




 DEVELOPMENT ASSESSMENT REPORT				
<b>Application No.</b>	DA/2021/1052			
<b>Address</b>	78 Stanmore Road STANMORE NSW 2048			
<b>Proposal</b>	To demolish part of the premises and carry out ground and first floor alterations and additions to a dwelling house including the construction of a new garage with terrace			
<b>Date of Lodgement</b>	1 November 2021			
<b>Applicant</b>	B and P Architects Pty Ltd			
<b>Owner</b>	Mr Hamish S Graham Mrs Helen L Graham			
<b>Number of Submissions</b>	One (1)			
<b>Value of works</b>	\$1,397,487.00			
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%			
<b>Main Issues</b>	Floor space ratio, residential period building, privacy, private open space, bulk & scale, structural adequacy and shadow diagrams.			
<b>Recommendation</b>	Approved with Conditions			
<b>Attachment A</b>	Recommended conditions of consent			
<b>Attachment B</b>	Plans of proposed development			
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards			
				
<b>LOCALITY MAP</b>				
Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council to demolish part of the premises and carry out ground and first floor alterations and additions to a dwelling house including the construction of a new garage with terrace at 78 Stanmore Road STANMORE NSW 2048. The application was notified to surrounding properties and one (1) submission was received in response to the notification.

The main issues that have arisen from the application include:

- The proposed development exceeds the maximum floor space ratio permitted on the site;
- The proposed external works resulted in unacceptable impacts to the period dwelling;
- The proposed terrace resulted in unacceptable visual privacy impacts to the neighbouring properties;
- The proposed staircase resulted in unacceptable visual bulk and scale impacts; and
- Insufficient information was provided to assess the structural adequacy of the existing development and the overshadowing impacts of the proposed development.

Amended plans were submitted which adequately addressed the above concerns, with the exception of the floor space ratio variation. A Clause 4.6 Variation Request was submitted with the application in support of the non-compliant floor space ratio which is assessed throughout this report and considered acceptable. The amended plans were not required to be re-notified.

## 2. Proposal

The proposed development seeks to demolish part of the premises and carry out ground and first floor alterations and additions to the dwelling house including:

- Demolition works;
- New external works including stairs, doors, windows, walls and balustrades;
- Enlargement of the existing driveway crossing to Alma Avenue to accommodate a double garage with an associated elevated terrace;
- Internal reconfiguration of the ground and first floor;
- Provision of two (2) skylights and 18 solar panels; and
- Associated landscaping works.

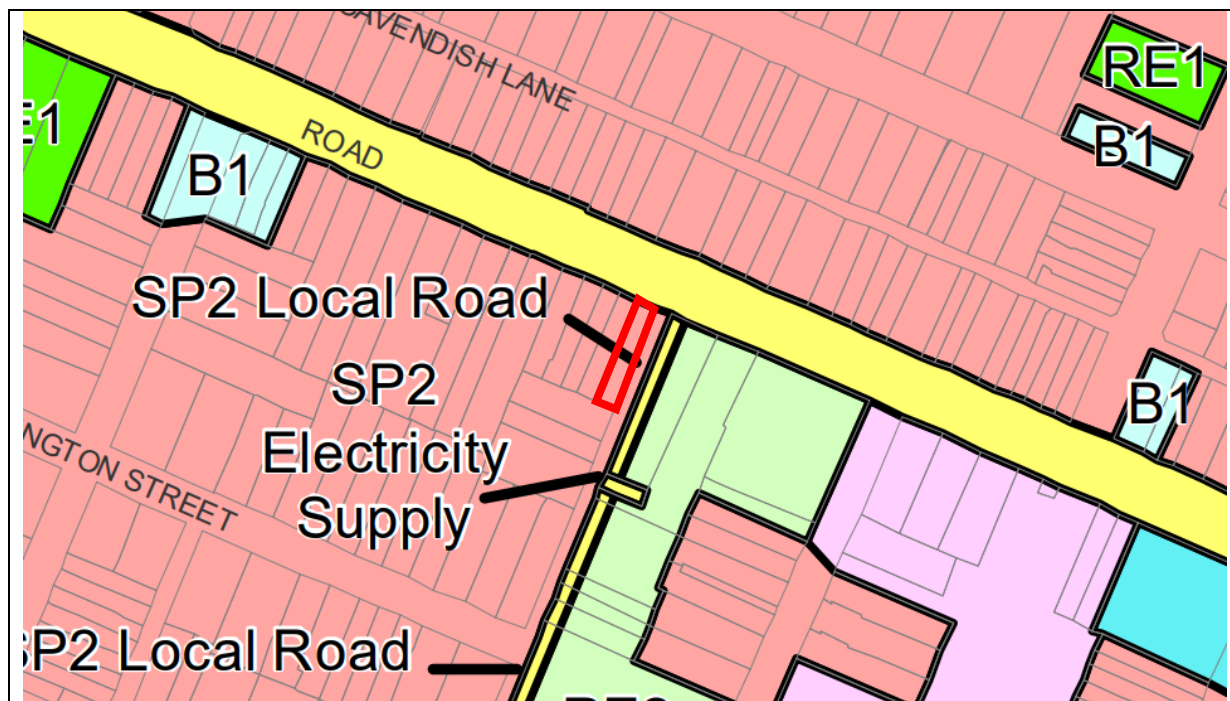
## 3. Site Description

The subject site is located on the south western corner of Stanmore Road and Alma Avenue, Stanmore. The site consists of one (1) allotment, is rectangular in shape with a total area of 246.3sqm and is legally described as Lot 5 DP238905.

The site has a frontage to Stanmore Road of 7.085 metres and a secondary frontage of approximately 33.89 metres to Alma Avenue.

The site supports a two (2) storey dwelling house. The adjoining property supports a two (2) storey dwelling house of a comparable bulk and scale.

The subject site is not listed as a heritage item or located within a heritage conservation area.



#### 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
BA No.2/91	New Garage	27 <sup>th</sup> February 1991

##### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
04/03/2022	Request for additional information issued to applicant (detailed below)
13/04/2022	Amended plans submitted to Council

A request for additional information was issued to the applicant on 4 March 2022 which required the following:

- The following be undertaken to retain the significant period features of the dwelling:
  - New infill windows to the kitchen are required to be deleted and the existing windows maintained;

- The masonry infill to the side entrance off Alma Avenue is required to be set in behind the arch detailing and must be reversible. It is suggested that a more lightweight material be explored, that is easily read as contemporary and that is recessive in its context of the elevation;
  - Removal of new window to the new toilet between bedroom 1 & 2;
  - Deletion of new window to bedroom 5 & associated screening;
  - Changes to bedroom 5 rear wall – any changes proposed should only be to the western end of the room and not near the corner facing Alma Avenue;
- The elevated terrace be amended to protect the privacy of the adjoining properties;
  - Additional landscaping be provided within the private open space;
  - The external staircase be redesigned to be a simple structure with a sloped skillion form up the staircase;
  - A step be maintained between the main hallway & dining room down to the new kitchen and living room;
  - A Structural Adequacy Report be submitted which demonstrates that the proposed excavation works will not result in any impacts to the structural adequacy of the dwelling; and
  - Amended shadow diagrams be submitted to allow an adequate assessment of the proposed overshadowing impacts.

Amended plans were submitted to Council on 13 April 2022 which adequately addressed the above, subject to the imposition of appropriate conditions.

## 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 (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

#### 5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

##### Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

*“(a) it has considered whether the land is contaminated, and*

*(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

*(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

*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) State Environmental Planning Policy (Transport and Infrastructure) 2021*

#### Chapter 2 Infrastructure

##### Development with frontage to classified road

In considering Section 2.118(2) of *SEPP (Transport and Infrastructure) 2021*:

The site fronts Stanmore Road which is a Classified Road. Vehicular access to the land is provided by Alma Avenue and this is considered practical and safe. The design will not adversely impact the safety, efficiency, and ongoing operation of the classified road.

The impacts of traffic noise or vehicle emissions have been considered and the development is not of a type that is sensitive/suitable measures, to ameliorate potential traffic noise or vehicle emissions have been included within the development

*5(a)(iv) State Environmental Planning Policy (Biodiversity and Conservation) 2021*

#### Chapter 2 Vegetation in non-rural areas

The protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application does not seek the removal of vegetation from within the site or on Council land. The application was referred to Council's Tree Management Officer who raised no objection to the proposed development, subject to the imposition of a condition regarding the protection of trees on public land.

Overall, the proposal is considered acceptable with regard to the SEPP subject to the imposition of conditions, which have been included in the recommendation of this report.

Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

5(a)(v) *Marrickville Local Environment Plan 2011 (MLEP 2011)*

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

- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Earthworks
- Clause 6.5 - Development in areas subject to aircraft noise

The following table provides an assessment of the application against the relevant standards contained within MLEP 2011:

**Part 2 – Permitted of prohibited development**

Zone	Proposed Use	Permitted with consent
Clause 2.3 R2 – Low Density Residential	<b>dwelling house</b> means a building containing only one dwelling.	Yes
Zone Objectives		Consistent?
Clause 2.3 – Zone Objectives	The development meets the objectives of the zone	Yes
Control	Proposed	Compliance
Clause 2.7 Demolition requires development consent	The proposal satisfies the clause as follows: <ul style="list-style-type: none"> <li>• Demolition works are proposed, which are permissible with consent; and</li> <li>• Standard conditions are recommended to manage impacts which may arise during demolition.</li> </ul>	Yes, subject to condition

**Part 4 – Principal development standards**

Control	Proposed		Compliance
Clause 4.3 Height of building	Maximum	9.5m	Yes
	Proposed	No change to the existing building height proposed (10.82m)	
Clause 4.4 Floor space ratio (FSR)	Maximum	0.9:1 or 221.67sqm	Refer to Cl4.6 Discussion below
	Proposed	1.138:1 or 280.4sqm	
	Variation	34.1sqm or 15.38%	
Clause 4.5 Calculation of FSR and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the clause.		Yes

**Part 5 – Miscellaneous provisions**

Control	Proposed	Compliance
Clause 5.10 – Heritage conservation	The subject site is not listed as a heritage item or located within a heritage conservation area.	Yes

**Part 6 – Additional local provisions**

Control	Proposed	Compliance
Clause 6.2 Earthworks	The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.	Yes
Clause 6.5 Aircraft noise	The site is located within the ANEF 20-25 contour. The proposal is capable of satisfying this clause as follows:  A condition has been included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions Cl. 6.5 MLEP 2011 and Part 2.6 of the MDCP 2011, respectively.	Yes (subject to condition)

### 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 4.4 - Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of the *Marrickville Local Environmental Plan 2011* by 15.38% (34.1sqm).

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

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

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Marrickville Local Environmental Plan 2011*. In justifying the proposed contravention of the development standard which is summarised as follows:

- A single dwelling house is maintained on an existing low density residential allotment of land;
- The changes and the development generally are not inconsistent with the relevant objectives of the floor space ratio standard;
- Most additional gross floor area is within the garage level and its additional car parking space, storage and circulation corridor;
- The site's primary streetscape presentation to Stanmore Road is not altered and existing traditionally designed openings at both floor levels to Alma Avenue are renewed. The rear extension generally maintains existing building alignments and the overall height, bulk and scale of the built form is not visible greater than existing;
- The proposed departure is a function of the land size, not the size of the built form;
- Although it departs from the standard, the altered built form is consistent with the locality's desired future character and the departure does not result in any adverse environmental impacts to neighbouring properties or the surrounding public domain; and
- The development provides for an appropriate environmental planning outcome and is not an overdevelopment of the site.

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable/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 R2 zone, in accordance with Clause 4.6(4)(a)(ii) of the *Marrickville Local Environmental Plan 2011* for the following reasons:

- The proposed development provides additional gross floor area to accommodate the housing needs of the community;



- The proposed development supplements the existing housing type and allows for additional housing density; and
- The proposed development will not restrict land uses that provide facilities or services that meet the day to day needs of residents.

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 *Marrickville Local Environmental Plan 2011* for the following reasons:

- The proposed development results in a building density and scale that is generally consistent with the neighbouring dwellings and has been designed to be consistent with the desired future character of the area; and
- The proposed development has been designed to not result in any unreasonable environmental impacts on the adjoining properties and the public domain.

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 *Marrickville Local Environmental Plan 2011*. 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.

**5(b) Draft Environmental Planning Instruments**

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

<b>Draft Environmental Planning Instruments</b>	<b>Compliance</b>
Draft State Environmental Planning Policy (Environment) 2018	Yes
Draft State Environmental Planning Policy (Remediation of Land) 2018	Yes
Draft State Environmental Planning Policy (Environment) 2017	Yes

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

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

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

**5(d) Development Control Plans**

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

**Part 2 – Generic Provisions**

Control	Proposed	Compliance
Part 2.1 – Urban Design	<ul style="list-style-type: none"> <li>• The proposal does not impact the definition between the public and private domain and is appropriate for the character of the locality given its form, massing, siting and detailing; and</li> <li>• The proposal preserves the existing character of the streetscape, as the proposed additions are consistent with and complement the street elevation of the existing dwelling and surrounding properties.</li> </ul>	Yes
Part 2.6 – Acoustic and Visual Privacy	<ul style="list-style-type: none"> <li>• The windows proposed predominantly face into the site or are adequately offset from adjoining windows, thereby protecting existing privacy levels for surrounding occupiers.</li> <li>• Where appropriate, planting has been provided to mitigate any overlooking impacts to the neighbouring properties.</li> </ul>	Yes
Part 2.7 – Solar Access and Overshadowing	<ul style="list-style-type: none"> <li>• The proposed development generally maintains the solar access to the rear private open space and windows to habitable rooms of the adjoining properties;</li> <li>• At least one habitable room of the dwelling has a window having an area not less than 15% of the floor area of the room, positioned within 30 degrees east and 20 degrees west of true north and will allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9:00am and 3:00pm on 21 June; and</li> <li>• The private open space provided for the dwelling house receives a minimum two hours of direct sunlight over 50% of its finished surface between 9.00am and 3.00pm on 21 June.</li> </ul>	Yes
Part 2.9 – Community Safety	<ul style="list-style-type: none"> <li>• The principal entrance to the dwelling house is visible from the street;</li> <li>• The dwelling house has been designed to overlook the street; and</li> <li>• The entrance to the dwelling house is well lit.</li> </ul>	Yes
Part 2.10 – Parking	Two (2) parking spaces are proposed.	Yes

Part 2.18 – Landscaping and Open Spaces	<ul style="list-style-type: none"> <li>• The entire front setback is to consist of pervious landscaping with the exception of the pathway and driveway;</li> <li>• The Landscape Plan identifies that a minimum of 536.sqm, being 21.7% of the total site area, with no dimension being less than 3 metres is to be retained as private open space; and</li> <li>• Less than 50% of the private open space is to be maintained as pervious landscaping.</li> </ul>	No – see discussion below
Part 2.21 – Site Facilities and Waste Management	<ul style="list-style-type: none"> <li>• The application was accompanied by a waste management plan in accordance with the Part; and</li> <li>• Standard conditions are recommended to ensure the appropriate management of waste during the construction of the proposal.</li> </ul>	Yes
Part 2.25 – Stormwater Management	Conditions are recommended from Council’s Engineer to ensure the appropriate management of stormwater.	Yes, subject to conditions

Consideration of non-compliances – Part 2.18 – Landscaping and Open Space

The proposal does not comply with the requirements of control C12 within Part 2.18 of the Marrickville Development Control Plan 2011. The relevant objectives to consider in relation to the variation are contained within Part 2.18.1 of the Marrickville Development Control Plan 2011. In considering a variation, it is considered that the proposed development satisfies the objectives of the control in that it:

- Conforms to and complements the character of the dwelling house and surrounding area;
- Provides adequate outdoor recreation space;
- Minimises the extent of hard paved areas; and
- Acts as an extension of the living area and receives adequate sunlight.

**Part 4 – Low Density Residential Development**

<b>Control</b>	<b>Assessment</b>	<b>Compliance</b>
Part 4.1.4 – Good Urban Design Practice	The height, bulk and scale of the development complement existing developments in the street and the architectural style of the proposal is in keeping with the character of the area.	Yes

<p>Part 4.1.5 – Streetscape and Design</p>	<ul style="list-style-type: none"> <li>• The development complements the uniformity and visual cohesiveness of the bulk, scale and height of the existing streetscape;</li> <li>• The proposal is a contemporary design that complements and/or embellishes the character of the area;</li> <li>• The dwelling house addresses the principal street frontage and are orientated to complement the existing pattern of development found in the street;</li> <li>• The architectural treatment of the façade interprets and translates positive characteristics in the locality.</li> </ul>	<p>Yes</p>
<p>Part 4.1.6 – Built form and character</p> <p><u>Side setbacks</u></p> <ul style="list-style-type: none"> <li>• Lot width &lt;8m – on merit</li> </ul> <p><u>Rear setback</u></p> <ul style="list-style-type: none"> <li>• On merit</li> </ul> <p><u>Site coverage</u></p> <p>On merit (0-300m<sup>2</sup> allotments)</p>	<ul style="list-style-type: none"> <li>• The existing front setback of the dwelling is to remain unaltered by the proposal;</li> <li>• The side setbacks proposed are considered satisfactory, as the proposal has an acceptable impact on adjoining properties in terms of overshadowing, visual bulk and privacy. In addition, the proposed side setbacks are consistent with the established setback pattern of the street;</li> <li>• The proposed ground and first floor rear setbacks are considered appropriate, as they will not create adverse impacts on adjoining properties in terms of visual bulk, overshadowing or privacy; and</li> <li>• The proposal seeks to increase the existing site coverage by a minor amount. The overall site coverage of the development is considered acceptable, as it is consistent with the pattern development of the street and will have an acceptable impact on adjoining properties.</li> </ul>	<p>Yes</p>
<p>Part 4.1.7 – Car Parking</p>	<ul style="list-style-type: none"> <li>• The garage complies with the design requirements and minimum dimension for car parking within Part 2.10 of MDCP 2011;</li> <li>• The garage is located to the rear of the site and is safely and conveniently located for use;</li> <li>• The design of the garage is appropriate to the dwelling house and the presentation of the garage to the laneway is consistent in height and form with other approved development in the laneway; and</li> <li>• The location of the driveway is suitable within the laneway and will not impact traffic or parking.</li> </ul>	<p>Yes</p>

<p>Part 4.1.11 – Additional controls for residential period dwellings</p>	<ul style="list-style-type: none"> <li>• The proposal retains the facade and main external body of the period building visible from the street;</li> <li>• The proposal accommodates contemporary additions and alterations while retaining the significant components of the period building;</li> <li>• The alterations and additions at the rear and the side and above the roof line, are subordinate to the main body of the period dwelling and will not be visible from the street; and</li> <li>• Existing significant period features at the front have been retained and will be reinstated.</li> </ul>	<p>Yes</p>
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**Part 9 – Strategic Context**

Control	Assessment	Compliance
<p>Part 9.9 – Newington (Precinct 9)</p>	<ul style="list-style-type: none"> <li>• The proposal protects the existing period dwelling on the site; and</li> <li>• The proposal has been designed to complement and improve the existing dwelling when viewed from the streetscape.</li> </ul>	<p>Yes</p>

**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 the Community Engagement Framework for a period of 14 days to surrounding properties.

One (1) submission was received in response to the notification which raised the following concern that is discussed below:

Issue: Concern was raised that the proposed development would impact a registered right of foot way used by 80 Stanmore Road, Stanmore

Comment: Advice was obtained from Council’s General Counsel who confirmed that no easement of the kind has ever existed on the title and as such, the proposed development

can be assessed with the view that the right of footway is not an impediment to the development on the land.

#### 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:

- Engineer – No objection raised; conditions provided; and
- Tree Management – No objection raised; conditions provided.

#### 6(b) External

The application was referred to the following external bodies:

- Ausgrid – No objection raised; conditions provided.

## 7. Section 7.11 Contributions/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 \$13,974.87 would be required for the development under Marrickville 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 *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

The development will not result in any significant impacts on the amenity of the adjoining 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 4.4 of the *Marrickville Local Environmental Plan 2011*. 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/2021/1052 for To demolish part of the premises and carry out ground and first floor alterations and additions to a dwelling house including the construction of a new garage with terrace at 78 Stanmore Road, Stanmore subject to the conditions listed in Attachment A below.

**Attachment A – Recommended conditions of consent**

**Attachment A – Recommended 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
2102-P-01 Rev A	Basement Plan	18/10/2022	benn and penna architects
2102-P-02 Rev C	Ground Floor Plan	12/04/2022	benn and penna architects
2102-P-03 Rev C	Level 1 Plan	12/04/2022	benn and penna architects
2102-P-04 Rev C	Roof Plan	12/04/2022	benn and penna architects
2102-P-05 Rev C	East Elevations	12/04/2022	benn and penna architects
2102-P-06 Rev C	West Elevations	12/04/2022	benn and penna architects
2102-P-07 Rev C	North + South Elevations	12/04/2022	benn and penna architects
2102-P-08 Rev A	Section A	18/10/2022	benn and penna architects
2102-P-09 Rev C	Section B	12/04/2022	benn and penna architects
2102-X-02 Rev A	Materials & Finishes Schedule	18/10/2022	benn and penna architects
2102-X-04 Rev A	Driveway Details	18/10/2022	benn and penna architects
A427761	BASIX Certificate	07/10/2021	benn and penna architects

As amended by the conditions of consent.



**FEES****2. 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.

**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 *Marrickville Section 94/94A Contributions Plan 2014*.

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\*:**

\$13,974.87

**\*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. 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.

<b>Security Deposit:</b>	\$8,432.00
<b>Inspection Fee:</b>	\$241.50

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

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

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

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

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

**GENERAL CONDITIONS****5. Tree Protection**

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

**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. 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. Overhead Powerlines

Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, [www.ausgrid.com.au](http://www.ausgrid.com.au). It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

"Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."

## **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 all the adjoining property 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 Neighbours 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.

**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. 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. 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;

- b. 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;
- c. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm. The major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- e. 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;
- f. As there is no overland flow/flood path available from the central courtyards to the Alma Avenue 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 150mm 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.
- g. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- h. No nuisance or concentration of flows to other properties;
- i. 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;
- j. A Silt Arrestor stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- k. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- l. 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 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- m. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; and
- n. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

**17. Public Domain Works – Prior to Construction Certificate**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The construction of a light duty vehicular crossing to the vehicular access location and removal of all redundant vehicular crossings to the site

All works must be completed prior to the issue of an Occupation Certificate.

**18. Alignment Levels – Rear Lane**

The internal vehicle hardstand area shall be redesigned such that the level at the boundary shall match the invert level of the adjacent gutter plus 110mm at both sides of the vehicle entry. This will require the internal garage slab or hard stand area to be adjusted locally at the boundary to ensure that it matches the above Alignment Levels. Amended plans shall be submitted to and approved by Council before the issue of the Construction Certificate.

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.

**19. Parking Facilities - Domestic**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with 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. A minimum of 2200mm 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;
- b. 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;
- c. 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;
- d. 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; and

- e. The external form and height of the approved structures must not be altered from the approved plans.

#### **20. 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.

#### **21. 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.

#### **22. 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*

#### **23. 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**



**24. 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.

**25. 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.

**PRIOR TO OCCUPATION CERTIFICATE****26. 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. A light duty concrete vehicle crossing at the vehicular access location; and
- b. 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”.

**27. 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.

**28. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

**29. 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.

**30. 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.

**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.

#### **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.

#### **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.

#### **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.

#### **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*.

**Lead-based Paint**

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

**Dial before you dig**

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

**Useful Contacts**

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

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

**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:

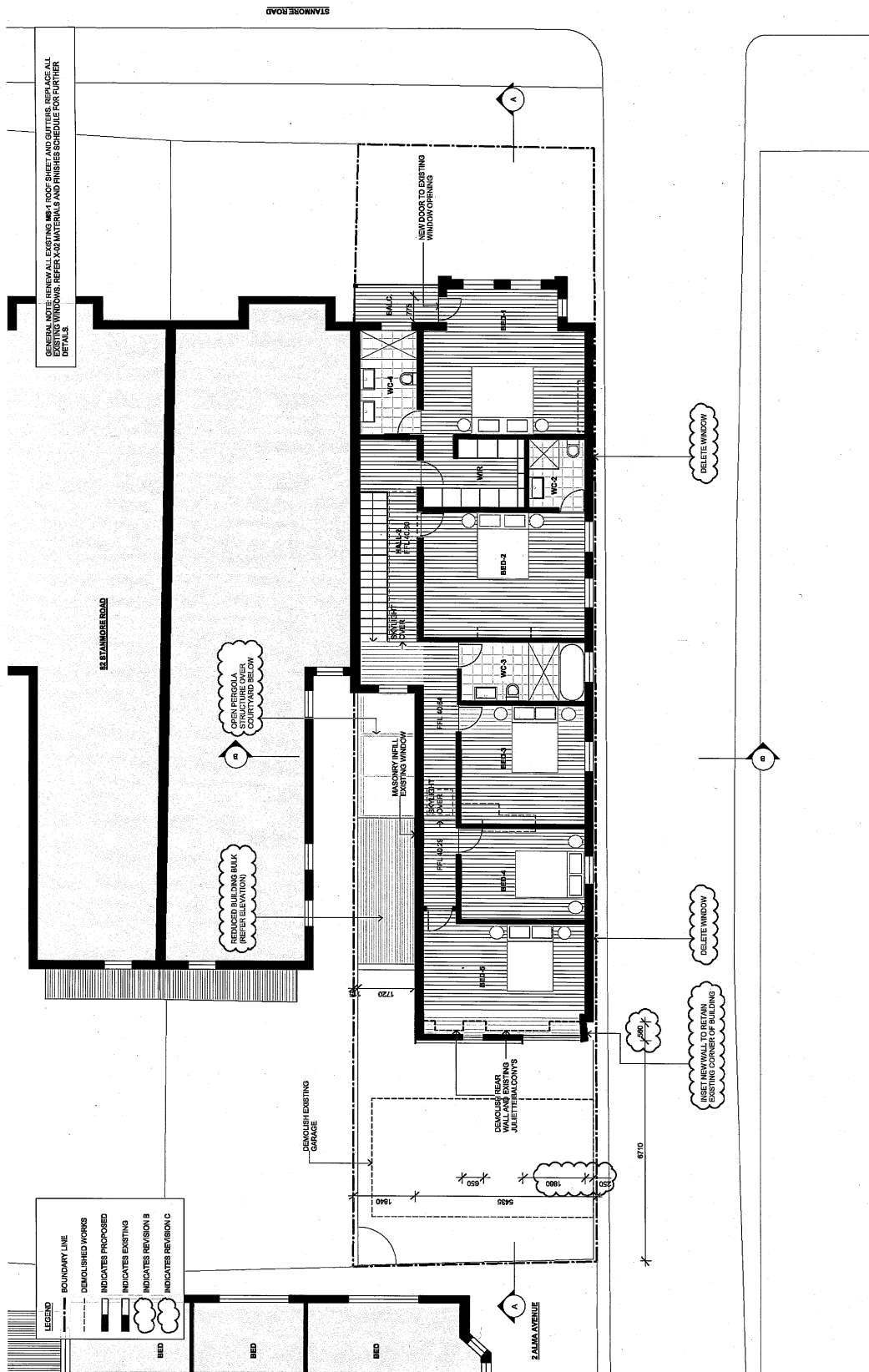
- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing 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.









GENERAL NOTE: REPAIR ALL EXISTING MBS 4 ROOF SHEET AND GUTTERS. REPAIR ALL EXISTING WINDOWS. REFER TO WATERING AND FINISHES SCHEDULE FOR FURTHER DETAILS.

**LEGEND**

- BOUNDARY LINE
- DEMOLISHED WORKS
- INDICATES PROPOSED
- INDICATES EXISTING
- INDICATES REVISION B
- INDICATES REVISION C

**PROPOSED PLAN - FIRST FLOOR**

CLIENT: HELENE HANISH GRAHAM

PROJECT: 75 STANMORE RD STANMORE

SCALE: 1:100 @ A3

REVISION C

REVISIONS

A	18.10.2021	DEVELOPMENT APPLICATION
B	18.03.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
C	12.04.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
D		
E		

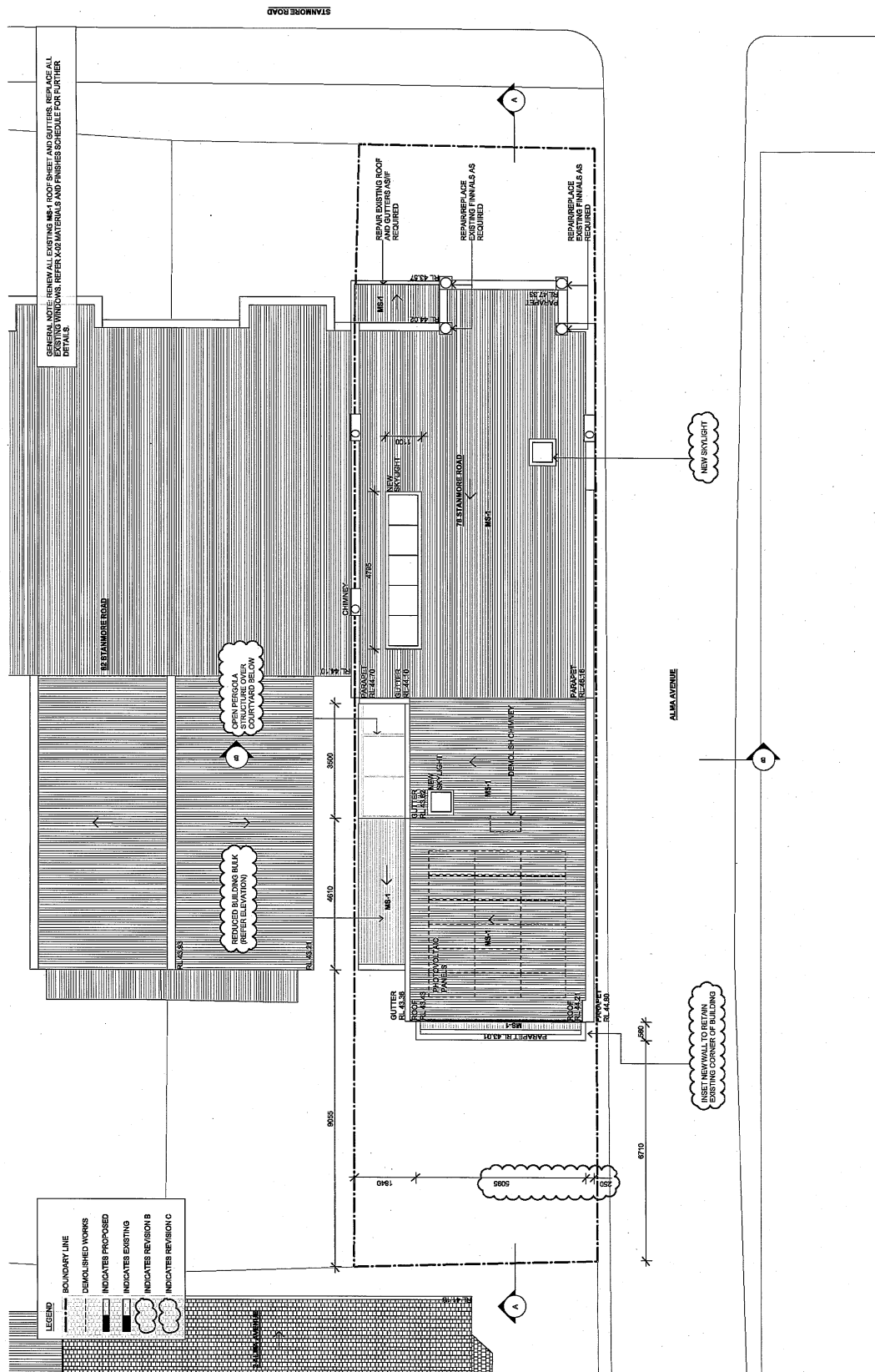
LEGEND

AC	AIR CONDITIONING
BR-1	BRICK (PAINTED)
BR-2	BRICK (UNPAINTED)
BR-3	BLOCKWORK MASONRY
DB-1	DOWNPIPE
DB-2	DOWNPIPE (CLEAR)
GC-2	GLAZING (FROSTED)
GC-3	GLAZING (CLEAR)
MS-2	METAL SHEET CLADDING
SP-1	STONE PAVING
TC-1	TIMBER CLADDING

**Benn + Penna**

Level 1, 123 Harris St.  
Pymont NSW 2009

+61 2 9519 9900  
info@bennandpenna.com  
www.bennandpenna.com



**2102-P-04**

PROPOSED PLAN - ROOF

CLIENT: HERRA HANISH (GRAMA)

PROJECT: 75 STAMMORE ROAD

SCALE: 1:100 @ A3

REVISION C

REVISIONS

A	18.10.2021	DEVELOPMENT APPLICATION
B	18.03.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
C	12.07.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
D		
E		

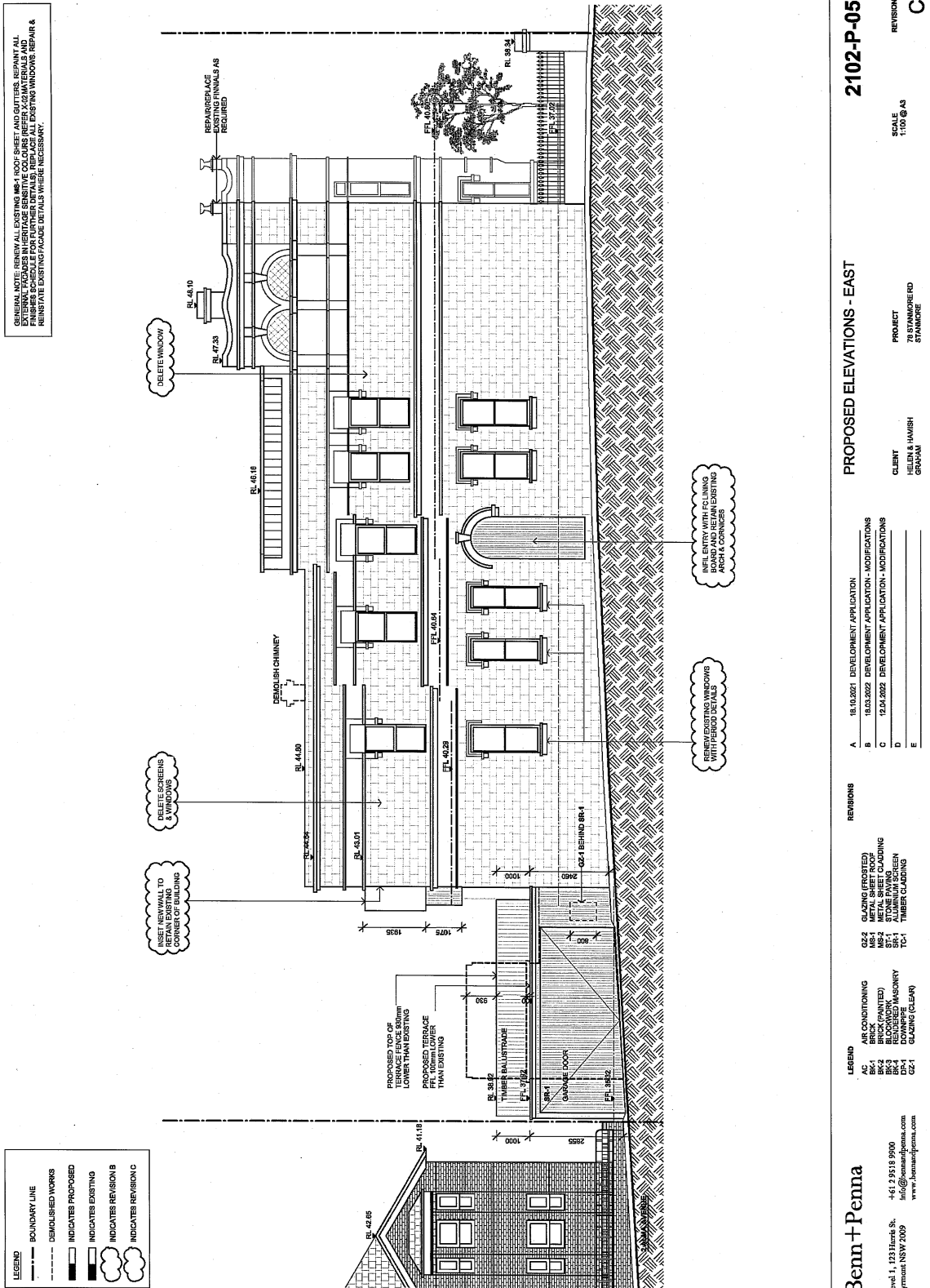
LEGEND

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BR-3	BLOCKWORK
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DB-199	DOWNPIPE
DB-200	DOWNPIPE

**Benn + Penna**

Level 1, 123 Harris St.  
Pymont NSW 2009

+61 2 9519 9900  
info@benn+penna.com  
www.benn+penna.com



GENERAL NOTE: CHECK ALL EXISTING MS&A ROOF SHEET AND CUTTERS. REPAIR/REPLACE ALL EXTERNAL FACADES IN HERITAGE SENSITIVE COLOURS (REFER X-02 MATERIALS AND FINISHERS SCHEDULE FOR FURTHER DETAILS). REPLACE ALL EXISTING WINDOWS REPAIR & RESTORE EXISTING FACADE DETAILS WHERE NECESSARY.

**LEGEND**

- BOUNDARY LINE
- - - - - DEMOLISHED WORKS
- ▬ INDICATES PROPOSED
- ▬ INDICATES EXISTING
- ▬ INDICATES REVISION B
- ▬ INDICATES REVISION C

**PROPOSED ELEVATIONS - EAST**

2102-P-05

SCALE 1:100 @ A3

REVISION C

CLIENT HELEN & HARISH GRAYAN

PROJECT 78 STAMBOLED STAMBOLED

REVISIONS

REVISIONS	DATE	DESCRIPTION
A	18.10.2021	DEVELOPMENT APPLICATION
B	18.03.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
C	12.04.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
D		
E		

LEGEND

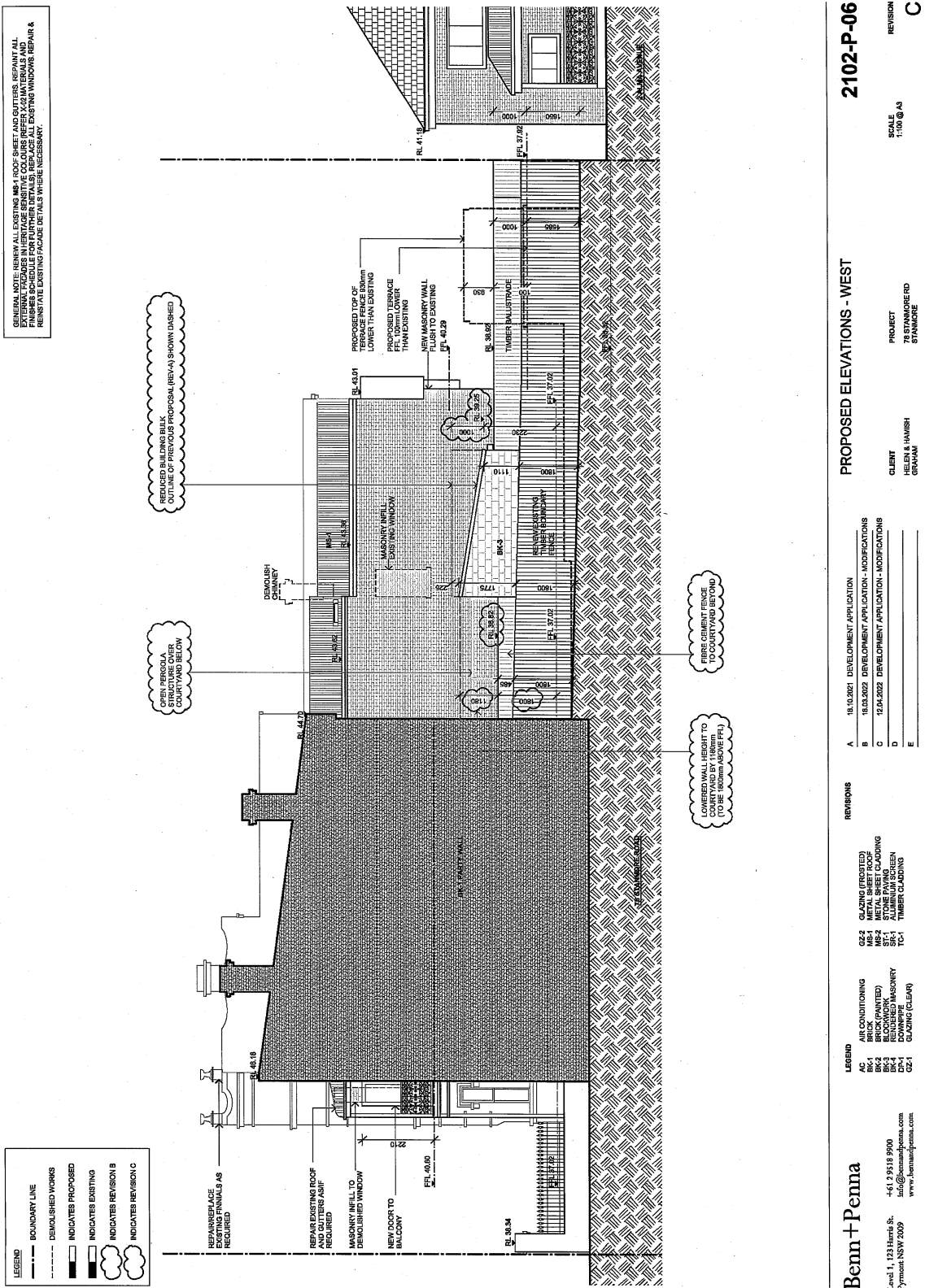
LEGEND	DESCRIPTION
GS-2	GLAZING (FROSTED)
MS-2	METAL SHEET CLADDING
SP-1	STONE PAVING
TC-1	TIMBER CLADDING
AC	AIR CONDITIONING
BR-2	BRICK (PAINTED)
BR-3	BLOCKWORK MASONRY
DP-4	DOWNPIPE
GS-1	GLAZING (CLEAN)

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Pymont NSW 2009

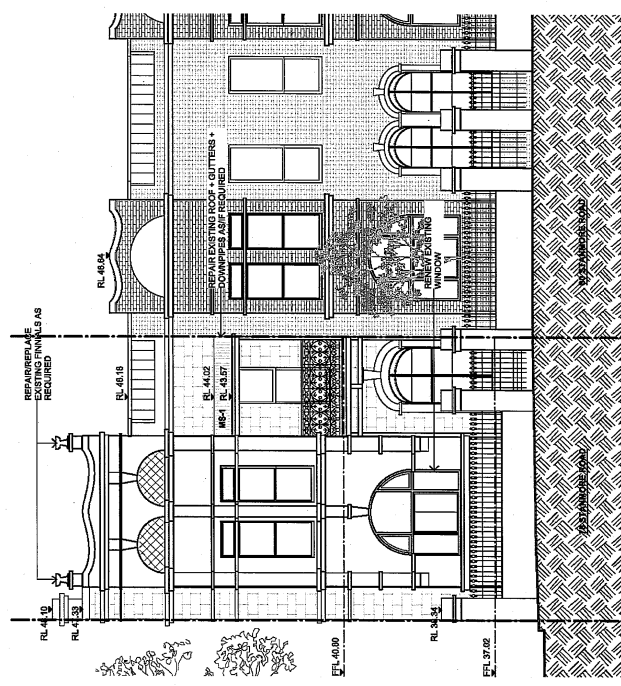
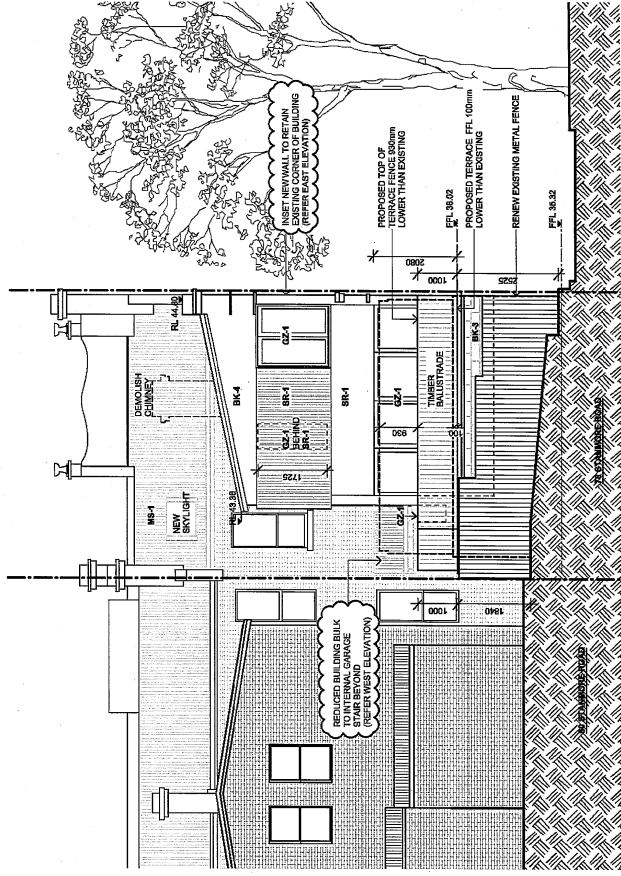
+61 2 9518 9900  
info@benn+penna.com  
www.benn+penna.com





GENERAL NOTE: REPAIR ALL EXISTING MS-4, MS-6, SKEW AND GUTTERS. REPAIR ALL EXTERNAL PARADES IN HERITAGE SENSITIVE COLOURS (REFER X-222 MATERIALS AND FINISHES SCHEDULE FOR FURTHER DETAILS). REPLACE ALL EXISTING WINDOWS. REPAIR & REFINISH EXISTING PORCH DETAILS WHERE NECESSARY.

**LEGEND**  
 - - - BOUNDARY LINE  
 - - - DEMOLISHED WORKS  
 - - - INDICATES PROPOSED  
 - - - INDICATES EXISTING  
 - - - INDICATES REVISION B  
 - - - INDICATES REVISION C



SOUTH ELEVATION

NORTH ELEVATION

**Benn + Penna**  
 Level 1, 123 Harris St. +61 2 9518 9900  
 Pymont NSW 2009 info@benn+penna.com www.benn+penna.com

**PROPOSED ELEVATIONS - NORTH + SOUTH**

**2102-P-07**

REVISIONS

A	18.10.2021	DEVELOPMENT APPLICATION
B	19.03.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
C	12.07.2022	DEVELOPMENT APPLICATION - MODIFICATIONS
D		
E		

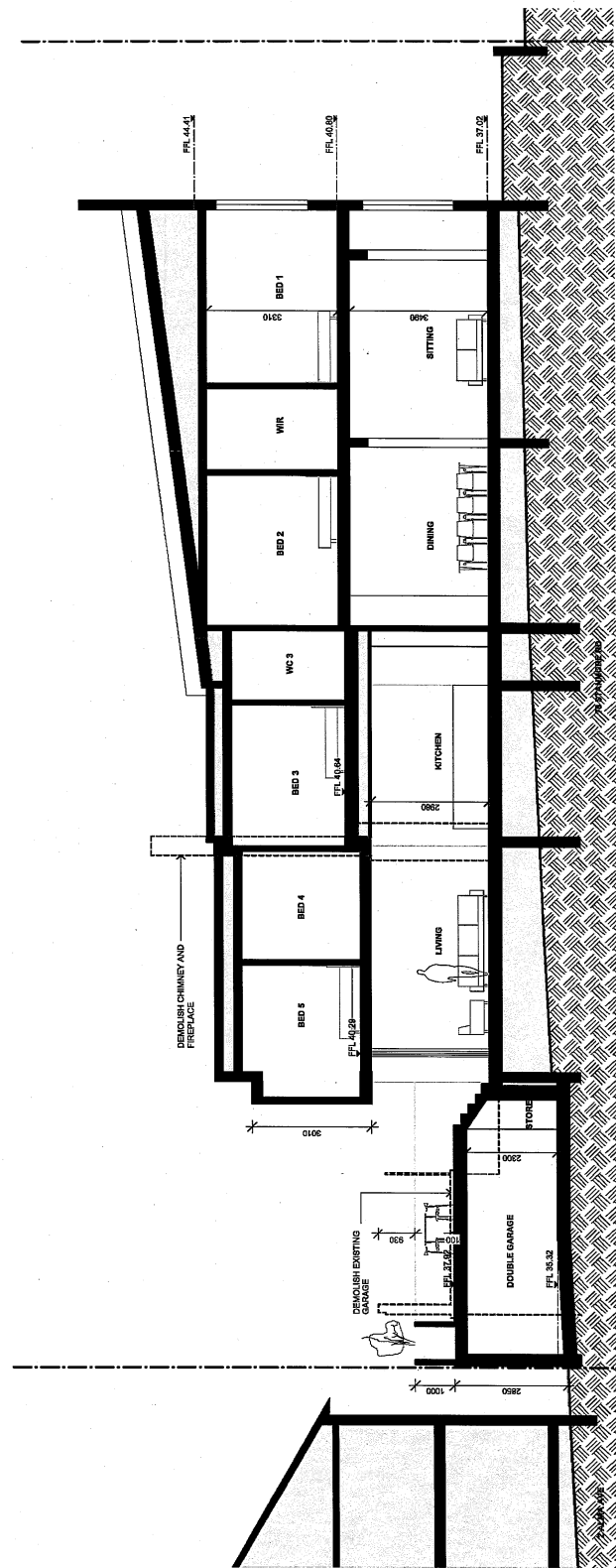
LEGEND

AC	AIR CONDITIONING
BR-1	BRICK (PAINTED)
BR-2	BRICK (UNPAINTED)
BR-3	BLOCKWORK
DP-1	DOWNPIPE
DP-2	DOWNPIPE (GLAZED)
GC-1	GLAZING (CLEAR)
GC-2	GLAZING (FROSTED)
MS-1	METAL SHEET CLADDING
MS-2	METAL SHEET CLADDING
SP-1	STONE PAVING
TC-1	TIMBER CLADDING

CLIENT: JULIA S. HAMBRI & GRAHAM  
 PROJECT: TASTY MARKET STANDS  
 SCALE: 1:100 @ A3  
 REVISION: C

**LEGEND**

	BOUNDARY LINE
	DEMOLISHED WORKS
	INDICATES PROPOSED
	INDICATES EXISTING



**2102-P-08**

**PROPOSED SECTION - A**

16.10.2021 DEVELOPMENT APPLICATION

**REVISIONS**

A	GLAZING (FROSTED)
B	GLAZING (CLEAR)
C	STONE PAVING
D	METAL SHEET CLADDING
E	BRICK PAINTED
	BLACKWORK
	CONCRETE MASONRY
	DOWNPIPE
	GLAZING (CLEAR)

**LEGEND**

AC	AIR CONDITIONING
BK1	BRICK (PAINTED)
BK2	BRICK (BLACKWORK)
BK3	CONCRETE MASONRY
DP-1	DOWNPIPE
GS-1	GLAZING (CLEAR)
GS-2	GLAZING (FROSTED)
MS-1	METAL SHEET CLADDING
MS-2	STONE PAVING
ST-1	STONE PAVING
TC-1	TIMBER CLADDING

**Benn + Penna**  
 Level 1, 123 Harris St.  
 Pymont NSW 2009  
 +61 2 9514 5900  
 info@bennandpenna.com  
 www.bennandpenna.com

REVISION **A**

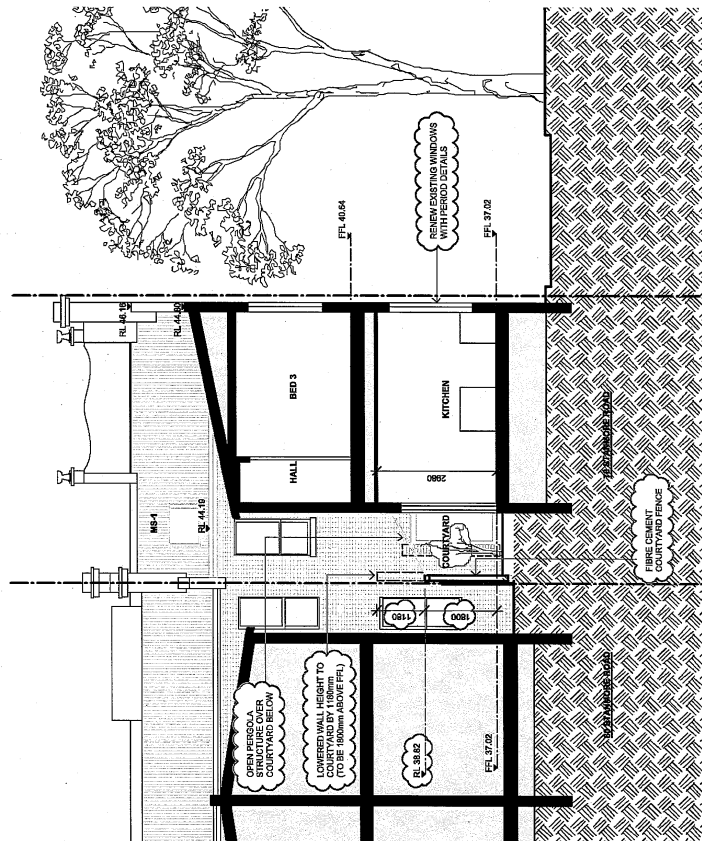
SCALE  
1:100 @ A3

PROJECT  
71 STANMORE RD  
STANMORE

CLIENT  
HELEN HANISH  
DRAWN



LEGEND:	
	BOUNDARY LINE
	DEMOLISHED WORKS
	INDICATES PROPOSED
	INDICATES EXISTING
	INDICATES REVISION B
	INDICATES REVISION C



**Benn + Penna**

Level 1, 123 Harris St.  
Pymont NSW 2009  
+61 2 9518 9900  
info@bennandpenna.com  
www.bennandpenna.com

LEGEND	
AC	AIR CONDITIONING
BK-1	BRICK (PAINTED)
BK-3	BLOCKWORK
DP-4	DOWNPIPE
GZ-1	GLAZING (CLEAR)
GZ-2	GLAZING (FROSTED)
MS-1	METAL SHEET ROOF CLADDING
ST-1	STONE PAVING
TC-1	TIMBER CLADDING

REVISIONS	
A	18/10/2021 DEVELOPMENT APPLICATION
B	18/03/2022 DEVELOPMENT APPLICATION - AMENDATIONS
C	12/05/2022 DEVELOPMENT APPLICATION - AMENDATIONS
D	
E	

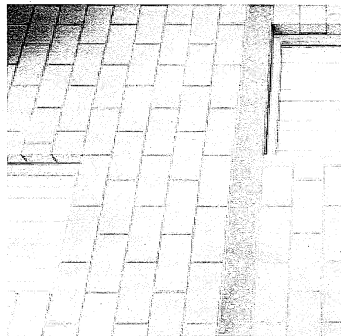
**PROPOSED SECTION - B**

**2102-P-09**

CLIENT: HANISH GRAMA  
PROJECT: 77 WILSON ROAD STANMORE  
SCALE: 1:100 @ A3  
REVISION: C



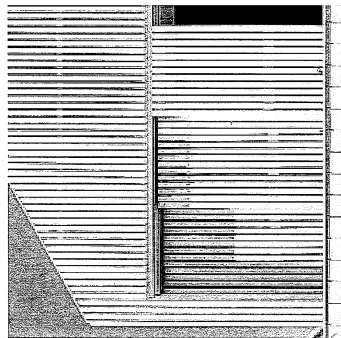
PROPOSED TIMBER CLADDING  
COLOUR SCHEME: NATURAL



PROPOSED PAINTED BRICKWORK  
COLOUR SCHEME: OFF WHITE



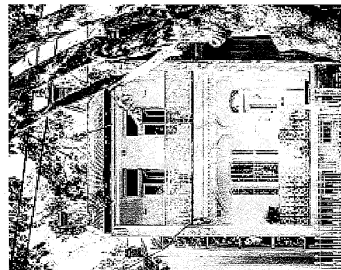
PROPOSED FLORPWAERS  
COLOUR SCHEME: NATURAL STONE



PROPOSED ALUMINUM SCREEN CLADDING  
COLOUR SCHEME: OFF WHITE



WHITE FRAMED DOORS/WINDOWS



EXISTING - PAINTED BRICKS  
COLOUR SCHEME: OFF WHITE

2102-X-02

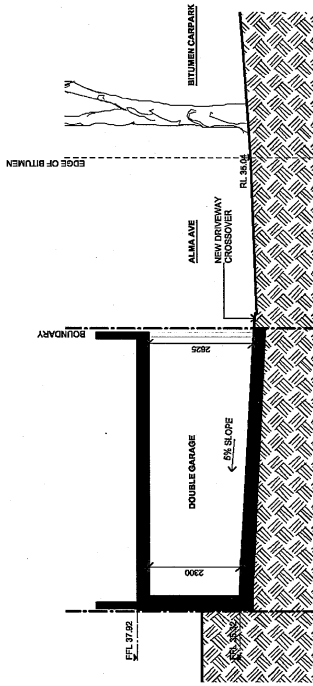
MATERIAL AND FINISHES SCHEDULE

REVISIONS	DATE	DESCRIPTION
A	18.10.2021	DEVELOPMENT APPLICATION
B		
C		
D		
E		

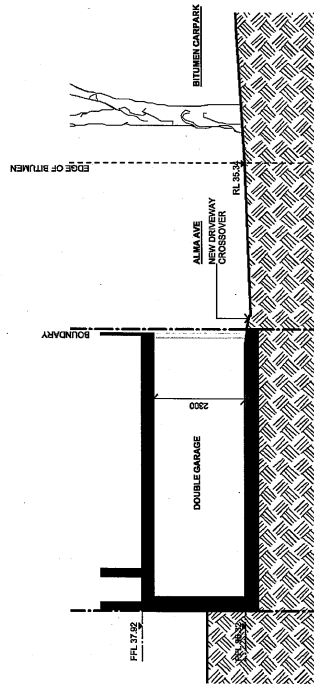
LEGEND	DESCRIPTION
AC	AIR CONDITIONING
BK-1	BRICK
BK-2	BRICK (PAINTED)
BK-3	BRICKWORK
BK-4	CONCRETE
BK-5	CONCRETE (PAINTED)
BK-6	GLAZING (CLEAR)
BK-7	GLAZING (FROSTED)
MS-1	METAL SHEET ROOF
ST-1	STONE PAVING
ST-2	STONE PAVING
TC-1	TIMBER CLADDING
TC-2	TIMBER CLADDING

CLIENT	PROJECT	SCALE	REVISION
HELEN & HAMISH GOSWAMI	78 STAMANDERO STAMANDERO	1:100 @ A3	A

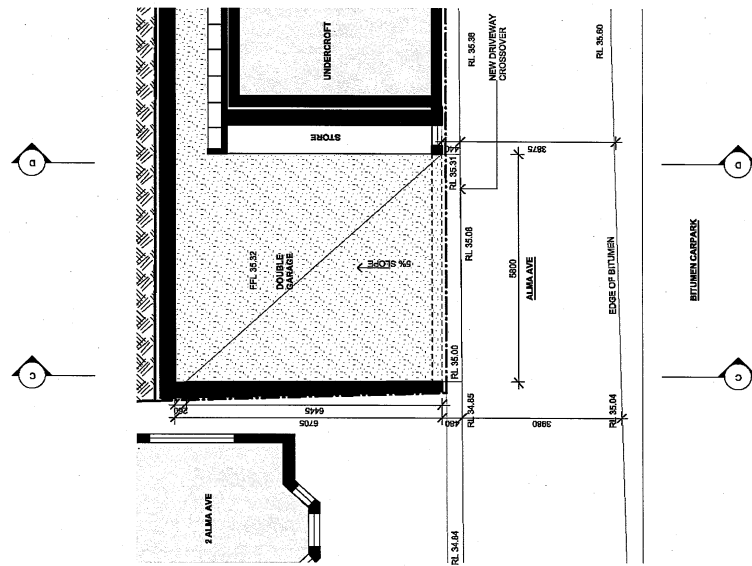
**Benn + Penna**  
 Level 1, 123 Mark St,  
 Pymont NSW 2109  
 +61 2 9519 9900  
 info@bennandpenna.com  
 www.bennandpenna.com



DRIVEWAY SECTION C



DRIVEWAY SECTION D



PLAN - GARAGE

2102-X-04

DRIVEWAY DETAILS

A	18.10.2021	DEVELOPMENT APPLICATION
B		
C		
D		
E		

REVISIONS

GZ-2	GLAZING (FROSTED)
MS-1	STONE PAVING
MS-2	METAL SHEET CLADDING
ST-1	STONE PAVING
TC-1	TIMBER CLADDING

LEGEND

AC	AIR CONDITIONING
BK-1	BRICK (PAINTED)
BK-3	BLOCKWORK MASONRY
DP-1	DOWNPIPE
GZ-1	GLAZING (CLEAR)

**Benn + Penna**  
 Level 1, 123 Harris St.  
 Pymont NSW 2009  
 +61 2 9519 9900  
 info@bennandpenna.com  
 www.bennandpenna.com

CLIENT: URBAN FURNISH GRAPHIC  
 PROJECT: 78 STANMORE RD STANMORE  
 SCALE: 1:100 @ A3  
 NORTH:

REVISION A

## Attachment C- Clause 4.6 Exception to Development Standards



AMENDED CLAUSE 4.6 VARIATION TO THE FSR DEVELOPMENT STANDARD

# Alterations and Additions

78 Stanmore Road, Stanmore

Prepared on behalf of

Hamish & Helen Graham c/- Benn + Penna

12 APRIL 2022

**Lockrey Planning & Development Solutions Pty Ltd** ABN 24 118 105 589 | ACN 118 105 589  
PO Box 2257 Clovelly NSW 2031 **M** 0413 483 120 **E** [slockrey@lpds.com.au](mailto:slockrey@lpds.com.au) **www.lpds.com.au**

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## 1.0 INTRODUCTION

This amended Exception to Development Standards Submission accompanies Development Application (DA) 2021/1052 proposing alterations and additions to the existing terrace house and its surrounds at 78 Stanmore Road, Stanmore (the site).

This amended submission follows discussions with the Inner West Council (the **Council**), planning officer's and the formal submission of amended plans by Benn + Penna and calculations provided by same. This amended submission will supersede that previously lodged, however, it should be read in conjunction with the detailed Statement of Environmental Effects (SEE) prepared by LPDS.

As noted in the originally lodged SEE, the proposal departs from the FSR development standard (FSR standard) at Clause 4.4(2A) of Marrickville Local Environmental Plan 2011 (LEP 2011).

As required pursuant to Clause 4.6(3) of LEP 2011, this submission provides a written request to the Inner West Council (the **Council**) that seeks to justify the amended proposal's departure from the FSR standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This submission (relative to format and content) takes into consideration relevant (current) NSW Land and Environment Court (NSW LEC) judgements.

## **2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION**

### **2.1 What is the name of the environmental planning instrument that applies to the land?**

Marrickville Local Environmental Plan 2011 (LEP 2011).

### **2.2 What is the zoning of the land?**

The land is zoned R2 Low Density Residential.

### **2.3 What are the objectives of the zone?**

The objectives of the R2 Low Density Residential zone are:

- to provide for the housing needs of the community within a low density residential environment.
- to enable other land uses that provide facilities or services to meet the day to day needs of residents.
- to provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.
- to provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.
- to provide for retail premises in existing buildings designed and constructed for commercial purposes.

### **2.4 What is the development standard being varied?**

Development Standards' are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the Act) as follows:

*development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*

- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed. (my emphasis)*

The FSR control at Clause 4.4(2A) of LEP 2011 is clearly a development standard as it relates to:

- the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work as specified by **subclause (c)**; and
- the cubic content or floor space of a building as specified by **subclause (d)**.

## **2.5 Is the development standard a performance based control? Give details.**

Yes, as it contains objectives to which compliance with the standard is targeted to achieve.

## **2.6 Under what clause is the development standard listed in the environmental planning instrument?**

The FSR standard is listed at Clause 4.4(2A) of LEP 2011.

## **2.7 What are the objectives of the development standard?**

The objectives of the FSR standard are expressly stated at Clause 4.4(1) of LEP 2011 and are:

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

## **2.8 What is the numeric value of the development standard in the environmental planning instrument?**

Clause 4.4(2A) of LEP 2011 establishes a maximum FSR of 0.9:1 for the site or a GFA of 221.67m<sup>2</sup>.



**2.9 What is the proposed numeric value of the development standard in the development application?**

The site's existing built form has a GFA of 246m<sup>2</sup>, equating to an FSR of 1:1 (rounded up).

The amended proposal for alterations and additions will result in a GFA of 280.4m<sup>2</sup> equating to an FSR of 1.1381:1 or 1.14:1 (rounded up).

**2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?**

The existing percentage variation is 11.1%.

The proposed percentage variation is 26.4%.

### 3.0 ASSESSMENT OF THE PROPOSED VARIATION

#### 3.1 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

##### 3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2011, the objectives of the R2 Low Density Residential zone are:

- to provide for the housing needs of the community within a low density residential environment.
- to enable other land uses that provide facilities or services to meet the day to day needs of residents.
- to provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.
- to provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.
- to provide for retail premises in existing buildings designed and constructed for commercial purposes.

The site may be developed with the stated variations to the FSR standard. Consistency is not readily quantifiable in absolute numerical terms. The amended proposal despite its departure from the FSR standard is consistent with the stated objectives of the R2 Low Density Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site as it:

- maintains the existing single dwelling house, a low density residential land use on an existing low density allotment of land;
- maintains flexible housing for a family;
- provides for an improved external form whilst maintaining the contributory streetscape appearance to (including the retention of existing traditional openings) Stanmore Road and Alma Avenue;
- extends, modernises and improves the internal living spaces and amenity for its occupants;
- maintains existing dwelling diversity within the surrounding locality. Specifically, the proposed works and site improvements result in a development that better meets the housing needs and increases the residential amenity for the site's occupants, whilst leaving unaltered the variety of housing types and current low density environment;
- is located on a site of sufficient size to appropriately accommodate the proposal;
- responds positively to the site's locational characteristics;
- there are no unreasonable amenity impacts; and
- does not proposed non-residential land uses, although the occupants can work from home as/if required;
- does not threaten existing nearby non-residential land uses that provide daily services to the local community.

### **3.1.2 Objectives of the FSR standard**

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

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

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

The site's built form despite its existing and proposed departure from the FSR standard is nonetheless consistent with the objectives of the FSR standard. As each objective is similar, a combined assessment of the proposal against all three objectives follows below:

- A single dwelling house is maintained on an existing low density residential allotment of land.
- The FSR changes and the development generally are not inconsistent with the relevant objectives of the FSR standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they alter the buildings' existing compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances.
- The site's primary streetscape presentation to Stanmore Road is not altered and existing traditionally designed openings at both floor levels to Alma Avenue are renewed. The existing side entry in Alma Avenue is to be infilled and with boards setback to retain the existing arch and cornices. The new double garage replaces an existing single vehicle garage and a relatively unusable space to its south, the former dunny lane. Most works are to the rear of the dwelling and its existing envelope is only marginally increased and where visible is imperceptible. The works are relatively simple but with a contemporary expression. The established roof ridge is not altered. The rear extension generally maintains existing building alignments and the overall height, bulk and scale of the built form is not visibly greater than existing. The partial infill of the breezeway at the ground floor level is not visible at all from the public domain.
- The scale of the proposal is characterised by the desired future character for the area. The height, bulk and scale of the built form does not influence or set a precedent for future buildings on neighbouring or nearby properties. Rather the altered terrace sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of development (as anticipated by the planning controls) and as existing in the site's vicinity.
- The locality's desired future character is determined by the relevant (existing) planning controls. The surrounding area is and has undergone periodic regeneration. An altered built form is proposed that will have an improved relationship to the site's locational characteristics through a high quality architectural and urban design solution and an improved landscape condition. The built form maintains visual interest and a human scale. This is the desired character.
- Essentially, the objective of an FSR standard is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the area. The maximum FSR that a site can achieve is determined by its environmental constraints, including overshadowing, privacy, streetscape, parking, landscaping, visual impact and views and the capacity of the community infrastructure. In terms of these performance criteria and as demonstrated within the separately submitted SEE, the proposal provides for an appropriate planning outcome as it has been

designed to minimise impacts and has had particular regard to site users and neighbours in terms of visual appearance, overshadowing, aural and visual privacy, natural daylight and ventilation, traffic generation, parking and streetscape. There are no unreasonable amenity impacts to neighbouring and nearby properties or the surrounding public domain.

- Most additional GFA/FSR is within the garage level and its additional car parking space, storage and circulation corridor. This FSR is effectively below ground and has no real impact. The quantum of additional floor space above the FSR standard is arranged on the site in a manner that does not result in adverse impacts upon neighbouring properties or the public realm by way of overshadowing, visual massing, view impacts or visual and acoustic privacy. This is clearly demonstrated within the separately submitted SEE.
- The nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design. In this regard, the proposal represents an appropriate planning outcome without any adverse environmental impacts. Further all new works comply with the height standard.
- The provision of residential accommodation close to public transport, employment opportunities and services, will provide good quality accommodation that is suitable for the intended occupants encouraging equal access to public amenities. The terrace has been designed to cater for a family household. This enriches residential diversity. A well-designed and socially responsive development will always attract a socially diverse mix of people and in turn improve and enhance for a much richer community life in the area.
- The expression of the built form is adjusted to respond to:
  - the site’s locational context;
  - the design and built form character of the adjoining and adjacent development;
  - solar access and the site’s orientation; and
  - internal and external amenity for the future occupants.
- The site is suitably located to provide additional floorspace above that technically permitted. It is within walking distance of existing infrastructure (public transport, shops, parks, amenities and facilities) which will be able to cope with any perceived increase in demand. Although an additional car parking space is proposed, above that technically permitted, this extra car space will not result in adverse traffic generation or impacts to the functioning of the surrounding road network or infrastructure. Conversely an additional off street car parking space potentially increases the availability of on street car parking, a desirable outcome, given that not all properties are provided with off street parking opportunities.

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

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

A development at 78 Stanmore Road, Stanmore that strictly complies with the FSR standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form departs from the standard.
- Compliance with the standard would require demolition of the existing built form which is economically practical and would be inconsistent with the objects of the Act. Compliance in this sense is clearly unnecessary and unreasonable.
- Most additional GFA/FSR is within the garage level and its additional car parking space, storage and circulation corridor. This FSR is effectively below ground and has no real impact. The quantum of additional floor space above the FSR standard is arranged on the site in a manner that does not result in adverse impacts upon neighbouring properties or the public realm by way of overshadowing, visual massing, view impacts or visual and acoustic privacy. This is clearly demonstrated within the separately submitted SEE.
- The site's primary streetscape presentation to Stanmore Road is not altered and existing traditionally designed openings at both floor levels to Alma Avenue are renewed. The existing side entry in Alma Avenue is to be infilled and with boards setback to retain the existing arch and cornices. The new double garage replaces an existing single vehicle garage and a relatively unusable space to its south, the former dunny lane. Most works are to the rear of the dwelling and its existing envelope is only marginally increased and where visible is imperceptible. The works are relatively simple but with a contemporary expression. The established roof ridge is not altered. The rear extension generally maintains existing building alignments and the overall height, bulk and scale of the built form is not visibly greater than existing. The partial infill of the breezeway with central courtyard retained at the ground floor level is not visible at all from the public domain and is an accepted ground level design condition for terrace houses within heritage conservation areas.
- The locality's desired future character is determined by the relevant (existing) planning controls. The surrounding area is and has undergone periodic regeneration. An altered built form is proposed that will have an improved relationship to the site's locational characteristics through a high quality architectural and urban design solution and an improved landscape condition. The built form maintains visual interest and a human scale. This is the desired character.
- A single dwelling house is maintained on an existing low density residential allotment of land.
- The FSR changes and the development generally are not inconsistent with the relevant objectives of the FSR standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they alter the buildings' existing compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances.

- The additional FSR does not result from excessive site disturbance or excavation. Internal existing FFL's have been retained. The 100mm lowering the garage rooftop terrace is a desirable outcome relative to its impacts and visual bulk and scale.
- The proposed departure is a function of the land size, not the size of the built form in terms of GFA. The existing building envelope is only marginally altered and where extended, the extensions are not visible from the public domain.
- All new works comply with the LEP 2011 height standard.
- The departure from the standard and the resultant built form does not in any way preclude the redevelopment of neighbouring and nearby built form.
- Although it departs from the FSR standard, the altered built form is consistent with the locality's desired future character and the departure does not result in any adverse environmental impacts to neighbouring properties or the surrounding public domain. The resultant built form provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual impact.
- Within this context, it is clear the site can accommodate the FSR proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality.

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

***Are the objectives of the standard achieved notwithstanding non-compliance with the standard?***

See above detailed assessment of the proposal by reference to the objectives of the FSR standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard, and in some cases the non-compliance better achieves the objectives by allowing for additional amenity for the site's occupants whilst maintaining the amenity of neighbouring properties.

***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?***

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

***Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?***

Compliance with the underlying objective of the FSR standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason.

The resultant built form is one that exhibits merit relative to architectural design and an improved landscape condition. It includes appropriate environmental initiatives and has a positive built form relationship with its neighbouring and nearby built form.

***Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?***

A review of Council's SEPP 1 and Clause 4.6 Variations Register (Q2 2021 being the most recent), demonstrates that the FSR standard cannot be said to be abandoned, however, there is numerous built form (dwelling houses specifically in this instance) in the surrounding locality and throughout the Inner West LGA and subject to the provisions of LEP 2011 that are zoned R2 Low Density Residential that depart from the current FSR standard and others.

***Is the zoning of the land unreasonable or inappropriate?***

The zoning of the land is reasonable and appropriate given the site's location. Two storey dwelling houses are the predominant land use / built form characteristic.

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

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposed development at 78 Stanmore Road, Stanmore, there are sufficient environmental planning grounds to justify contravening the FSR standard being:

- A single dwelling house is maintained on an existing low density residential allotment of land.
- The FSR changes and the development generally are not inconsistent with the relevant objectives of the FSR standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they alter the buildings' existing compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances.
- Most additional GFA/FSR is within the garage level and its additional car parking space, storage and circulation corridor. This FSR is effectively below ground, and has no real impact. The partial infill of the breezeway at the ground floor level is not visible at all from the public domain and is a typically accepted ground level design condition for terrace houses within heritage conservation areas. The breezeway has been maintained at the first floor level. The quantum of additional floor space above that existing and the FSR standard is arranged on the site in a manner that does not result in adverse impacts upon neighbouring properties or the public realm by way of overshadowing, visual massing, view impacts or visual and acoustic privacy. This is clearly demonstrated within the separately submitted SEE.
- The site's primary streetscape presentation to Stanmore Road is not altered and existing traditionally designed openings at both floor levels to Alma Avenue are renewed. The existing side entry in Alma Avenue is to be infilled and with boards setback to retain the existing arch and cornices. The new double garage replaces an existing single vehicle garage and a relatively unusable space to its south, the former dunny lane. Most works are to the rear of the dwelling and its existing envelope is only marginally increased and where visible is imperceptible. The works are relatively simple but with a contemporary expression. The established roof ridge is not altered. The rear extension generally maintains existing

building alignments and the overall height, bulk and scale of the built form is not visibly greater than existing.

- The additional FSR does not result from excessive site disturbance or excavation. Internal existing FFL's have been retained. The 100mm lowering the garage rooftop terrace is a desirable outcome relative to its impacts and visual bulk and scale.
- The proposed departure is a function of the land size, not the size of the built form in terms of GFA. The existing building envelope is only marginally altered and where extended, the extensions are not visible from the public domain.
- Although it departs from the FSR standard, the altered built form is consistent with the locality's desired future character and the departure does not result in any adverse environmental impacts to neighbouring properties or the surrounding public domain. The resultant built form provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual impact.
- The development provides for an appropriate environmental planning outcome and is not an overdevelopment of the site as follows:
  - the proposal satisfies the objectives of the R2 Low Density Residential zone;
  - the proposal satisfies the objectives of the FSR standard;
  - all new works comply with the LEP 2011 height standard;
  - the nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design. In this regard, the proposal represents an appropriate planning outcome to an existing built form (and therefore established built form character) without any unreasonable environmental impacts; and
  - a similar building envelope / alignment is proposed as that existing. It will not materially alter the visible built environment, the locality's existing character or desired future character.
- Appropriate environmental initiatives are proposed, including:
  - retention of existing slabs and internal FFL's;
  - retention of existing substantial areas of the existing built form (and its materials); and
  - increased useability of landscaped areas and new landscaping works generally.



### **3.4 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?**

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application as the departure from the FSR standard relates to local and contextual conditions. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of built forms on varying allotment sizes and existing built form.

The provision of a high quality architectural and landscape design solution on an existing low density residential allotment of land with associated amenities will assist in meeting the considerable housing and locational context demand. The site's overall built form sits comfortably within its established and desired future built form local context.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

### **3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?**

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage, including generally the C17 Kingston South HCA and the site's contributory status;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would require demolition of the existing dwelling which is unquestionably economically impractical and is most unlikely given the site's contributory status within the C17 Kingston South HCA. Considering demolition of the existing dwelling, in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 1.3 of the Act. The site's redevelopment and existing and proposed departure from the FSR standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

### **3.6 Is there public benefit in maintaining the development standard?**

Generally, there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the FSR standard is not achievable given the existing departing built form and would serve no purpose other than to impose numerical inflexibility. Consent for the demolition of the existing contributory built form is also unlikely. A rigid and inflexible compliance based approach to the standard forgoes the opportunity to provide a high quality architectural design solution and an improved landscape condition for the site's occupants whilst maintaining existing amenity levels for neighbouring properties.

It is known that Council has considered applications favourably which depart from the FSR standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted. Under the presented circumstances the variation to the FSR standard is in the public interest because it is not inconsistent with the objectives of the FSR standard and neither is it inconsistent with the objectives for development in the R2 Low Density Residential zone. Therefore, it is argued that there is no public benefit in maintaining the adopted FSR planning control.

On balance the variation to the FSR standard is an appropriate use of the provisions of Clause 4.6 and the development is therefore capable of being granted consent.

### **3.7 Is the objection well founded?**

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

## 4.0 CONCLUSION

The proposed variation to the FSR standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical FSR standard is unlikely, given it would require demolition of the existing contributory dwelling. It would also would not significantly alter the development's environmental impacts and therefore impacts to neighbouring properties and the surrounding public domain as:

- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone;
- the proposal satisfies and achieves the objectives of the FSR standard;
- the predominant built form / envelope is maintained and where extended it is not visible from the public domain;
- the departure is a function of the land size, not the size of the built form in terms of GFA. The existing building envelope is only marginally altered and where extended, the extensions are not visible from the public domain; and
- all new works comply with the LEP 2011 height standard; and
- an increase in amenity for the site's occupants whilst not resulting in unreasonable amenity impacts to the neighbouring properties.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied the amended proposal is in the public interest because it is consistent with the objectives for development in the zone and the objectives of the standard. It therefore is appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2011 in the circumstances of this application.