 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/0305
Address	70 Trafalgar Street ANNANDALE NSW 2038
Proposal	Proposed new studio above existing garage.
Date of Lodgement	22 April 2021
Applicant	Mr Jonathan G Edmondson-Jones
Owner	Mr Jonathan G Edmondson-Jones Ms Janelle G Bowman
Number of Submissions	Two (2)
Value of works	\$88,000.00
Reason for determination at Planning Panel	FSR variation exceeds 10%
Main Issues	Floor Space Ratio
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards – Landscaped areas for residential accommodation in Zone R1
Attachment D	Clause 4.6 Exception to Development Standards – Floor Space Ratio







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 **INNER WEST COUNCIL**

Created on 8/17/2021
Map Scale: 1:1500

LOCALITY MAP

Subject Site		Objectors	
Notified Area		Supporters	

1. Executive Summary

This report is an assessment of the application submitted to Council for a proposed new studio above existing garage at 70 Trafalgar Street Annandale. The application was notified to surrounding properties and two (2) submissions were received in response.

The main issues that have arisen from the assessment include:

- Floor Space Ratio variation exceeds 10%

The non-compliance is acceptable given that the proposed increase in FSR will have no significant adverse amenity impacts to the adjoining properties or impacts on the public domain, and therefore the application is recommended for approval.

2. Proposal

The proposal seeks to construct a new first floor addition above an existing garage/rumpus room located at the rear of the site to provide a bedroom, bathroom and living area. The proposal relies on an existing staircase within the garage which currently provides access to a storage space within the existing roof.

No changes are proposed to the existing dwelling.

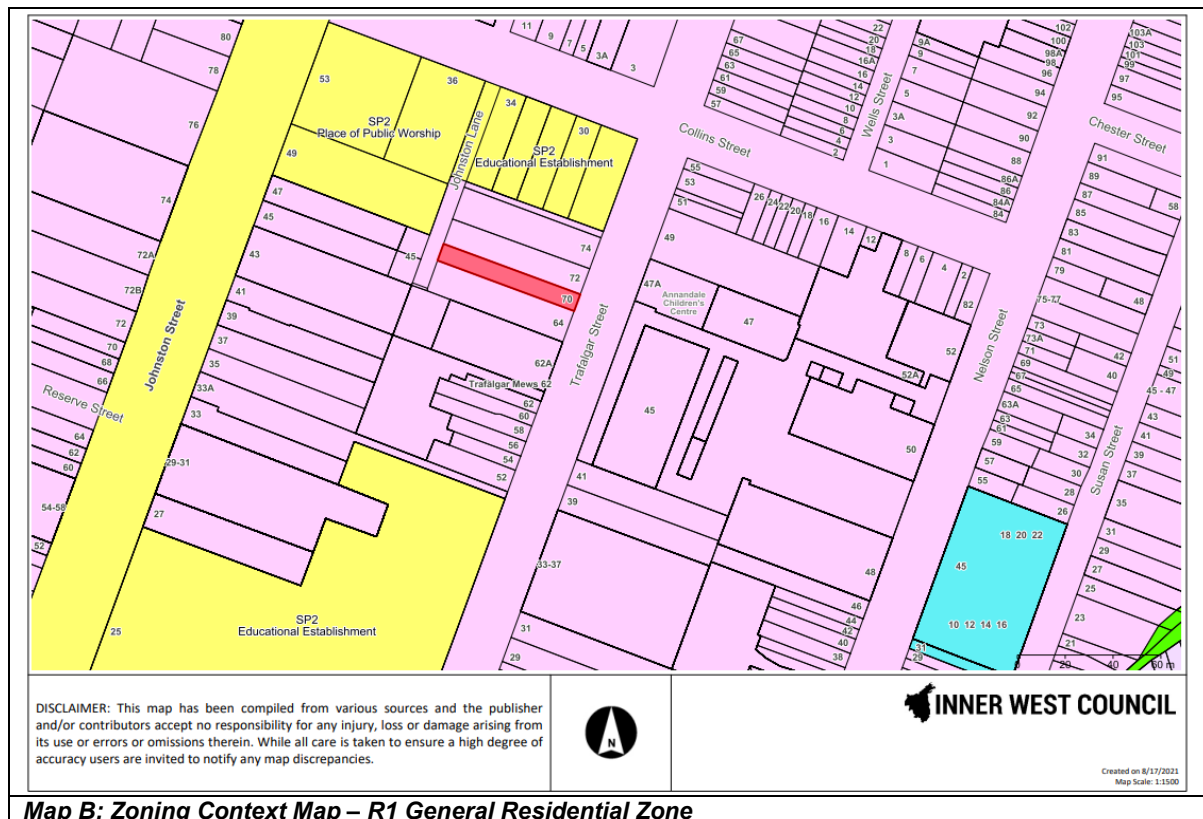
3. Site Description

The subject site is located on the western side of Trafalgar Street, between Collins Street and Albion Street. The site consists of one (1) allotment and is generally rectangular in shape with a total area of 367 sqm and is legally described as Lot 1 in DP 127422 or 70 Trafalgar Street Annandale, NSW 2038.

The site has a frontage to Trafalgar Street of 6.78 metres.

The site supports a two storey terrace house, swimming pool and double garage fronting Johnston Lane. The adjoining properties support mainly two storey residential dwelling houses with the exception of a Primary School to the north and a Preschool to the west.

The subject site is not listed as a heritage item, however is located within a Heritage Conservation Area. The property is not identified as a flood prone lot.



Map B: Zoning Context Map – R1 General Residential Zone

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
PDA/2020/0372	Secondary dwelling over garage	Advise Issued – 09/11/2020
M/2007/177	Section 96 modification of development consent D/2006/525 which approved alterations and additions to existing dwelling including new attic level and new swimming pool. Modification seeks to remove tree shown as retained on original consent.	Approved – 15/08/2007
D/2006/525	Alterations and additions to existing dwelling including new attic level and new swimming pool	Approved – 07/12/2006

Surrounding properties

Not applicable

4(b) Application history

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

Date	Discussion / Letter / Additional Information
07 July 2021	<p>Council forwarded the applicant a request for additional information letter which raised the following issues:</p> <ul style="list-style-type: none"> • Non-compliance with Floor Space Ratio (FSR) Development Standard • Clause 4.6 Exception Request • Heritage • Materials and finishes • Shadow Diagrams • Existing floor plans
28 July 2021	Applicant submitted additional information as per Council's request.

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*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

5(a)(i) *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) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

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

5(a)(iii) *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 2.5 - Additional permitted uses for land
 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 6.2 - Earthworks
 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 – General Residential under the *LLEP 2011*. The *LLEP 2013* defines the development as alterations and additions to a **dwelling house** and the development is permitted with consent within the land use table. The development is consistent with the objectives of the R1 zone.

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

Standard	Proposal	Non-compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 256.90sqm	0.82:1 or 300sqm	43sqm or 16.74%	No
Landscape Area Minimum permissible: 20% or 73.4sqm	10.80% or 39.642sqm	33.80sqm or 46%	No
Site Coverage Maximum permissible: 60% or 220.2sqm	59% or 216.64sqm	N/A	Yes

(ii) Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio

Clause 4.3A - Landscaped areas for residential accommodation in Zone R1

The applicant seeks a variation to the Landscaped Area Development Standard under Clause 4.3A of the Leichhardt LEP by 46% (33.80sqm).

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 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 Landscape Area development standard which is summarised as follows:

- The proposal will not reduce the existing landscaped area.
- In the context (mostly housing of one or two storeys on long relatively narrow lots), the proposal will provide a typical proportion of open area to built form.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will allow good solar access to the subject site and will not unreasonably increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.
- The proposed built form is satisfactory in heritage and streetscape terms.

The applicant's written rationale adequately demonstrates that 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 R1 zone, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP for the following reasons:

The relevant objectives of the R1 – General Residential zone are outlined below:

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

Having regard to these objectives, the following is noted:

- a) The proposed additions provide residential accommodation which is compatible with the character, pattern of development and streetscape of the neighbourhood.
- b) The non-compliance for this proposed development is existing and will maintain a satisfactory streetscape character and maintain a high level of amenity and privacy for the subject property and adjoining properties.
- c) The proposal maintains solar access to living areas and private open space areas of the subject property and adjoining properties.
- d) The proposal has been designed to minimise adverse impacts to surrounding properties, the environment and the public domain.
- e) The proposal will allow increased opportunities for working from home.

It is considered the development is in the public interest because it is consistent with the objectives of the Landscaped Area development standard, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP 2013 for the following reasons:

The objectives of the Landscaped Area development standard are as follows:

(1) The objectives of this clause are as follows —

- a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- (b) to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) to ensure that development promotes the desired future character of the neighbourhood,*
- (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*
- (e) to control site density,*
- (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

Having regard to these objectives, the following is noted:

- a) The proposal provides residential accommodation which is compatible with the character, pattern of development and streetscape of the neighbourhood.
- b) The relationship between the landscaped areas on the site and the built form will not change dramatically, and it is noted that the site coverage for the site remains unchanged and the soft landscaping at the front and middle of the site will not be reduced.
- c) The proposed development will maintain the existing permeable area of the site and will not affect the underground flow of water.
- d) The proposed development will not affect the existing building footprint and complies with Council's controls for site coverage and the provision of private open space.

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 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Landscaped Area Development Standard and it is recommended the Clause 4.6 exception be granted.

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 16.74% (43sqm).

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 amount by which the proposal exceeds the FSR standard (and all of the additional area proposed) is the same as the area of the double garage.
- In the context (a cul-de-sac lane of garages, sheds and industrial buildings converted to residential use), the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact.

- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will allow good solar access to the subject site and will not unreasonably increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.
- The proposed built form is satisfactory in heritage and streetscape terms.

The applicant's written rationale adequately demonstrates that 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 R1 zone, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP for the following reasons:

Having regard to the zoning objectives, the following is noted:

- a) The proposed additions provide residential accommodation which is compatible with the character, pattern of development and streetscape of the neighbourhood.
- b) The non-compliance for this proposed development is existing and will maintain a satisfactory streetscape character and maintaining a high level of amenity and privacy for the subject property and adjoining properties.
- c) The proposal maintains solar access to living areas and private open space areas of the subject property and adjoining properties.
- d) The proposal has been designed to minimise adverse impacts to surrounding properties, the environment and the public domain.
- e) The proposal will allow increased opportunities for working from home.

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:

The objectives of the Floor Space Ratio development standard are as follows:

(1) The objectives of this clause are as follows:

(a) to ensure that residential accommodation:

- (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
- (ii) provides a suitable balance between landscaped areas and the built form, and*
- (iii) minimises the impact of the bulk and scale of buildings,*

Having regard to these objectives, the following is noted:

- a) The proposal provides residential accommodation which is compatible with the character, pattern of development and streetscape of the neighbourhood.
- b) The proposed additions enhance the amenity of the subject site without adversely impacting neighbouring amenity.
- c) The proportion of built form to open area will remain typical of that in the neighbourhood and represents contemporary development compatible with surrounding built form in Johnston Lane and is consistent with the relevant desired future character provisions set out in part 2.2.1.5 Trafalgar Street Distinctive Neighbourhood of Leichhardt Development Control Plan 2013.

- d) The proposed development will not affect the existing landscaped area or building footprint and complies with Council's control for site coverage.
- e) The proposal is designed to minimise impacts on streetscape and neighbouring amenity due to bulk and scale, which will be consistent with that surrounding.

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 the Floor Space Ratio Development Standard and it is recommended the Clause 4.6 exception be granted.

(iii) Clause 5.10 – Heritage Conservation

The subject property at 70 Trafalgar Street, Annandale, is a contributory dwelling located within the Annandale Heritage Conservation Area (C1 in Schedule 5 of the Leichhardt LEP 2013).

The following heritage commentary is made in response to the revised architectural drawings prepared by Sydesign, dated 23 July 2021. These drawings responded to the heritage commentary provided on 30 June 2021 in response to the original proposal, which was considered unacceptable from a heritage perspective, and provided alternative solutions, which are reiterated below along with additional commentary in response to the revised drawings.

1. It is recommended that the design be amended to incorporate the following design changes:

- a. The roof form of the proposed studio addition is to be redesigned to a traditional symmetrical gable roof form with a 45° building envelope taken from the top of the side wall.*

Comment: the 45-degree building envelope has been taken from the side elevation rather than the front elevation as prescribed by the LDCP 2013. This is however, considered acceptable due to the mixed orientation of gable roof forms in the laneway. The main objective is to include a complementary gable roof form as part of the proposal and the amended proposal is acceptable as it will present more so as a traditional roof form to the laneway.

- b. The dormer on the western roof plane of the proposed studio is to be redesigned in accordance with the following:*

- i. set a minimum 300mm below the ridgeline;*
- ii. set a minimum of 500mm from the side walls; and*
- iii. set a minimum of 200mm up from the rear wall plate.*

Comment: The dormer in the western roof plane has been designed in accordance with the above. The form of the dormer is proposed as a gable with a low pitch which is uncharacteristic of dormers in the HCA. It is recommended a condition be included in the consent requiring that the gable dormer in the western roof plane is to be redesigned with a skillion roof form with a 5° - 10° roof pitch that slopes down from the ridgeline to the west, towards the laneway, so that it better complements the character of the HCA.

- c. *The window opening in the west elevation (W02) is to be redesigned so it contains a set of 3 vertically proportioned windows, employing traditional design (timber sash) and materials (timber frame).*

Comment: The window opening has been redesigned containing 4 vertically proportioned windows. Though, this creates a horizontal window opening, the 4 windows do break up the opening into vertical proportions, which is acceptable.

2. *A revised Schedule of Colours & Materials will need to be submitted for consideration and in accordance with the following:*

- a. *The proposed Scyon Axon cladding is to be laid horizontally, not vertically;*
- b. *Greys and blacks (Monument) are not acceptable and must be avoided. Light, warm, earthy, tones are to be used, e.g. beige or a matching colour to the neighbouring garage at No. 72;*
- c. *A pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby".*

Comment: The proposed cladding has been amended to horizontal Scyon Stria cladding, which is acceptable. It is proposed to paint the cladding in Shale Grey which is generally acceptable within the context. Colorbond "Windspray" is proposed for the roofing.

In light of the discussion above, the following design change condition is recommended to ensure the development is in accordance with Clause 5.10 Objectives 1(a) and (b) in the LLEP 2013 and the relevant objectives and controls in the LDCP 2013.

2. Design change

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

- a. The gable dormer in the western roof plane of the proposed studio has been designed with a skillion roof form with a 5° - 10° roof pitch that slopes from the ridge line down to the west, towards the laneway.

(iv) Clause 6.8 - Development in areas subject to aircraft noise

An Acoustic Report has been submitted to Council and is referenced in the recommended consent conditions.

5(b) Draft Environmental Planning Instruments

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

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

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

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

5(c) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	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	N/A
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion under 5(a)(iii)
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes – see discussion
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.1.5 Trafalgar Street Distinctive Neighbourhood C2.2.1.5(a) Trafalgar Street Laneways Sub Area	Yes – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes

C3.2 Site Layout and Building Design	N/A
C3.3 Elevation and Materials	Yes – see discussion under 5(a)(iii)
C3.4 Dormer Windows	Yes – see discussion under 5(a)(iii)
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
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
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
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
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A

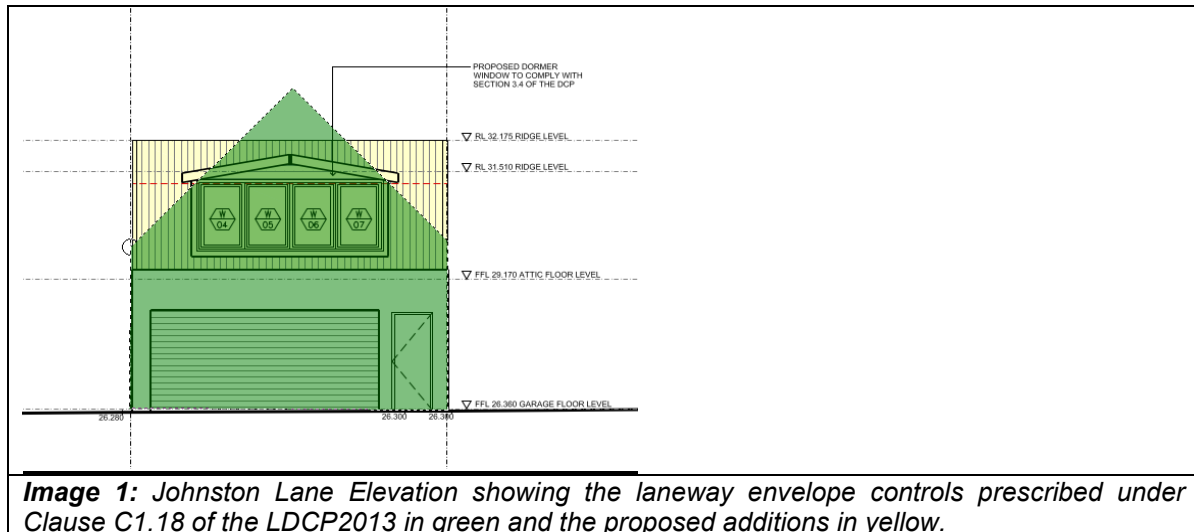
The following provides discussion of the relevant issues:

C1.18 Laneways, C2.2.1.5 Trafalgar Street Distinctive Neighbourhood and C2.2.1.5(a) Trafalgar Street Laneways Sub Area

Clause 1.18 of the LDCP 2013 prescribes the following laneway controls:

- C6 - Where fronting a Medium Lane, development shall comply with a laneway envelope that has:
 - a. a maximum side wall height of 3.6m;
 - b. a 45° building envelope taken from the top of the side wall; and
 - c. a maximum roof height of 6m.

The proposed development does not achieve technical compliance with the numerical requirements above and the area of non-compliance is illustrated by *Image 1* below.



Despite the prescribed laneway controls and Trafalgar Street neighbourhood controls, the proposal is considered acceptable for the following reasons:

- The 45-degree building envelope has been taken from the side elevation and is considered acceptable due to the mixed orientation of gable roof forms in the laneway.
- The proposal has been redesigned by way of amended plans to include a complementary gable roof form which will present more so as a traditional roof form to the laneway.
- The proposal makes a positive contribution to the Heritage Conservation Area – refer to Section 5(a)(iii).
- The proposal has been designed to minimise amenity impacts to neighbouring properties and it is considered that an alternate design would not result in a superior amenity outcome.
- The proposal does not exceed the maximum roof height control of 6m and results in acceptable visual bulk and scale which is comparable to other development along the Johnston Lane.
- The proposal is consistent with the streetscape and the desired future character for development within the Trafalgar Street laneways.

C3.9 Solar Access

The following solar access controls apply:

- C12 – Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice.
- C15 – Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

- C18 – 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.
- C19 – Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

The proposal will result in some minor additional overshadowing to the private open space of a neighbouring property at No. 64 Trafalgar Street, Annandale. The additional overshadowing accounts for 0.3sqm at 1pm, 4.3sqm at 2pm and 13sqm at 3pm in mid-winter.

As confirmed by the shadow diagrams submitted, this adjoining property will retain the requisite two and a half hours of solar access to 50% of their private open space in mid-winter between 10:00am and 1:00pm and hence, any additional overshadowing caused by the proposal is not considered to be adverse or contrary to the provisions of this Clause.

It is noted that given the orientation of the site and location of the proposed additions, that no additional shadows will be cast onto the private open space or affect living room windows of the neighbouring property to the north at No. 72 Trafalgar Street, Annandale.

Overall, any additional overshadowing caused by the proposal to neighbouring properties is not considered to be unreasonable, and the proposal complies with the objectives and controls of this Clause.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. A total of two (2) submissions were received.

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

- Impact on streetscape, Heritage and neighbourhood character – see Section 5(a)(iii) and Section 5(c)
- Height, bulk and scale – see Section 5(a)(iii) and Section 5(c)
- Solar Access and overshadowing impacts– see Section 5(c)

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

Issue: Errors / misinformation / inaccuracies contained with the documentation submitted to Council

Comment: Noted, however, notwithstanding any errors contained within the shadow diagram or site plan, an assessment of the application has found that the proposal is generally acceptable and complies with the provisions of LLEP2013 and LDGP2013.

Issue: Loss of privacy – No. 64 and No. 72 Trafalgar St, Annandale

Comment: Privacy screens are proposed to the eastern windows of the development which face No. 64 and No. 72 Trafalgar Street. This is considered acceptable with regard to limiting any potential sightlines and the proposal is considered acceptable and satisfies the objective and controls specified under Clause 3.11 – Visual Privacy.

Issue: Loss of outlook to rear garden – No. 72 Trafalgar St, Annandale

Comment: Unfortunately, loss of views to an outlook such as trees or sky is not protected under the LDGP2013.

Issue: “We dislike the existing colour of the garage which is very dark and having a structure twice as high in such a dark colour would be very upsetting and not in character with the neighbourhood”

Comment: The proposed materials, finishes and colours are considered acceptable with regard to the Heritage Conservation Area and design future character of the Trafalgar Street Distinctive Neighbourhood – refer to Section 5(a)(iii) and Section 5(c).

Issue: Construction vehicles and use of the laneway during construction by workers

Comment: Standard conditions are to be included as part of any future consent regarding the construction of the development. It is not considered that the development will result in adverse traffic or parking impacts during construction.

Issue: Overdevelopment of the site

Comment: The proposal retains all existing landscaped area on the site and complies with the Site Coverage development standard. The variation to the FSR development standard is considered acceptable within the context of the subject site and surrounding properties – refer to Section 5(a)(iii).

Issue: Additional vehicles and illegal parking in the laneway

Comment: The proposal does not involve changes to the existing garage on the site and the additional floor space being pursued is to be used in conjunction with the existing dwelling i.e., not as a secondary dwelling. As such, it is considered that the development will not result in any adverse or undue changes to the existing parking situation within Johnston Lane and any additional parking demand generated by the development is not considered to be unreasonable. Furthermore, it is beyond the scope of this planning assessment to consider potential illegal parking within Johnston Lane which is a matter to be referred to Council’s rangers.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is not contrary to the public interest.

6 Referrals

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 Engineer - No objections to proposal, subject to conditions being imposed.
- Heritage – No objections to proposal, subject to conditions being imposed.

6(b) External

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

- Ausgrid - No objections to proposal, subject to conditions being imposed.

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are not payable for the proposal.

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 Clauses 4.3A and 4.4 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2021/0305 for a proposed new studio above the existing garage at 70 Trafalgar Street ANNANDALE 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
DA02 - Rev C	Garage Floor Plan	23.07.2021	Sydesign
DA03 - Rev C	Attic Storage Floor Plan	23.07.2021	Sydesign
DA04 - Rev C	Roof Plan	23.07.2021	Sydesign
DA05 - Rev C	North and South Elevations	23.07.2021	Sydesign
DA06 - Rev C	East and West Elevations	23.07.2021	Sydesign
DA07 - Rev C	Section A-A	23.07.2021	Sydesign
DA08 - Rev C	Schedule of Colours and Materials	23.07.2021	Sydesign
BASIX Certificate No. A407212_02	BASIX Certificate	28.07.2021	Sydesign
Reference No.: 2021-110	Acoustic Report	15.03.2021	Acoustic Noise and Vibration Solutions

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

- a. The gable dormer in the western roof plane of the proposed studio has been designed with a skillion roof form with a 5° - 10° roof pitch that slopes from the ridgeline down to the west, towards the laneway.

FEES

3. 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.

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. Stormwater Drainage System – Simple

Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.

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

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road.

It is noted that the kitchen shown on plans at the pre DA stage is deleted, therefore the proposal is not a secondary dwelling and OSD is not required.

7. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Windows (W01), (W02) and (W03) have been amended in the following manner:

- a. Suitable externally fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level;
Note: The louvers are to individual opening more than 30mm wide and a total area of opening that is less than 30% of the surface area of the screen and made of durable materials. Louvered screens must be securely fitted and may be able to be tilted open from a closed position to an angle of 45 degrees in a downward or upward position.

8. 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.

9. 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.

10. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

11. 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.

12. 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 the adjoining properties at No. 64 Trafalgar Street, Annandale and No. 72 Trafalgar Street, Annandale 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.

13. 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 furni

14. 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**15. 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.

16. Amended Architectural Plans to Reflect requirements (a-g)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans to make provision for the following:

- a) The design of the access and car parking facilities must comply with AS/NZS 2890. 1: 2004 Parking Facilities Part 1: Off- street car parking and Council's LDCP2013 and boundary level requirements. Any existing non-compliances must be upgraded to current standards. The following details must be submitted:
- b) A longitudinal section along each edge of the vehicular access demonstrating compliance with the ground clearance and headroom requirements of the Standard, and showing that the boundary levels are 110mm above the adjacent road gutter invert for the full width of the vehicle crossing. The sections must extend to the centreline of the road carriageway.
- c) A longitudinal section along the Council footpath, adjacent to the property boundary, demonstrating that the longitudinal gradient of the crossing matches the adjacent road gradient.
- d) The floor level of the parking space must be higher than the street kerb and footpath across the full width of the vehicle crossing or 170mm above the adjacent road gutter level, whichever is the highest.
- e) A minimum headroom of 2200mm must be provided throughout the access and parking facilities. Note that headroom must be measured to the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
- f) The parking module must have minimum clear dimensions of 6000 x 5400mm (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.
- 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 the AS/NZS 2890.1:2004. The plan must include any existing on street parking spaces.

No changes to the external form or appearance of the development contrary to the approved plans must occur except as identified by this condition. Any changes to such must be subject to separate approval.

17. 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.

18. 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

19. 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.

DURING DEMOLITION AND CONSTRUCTION

20. 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.

21. Stormwater Drainage System

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

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

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

PRIOR TO OCCUPATION CERTIFICATE

22. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Light/Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site must be reconstructed; and
- d. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

23. 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.

24. Protect Sandstone Kerb

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

25. Aircraft Noise –Alterations and Additions

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

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

ON-GOING

26. Ongoing - Use of Studio

The studio above the garage can only be occupied by a family member and cannot be rented to or occupied by any third party who is not a family member unless consent is first obtained from Council for a secondary dwelling.

27. Ongoing 2 - Kitchen Facilities

Kitchen facilities such as a stove and/or oven are not to be installed in the studio unless consent is first obtained from Council for a secondary dwelling.

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.

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	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.diyasafe.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	1300 651 116	www.wasteservice.nsw.gov.au
Environmental Solutions		
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.

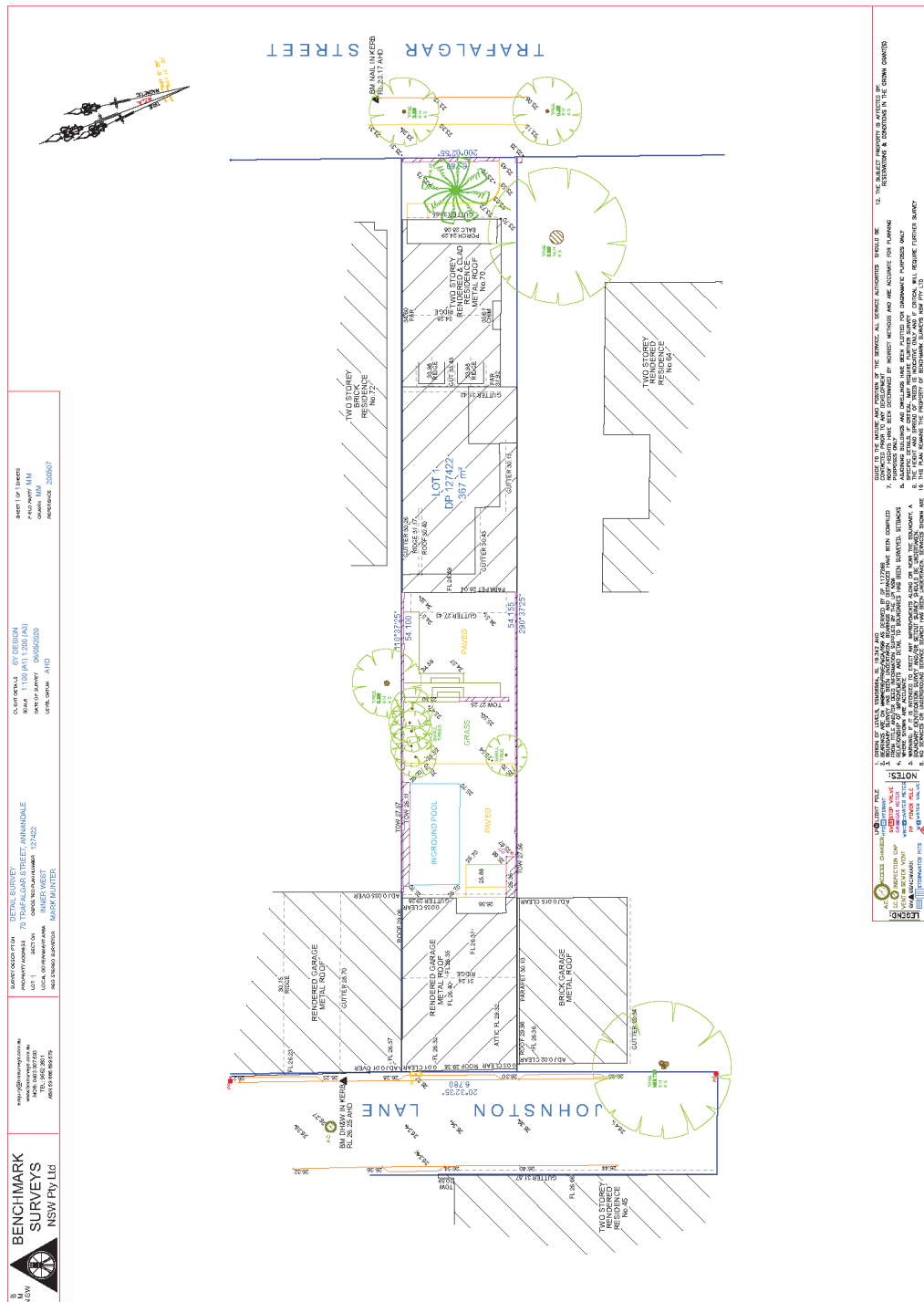
Ausgrid

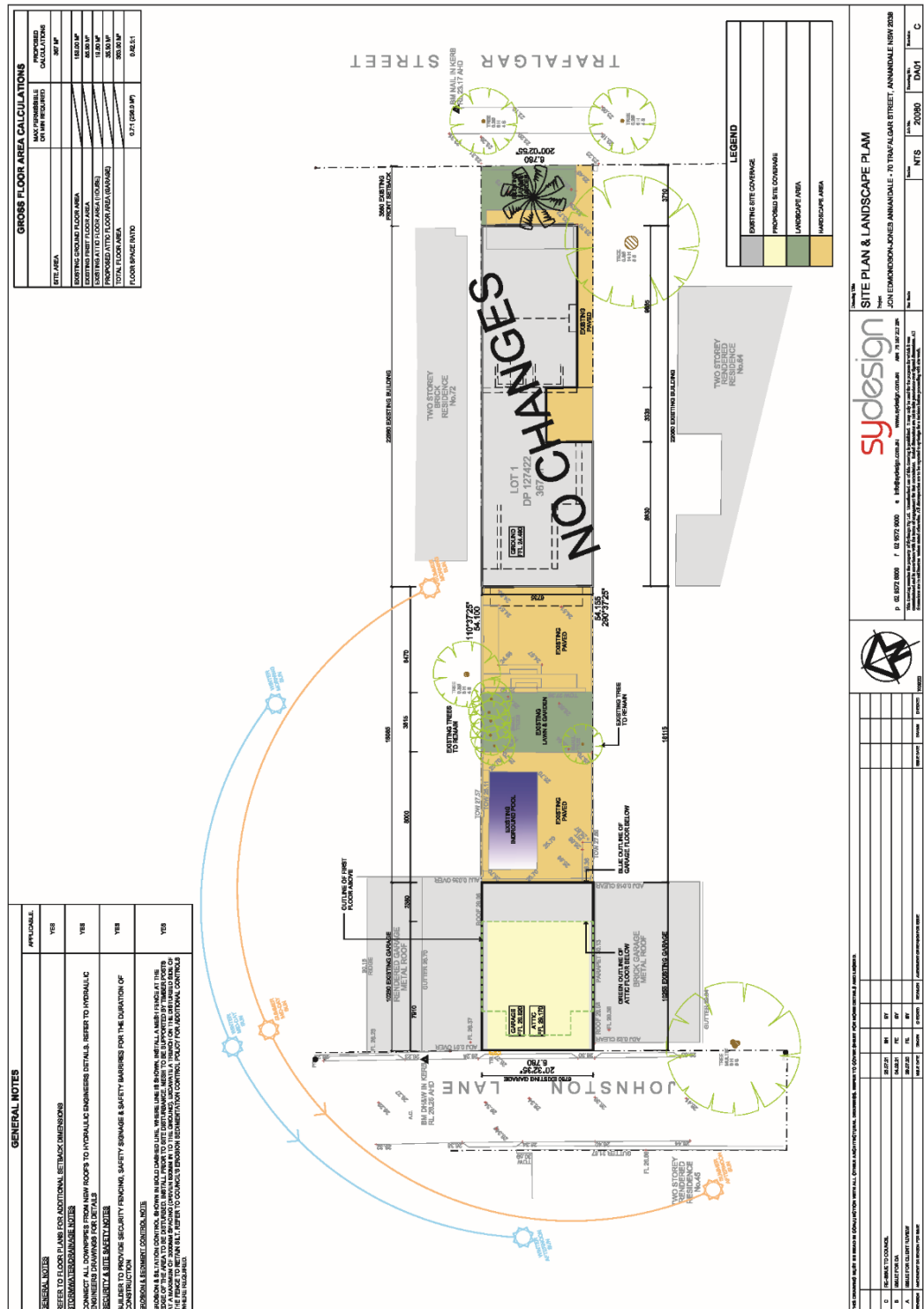
The development must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.

The "as constructed" minimum clearances to Ausgrid's infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Ausgrid's Network Standards can be sourced from Ausgrid's website, www.ausgrid.com.au

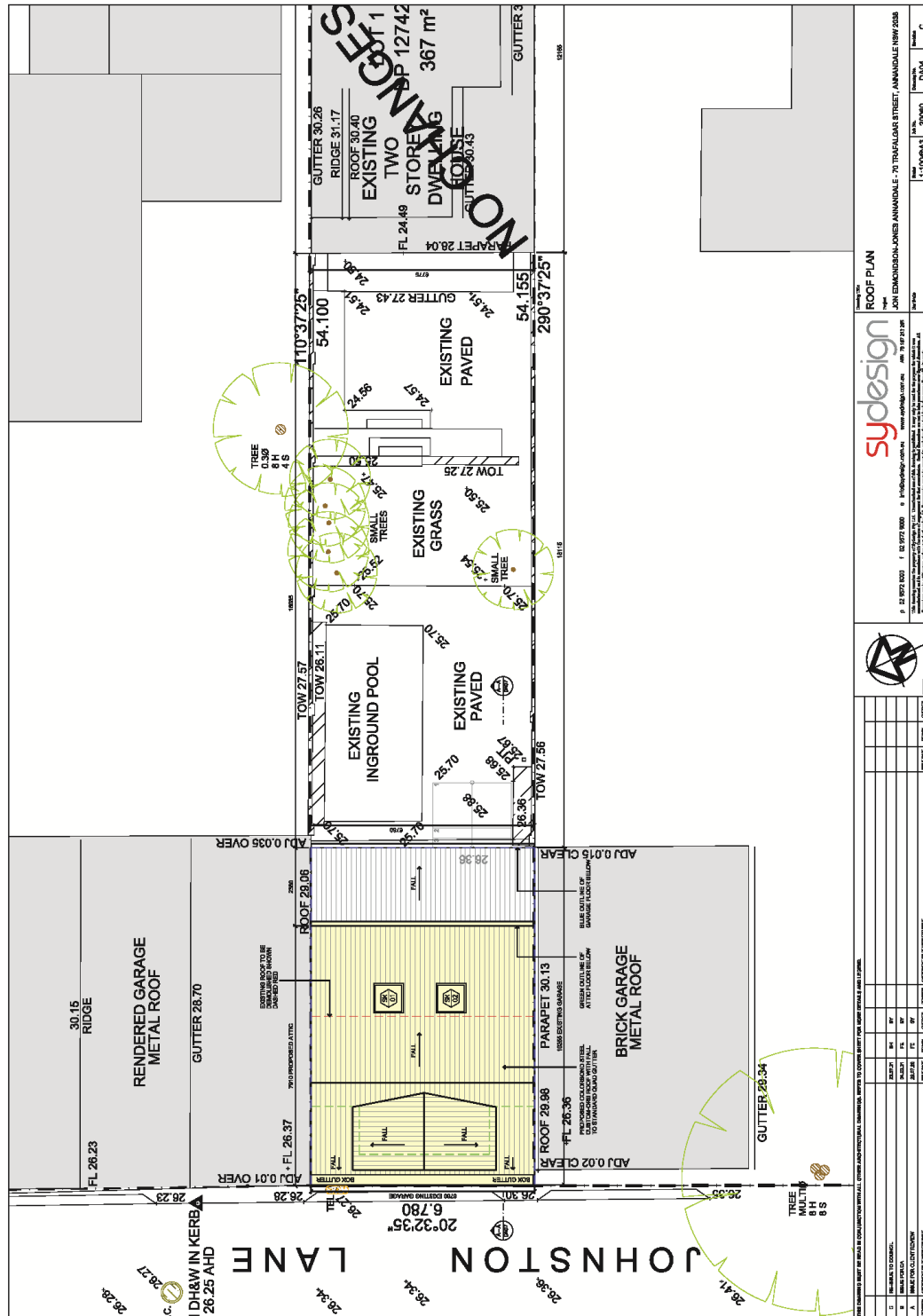
Attachment B – Plans of proposed development

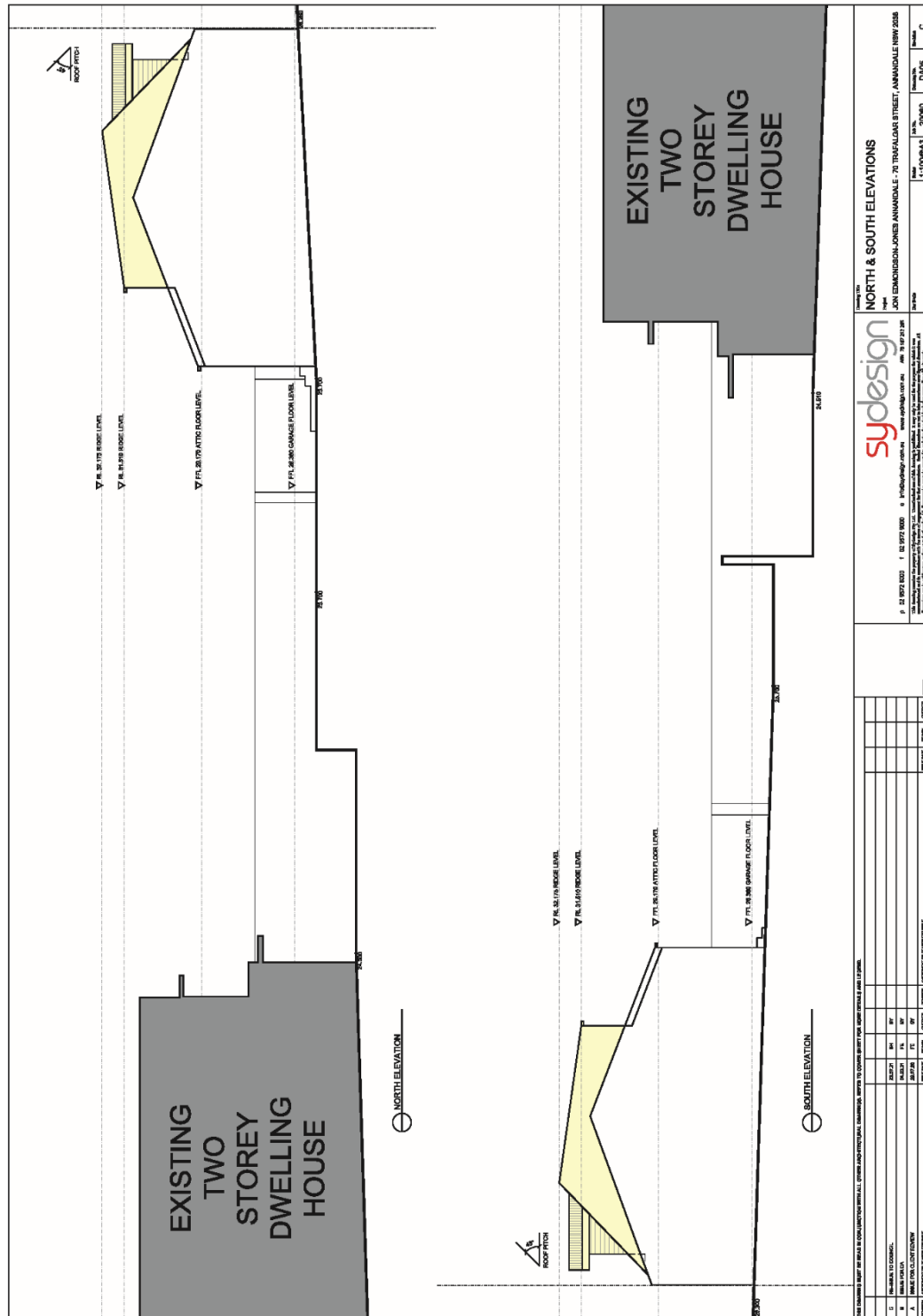


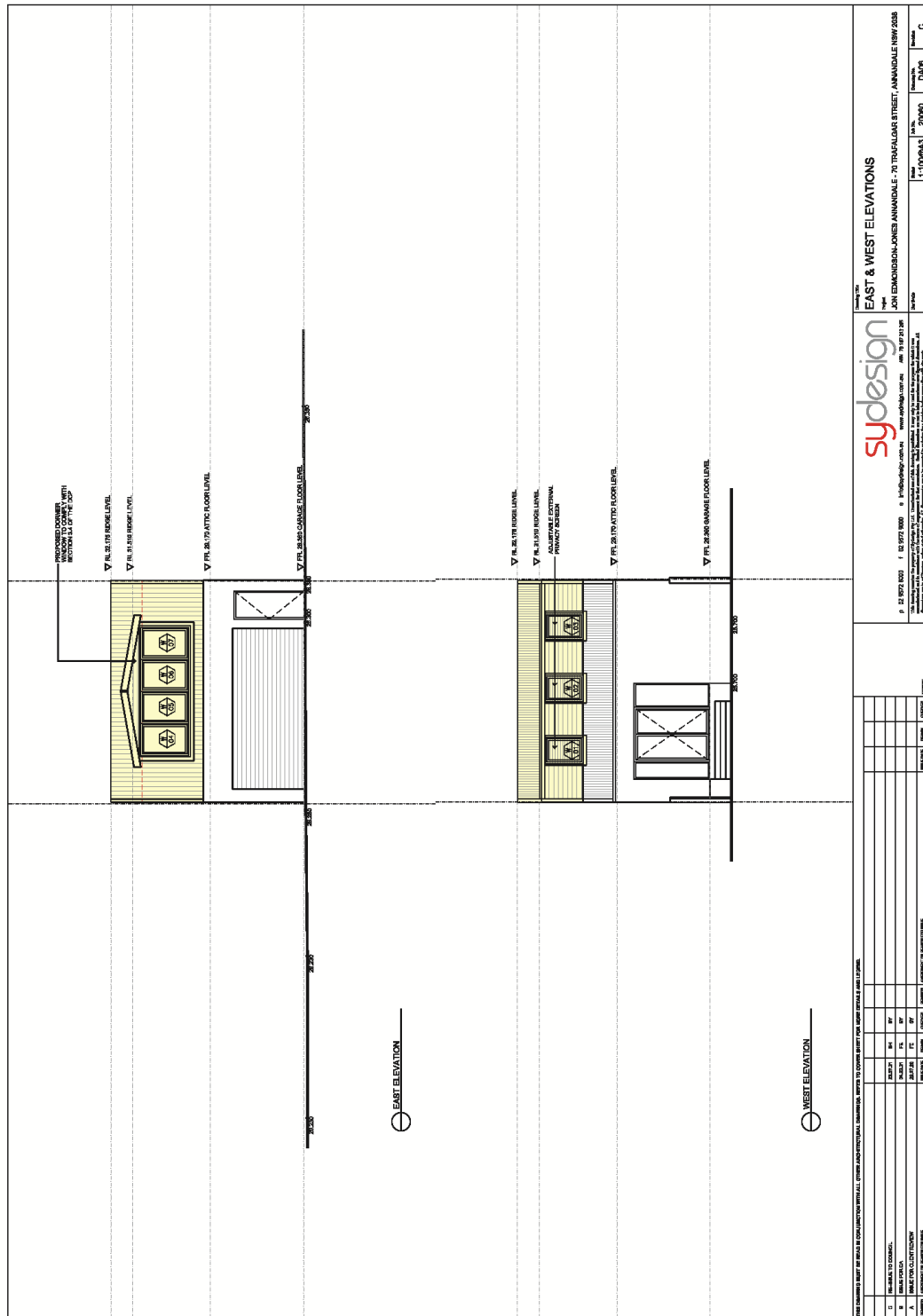


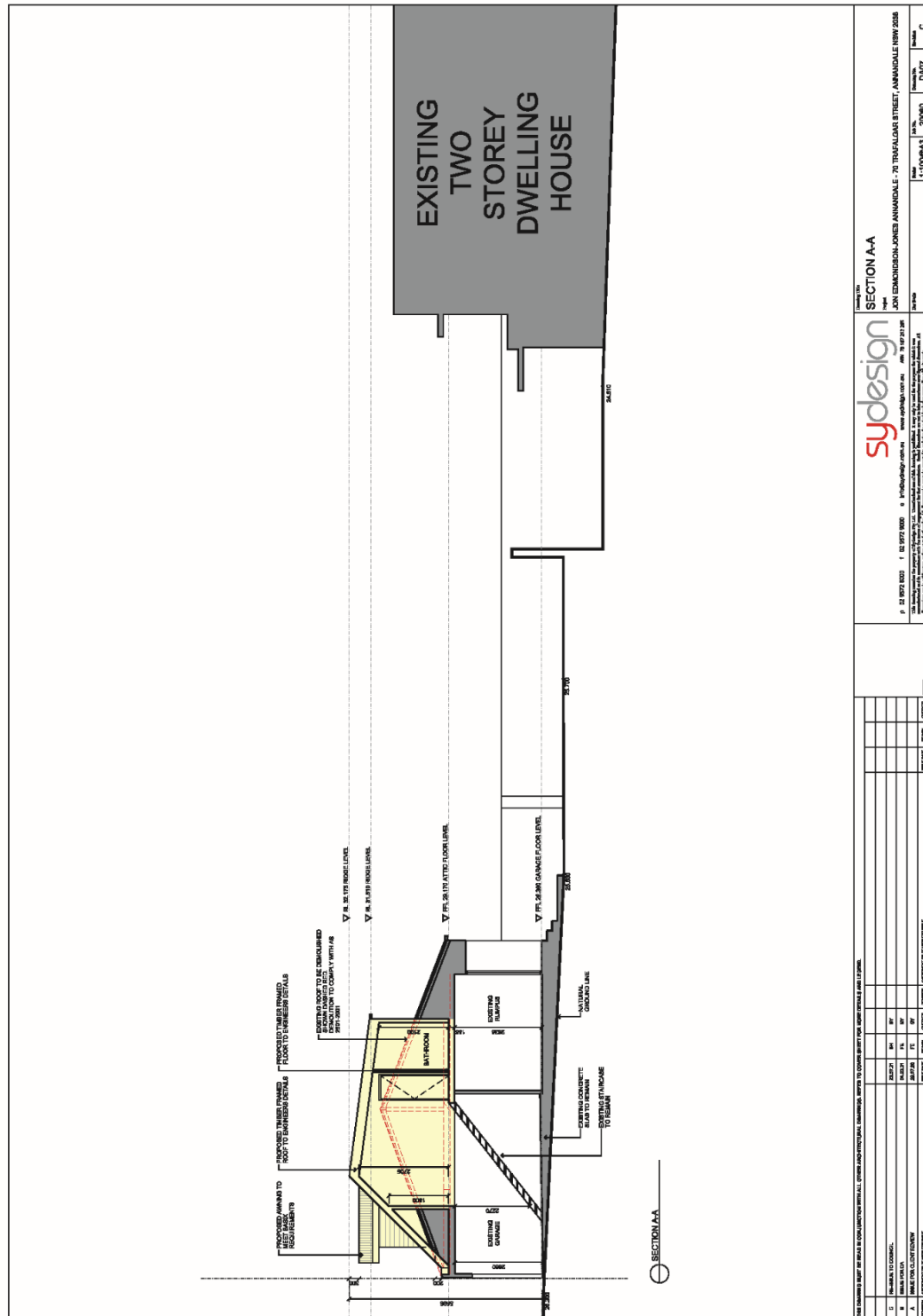






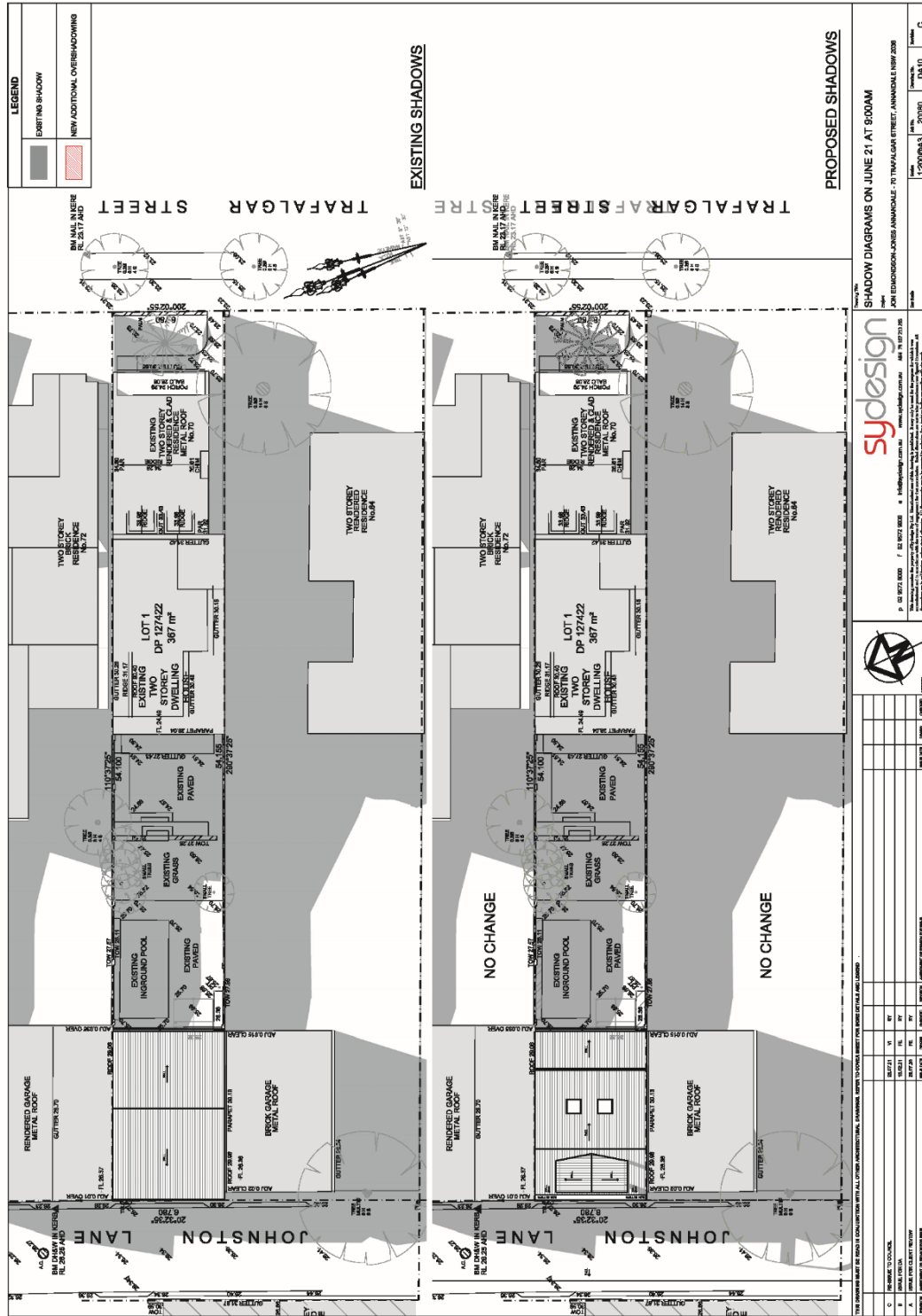


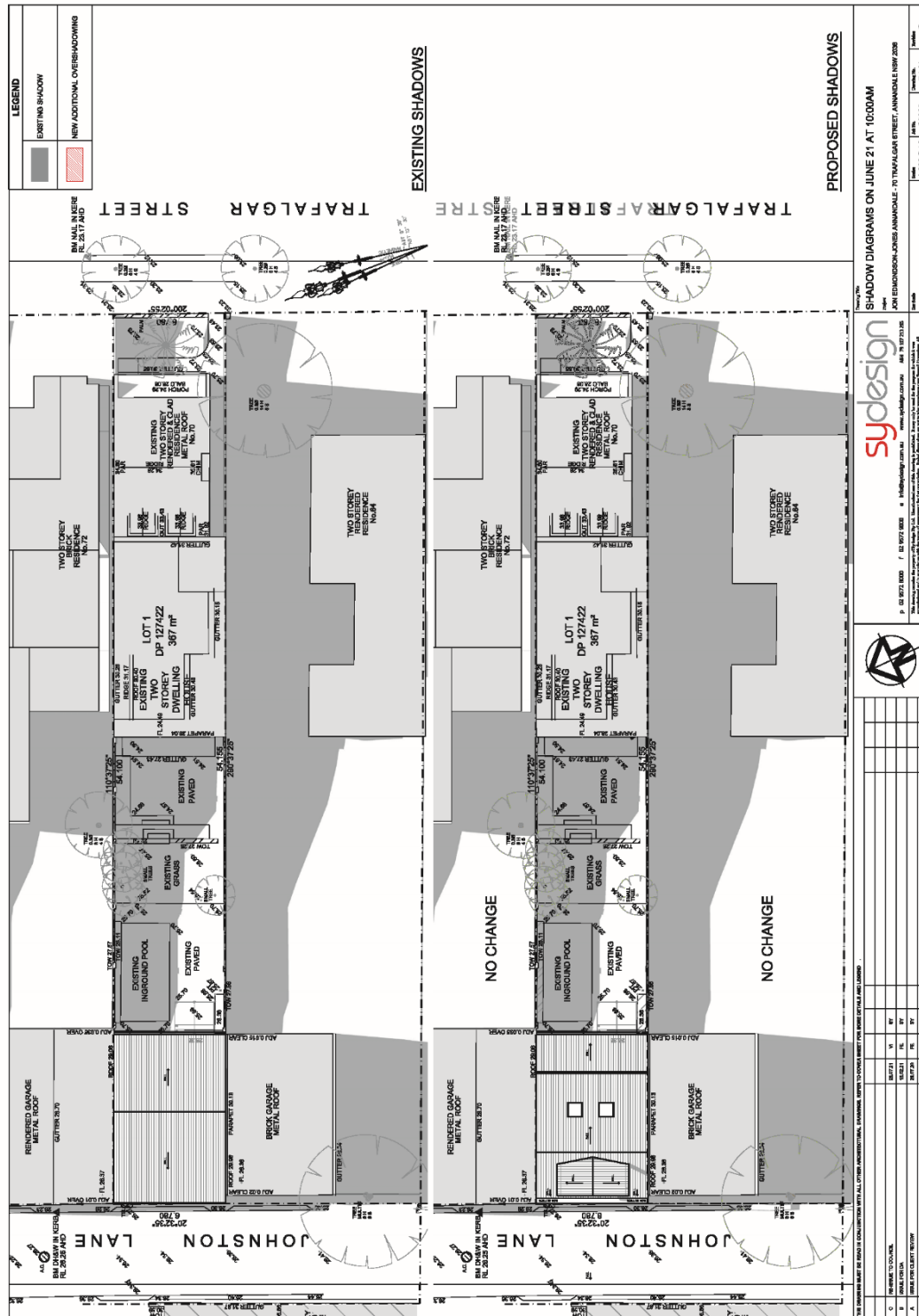


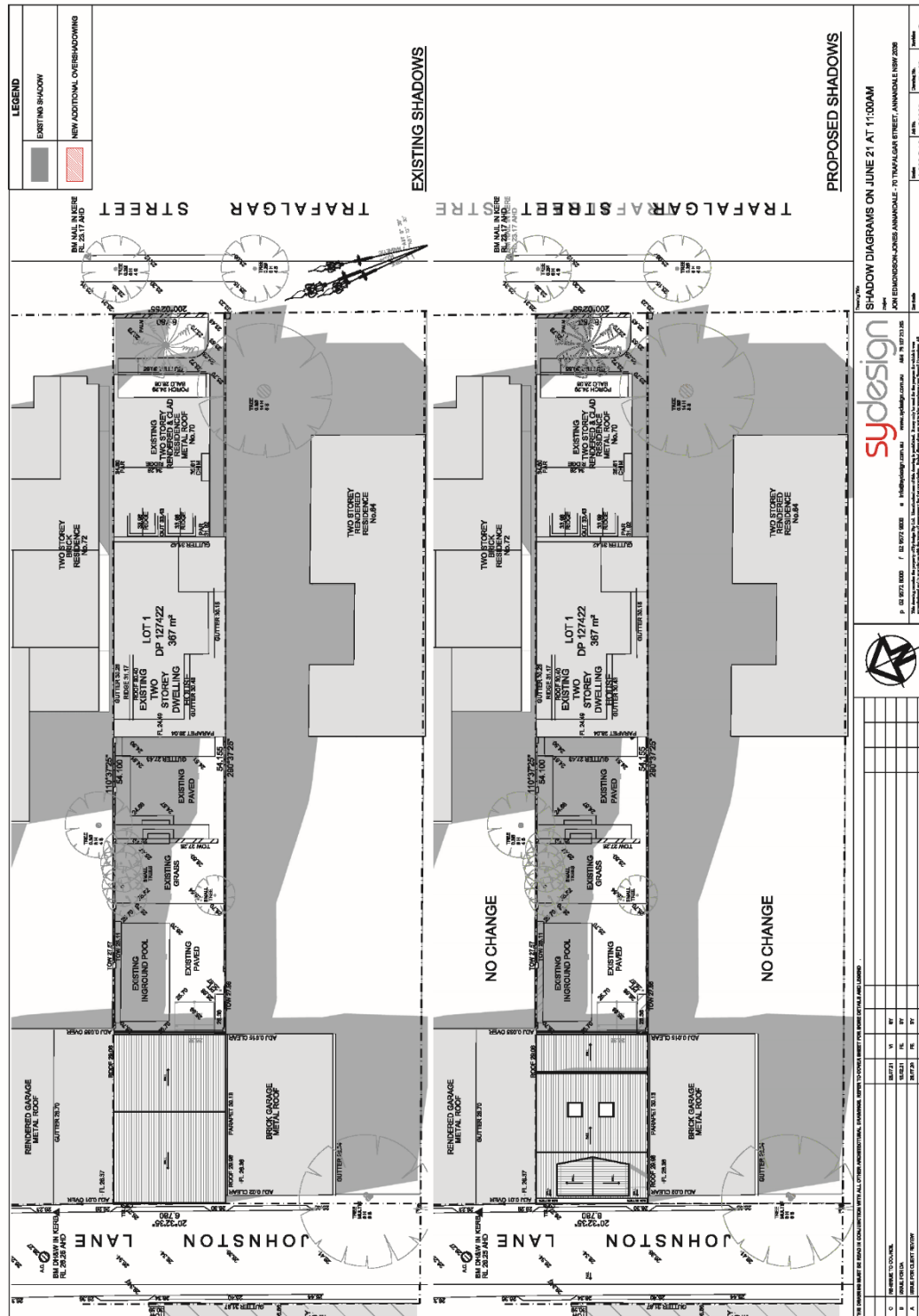


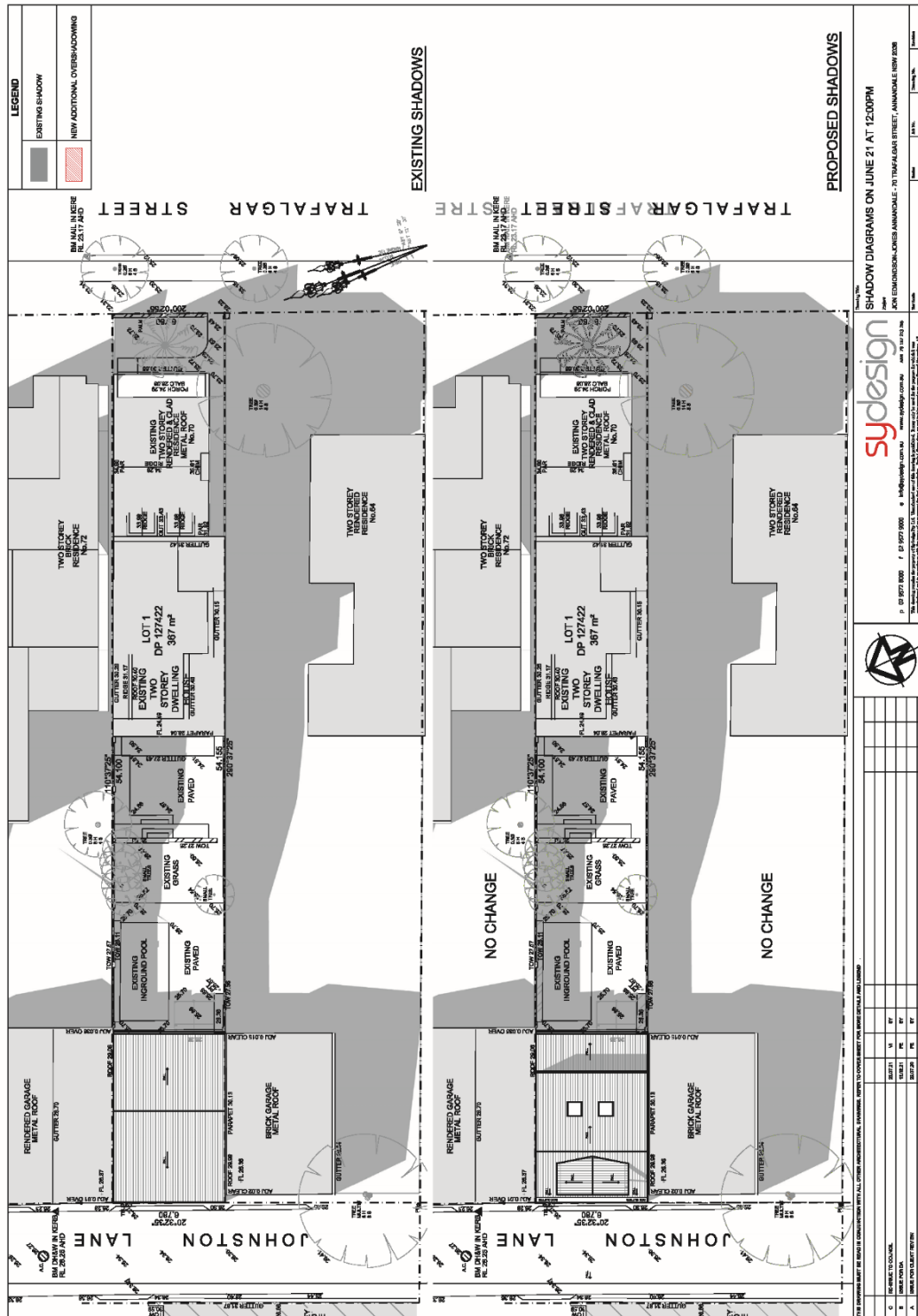
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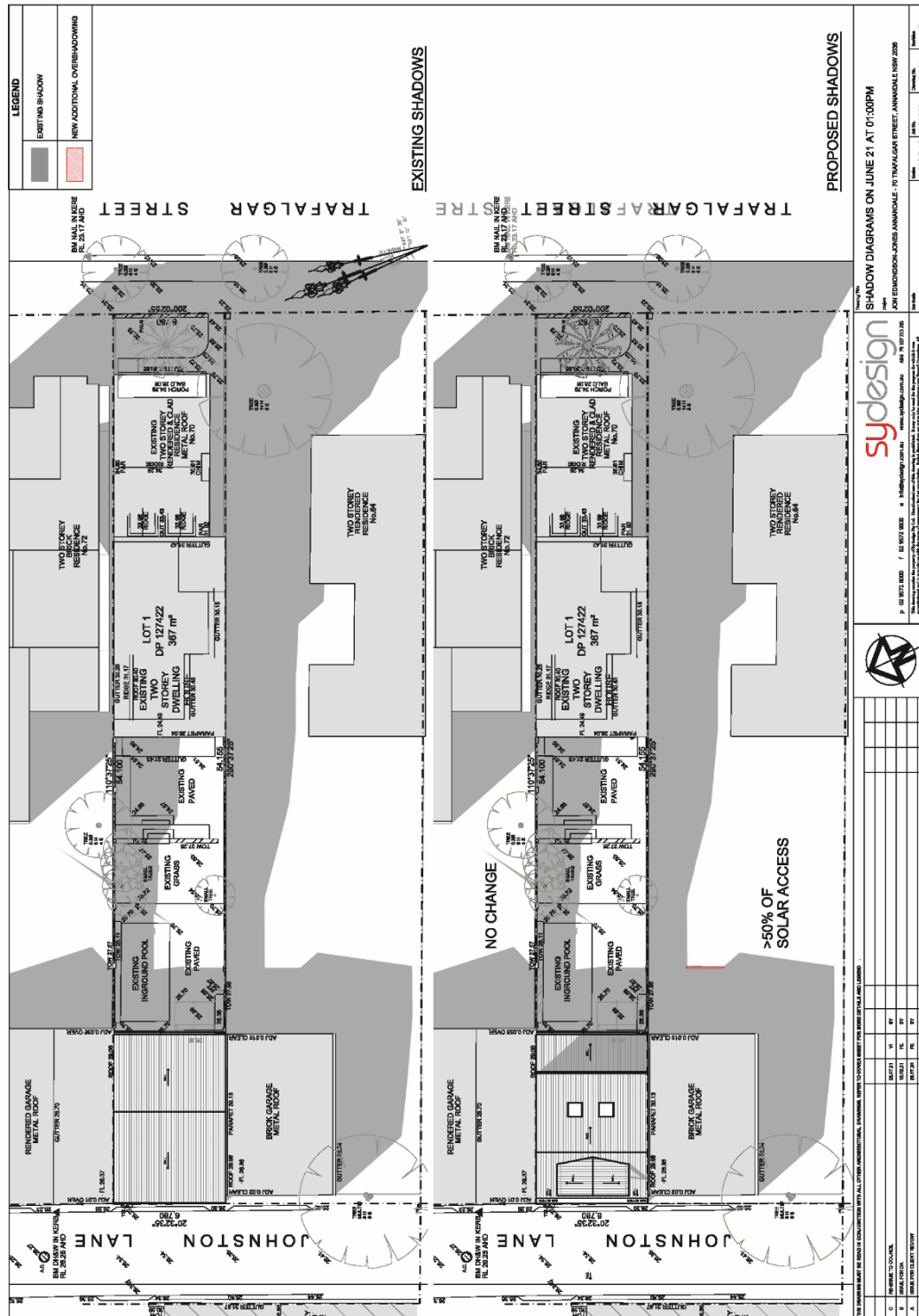


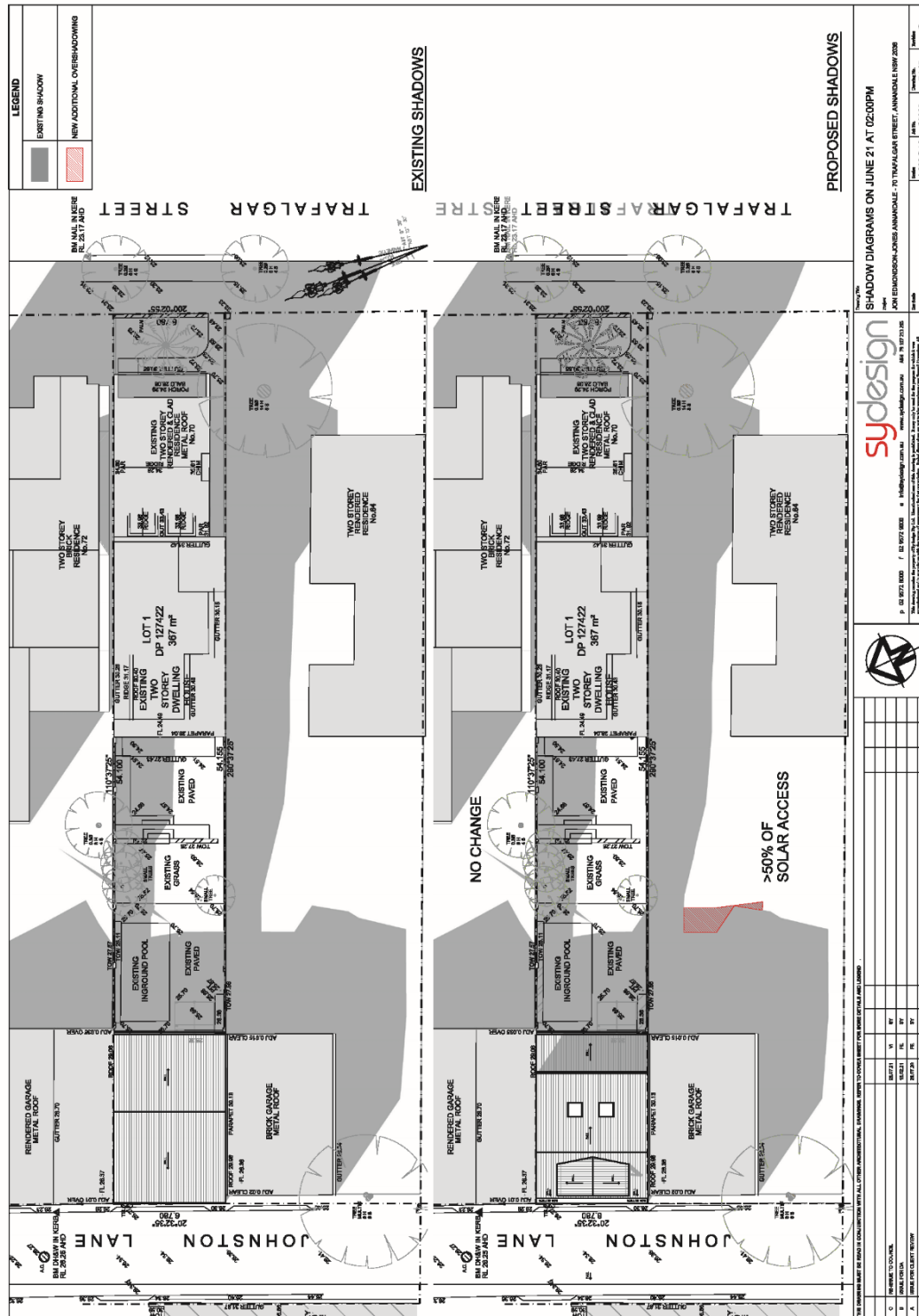


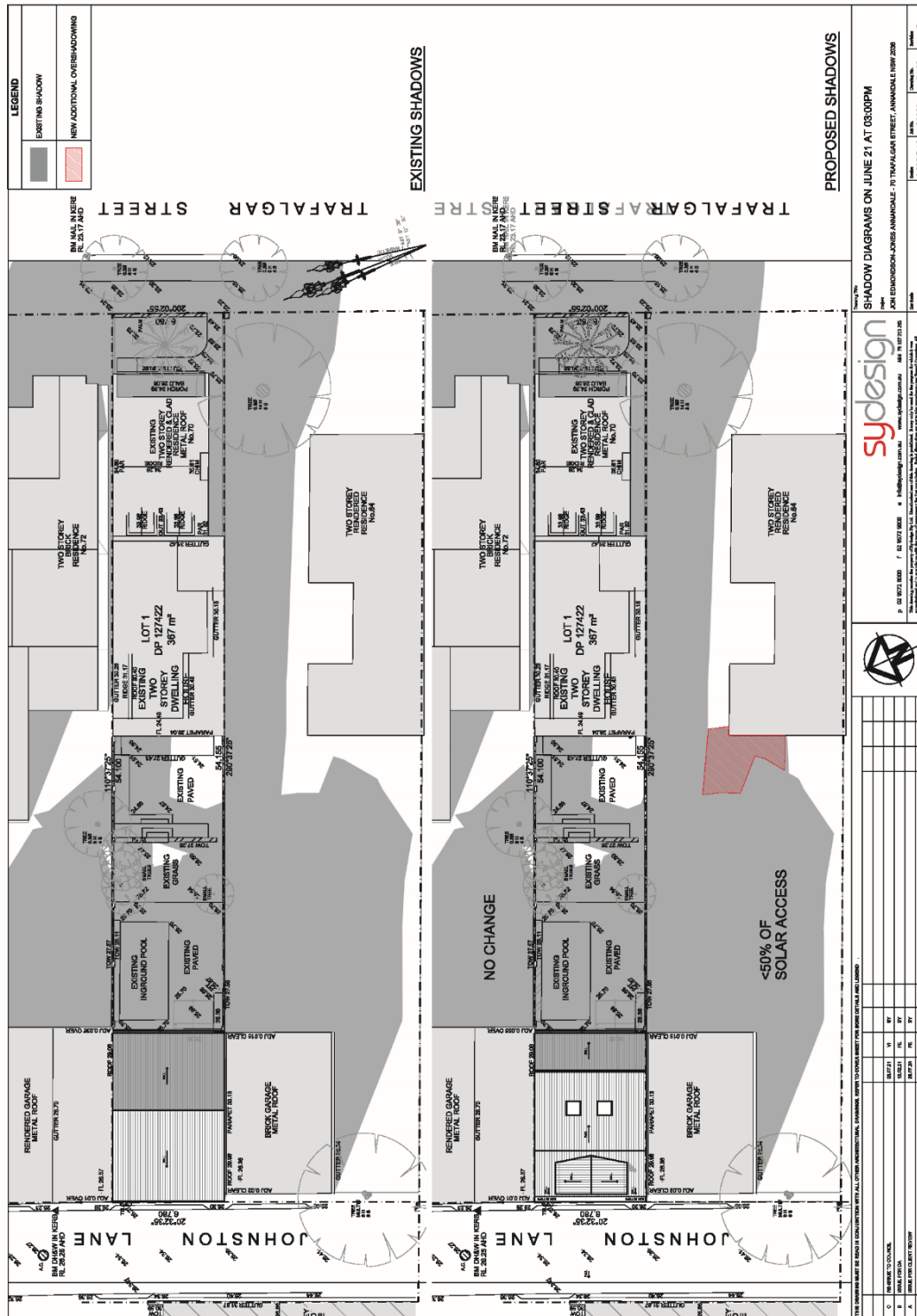












Attachment C- Clause 4.6 Exception to Development Standards

CLAUSE 4.6 SUBMISSION (landscaped area)

for
Proposed alterations and additions to dwelling house

at
70 Trafalgar Street, Annandale

for
Jon Edmondson-Jones

prepared by
John Pagan

Burrell Threlfo Pagan Pty Ltd
TOWN PLANNING CONSULTANTS
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phone: 9818 8333
email: john@btpplan.com.au

March 2021

70 Trafalgar Street, Annandale : Clause 4.6 Submission (landscaped area)

1. INTRODUCTION

This submission accompanies a development application for alterations and additions to the existing house at 70 Trafalgar Street, Annandale, as shown in the drawings 20080 DA00B-DA08B dated 4 February 2021 prepared by Sydesign Pty Ltd. As set out in the Statement of Environmental Effects accompanying the application, the existing landscaped area, which will not be affected by the proposal, is below the minimum of 20% of site area required under *Leichhardt Local Environmental Plan 2013* (the LEP). Because alterations and additions are proposed on a site that does not comply with the development standard for landscaped area, a submission under clause 4.6 of the LEP is required seeking an exception to the standard.

2. LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

2.1 Landscaped area

For residential accommodation in the R1 General Residential zone, clause 4.3A(3)(a) sets a minimum landscaped area (with minimum width 1m) of 20% for a lot more than 235m² in area.

For the site area of 367m² the required landscaped area is 73.4m². The Architect has calculated the existing landscaped area, which will not be affected by the proposal, to be 39.6m² or 10.8% of site area, which does not comply with the standard. The extent of the non-compliance is 33.8m² or 46% of the minimum requirement.

Because the proposed site coverage does not comply with the standard, an exception to the standard is sought under clause 4.6 of the LEP.

2.2 Exception to Development Standard (Landscaped area)

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

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

70 Trafalgar Street, Annandale : Clause 4.6 Submission (landscaped area)

The landscaped area control contained in clause 4.3A of the LEP is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6.

In accordance with the guidelines provided by decisions of the Land and Environment Court, this submission addresses the requirements of clause 4.6 in turn.

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

In the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827, Chief Justice Preston outlined the rationale for development standards and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his decision Preston CJ noted:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The judgment in *Wehbe* identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. Subsequent cases including *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 have confirmed that these ways are equally applicable under the clause 4.6 regime.

The first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Wehbe* at 42 and 43).

The objectives of the landscaped area standard are set out in clause 4.3A:

- (a) *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents*
- (b) *to maintain and encourage a landscaped corridor between adjoining properties*
- (c) *to ensure that development promotes the desired future character of the neighbourhood*
- (d) *to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water*
- (e) *to control site density*
- (f) *to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space*

70 Trafalgar Street, Annandale : Clause 4.6 Submission (landscaped area)

Objective (a) *Provide landscaped areas suitable for substantial tree planting and for the use and enjoyment of residents*

The existing development provides a large open area in the middle of the site that meets Council's requirements for private open space and is suitable for the use and enjoyment of residents as well as containing several trees. In addition there is a landscaped area with trees in the front setback.

Objective (b) *Maintain and encourage a landscaped corridor between adjoining properties*

The existing development provides landscaped areas at the front and middle of the site that are consistent with the existing irregular landscaped corridor that includes adjoining properties.

Objective (c) *Promote the desired future character of the neighbourhood*

The proportion of built form to open area will remain typical of that in the neighbourhood and represents contemporary development compatible with surrounding built form in Johnston Lane and consistent with the relevant desired future character provisions set out in part 2.2.1.5 Trafalgar Street Distinctive Neighbourhood of Leichhardt Development Control Plan 2013.

Objective (d) *Maximise the retention and absorption of drainage water; minimise obstruction to the underground flow of water*

The proposed development will maintain the existing permeable area of the site area at 10.8% and will not affect the underground flow of water.

Objective (e) *Control site density*

This objective is not strictly relevant to the landscaped area standard, but to the extent that the measures are related, the floor space ratio of the proposed development is addressed in a separate submission.

Objective (f) *Limit building footprint to provide adequate landscaped areas and private open space*

The proposed development will not affect the existing building footprint and complies with Council's controls for site coverage and the provision of private open space.

The arguments set out above show that in the circumstances compliance with the development standard is unreasonable and unnecessary because the relevant objectives of the development standard will be achieved by the proposed development despite the numerical non-compliance.

70 Trafalgar Street, Annandale : Clause 4.6 Submission (landscaped area)

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

The following environmental planning grounds are relevant:

- The proposal will not reduce the existing landscaped area.
- In the context (mostly housing of one or two storeys on long relatively narrow lots), the proposal will provide a typical proportion of open area to built form.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will allow good solar access to the subject site and will not unreasonably increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.
- The proposed built form is satisfactory in heritage and streetscape terms.

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

Any proposed development that achieves the objectives of a development standard must also be consistent with the objectives of the standard, as the threshold for consistency is lower than that for achievement. The discussion above in response to clause 4.6(3)(a) has demonstrated that the proposed development will achieve the objectives of the standard; therefore it will also be consistent with those objectives.

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

In relation to the objectives of the R1 zone:

- *to provide for the housing needs of the community*

The proposed alterations and additions to the existing garage/rumpus room will contribute towards meeting the demand for housing in the locality.

- *to provide for a variety of housing types and densities*

By providing additional accommodation, the proposal will contribute towards the variety of available housing types and densities.

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

This objective is not applicable to the proposed development.

- *to improve opportunities to work from home*

The proposed alterations and additions will provide enhanced opportunities to work from home.

70 Trafalgar Street, Annandale : Clause 4.6 Submission (landscaped area)

- *to provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas*

The proposal is designed to be compatible in pattern, orientation and character with the existing and surrounding buildings in Johnston Lane and is consistent with Council's planning controls relating to desired future character.

- *to provide landscaped areas for the use and enjoyment of existing and future residents*

The proposed development maintains the existing large open area in the middle of the site that meets Council's requirements for private open space and is suitable for the use and enjoyment of 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*

This objective is not relevant to the proposal.

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

The proposal will provide an improved standard of housing on the site without material adverse impacts on neighbouring properties.

Concurrence of the Secretary

The concurrence of the Secretary can be assumed by Council. The implications of a single house development not complying with a landscaped area development standard of the Leichhardt LEP are local in scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The landscaped area of the proposed development will not be reduced and is justified as set out above. The variation sought will enhance the utility and amenity of the development, furthering the objectives of the *Environmental Planning and Assessment Act 1979*, without material adverse impacts on neighbouring amenity or the public domain.

3. CONCLUSION

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and with those of the R1 General Residential zone.

John Pagan BTP MPIA
Town Planner

26 March 2021

Burrell Threlfo Pagan Pty Ltd
Town Planning Consultants

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Attachment D – Statement of Heritage Significance

CLAUSE 4.6 SUBMISSION
(floor space ratio)

for
Proposed alterations and additions to dwelling house
(amended plans)

at
70 Trafalgar Street, Annandale

for
Jon Edmondson-Jones

prepared by
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July 2021

70 Trafalgar Street, Annandale (amended plans) : Clause 4.6 Submission (floor space ratio)

1. INTRODUCTION

This submission accompanies an amended proposal for alterations and additions to the existing house at 70 Trafalgar Street, Annandale, as shown in the drawings 20080 DA00C-DA17C dated 23 July 2021 prepared by Sydesign Pty Ltd. Following further investigation by the Applicant and Architect, the existing floor area of the house has been determined to be greater than previously understood. Although the floor area of the proposed addition has been reduced by the amendment, the existing and proposed floor space ratio (FSR) of the buildings on the site will be above the maximum of 0.7:1 allowed under *Leichhardt Local Environmental Plan 2013* (the LEP). Because the buildings as proposed to be extended exceed the development standard for FSR, a submission under clause 4.6 of the LEP is required seeking an exception to the standard.

2. LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

2.1 Floor space ratio

The site is shown edged black on the Floor Space Ratio Map, by reference to which clause 4.4(2B)(a) provides that a lot between 300 and 450 square metres (m²) in area is subject to a maximum floor space ratio (FSR) of 0.7:1. The site area of 367m² allows a gross floor area (GFA) of 256.9m².

The Architect has now calculated the GFA of the existing house (including the area of the attic at the front of the house and the double garage at the rear) to be a total of 267.5 m², which represents a floor space ratio (FSR) of 0.73:1 on the site area of 367m². The proposed addition as amended will increase the GFA of the existing buildings by 35.5m² to 303.0m², which represents an FSR of 0.83:1 and exceeds the standard. The extent of the non-compliance is 46m², a 17.9% variation to the standard. The proposed additional floor area is equivalent to the area of the garage, which would not be assessable as floor area in normal development control practice.

Because the amended proposal does not comply with the development standard for floor space ratio, an exception to the standard is sought under clause 4.6 of the LEP.

2.2 Exception to Development Standard (Floor space ratio)

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

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard and*

70 Trafalgar Street, Annandale (amended plans) : Clause 4.6 Submission (floor space ratio)

- the consent authority is satisfied that
 - (4)(a)(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- the concurrence of the Secretary has been obtained

The FSR control contained in clause 4.4 of the LEP is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6.

In accordance with the guidelines provided by decisions of the Land and Environment Court, this submission addresses the requirements of clause 4.6 in turn.

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

In the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827, Chief Justice Preston outlined the rationale for development standards and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his decision Preston CJ noted:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The judgment in *Wehbe* identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. Subsequent cases including *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 have confirmed that these ways are equally applicable under the clause 4.6 regime.

The first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Wehbe* at 42 and 43).

The objectives of the floor space ratio standard are set out in clause 4.4(1) of the LEP:

- (a) *to ensure that residential accommodation:*
 - (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) *provides a suitable balance between landscaped areas and the built form, and*
 - (iii) *minimises the impact of the bulk and scale of buildings*
- (b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale*

70 Trafalgar Street, Annandale (amended plans) : Clause 4.6 Submission (floor space ratio)

Objective (a)

(i) *Bulk, form and scale compatible with desired future character:*

The proportion of built form to open area will remain typical of that in the neighbourhood and represents contemporary development compatible with surrounding built form in Johnston Lane and consistent with the relevant desired future character provisions set out in part 2.2.1.5 Trafalgar Street Distinctive Neighbourhood of *Leichhardt Development Control Plan 2013*.

(ii) *Balance between landscaped area and built form:*

The proposed development will not affect the existing landscaped area or building footprint and complies with Council's control for site coverage.

(iii) *Impact of bulk and scale:*

The proposal is designed to minimise impacts on streetscape and neighbouring amenity due to bulk and scale, which will be consistent with that surrounding.

Objective (b)

Compatibility of non-residential development with the desired future character of the area in relation to building bulk, form and scale:

Consistent with the second method in *Wehbe*, this objective, relating to non-residential development, is not relevant to the development.

The arguments set out above show that in the circumstances compliance with the development standard is unreasonable and unnecessary because the relevant objectives of the development standard will be achieved by the proposed development despite the numerical non-compliance.

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

The following environmental planning grounds are relevant:

- Most of the amount by which the proposal exceeds the FSR standard (and all of the additional area proposed) is the same as the area of the double garage. In accordance with standard development control practice, this area ought not to be included in assessable floor area (GFA).
- In the context (a cul-de-sac lane of garages, sheds and industrial buildings converted to residential use), the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will allow good solar access to the subject site and will not unreasonably increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.
- The proposed built form is satisfactory in heritage and streetscape terms.

70 Trafalgar Street, Annandale (amended plans) : Clause 4.6 Submission (floor space ratio)

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

Any proposed development that achieves the objectives of a development standard must also be consistent with the objectives of the standard, as the threshold for consistency is lower than that for achievement. The discussion above in response to clause 4.6(3)(a) has demonstrated that the proposed development will achieve the objectives of the standard; therefore it will also be consistent with those objectives.

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

In relation to the objectives of the R1 zone:

- *to provide for the housing needs of the community*

The proposed alterations and additions to the existing garage/rumpus room will contribute towards meeting the demand for housing in the locality.

- *to provide for a variety of housing types and densities*

By providing additional accommodation, the proposal will contribute towards the variety of available housing types and densities.

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

This objective is not applicable to the proposed development.

- *to improve opportunities to work from home*

The proposal will provide enhanced 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*

The proposal is designed to be compatible in pattern, orientation and character with the existing and surrounding buildings in Johnston Lane and is consistent with Council's planning controls relating to desired future character.

- *to provide landscaped areas for the use and enjoyment of existing and future residents*

The proposed development maintains the existing large open area in the middle of the site that is suitable for the use and enjoyment of 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*

This objective is not relevant to the proposal.

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

The proposal will provide an improved standard of housing on the site without material adverse impacts on neighbouring properties.

70 Trafalgar Street, Annandale (amended plans) : Clause 4.6 Submission (floor space ratio)

Concurrence of the Secretary

The concurrence of the Secretary can be assumed by Council. The implications of a single house development not complying with a floor space ratio development standard of the Leichhardt LEP are local in scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. Most of the amount by which the proposal exceeds the FSR standard (and all of the additional area proposed) is the same as the area of the garage, which would not be assessable as floor area in normal development control practice. The non-compliance is justified as set out above. The variation sought will enhance the utility and amenity of the development, furthering the objectives of the *Environmental Planning and Assessment Act 1979*, without material adverse impacts on neighbouring amenity or the public domain.

3. CONCLUSION

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and with those of the R1 General Residential zone.

John Pagan BTP MPIA
Town Planner

28 July 2021