

INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/0848
Address	25 Nelson Street ANNANDALE NSW 2038
Proposal	Alterations and additions including rear additions and balcony to first floor and rebuild elements of front wall to Nelson street. Erect new garage with studio above at rear of site.
Date of Lodgement	07 October 2020
Applicant	Robert Staines
Owner	Mr Murray J Lee
Number of Submissions	Initial: Nil After Renotification: Nil
Value of works	\$300,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Variation to Development Standard
Recommendation	Approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the existing dwelling including the erection of a new garage with first floor studio to Susan Street at the rear. The application was notified to surrounding properties and no submissions were received in response to the initial notification. The proposal as amended was renotified to surrounding properties and no submissions were received in response to the renotification.

The main issues that have arisen from the application include the variation to the FSR Development Standard.

The non-compliances are acceptable given that the amended proposal is suitably scaled so as not to detract from the Susan Street streetscape whilst ensuring that the amenity of the subject site and adjoining sites is not adversely impacted.

2. Proposal

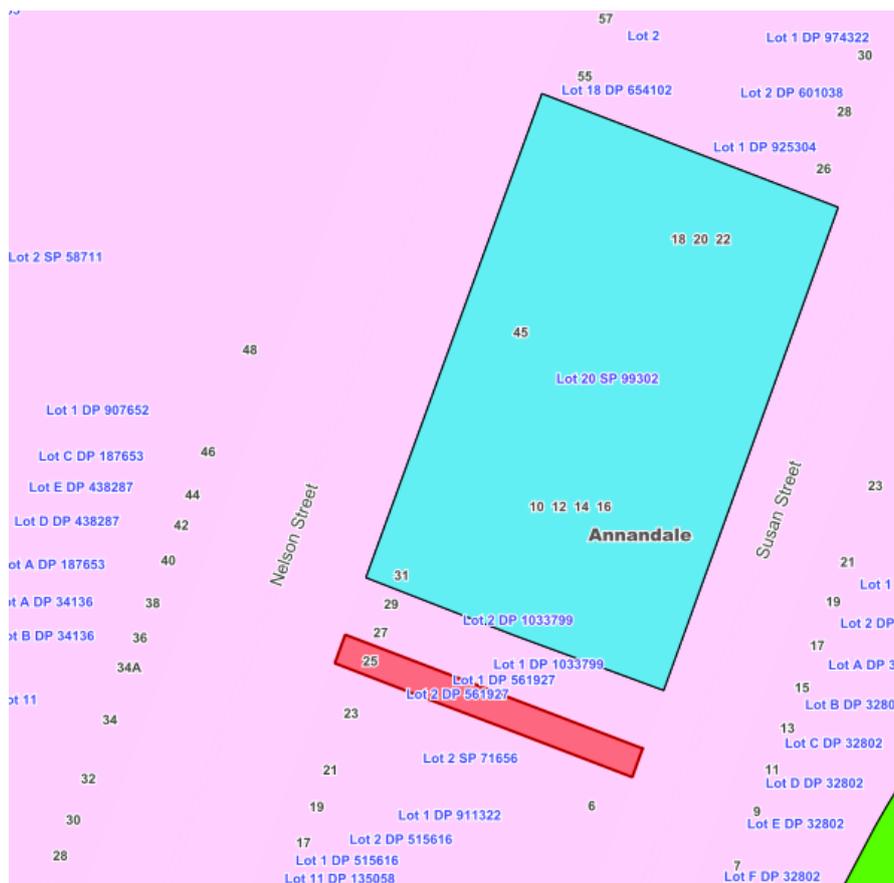
The proposed development seeks consent for alterations and additions to the existing dwelling including the erection of a new garage with first floor studio to Susan Street at the rear. Specifically the proposal as amended consists of the following:

- Construction of a single garage with a first-floor studio at the rear of the subject site (Susan Street elevation);
- Demolition of outbuilding;
- New lower ground floor extension to accommodate living and dining room;
- Reconfiguration of the first floor to accommodate a new bathroom;
- Construction of a balcony to the rear of the first floor with 1.8m high visual privacy screens at its southern elevation;
- Reconfiguration of the ground floor to accommodate a new bathroom and window openings to Nelson Street; and
- Reconfiguration and extension to the lower ground floor to accommodate new kitchen, living and dining area with timber deck.

3. Site Description

The subject site is located on the eastern side of Nelson Street, between Albion Street to the south and Chester Street to the north. The site consists of a single allotment and is generally rectangular with a total area of 153.9sqm. The site has a frontage to Nelson Street of 3.8m and a secondary frontage of approximately 3.8m to Susan Street. The site supports a three-storey dwelling, with two storeys being presented to the Nelson Street elevation due to the fall of the subject site.

The adjoining properties support single and two storey dwellings. Further north to the site comprises of a mixed use development comprising of offices and units fronting Nelson Street and townhouses fronting Susan Street. The property is located within the Annandale Heritage Conservation Area.



Land Zoning map extract (subject site highlighted in red)

4. Background

4(a) Site history

There is no recent relevant development history for the subject site or the adjoining properties at 23 and 27 Nelson Street, Annandale.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
8/02/2021	Request for the following additional information sent to the applicant: - Clause 4.6 variation to vary the FSR Development Standard. - Design amendments to address the outstanding heritage concerns, this includes reconfiguration of windows at the front and rear elevation of the dwelling.
2/03/2021	Amended plans incorporating the design change recommendations and revised 4.6 variation request provided.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy No. 55—Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

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

5(a)(ii) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.4 - Stormwater management
- Clause 6.8 - Development in areas subject to aircraft noise

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

The site is zoned R1 under the LLEP 2011. The LLEP 2013 defines the development as alterations and additions to an existing dwelling house: “Dwelling House means a building containing only one dwelling”

The development is permitted with consent within the land use table. The development is consistent with the objectives of the LR1 zone.

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

Standard	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible:0.8:1 (123.12sqm)	169.36sqm (1.1:1)	46.24 sqm or 37.6%	No

Landscape Area Minimum permissible: 15% (23.1sqm)	16.2% (25sqm)	N/A	Yes
Site Coverage Maximum permissible: 60% (107.7sqm)	58.4% (89.9sqm)	N/A	Yes

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 Leichhardt LEP by 37.6% (46.24sqm).

In order to demonstrate whether strict numeric compliance is unreasonable or 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 Leichhardt LEP below.

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

- *The proposal is of an appropriate form and scale with the existing dwelling and compatible with surrounding development at both the Nelson Street and Susan Street elevations;*
- *The proposed FSR non compliance will be indiscernible from Nelson Street, Susan Street and the adjoining properties with the lower ground floor level being located below street level;*
- *The proposed rear additions to the existing dwelling will extend beyond the rear of the dwellings immediately adjoining to the north and south, despite the works have been articulated so as not to adversely impacts the adjoining affected properties;*
- *The proposed garage with first floor studio is scaled so as not to detract from the Susan Street elevation.*
- *Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1, which are set out below, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013. The zoning objectives are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To improve opportunities to work from home*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas*
- *To provide landscaped areas for the use and enjoyment of existing and future residents*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area*

- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

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

- The proposed development is compliant with the site coverage and landscaped area development standards ensuring that there is a suitable balance between the built form and open areas on the subject site;
- The additional FSR is predominately located at the rear of the site contained within the garage and first floor studio .The proposed works at the rear of the site have been designed so as not to detract from the character and pattern of development at the Susan Street elevation and within the immediate area of the subject site.
- The works at the rear of the site has been designed to minimise ceiling heights and subsequently bulk where possible to reduce the extent of the impacts to the adjoining properties to the rear and side.

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 the Leichhardt LEP for the following reasons:

To ensure that residential accommodation:

- *Is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
Comment: The proposed development will be compatible with the desired future character of the area in relation to building bulk, form and scale. The proposal as amended incorporates a roof form sympathetic with that of the adjoining dwelling at 23 Nelson Street so as not to detract from the Susan Street streetscape. The proposal is consistent with this clause.
- *(ii) provides a suitable balance between landscaped areas and the built form, and*
Comment: The proposal development is a suitably designed to accommodate a dwelling house with a garage and studio at the rear whilst maintaining reasonable internal amenity, POS area and landscaped area. The proposal is consistent with this clause.
- *(iii) minimises the impact of the bulk and scale of buildings,*
Comment: The proposed development employs minimal ceiling heights where possible to minimise visual bulk impacts to the adjoining properties. The proposal is consistent with this clause.

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 Leichhardt LEP. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio and it is recommended the Clause 4.6 exception be granted.

5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

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

The amended provisions contained in the Draft IWLEP 2020 are not 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(d) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
Part C: Place – Section 2 Urban Character	
C2.2.1.6 Nelson Street Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No, but acceptable – see discussion
C3.3 Elevation and Materials	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.11 Visual Privacy	Yes
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes

E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

Side setbacks

The proposal seeks to maintain the existing nil side setbacks for the new lower ground floor rear extension. The new ground floor extension will have wall height of 3.5m at its highest point, in accordance with the numerical provisions under this Part a 400mm side setback is required at each side boundary. Despite the numerical non-compliance, the proposal is acceptable. Pursuant to Clause C3.2 of the LDCP2013, where a proposal seeks a variation of the side setback control graph, various tests need to be met. These tests are assessed below:

- The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the LDCP2013 and complies with streetscape and desired future character controls.***
Comment: Acceptable. Detached dwellings have varied lot widths and setbacks to the side boundaries respectively. The proposed lower ground floor extension has been designed so as not to detract from the objectives of the HCA whilst minimising visual bulk, overshadowing and visual privacy impacts to the adjoining properties where possible. The form and scale of the proposal and its architectural style, materials and finishes will be complementary with, and will remain consistent with the existing surrounding development and will maintain the character of the area.
- The pattern of development is not adversely compromised.***
Comment: Acceptable. The lower ground floor extension is located where development is expected to occur under the BLZ provisions. The extension proposed is suitably scaled and located so as not to cause adverse visual bulk impacts when viewed from the adjoining POS areas.
- The bulk and scale of the development has been minimised and is acceptable.***
Comment: Acceptable. The proposed development has been designed with consideration to the objectives of the desired future character. The overall bulk of the development is modest in scale and has been minimised so as not to result in unreasonable amenity impacts to the adjoining dwellings.
- The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.***
Comment: Acceptable.
- The proposal does not unduly obstruct adjoining properties for maintenance purposes.***
Comment: Acceptable

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 Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. No submissions were received in response to the initial notification and renotification of the application.

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, the proposal as amended raises no issues.

- Heritage
- Engineering

7. Section 7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$3,000 would be required for the development under the Leichhardt Section 94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and Leichhardt Development Control Plan 2013.

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 to vary 4.4 – Floor Space Ratio of the *Leichhardt Local Environmental Plan 2013*. 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. (KL)
- 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/2020/0848 for Alterations and additions including rear additions and balcony to first floor and rebuild elements of front wall to Nelson street. Erect new garage with bedroom above at rear of site. at 25 Nelson Street ANNANDALE NSW 2038 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
00	Site Plan/Analysis	September 2020	4 Track Building Design
01	Lower Ground	September 2020	4 Track Building Design
02	Ground Floor Plan	September 2020	4 Track Building Design
01, Rev A	First Floor Plan	23/02/2021	4 Track Building Design
05, Rev A	East and West Elevation	23/02/2021	4 Track Building Design
06, Rev A	North and South Elevation	23/02/2021	4 Track Building Design
07, Rev A	Section Plan	23/02/2021	4 Track Building Design
08, Rev A	Garage and Studio Floor Plan	23/02/2021	4 Track Building Design
09, Rev A	East and West Garage Elevation Plan	23/02/2021	4 Track Building Design
10, Rev A	Garage Section Plan	23/02/2021	4 Track Building Design
11	Long Section	23/02/2021	4 Track Building Design
12, A	Roof Plan	23/02/2021	4 Track Building Design
13	Landscape Plan	September 2020	4 Track Building Design
14	Stormwater Plan	September 2020	4 Track Building Design

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

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

Security Deposit:	\$2,209.00
Inspection Fee:	\$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.

3. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

Note:

Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:

\$3,000

***Indexing of the Section 7.12 contribution payment:**

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000)*. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a**

minimum of 2 business days for the invoice to be issued before payment can be accepted.

4. Long Service Levy

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

GENERAL CONDITIONS

5. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

6. Waste Management Plan

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

7. Erosion and Sediment Control

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

8. Works Outside the Property Boundary

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

9. Balcony

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating the the first floor privacy screen at the northern elevation having a minimum block out density of 75% and a height of 1.6 metres above the finished floor level of the balcony.

PRIOR TO ANY DEMOLITION

10. Hoardings

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

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

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

11. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

12. 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.

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

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

15. Stormwater Drainage System – Minor Developments (OSD is not required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The Stormwater Drainage Concept plan on Drawing No. 15 prepared by 4 TRACK BUILDING DESIGN and dated September 2020, must be amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm and the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- f. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- g. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;

- h. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- i. As there is no overland flow/flood path available from the rear and central courtyards to the Susan Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - 1. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe;
 - 2. The maximum water level over the sag pit shall not be less than 150 mm below the floor level or damp course of the building; and
 - 3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- j. A minimum 150 mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- k. No nuisance or concentration of flows to other properties;
- l. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- m. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- n. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- o. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- p. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm;
- q. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- r. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- s. No impact to street tree(s);

16. Parking Facilities - Domestic

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- a. The garage slab or driveway must rise within the property to be 170 mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- b. A minimum of 2200 mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements;

- d. The garage/carport/parking space must have minimum clear internal dimensions of 6000 mm x 3000 mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- e. The pedestrian door to the must be deleted and the roller door widened to the full width of the Susan Street frontage;
- f. The joinery within the garage must be deleted as it encroaches to the required 6 m x 3 m clear dimensions of the parking space;
- g. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- h. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004;

17. Changes to Levels

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

- a. A 150 mm step down must be provided between the finished floor level of the internal rooms and the finished surface level of the external area.

18. 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.

19. 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

20. Acoustic Report – Aircraft Noise

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

21. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

DURING DEMOLITION AND CONSTRUCTION**22. Survey Prior to Footings**

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

23. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

PRIOR TO OCCUPATION CERTIFICATE**24. No Encroachments**

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

25. Protect Sandstone Kerb

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

26. Light Duty Vehicle Crossing

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that a light duty concrete vehicle crossing(s), in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-“Roadworks Specifications” have been constructed at the vehicular access locations.

27. Parking Signoff – Minor Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

28. Aircraft Noise –Alterations and Additions

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the “Before the Issue of a Construction Certificate” Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development. Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

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.

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

Dial before you dig

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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*.

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.

Attachment B – Plans of proposed development

Notes

Amendments

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25 NELSON ST
ANNANDALE

Client:
MURRAY LEE

Project Status:
DA

Sheet Name:
SITE PLAN

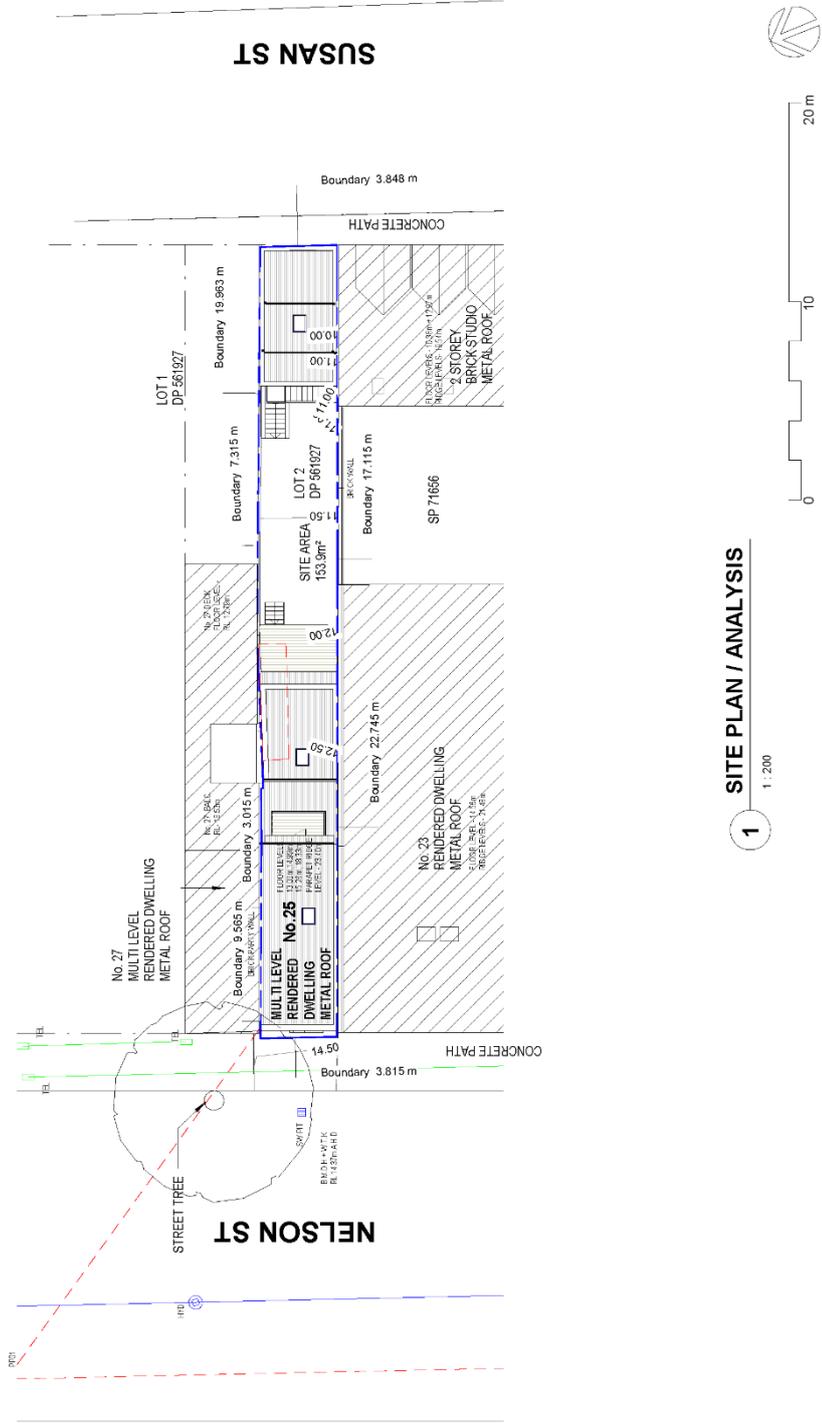
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Date:
SEPT 2020

Sheet Number
00

4 TRACE BUILDING DESIGN
41 High Street
Perry Beach
NSW 2267
P: 0422713198
E: info@4trace.com.au



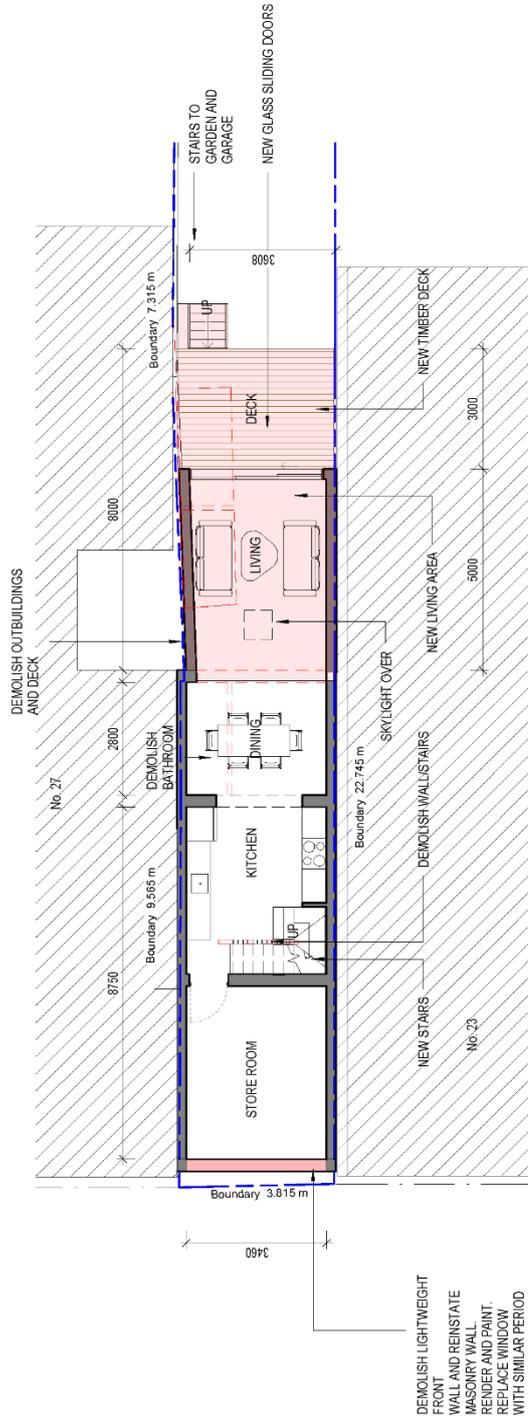
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Notes

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25 NELSON ST
ANNANDALE
Client:
MURRAY LEE
Project Status:
DA
Sheet Name:
LG PLAN
Project number:
73
Scale:
1:100 @ A3
Date:
SEPT 2020
Sheet Number
01

4 TRACK BUILDING DESIGN
4 High View Rd
Perry Beach
NSW 2257
P: 042271398
E: info@4td.com.au



1 LOWER GROUND

1:100

Notes

Amendments

Project Address:
25 NELSON ST
ANNANDALE

Client:
MURRAY LEE

Project Status:
DA

Sheet Name:
GF PLAN

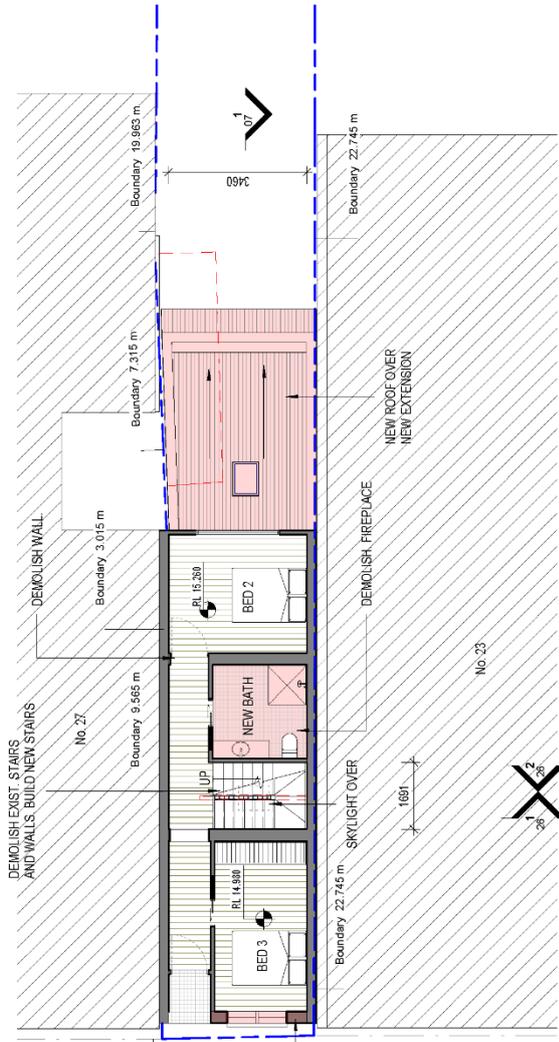
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Date:
SEPT 2020

Sheet Number
02

4TRACK BUILDING DESIGN
6 High View Rd
Preston Vic 3073
P: 0422713398
E: info@4td.com.au



DEMOLISH LIGHTWEIGHT
FRONT
WALL AND REINSTATE
MASONRY WALL.
RENDER AND PAINT.
REPLACE WINDOW/
WITH SIMILAR PERIOD
DESIGN

1
GROUND FLOOR
1: 100



Notes

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Amendments
REV 2/2021 CHANGES: PARAPETS, NEW STUDY POD

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25 NELSON ST
ANNANDALE

Client:
MURRAY LEE

Project Status:
DA

Sheet Name:
ELEVATIONS E/W

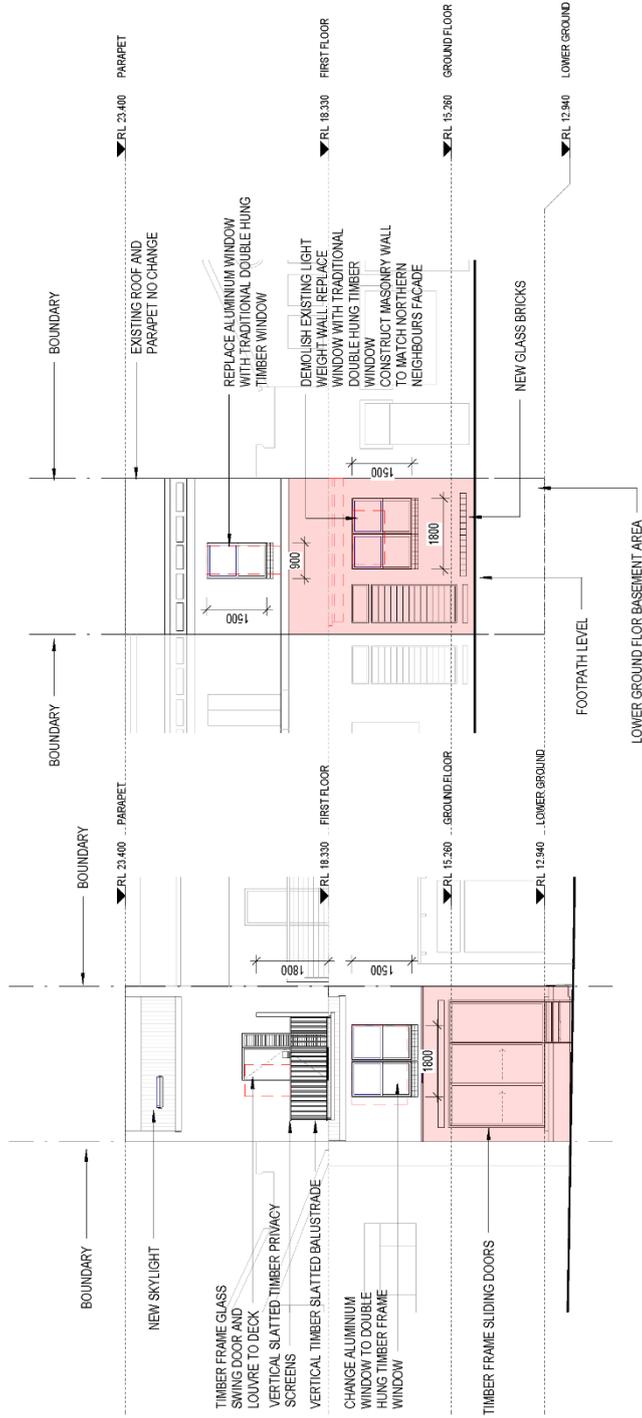
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73

Scale:
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Date:
23/02/2021

Sheet Number
05 A

4 TRACK BUILDING DESIGN
1 High View Rd
Ryde NSW 2112
P: 042271398
E: info@4track.com.au



1
East Elevation
1:100

2
West Elevation
1:100

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Amendments
 REVISIONS
 NO. DESCRIPTION
 1 NEW SLATED BALUSTRADE

Project Address:
 26 NELSON ST
 ANNANDALE

Client:
 MURRAY LEE

Project Status:
 DA

Sheet Name:
 ELEVATIONS WS

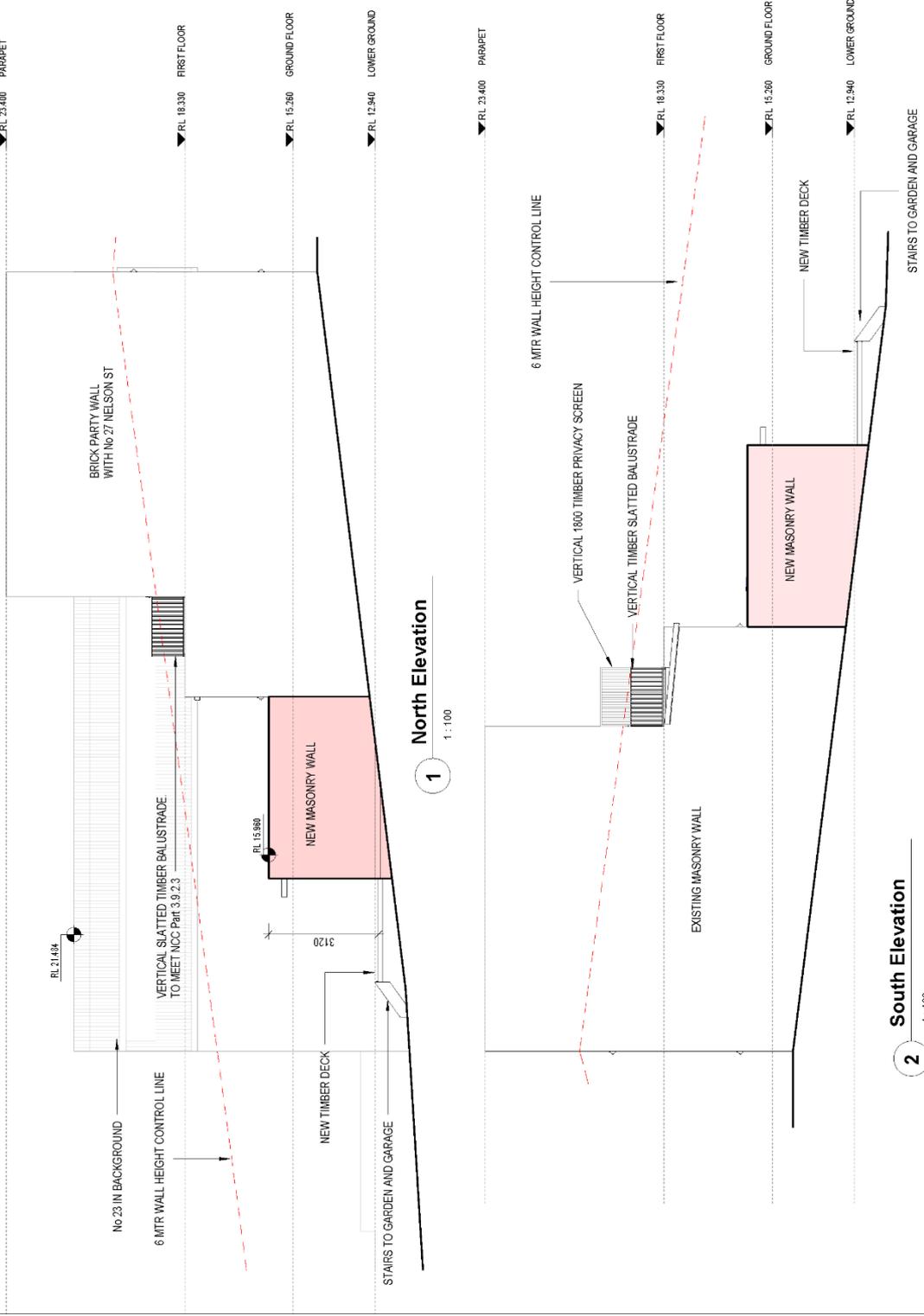
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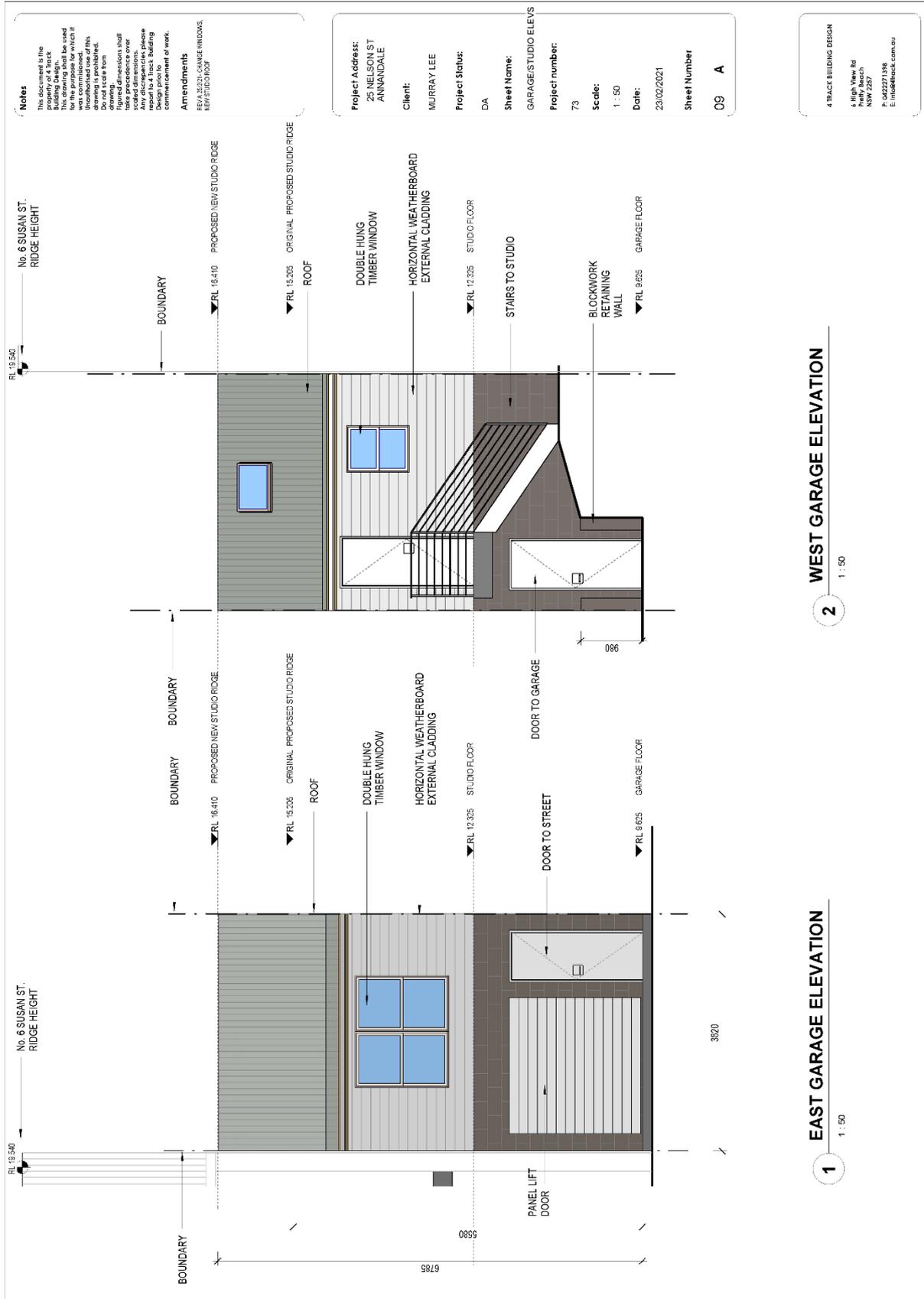
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Date:
 23/02/2021

Sheet Number
 06 A

4 TRACK BUILDING DESIGN
 6 High View Rd
 4th Floor
 NEW 2237
 P: 042271198
 E: info@4track.com.au





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Amendments
 REVISED: DIMENSIONS, HEIGHTS, MATERIALS, FINISHES, ETC.

Project Address:
 25 NELSON ST
 ANNANDALE

Client:
 MURRAY LEE

Project Status:
 DA

Sheet Name:
 GARAGE SECTION

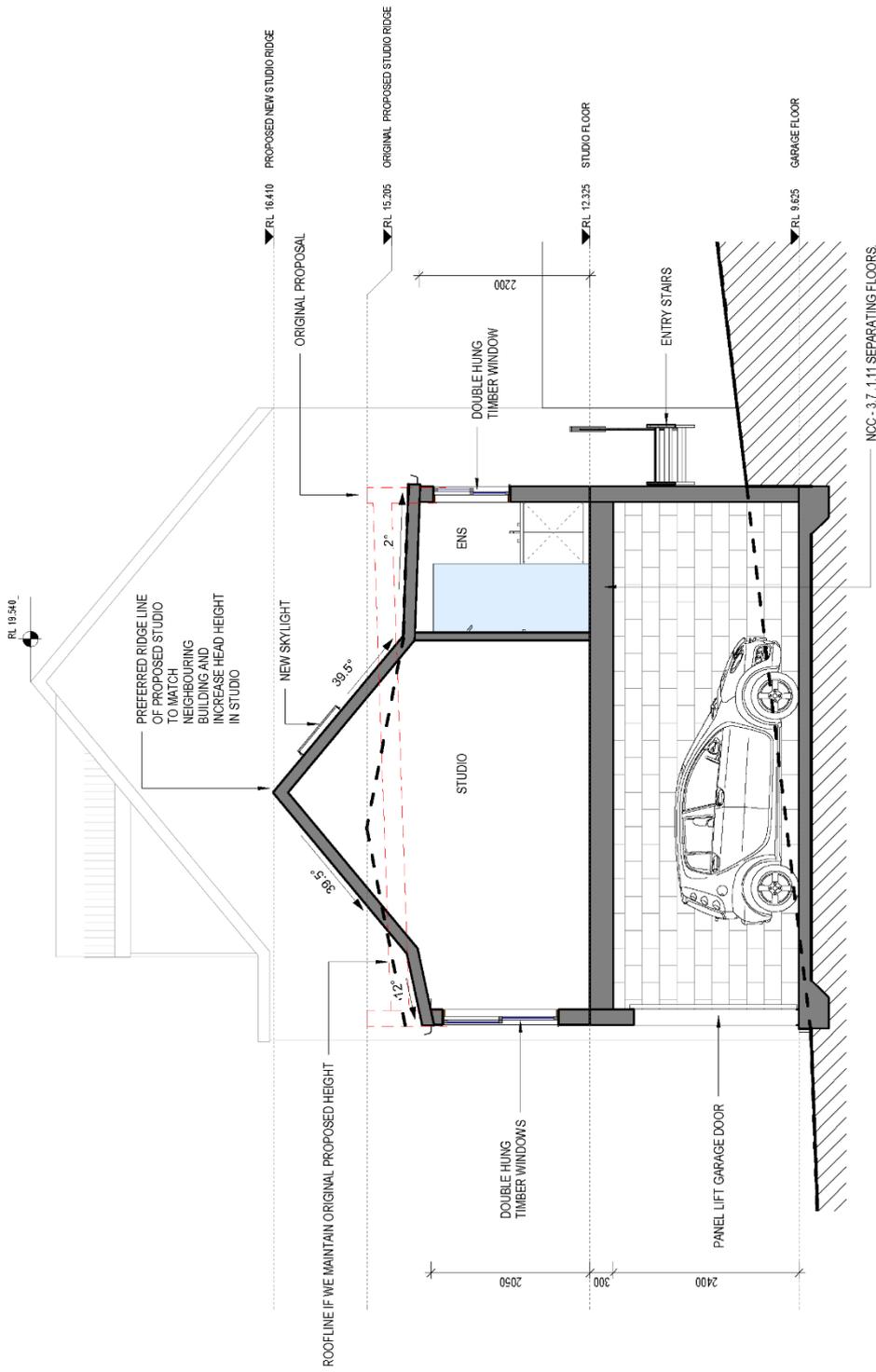
Project number:
 73

Scale:
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Date:
 23/02/2021

Sheet Number
 10 A

iTRACK BUILDING DESIGN
 6 High View Rd
 Peery Beach
 NSW 2257
 P: 0422271998
 E: info@itrack.com.au



Where parts of a Class 1a dwelling are located above or below a Class 1(a) private garage which is not appurtenant to that Class 1a dwelling, any floor separating the Class 1a dwelling from the non-appurtenant Class 1(a) private garage must—

- (i) - be a floor/ceiling system incorporating a ceiling which has a resistance to the incident spread of fire to the space above itself of not less than 60 minutes; or
- (ii) have an FRL not less than 30/30/30 when tested from the underside; or
- (iii) have a Open link in same gagefire-protective covering on the underside of the floor, including beams incorporated in it, if the floor is Open link in same gagecombustible or of metal.

1 GARAGE SECTION
 1 : 50

Notes

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Amendments

Project Address:
26 NELSON ST
ANNANDALE

Client:
MURRAY LEE

Project Status:
DA

Sheet Name:
LONG SECTION

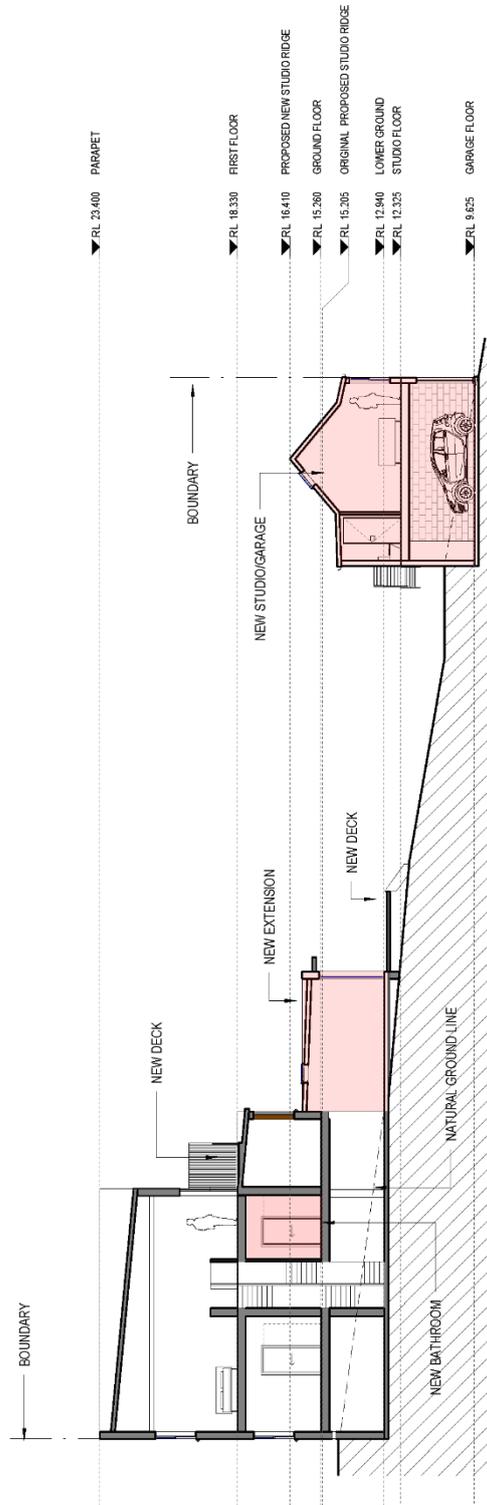
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Date:
23/02/2021

Sheet Number
11

4 TRACK BUILDING DESIGN
6 High View Rd
New South Wales
New South
P: 042271 198
E: info@4track.com.au



1 LONG SECTION
1:150

Notes

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Figured dimensions shall be used unless otherwise stated dimensions. Any discrepancies please refer to the Building Design prior to commencement of work.

Amendments
REV A 25/01/21 CHANGE WINDOWS NEW SKY LIGHT

Project Address:
25 NELSON ST
ANNANDALE

Client:
MURRAY LEE

Project Status:
DA

Sheet Name:
ROOF PLAN

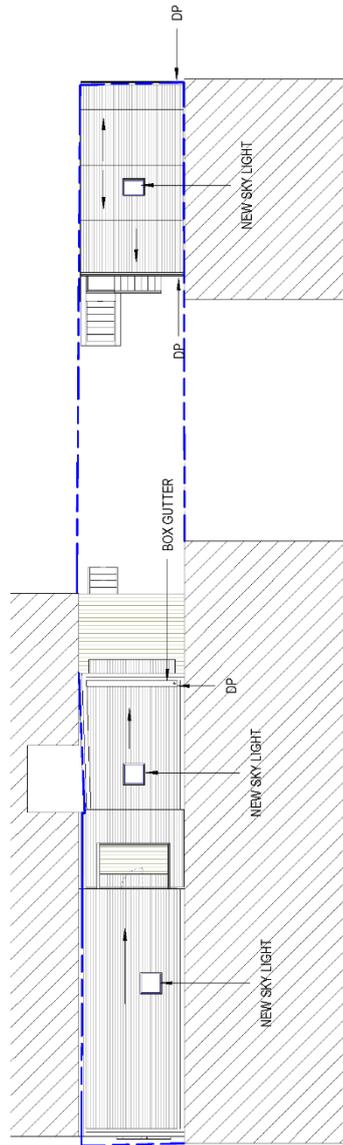
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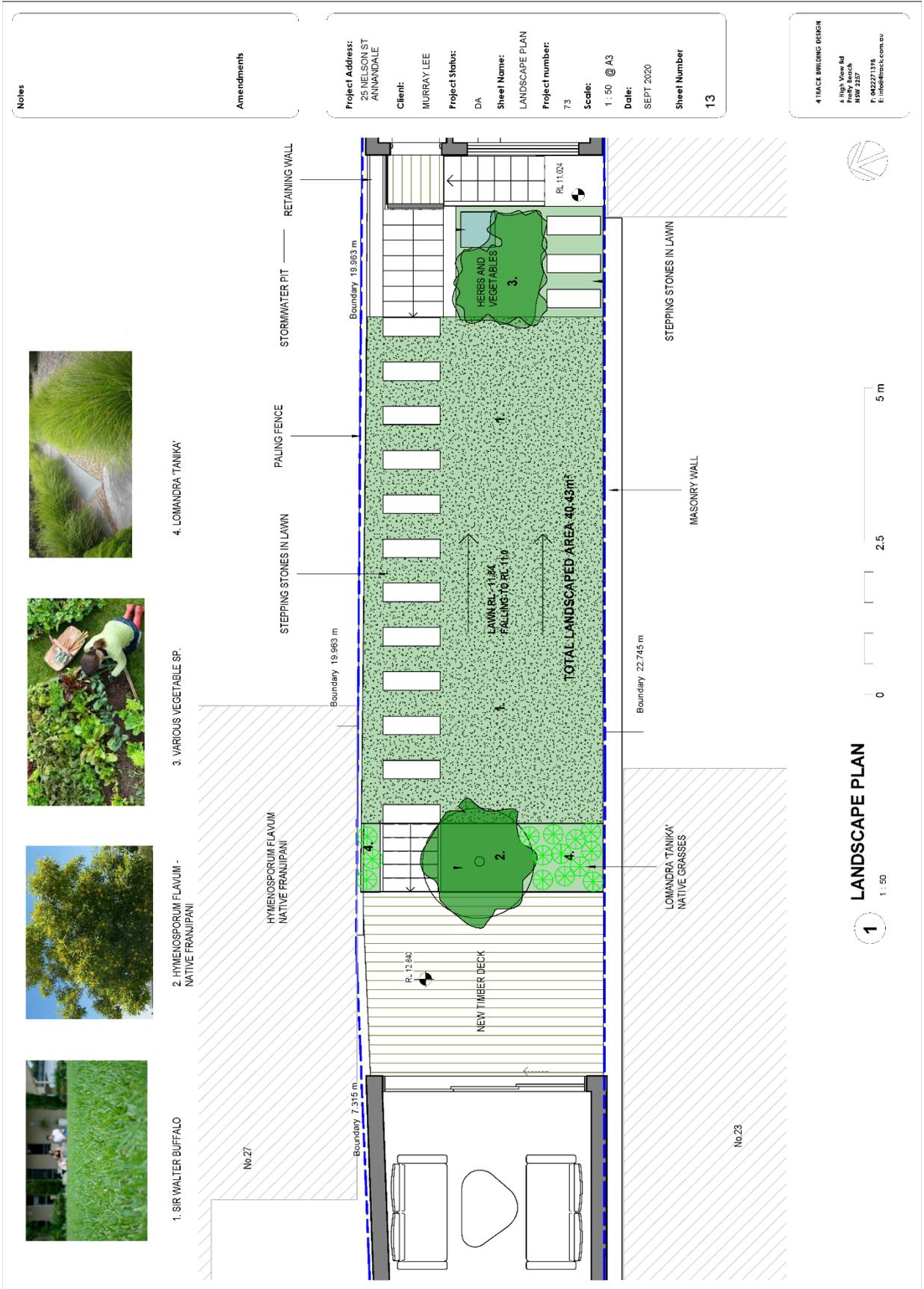
Date:
23/02/2021

Sheet Number
12 A

4 TRACK BUILDING DESIGN
4 High View Rd
Parramatta NSW 2150
P: 042271 5196
E: info@4track.com.au



1 ROOF PLAN
1 : 150



Attachment C- Clause 4.6 Exception to Development Standards



25 Nelson Street, Annandale

REQUEST FOR VARIATION TO FLOOR SPACE RATIO OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF LEICHHARDT LEP 2013

Clause 4.4 – Floor Space Ratio

Clause 4.4(2B)¹ of Leichhardt LEP 2013 prescribes a FSR of 0.8:1 (123.12m²) for development for the purpose of residential accommodation on a lot with an area of between 150m² and 300m². The subject site has an area of 153.9m².

The proposed alterations and additions will result in the site having an FSR of 1.1:1 (GFA: 169.36m²), providing a non-compliance with this control. The percentage variation is 37.5%.

The proposal therefore seeks to vary the FSR development standard.

The objectives of Clause 4.4 are as follows:

- (a) *for development in Zone R3 Medium Density Residential—*
- (i) *to ensure the bulk and scale of new development is compatible with the desired future character of the area, and*
 - (ii) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and*
 - (iii) *to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space,*

The zoning of the land is R1 General Residential. The objectives of the R1 zone are:

¹ 4.4 Floor space ratio

(2B) Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation—

(a) on land shown edged black or pink on the Floor Space Ratio Map is not to exceed—

(i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or

(ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or

(iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or

(iv) in the case of development on a lot with an area of 450 square metres or more—0.6:1, or

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

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Leichhardt Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

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

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *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*
- (4) Consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (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*
 - (b) the concurrence of the Secretary has been obtained.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways²:

² see *Wehbe v Pittwater Council* [2007] NSWLEC 827

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

These five ways were re-emphasised by Commissioner Morris³. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance⁴. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with⁵. This objection relies on this method. Compliance with the objectives of the FSR standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- The proposed alterations and additions are sympathetic to the existing dwelling and compatible with the existing streetscape and adjacent buildings in terms of scale, form, siting and materials.

³ *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

⁴ *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

⁵ see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

- The proposed FSR non-compliance will be indiscernible from Nelson Street, Susan Street and the adjoining properties with the lower ground floor level being located below street level.
- As demonstrated in the plans submitted with this application, the proposed works will result in the dwelling having a rear setback that is greater than the dwellings adjoining the subject site to the north and south. The proposed rear lane garage with studio above is smaller in length and width than the rear lane garage with studio above adjoining the subject site to the north at 27 Nelson Street.
- The proposed works will allow for additional floor space, whilst respecting the scale of surrounding development.
- The proposed works incorporate articulated facades to avoid a bulky appearance and to create proportions consistent within the streetscape.
- The proposed additions are considered to be satisfactory, given the existing development along Nelson Street and Susan Street with the proposed additions having no conservation impact on the Annandale Heritage Conservation Area.
- The proposed works have been sited and designed to comply with the LEP landscaped areas and site coverage controls, further demonstrating that the proposed works can be adequately accommodated on the site.
- Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.
- The siting and design of the proposal minimises the obstruction of views from neighbouring properties and the public domain.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the LEP and DCP, including solar access, landscaped area and private open space. The dwelling and studio above the rear lane garage will have a high level of internal amenity in terms of natural light, natural ventilation, layout, room sizes and provision of private open space. The excess FSR thereby does not compromise the ability to meet or outperform the

above criteria. This demonstrates that the site can accommodate the additional FSR on the site.

2. There are sufficient environmental planning grounds to justify contravening the development standard:

Given the consistency of the proposal against the zone objectives and FSR objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁶.

The components proposed above the FSR control are:

- 46.24m² of GFA

In addition, there are sufficient environmental planning grounds that the proposed FSR can be achieved without adverse impacts for the following reasons:

- The proposal will not result in the loss of views from surrounding development;
- The proposal will not result in unreasonable overshadowing of adjoining properties;
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained; and
- The proposal will provide a development, which is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality.

The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979). The building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

The aspect of the development that breaches the FSR control can be justified as the proposal provides a consistent scale with neighbouring development with the lower ground floor level located below street level. This can be described as an environmental planning ground because the quality and form

⁶ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome⁷.

Reduction in the FSR will not result in improved amenity for adjoining properties. The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds⁸.

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. 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:

Objectives of Standard

The proposal will be in the public interest as it meets the objectives of the FSR development standard as follows:

Objective (a)(i) seeks to *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*

Comment: The bulk and sale of the proposed development is compatible with the desired future character of the area. The proposed development will maintain and enhance the streetscape and contribute to the character of the area.

The proposed built form and massing is responsive to the existing and future character of the area and is compatible within the context of the site.

The proposed works will allow for additional floor space, whilst respecting the scale of surrounding development.

As demonstrated in the plans submitted with this application, the proposed works will result in the dwelling having a rear setback that is greater than the dwellings adjoining the subject site to the north and south. The proposed rear

⁷ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1097 at [42]

⁸ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

lane garage with studio above is smaller in length and width than the rear lane garage with studio above adjoining the subject site to the north at 27 Nelson Street.

The proposed additions are considered to be satisfactory, given the existing development along Nelson Street and Susan Street with the proposed additions having no conservation impact on the Annandale Heritage Conservation Area.

Objective (a)(ii) seeks to *provides a suitable balance between landscaped areas and the built form, and*

Comment: The proposed works have been sited and designed to comply with the LEP landscaped areas and site coverage controls, further demonstrating that the proposed works can be adequately accommodated on the site. The proposal includes 40.86sqm of landscaping area at the rear of the site.

Objective (c) seeks to *minimises the impact of the bulk and scale of buildings,*

Comment: The proposed development provides an articulated building form that minimises perceived bulk and scale impacts when viewed from the surrounds of the site.

The proposed materials and finishes provide a high level of architectural quality, visual interest and articulation. The proposed materials and finishes are compatible with those prevailing in the streetscape and the period of construction of the dwelling.

The proposed development has been designed to minimise impacts on neighbouring properties, the streetscape and the public domain in terms of overshadowing, views and privacy, as follows:

- **Solar Access:** The proposed works have been designed to maximise sunlight and daylight received to the living rooms and private open space areas of the subject dwelling and adjoining dwellings to maximise amenity and energy efficiency.

The DCP requires the subject site to receive a minimum three hours of direct sunlight over 50% of the required private open space between 9am and 3pm at the winter solstice. As demonstrated in the accompanying Shadow Diagrams, more than 50% of the private open space area of the subject site will receive more than 3 hours of direct sunlight between 9am and 3pm at the winter solstice.

The subject site is orientated east-west. Therefore, due to the site orientation, some overshadowing to the adjoining southern neighbour is inevitable. The DCP requires where the surrounding allotments are orientated east/west, that the main living room glazing must maintain a minimum of 2 hours solar access between 9am and 3pm during the winter solstice. As demonstrated in the shadow diagrams submitted with this application and the extract of the Shadow Study below, the proposal will result in minimal additional overshadowing impacts to the adjoining southern neighbour. The main living room glazing of the adjoining neighbours will receive more than 2 hours solar access between 9am and 3pm during the winter solstice.

The DCP requires where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice. The private open space areas of the adjoining neighbours will receive more than 2.5 hours of solar access between 9am and 3pm to 50% of the total area during the winter solstice.

- Views: The proposed development will not have an adverse impact on views from the public domain or surrounding properties.
- Privacy: The proposal has been designed and sited to ensure adequate visual and acoustic privacy between the subject dwelling and the adjoining dwellings. The proposal has considered the location of the development on the site, the internal layout and the building materials used. The proposal has appropriate setbacks thereby providing adequate separation from the adjoining properties. Windows have been appropriately sited and designed to minimise any potential overlooking. The proposed rear balcony on the first floor is screened to maintain visual and acoustic privacy. The ground floor rear deck and open space area is screened by landscaping and fencing.

Objectives of the Zone

The zoning of the property is R1 General Residential under the provisions of the Leichhardt Local Environmental Plan 2013. The objectives of the zone are:

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

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

The proposal is consistent with the objectives of the zoning as follows:

- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.
- The proposed height, bulk and scale is consistent with the character of surrounding development with the lower ground floor level located below street level.
- The proposal will not inhibit other land uses to be provided in the area that provide facilities or services to meet the day to day needs of residents.
- The proposal will not compromise the amenity of other residents in terms of privacy, solar access or views. The proposed works have been designed to ensure that mutual privacy is maintained between residents within the building and neighbouring properties.
- The proposal will not create any additional demand for infrastructure.
- The proposed development is considered suitable for the subject site.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR development standard and the objectives of the R1 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

With respect to Clause 4.6(4)(b), concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 21 February 2018 attached to the Planning Circular PS 18-003⁹.

⁹ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at Para [28]

Conclusion

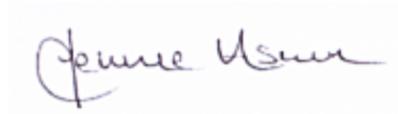
The consistency of the development with the zone objectives and the objectives of the FSR standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



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1 March 2021