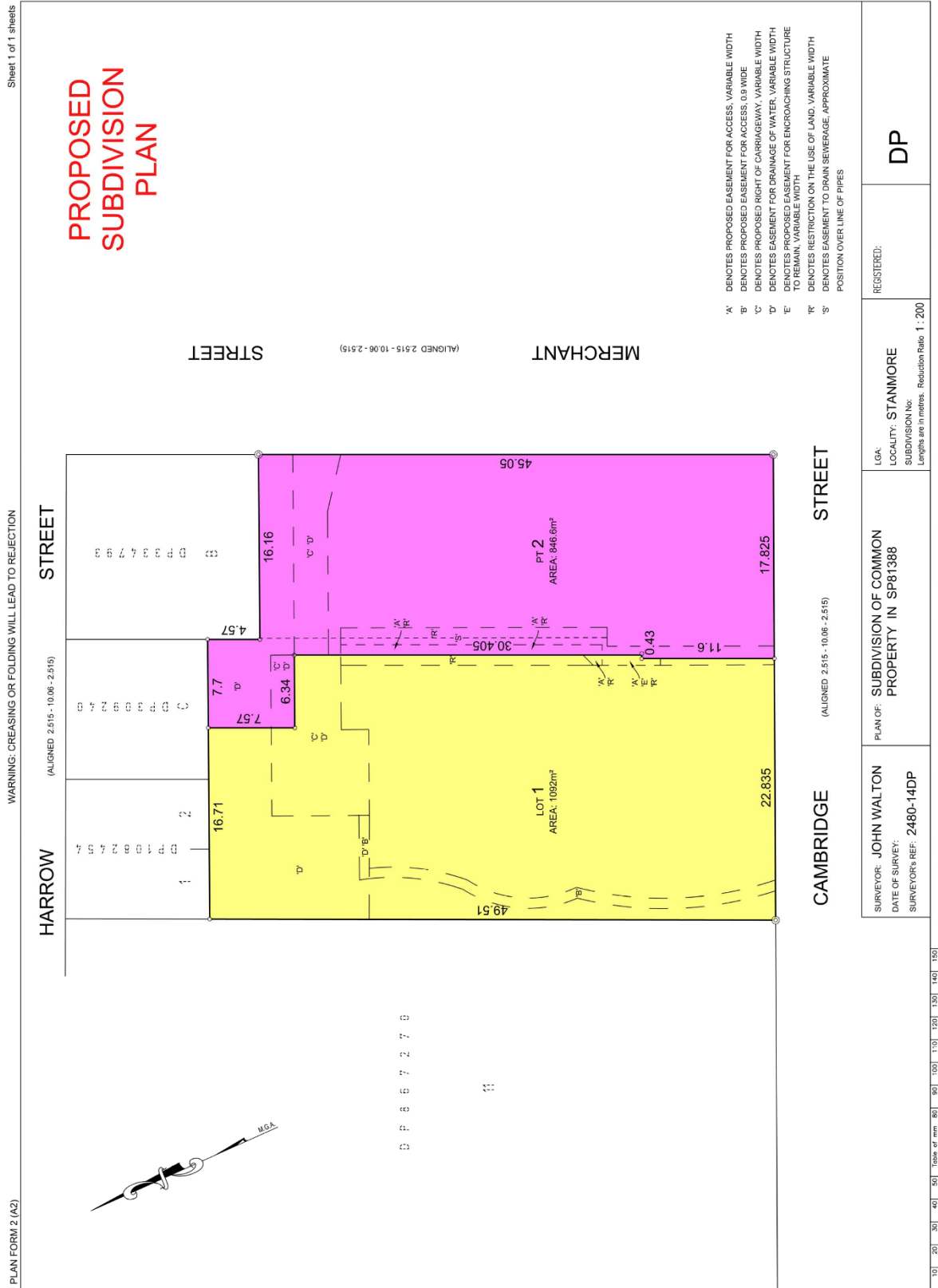
**Street Numbering**

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







DRAWING: 111 Cambridge St - GF Plan DA-2001

PROJECT: 109-111 Cambridge Street, Stammore council MOD/Urban DATE: 03/03/2021 1:100 (A3)

**PLACE**  
STUDIO

PLACE STUDIO: DEVELOPMENT APPLICATION NOT FOR CONSTRUCTION  
 2 ACT 2016 (A) PTY LTD  
 Suite 7 Level 03 35 Broadmeadow Street,  
 Strongly Place Studio Pty Ltd  
 www.stronglyplace.com.au  
 1. All dimensions are in metres unless otherwise stated.

LEGEND:  
 DS Downsize  
 EN Ensuite  
 HW Hot Water  
 HW Hot Water  
 SP Stair  
 WT Water  
 TO Top of Slab  
 TO Top of Slab

REF:	DATE:	DESCRIPTION:	ISSUED:
01	15.12.2020	DESIGN DEVELOPMENT APPLICATION	1
02	02.03.2021	REVISED DESIGN DEVELOPMENT APPLICATION	2

GENERAL NOTES:  
 Individual property contained herein is not to be used for any other purpose without the written consent of the architect.  
 Do not scale & do not assume design details if in doubt.  
 Please check all dimensions, levels, heights, etc. on drawings.  
 Please refer to all drawings for full details and specifications for any materials, finishes, etc.  
 All dimensions are in metres unless otherwise stated.



CONCRETE SLAB TO ADJOIN WITH NEIGHBOUR

PROTECTION OF OPENINGS REQUIRED AS PER CLAUSE 3.4 OF THE BCA

DRAWING: 111 Cambridge St - 1F Plan DA-2002

PROJECT: 109-111 Cambridge Street, Stammore NSW MOD/Urban DATE/ISSUE: 03/03/2021 1:100 (A3)

**PLACE**  
STUDIO

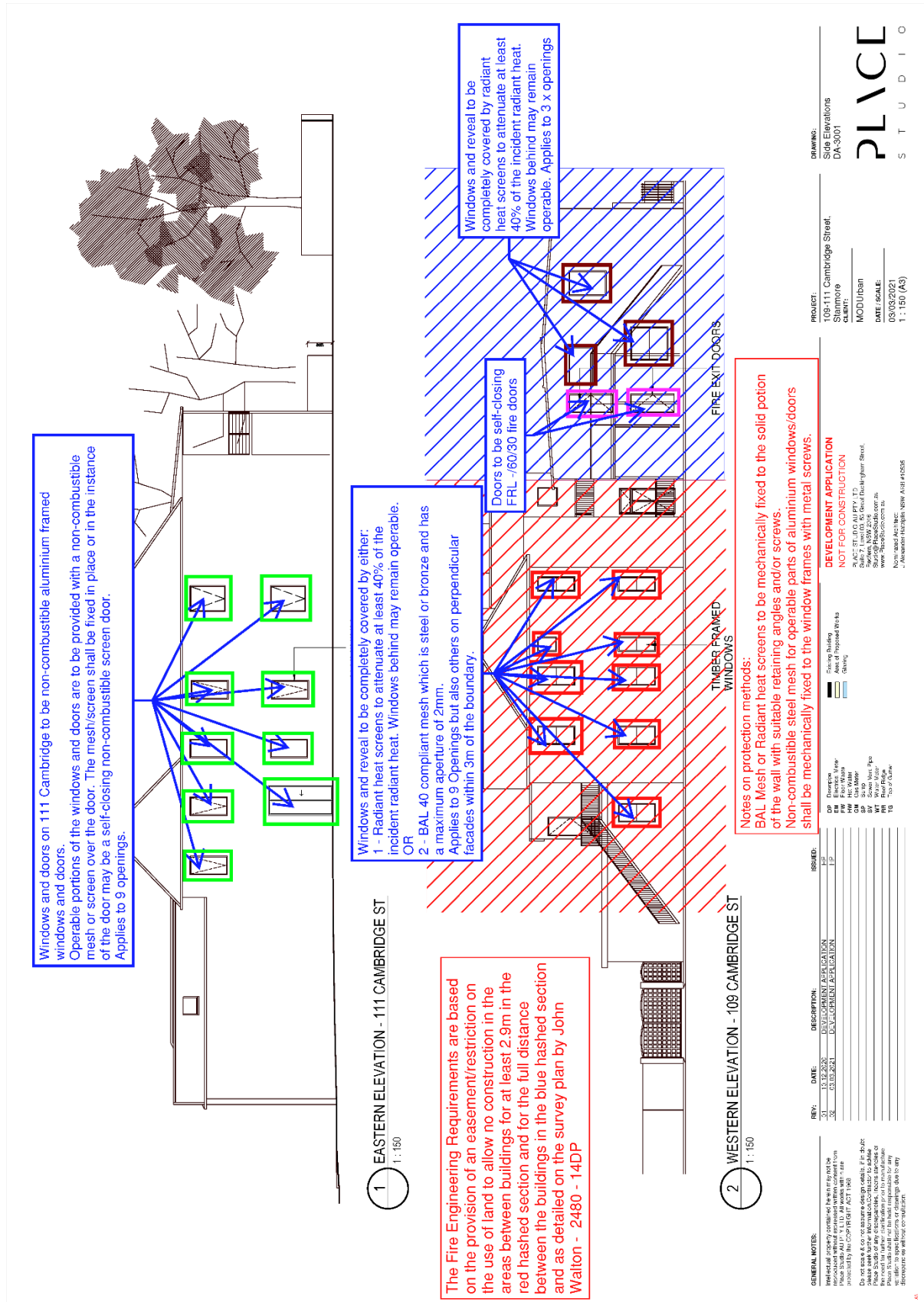
PLACE STUDIO: DEVELOPMENT APPLICATION NOT FOR CONSTRUCTION. 3 ACT 2016 (4) PTY LTD. Suite 7 Level 03, 45 Great South Bay Street, Stamford Hill NSW 1505. www.placestudio.com.au. 1. All dimensions are in metres. NSW A181 4/2008

LEGEND: DS Downpipe, E Electric Meter, HW Hot Water, HWB Hot Water Box, SP Stair, ST Stair, WT Water Meter, TO Top of Slab, etc.

REF:	DATE:	DESCRIPTION:	ISSUED:
01	15.10.2020	DESIGN/PERMIT APPLICATION	1/2
02	02.03.2021	FOR CONSTRUCTION	1/2

GENERAL NOTES: Individual property contained herein is not to be used for any other purpose without the written consent of the Council. Do not scale & do not reuse design details if it is not the original design. Please check all dimensions, levels, and details of the plan against the site plan and the relevant legislation. All dimensions are in metres unless otherwise stated.





Attachment C- Clause 4.6 Exception to Development Standards



109-111 Cambridge Street,  
Stanmore – FSR

Clause 4.6 Variation Statement – December 2020

[MODURBAN.COM.AU](http://MODURBAN.COM.AU)



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INTRODUCTION

1. Overview

This Clause 4.6 Variation request has been prepared in support of the development application for the proposed subdivision of the existing strata title into a one Torrens title lot and one strata lot.

This Clause 4.6 Variation has been submitted in conjunction with the Statement of Environmental Effects (SEE) that assessed the proposed works as described above. The request for variation of the development standard has been prepared in accordance with the requirements of Clause 4.6 of the Marrickville LEP 2011 (MLEP 2011) which has the following aims and objectives:

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

The proposed variations to development standards for the proposed development are in relation to Clause 4.4 Floor Space Ratio of the MLEP 2011. In summary the following variations are proposed:

	111 Cambridge Street	109 Cambridge Street
New Site Area	1,156m <sup>2</sup>	811m <sup>2</sup>
GFA	748.69m <sup>2</sup>	653.75m <sup>2</sup>
Marrickville LEP Maximum FSR	0.6:1	0.6:1
<b>Proposed FSR</b>	<b>0.65:1</b>	<b>0.80:1</b>
<b>Complies</b>	<b>No</b>	<b>No</b>

In accordance with Clause 4.6 of the MLEP 2011 Council is required to consider the following:

*Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- 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.*

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.



109-111 CAMBRIDGE STREET, STANMORE 2



THE STANDARDS BEING OBJECTED TO

2. Relevant Development Standards

The development standards being requested to be varied are Clause 4.4 Floor Space Ratio of the MLEP 2011.

2.1 The objectives/underlying purpose of the clause

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for Clause 4.4 Floor Space Ratio, the objectives and underlying purpose behind each of the development standards are basic issues for consideration in the development assessment process.

Section 3 of this Clause 4.6 Variation addresses the proposed variation to Clause 4.4 Floor Space Ratio development standard.

2.2 Proposed Variation to Standards

The proposed variations to development standards for the proposed development are in relation to Clause 4.4 Floor Space Ratio of the MLEP 2013. In summary the following variations to development standards are proposed:

	111 Cambridge Street	109 Cambridge Street
New Site Area	1,156m <sup>2</sup>	811m <sup>2</sup>
GFA	748.69m <sup>2</sup>	653.75m <sup>2</sup>
Marrickville LEP Maximum FSR	0.6:1	0.6:1
<b>Proposed FSR</b>	<b>0.65:1</b>	<b>0.80:1</b>
<b>Complies</b>	<b>No</b>	<b>No</b>





## PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

### 3. Overview

Pursuant to Clause 4.6 of MLEP 2011, we hereby seek exception to the 0.6:1 FSR standard applicable both sites pursuant to Clause 4.4 Floor Space Ratio of MLEP 2013. Clause 4.6(4)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

The proposed variation to the FSR standard is a result of the applicant seeking to subdivide the lot to ensure the boarding house and residential flat buildings are on individual lots. It should be noted the current site exhibits a non-compliant FSR (0.7:1).

#### 3.1 Objectives of the Standard

The objectives of the standard are as follows:

- (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.*

Notwithstanding the proposed variation to the numerical standard, the proposed development is nevertheless consistent with these objectives:

- (a) to establish the maximum floor space ratio,*

Noted

- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*

- The proposal will maintain and enhance the residential amenity of the surrounding dwelling houses including their current levels of solar access, visual and acoustic privacy and ventilation.
- The proposal gives provision of two residential buildings on separate lots that is compatible with the surrounding residential land uses, and existing built form on site.
- The proposed built form and scale and bulk is not altered by the proposal and remains as existing, which it is noted as a non-compliant FSR at present.
- The scale of the development and its typology is considered to be appropriate for the site and the surrounding area and meets the needs of the local residents and the wider Sydney metropolitan area.
- The proposed design of the development achieves an appropriate built form in that it enhances the appearance of the building from public domain, and maintains the character of the streetscape. No additional floor area is being added as part of the proposal and no change to building envelopes are proposed.

- In light of the proposals contribution to achieving the desired future character of the area, a reduction of gross floor area would serve no material planning purpose, other than numerical compliance with a generic Council control.

*(c) to minimise adverse environmental impacts on adjoining properties and the public domain.*

The proposed design of the development achieves an appropriate built form in that it maintains the current building envelopes on site that in turn enhances the public domain, maintains the character of the streetscape, along with providing good internal amenity and outlook.

It should be noted the current site exhibits a non-compliant FSR. The proposal does not seek to add floor space.

No new amenity impacts will occur to neighbours.

### 3.2 Objectives of the Zone

The site is currently zoned R2 Low Density Residential under the Marrickville LEP 2011. The proposal results in subdivision of the lot into two lots creating two new dwelling houses, and is therefore considered permissible within the R2 zone, as outlined in the accompanying SEE.

The proposed subdivision is consistent with the R2 zone objectives in that:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposal gives provision of separate housing typologies on two separate sites within the Sydney housing market, that adds to the diversity of dwelling types in Sydney, whilst maintaining the existing dwellings/housing located on site.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Both newly created lots provide a boarding house facility (109) and a residential flat building (111).

- *To provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.*

The proposal for subdivision maintains an existing residential flat building on part of the site.

- *To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.*

Not applicable

- *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*

Not applicable

### 3.3 Establishing if the Development Standard is Unreasonable or Necessary

In *Wehbe v Pittwater Council [2007] NSWLEC 827* Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

#### **3.4 Establishing if the Development Standard is Unreasonable or Necessary**

In applying the tests of *Wehbe v Pittwater Council* [2007] NSWLEC 827, only one of the above rationales is required to be established. Notwithstanding the proposed variation, as demonstrated in Sections 3.1 and 3.2, the proposal is consistent with the underlying objectives of the standard for site coverage and the R1 zone of MLEP 2011.


#### **3.5 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Land and Environment Court (LEC) addressed the 'sufficiency' of environmental planning grounds:

*The environmental planning grounds relied on in written request under cl 4.6 must be 'sufficient'. There are two respects in which the written request needs to be 'sufficient'. First the environmental planning grounds advanced in the written request must be sufficient 'to justify contravening the development standard' The focus of Cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must satisfy the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, the LEC found that the environmental ground advanced by the applicant in the Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site for the following reasons:

- The proposal is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**.
- The objectives of the zone are still achieved.

- 
- It should be considered that the site has a unique opportunity to provide improved standards of residential accommodation, and in terms of two dwelling types that are in demand in Sydney, and flexibility in the application of built form controls to the subject site should be considered.
  - The existing building envelope of both buildings is maintained.
  - The proposed subdivision will still maintain the character of the area, and will not significantly alter the patterns of subdivision. The proposal is essentially a new boundary internal to the lot which would not be discernible from the Cambridge Street frontages. The existing buildings fronting Cambridge Street already presents as a different building.
  - The bulk and scale of the proposal is unaltered and is consistent with this style of residential building which is common for residential areas.
  - The proposal will add to delivering a mix of well-designed housing that meets the needs of Sydney's growing population by providing a greater number of smaller family dwellings to meet the changing population as well as increasing overall supply to ease pressures in the rental market.
  - The proposed development will not impact on the amenity of adjoining occupiers.
  - The proposal will not result in any unreasonable privacy intrusion or loss of daylight access to adjacent properties.

### 3.6 The public benefit of maintaining the development standard

There is no public benefit in maintaining the numerical FSR standard in this instance as it is not achievable. As outlined in Section 3.5 above, there are a number of planning and urban design outcomes that warrant the proposed variation to the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

### 3.7 Overview

This exception to the development standard demonstrates that the proposed variation to site coverage standard should be supported because:

- The proposed subdivision results in two standalone residential buildings and their built form and character are consistent with the underlying objectives of the zone.
- The proposed variation allows for the provision of improved residential accommodation, for small family housing.
- The proposed variation does not result in any unreasonable privacy, sunlight, view loss or visual impacts.
- The proposed variation to the standard does not raise any matter of significance for State or regional environmental planning.
- There is no public benefit in maintaining strict compliance with the standard.
- Strict application of the standard is therefore unreasonable and unnecessary in the circumstances of the case.

Overall, it is considered that the proposed variation to the minimum FSR standard is entirely appropriate and can be clearly justified having regard to the matters listed within MLEP Clause 4.6.

### 3.8 Conclusion

It is requested that council supports the proposed variation to Clause 4.4 of the MLEP 2011 for the following reasons:



- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- The proposed variation allows for the provision of additional residential accommodation, for small family housing.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standards.





## Attachment D – Statement of Heritage Significance

10/03/2021

Kingston South Heritage Conservation Area | NSW Environment, Energy and Science

[NSW Department of Planning, Industry and Environment](#)

[Home](#) > [About us](#)

# Kingston South Heritage Conservation Area

## Item details

<b>Name of item:</b>	Kingston South Heritage Conservation Area
<b>Other name/s:</b>	Kingston South Heritage Conservation Area - HCA 17
<b>Type of item:</b>	Conservation Area
<b>Group/Collection:</b>	Urban Area
<b>Category:</b>	Townscape
<b>Primary address:</b>	, Stanmore, NSW 2048
<b>Local govt. area:</b>	Inner West

## All addresses

Street Address	Suburb/town	LGA	Parish	County	Type
	Stanmore	Inner West			Primary Address

## Statement of significance:

Kingston South Heritage Conservation Area is of historical significance as part of the December 1863 "Holt, Smart and Mort's Subdivision of South Kingston", which was Deposited Plan 1 under the Torrens Title System and which is still in use in New South Wales. The area developed in the late 1860s and 1870s as a highly desirable residential precinct for entrepreneurs and the middle class.

The Area is aesthetically significant for its examples of late 19th century to mid 20th century development including 19th Century Villas and their garden setting, 19th Century houses (detached and semi-detached) and their garden setting, 19th and early 20th Century terraces and houses (detached and semi-detached), and group of Inter-War residential flat buildings in Holt Street. The Area is representative of the rich variety of built forms which are collectively representative of the cultural needs and aspirations of the community that built and occupied them between 1854-1940.

**Date significance updated:** 16 Jan 12

*Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The State Heritage Inventory is continually being updated by local and State agencies as new information becomes available. Read the [OEHL copyright and disclaimer](#).*

## Description

<b>Construction years:</b>	1854-1940
<b>Physical description:</b>	LOCATION

10/03/2021

## Kingston South Heritage Conservation Area | NSW Environment, Energy and Science

The Kingston South Heritage Conservation Area is located in Stanmore between the railway line and Stanmore Road; and between Holt and Liberty Streets.

KEY PERIOD OF SIGNIFICANCE: 1854 - 1940

## DESCRIPTION

The Kingston South Heritage Conservation Area is a mixed-use area demonstrating a rich range of high-quality residential and institutional development from the mid 19th Century to the present day. The area is positioned at the top of the southernmost prominent ridgeline before the land falls away to the Cooks River, offering distant views from vantage points such as the intersection of Merchant and Cambridge Streets. This topographical superiority was likely to be one of the reasons that the area was targeted for the location of large suburban villa estates, substantially intact examples of which still survive. The original high-status residential character of the area has now evolved with the demolition of many of the villas in the late 20th Century and the construction of three-storey walk-up flats throughout the area. These flats have become prominent elements in the local streetscape. A notable group of Inter-War flat buildings marks the western edge of the area (Holt Street). Some of the large original houses have been used as boarding houses, but many of these are now returning to their original use as a single-family dwelling. The area also includes good groups of terraced dwellings, including both superior and modest variations; a rare example of a three-story terrace (Hughendon Terrace) and a notable row of formal 2-storey Edwardian detached and paired houses overlooking Stanmore Road in the south-eastern corner of the area.

The area is also characterised by the extension of educational and cultural activities that now provide the dominant character of the north-western quadrant of the area. Some of these activities are located within adapted buildings, but others such as the Newington Preparatory School have introduced large and intrusive buildings into the area.

Layering to surviving existing buildings varies from minor to intrusive and the current gentrification trends are having a significant impact on the face brickwork throughout the area, with examples of recent rendering and painting found as well as examples of more major work.

## CONTRIBUTORY ELEMENTS

- Street layout including alignment of Stanmore Road
- Surviving Deposited Plan 1 allotments and structures on these lots from the key period of significance (1854-1940)
- Street tree plantings
- Malachie Park including mature vegetation and remnants of original fabric (fence)
- Street names set into footpath
- Sandstone block kerbing
- Imposing street presence of dwellings regardless of typology
- Groups and runs of buildings from key period of significance (1854-1940)
- Residential character demonstrated through the single and two-storey 19th-century and Federation period terrace housing typologies
- Building typologies reinforce the tight urban grain.
- Groups and runs of terraces demonstrate strong streetscape qualities including cohesiveness of form, scale, rhythm and materials.
- High quality detailing to front elevation of intact and substantially intact houses and terraces

<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2030494>

2/6

10/03/2021

Kingston South Heritage Conservation Area | NSW Environment, Energy and Science

- Increasing simplification of scale and detailing towards rear – including window size, bulk and visual prominence in view from street
- Roof forms appropriate to typology and period of construction
- Primary ridgelines of roofs are aligned parallel to the street
- Roof forms of groups or runs of buildings demonstrating consistent pitch and rhythm
- Lack of major alterations to roof form and volumes
- Original chimneys contribute to the quality and visual interest of roofscapes
- Original dormer windows - small and vertically proportioned
- Intact or substantially intact built elements
- Consistency of form and detailing to intact and substantially intact original dwellings and streetscapes
- Any additions visible from the public domain that are of a minor scale, respect original built form and are unobtrusive in the context of the streetscape
- Building heights appropriate to typology and period of construction
- Detailing and finishes appropriate to typology and period of construction
- Window openings appropriate for architectural type
- Timber framed windows
- Complex timber framed windows to main bay of front elevation
- Use of appropriate colour schemes for detailing
- Fences appropriate to typology and period of construction
- Original Iron Palisade fences
- Original low face-brick (not rendered or painted) walls
- Buildings sited centrally on lots
- Footprints of additions to the rear respect the traditional pattern of development (including service wing/pavilion/recessive scale)
- Vehicle access from rear lanes (where available)

## NON CONTRIBUTORY ELEMENTS

- Overscaled additions
- Poorly proportioned additions
- Alterations to roof forms
- Removal of original detailing
- Painting rendering etc (including to face brick of residential flat buildings)
- Alteration to fenestration patterns (including reconfiguration/re-orientation of vertical openings to horizontal)
- Removal/replacement of timber windows with aluminium
- Application of conjectural detailing to new work
- Inappropriate use of dormers (contrary to typology)
- Historically inappropriate fence design and details not relevant to building typology and/or incongruous/visually intrusive in streetscape views
- Visually intrusive security measures (eg light painted bars and grilles on external face of

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buildings)

-Replacement fences of type or form inappropriate to building typology and/or intrusive on aesthetic value of streetscape

-High front fences

-Non-transparent front fences

**Physical condition and/or Archaeological potential:**

Good.

**Date condition updated:** 15 Jul 09

**Modifications and dates:**

Layering to surviving existing buildings varies from minor to intrusive and the current gentrification trends. Recent rendering and painting of face brickwork is found throughout the area.

## History

**Historical notes:**

The original owners of the land within the Marrickville Council area were the Cadigal and Wangal clans of the coastal Eora people. They spoke Eora, which may have been a dialect of the Dharug (Darug) language, though sources differ on this point. With the establishment of the penal colony at Sydney Cove in 1788 the dispossession of the original inhabitants had begun. In 1789 a smallpox plague decimated the Aboriginal population, though descendants of the Cadigal and Wangal people still reside within the Sydney metropolitan area.

Kingston South was part of land granted to Captain Thomas Rowley, adjutant of the New South Wales Corps. Originally granted 100 acres in 1793, Rowley's grant, known as Kingston Farm, was enlarged twice, in 1800 and 1803, to 240 acres. Compared to the modest 25 acre blocks typically granted to emancipists and soldiers in the Newtown area it was a substantial land holding.

Kingston Farm passed to Rowley's children after his death in 1806, and by 1841 the house stood on 17 acres when Samuel Lyons advertised the "Remaining portion of the KINGSTON FARM, with the DWELLING-HOUSE erected thereon, together with the several detached buildings, namely, Cooking-house, Servants' Rooms, Gig-house, Stables, &c. The extent of the Homestead is six acres one rood and six perches, the greater portion of which is in cultivation as a Garden and Orchard, but the commits of the whole intended for Sale, are sevonteen acres, one rood and thirty perches. It seldom happens that such an eligible property as the foregoing is brought to the barrier, and in this particular instance, Mr. LYONS earnestly invites the personal inspection of intending purchasers, being satisfied that few (if any) situations can be found, within so short a distance of the town, commanding, as Kingston does, so many advantages for A First-rate Home-stead, or an establishment for a family of the highest respectability, as this portion of the KINGSTON GRANT. It is surrounded by the splendid Estates of CAMPERDOWN ANNANDALE, and the well known and highly esteemed properties of James Holt, Esq., and that portion of Kingston, lately purchased by Messrs. Jones and Dacre; it is also in the immediate vicinity of the Glebe Land, Grose Farm, &c. The public have lately given such sufficient proof of their estimation of land in the neighbourhood, of Kingston, that the Auctioneer dopa not feel himself called upon to offer any remarks upon its value, being satisfied that it will realise all the expectations of its proprietor; and parties desirous of possessing so valuable an acquisition to their comfort as the Desirable Retreat of Kingston." (The Sydney Gazette and New South Wales Advertiser, Tuesday 20 July 1841, p. 3)

In 1854 a portion of Kingston Farm, south of the proposed railway line from Sydney to Parramatta and close to the site of Newtown Railway Station, was purchased by Thomas Holt, Thomas Ware Smart, Thomas Sutcliffe Mort and George Wigram Allen. The railway opened in September 1855 and in 1857 the land was subdivided into 370 allotments as the Kingston South Estate. The subdivision was not a great success and in 1861, after four years, only 16 lots had been sold and the unsold lots were distributed among the partners.

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It was then re-subdivided in 1863 and became the first subdivision under the provisions of the Real Property Act of 1862 (now known as Torrens Title) on 24 December 1863 as "Holt, Smart and Mort's Subdivision of South Kingston", Deposited Plan 1.

The South Kingston area became a highly desirable residential precinct, especially by comparison with the modest areas in nearby Newtown streets. Notable residents in the 19th Century included Richard Wilmont Cozens, an alderman on Newtown Council from 1865 to 1879 and Aubrey Mowle, son of noted diarist Mary Braidwood Mowle, who was Council Clerk at Petersham for nearly 20 years.

Historic themes

Australian theme (abbrev)	New South Wales theme	Local theme
4. Settlement-Building settlements, towns and cities	Accommodation-Activities associated with the provision of accommodation, and particular types of accommodation – does not include architectural styles – use the theme of Creative Endeavour for such activities.	(none)-

Assessment of significance

- SHR Criteria a)** [Historical significance] Kingston South Heritage Conservation Area is of historical significance as part of the December 1863 "Holt, Smart and Mort's Subdivision of South Kingston", Deposited Plan 1, which developed in the late 1860s and 1870s as a highly desirable residential precinct for entrepreneurs and the middle class.
- SHR Criteria c)** [Aesthetic significance] The Area is aesthetically significant for its examples of late 19th century to mid 20th century development including 19th Century Villas and their garden setting, 19th Century houses (detached and semi-detached) and their garden setting, 19th and early 20th Century terraces and houses (detached and semi-detached), and group of Inter-War residential flat buildings in Holt Street.
- SHR Criteria g)** [Representativeness] The Area is representative of the rich variety of built forms each of which is representative of the cultural needs and aspirations of the community that built and occupied them between 1854-1940.
- Integrity/Intactness:** The area is largely intact. Some of the large original houses have been used as boarding houses, but many of these are now returning to their original use as a single-family dwelling.
- Assessment criteria:** Items are assessed against the  **State Heritage Register (SHR) Criteria** to determine the level of significance. Refer to the Listings below for the level of statutory protection.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan	Marrickville Local Environmental Plan 2011	C17	12 Dec 11	2011/645	
Heritage study					

Study details

Title	Year	Number	Author	Inspected by	Guidelines used

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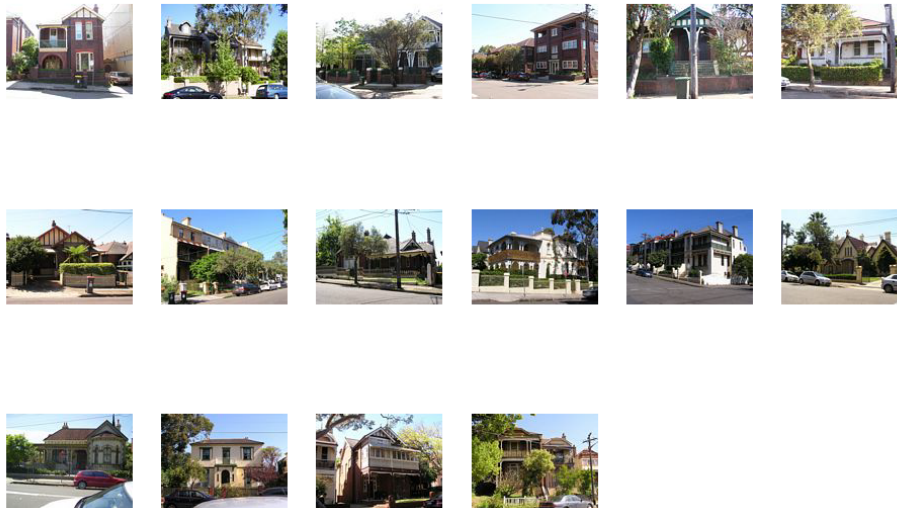
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Marrickville Review of Draft Heritage Conservation Areas	2009	Paul Davies Pty Ltd	Robyn Conroy	N o
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**References, internet links & images**

None

Note: internet links may be to web pages, documents or images.



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