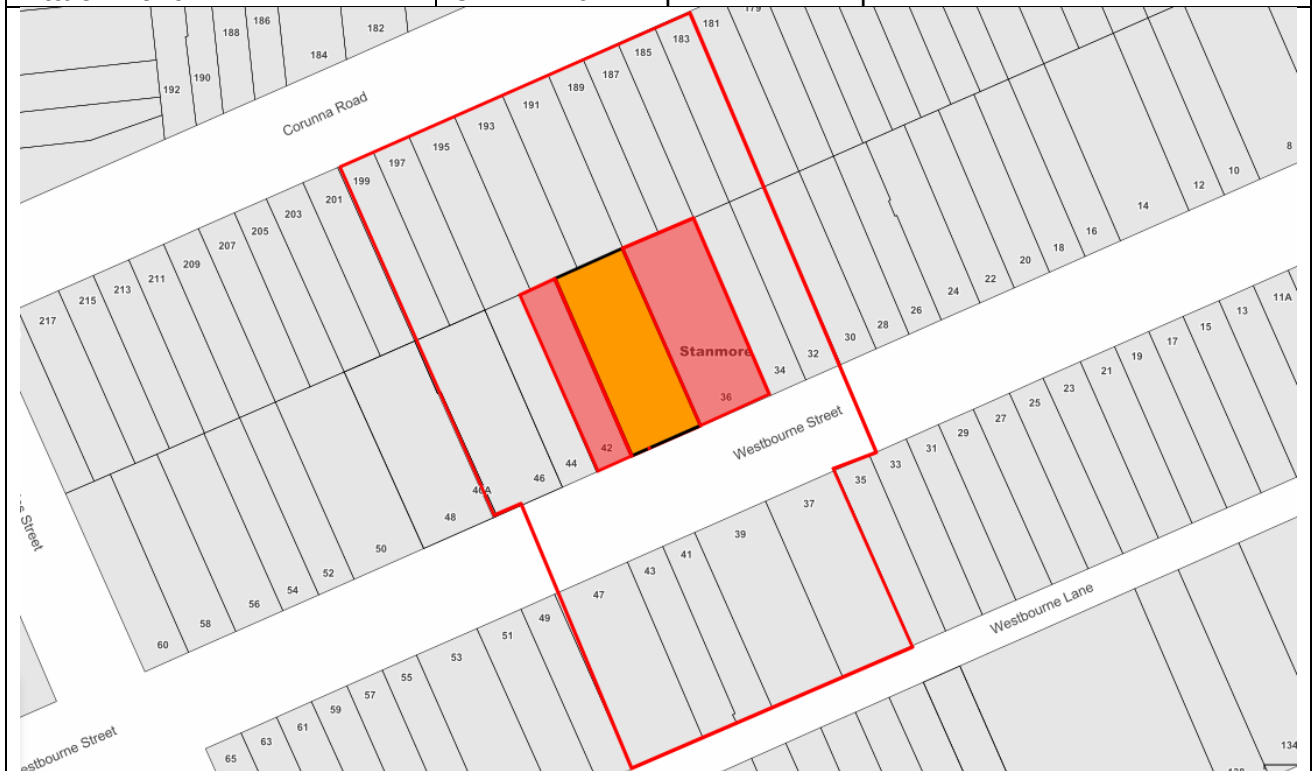






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2022/0384
Address	40 Westbourne Street STANMORE NSW 2048
Proposal	To demolish part of the premises, carry out alterations and additions to a dwelling house to provide a rear deck and construct a detached secondary dwelling at the rear of the site
Date of Lodgement	24 May 2022
Applicant	GAT and Associates Pty Ltd
Owner	Mrs Kaye E Morehen
Number of Submissions	Initial: 2
Value of works	\$255,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Setbacks, Privacy
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of part of the premises, to carry out alterations and additions to a dwelling house, provide a rear deck and construct a detached secondary dwelling at the rear of the site at 40 Westbourne Street Stanmore.

The application was notified to surrounding properties and 2 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- The application breaches the Non-Discretionary Development Standard under Clause 53 (2)(a) of State Environmental Planning Policy (Housing) 2021 relating to site area for secondary dwellings by 17.5%.

The non-compliance is acceptable given the design of the proposal and therefore the application is recommended for approval.

2. Proposal

To demolish of part of the premises, carry out alterations and additions to a dwelling house, to provide a rear deck and construct a detached secondary dwelling at the rear of the site

Demolition

- Demolition of a rear elevated deck and partial demolition of an external rear wall.
- Demolition of an existing outbuilding.
- Removal of a dying peach tree located in the rear yard.

Principal Dwelling

- Construction of a new rear deck with adequate privacy mitigation, including screening the secondary dwelling from the principal dwelling.
- Squared off external wall of principal dwelling.

Secondary Dwelling

- One Bedroom.
- One Bathroom.
- Kitchenette.
- Dining and living area.
- Formal private open space area.

3. Site Description

The subject site is located on the northern side of Westbourne Street, between Charles Street and Cannon Lane. The site consists of 1 allotment and is generally rectangular in shape with a total area of 370.9 sqm.

The site has a frontage to Westbourne Street of 12.19 metres. The site supports a detached dwelling and outbuilding. The adjoining properties consist of detached single and two storey dwellings.

The following trees are located on the site and within the vicinity.

- 2 x *Melaleuca bracteata* (Black Tea Tree) – Located on Council verge
- *Magnolia soulangeana* (Saucer Magnolia) – Located at the rear along the western boundary towards the rear boundary behind the *Prunus persica* (Peach Tree)
- *Prunus Persica* (Peach Tree) – Located at the rear along the western boundary closest to proposed deck
- *Gleditsia triacanthos* (Honey Locust) – Located at Neighbouring property behind proposed secondary dwelling at 189 Corunna Road

The site is zoned R2 Low Density Residential under MLEP 2011.

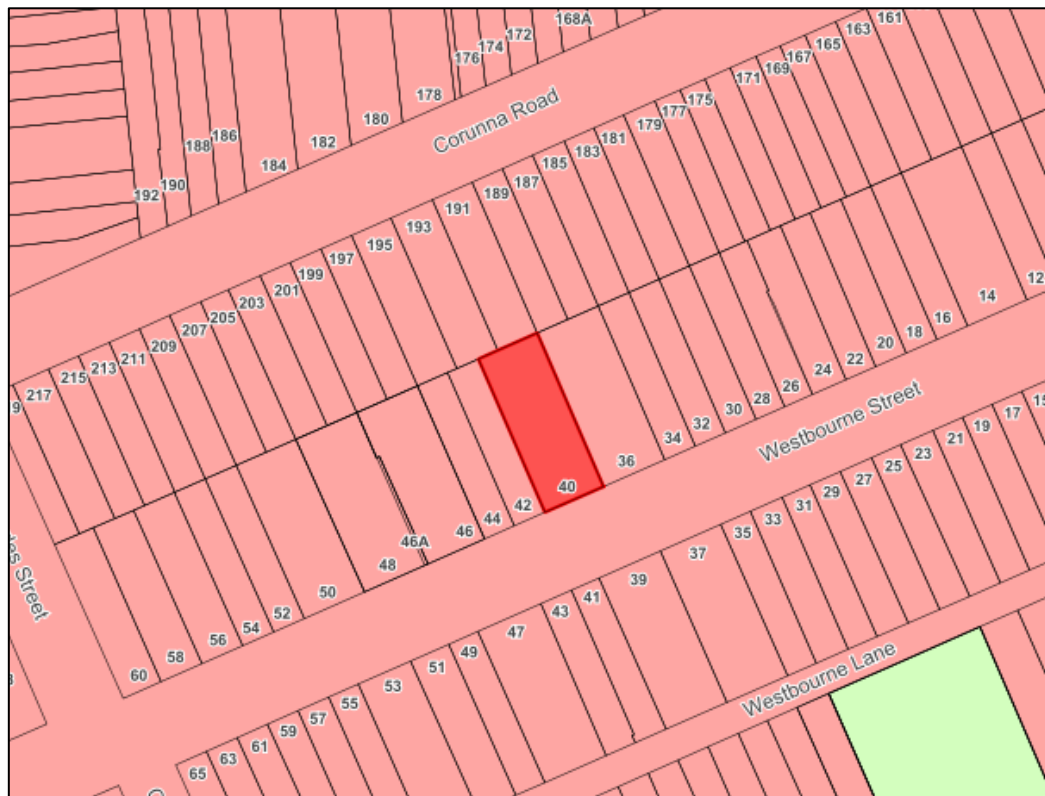


Figure 1: Zoning Map

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
BA-B795/97	Erection of a double car space carport at the rear of the premises	Approved on 18 February 1998
PDA/2021/0464	To carry out alterations and additions to a dwelling house and construct a detached secondary dwelling	Completed 21 January 2022

4(b) Application history

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

Date	Discussion / Letter / Additional Information
24 May 2022	Application Lodged
1 August 2022	Additional information request sent to applicant requesting the following: <ul style="list-style-type: none"> • Clause 4.6 request to vary minimum lot size for secondary dwellings under the Housing SEPP.
9 August 2022	Clause 4.6 Variation submitted

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 (Housing) 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 (Housing) 2021

Chapter 3 Diverse housing, Part 1 Secondary dwellings

The SEPP provides controls relating to various matters including floor space ratio, site area and parking requirements. The proposal includes a secondary dwelling on the first floor. The development is subject to Chapter 3, Part 1 of the Housing SEPP which allows for secondary dwellings to be carried out with consent.

The main standards relating to secondary dwellings contained in the Housing SEPP are addressed below:

Clause	Standard	Proposed	Compliance
52 (2)(a) – Number of dwellings	No dwellings other than principal and secondary dwelling are permitted	The development proposes a principal dwelling and secondary dwelling only on the site.	Yes
52 (2)(b) – Floor area	222.54sqm floor area permitted under LEP for site	210sqm (0.57:1) gross floor area proposed	Yes
52 (2)(c) – Total Floor Area	Maximum 60sqm floor area permitted for secondary dwelling	The secondary dwelling has a floor area of 29sqm	Yes
53 (2)(a) – Minimum site area	Minimum site area of 450sqm	The site has an area of 370.9sqm which doesn't comply with the minimum site area under the Housing SEPP.	No. See discussion under Clause 4.6 of MLEP 2011.
53 (2)(b) – Parking	Existing car parking space must be maintained	The site maintains the existing car parking space on the site.	Yes

The proposed development is consistent with Chapter 3, Part 1 of the Housing SEPP except for the minimum site area requirements. The development proposes a variation to the minimum site area required by Clause 53(2)(a) of the Housing SEPP under Clause 4.6 of the MLEP 2011. This matter is discussed in more detail below under Clause 4.6 of MLEP 2011.

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

Chapter 2 Vegetation in non-rural areas

Chapter 2 concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of MDCP 2011.

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer who raised no objections to the removal of the *Prunus Persica* (Peach Tree) – Located at the rear along the western boundary closest to proposed deck.

Conditions were also imposed for the pruning of the *Gleditsia triacanthos* (Honey Locust) – which is located at the neighbouring property north-east of the site behind proposed secondary dwelling at 189 Corunna Road

Overall, the proposal is considered acceptable with regard to the SEPP and Part 2.20 of MDCP 2011 subject to the imposition of conditions, which have been included in the recommendation of this report.

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 1.2 - Aims of the Plan
- 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 6.1- Earthworks
- Clause 6.5 - Development in areas subject to aircraft noise

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

Standard	Proposal	Non-compliance	Complies
Height of Building Maximum permissible: 9.5 m	5.255m for rear additions 3.3m for Secondary Dwelling	N/A	Yes
Floor Space Ratio Maximum permissible: 0.6:1 or 222.54 sqm	0.42:1 or 156.1 sqm	N/A	Yes

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

The site is zoned R2 low density residential under the *MLEP 2011*. The *MLEP 2011* defines the development as:

- “dwelling house means a building containing only one dwelling.”; and*
“secondary dwelling means a self-contained dwelling that—
 (a) *is established in conjunction with another dwelling (the principal dwelling), and*
 (b) *is on the same lot of land as the principal dwelling, and*
 (c) *is located within, or is attached to, or is separate from, the principal dwelling.”*

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R2 zone.

(ii) Clause 4.6 - Exceptions to Development Standards

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

- Clause 53(2)(a) – Non-discretionary development standards – the Act, s 4.15 of the Housing SEPP

The applicant seeks a variation to the non-discretionary development standards development standard (minimum site area) under Clause 53(2)(a) of the Housing SEPP by 17.5% (79.1sqm).

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:

- *The proposed variation allows the site to provide a diverse housing type with the addition of a secondary dwelling to a detached dwelling house. The secondary dwelling can be used as either low-cost rental accommodation or a separate living area to the principal dwelling.*
- *The proposed secondary dwelling provides an opportunity for affordable rental housing. The proposal does not utilise any incentives in terms of floor space bonuses.*
- *The proposed secondary dwelling will meet the needs of all residents as the secondary dwelling is accessible from the street and allow for diversity in housing choice & affordability.*
- *The proposed variation does not restrict the proposed secondary dwelling from providing a reasonable level of amenity, by receiving adequate solar access, and allowing the principal dwelling and neighbouring sites to retain adequate solar access. The secondary dwelling will enjoy its separate area of private open space that is suitably landscaped and does not restrict the principal dwelling from retaining a suitable private open space area.*
- *The proposal provides a new contemporary secondary dwelling that reflects and enhances newer development that is located along Westbourne Street.*
- *The secondary dwelling is suitable for the subject site in lieu of providing an adequate site area. This is as the site complies with development standards under the MLEP 2011 such as floor space ratio, height of buildings, and miscellaneous controls for the sizing of secondary dwellings. The site is compliant with key controls under the MDCP 2011, such as an area for private open space, landscaped area, and solar access. It is considered that due to compliance with these key controls, the site is appropriate for a secondary dwelling.*
- *The development meets the objectives of the R2 Low-Density Residential zoning of the land;*
- *The proposed development and variation maintain consistency with the Principles of SEPP Housing 2021*

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

The site is located within an R2 Low Density Residential zone and the objectives of the zone are as follows:

- *“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.”*

It is considered the development is in the public interest because it is consistent with the objectives of the R2 Low Density Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the *Marrickville Local Environmental Plan 2011* as the development is consistent with the zone objectives in that it provides for the housing needs while maintaining the low density character and nature of the surrounding area.

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 non-discretionary development standards under Clause 53(2)(a) and it is recommended the Clause 4.6 exception be granted.

(iii) Clause 5.4 (9) – Miscellaneous Permissible Uses

Secondary dwellings on land other than land in a rural zone

If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—

- (a) 60 square metres,*
- (b) 35% of the total floor area of the principal dwelling.*

The secondary dwelling is 29.1sqm and therefore complies with Clause 5.4(9)

(iv) Clause 6.5 – Aircraft Noise

The site is located within the ANEF 25-30 contour, and as such an Acoustic Report was submitted with the application. The proposal is capable of satisfying this clause. 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 of MLEP 2011.

5(a)(vi) *Inner West Local Environmental Plan 2022 (IWLEP 2022)*

The *Inner West Local Environment Plan 2022 (IWLEP)* was gazetted on the 12th of August 2022. As per Section 1.8A – Savings provisions, of this plan, as the subject development application was made before the commencement of this Plan, the application is to be determined as if the IWLEP 2022 had not commenced.

Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* requires consideration of any Environmental Planning Instrument (EPI), and (1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 24 May 2022 at this date, the IWLEP was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

Notwithstanding this, the amended provisions of the draft EPI do not alter the outcome of the assessment of the subject application.

5(b) Draft Environmental Planning Instruments

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

Draft Environmental Planning Instruments	Compliance
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) Development Control Plans

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

Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes – see discussion
Part 2.7 – Solar Access and Overshadowing	Yes – see discussion
Part 2.10 – Parking	Yes – see discussion
Part 2.18 – Landscaping and Open Space	Yes – see discussion
Part 2.20 – Tree Management	Yes
Part 2.21 – Site Facilities and Waste Management	Yes – see discussion
Part 2.25 – Stormwater Management	Yes – see discussion
Part 4.1 – Low Density Residential Development	Yes – see discussion

The following provides discussion of the relevant issues:

Part 2 – Generic Provisions

Control	Proposed	Compliance
Part 2.1 – Urban Design	<ul style="list-style-type: none"> 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 The proposal preserves the existing character of the streetscape, as the proposed addition will not be visible from the public domain and protects the street elevation of the existing dwelling. 	Yes
Part 2.6 – Acoustic and Visual Privacy	<ul style="list-style-type: none"> The windows proposed predominantly face into the site or are adequately offset from adjoining windows, thereby protecting existing privacy levels for surrounding occupiers. Privacy screens have been provided on the sides of the proposed balcony to alleviate privacy impacts on adjoining properties 	Yes
Part 2.7 – Solar Access and Overshadowing	<ul style="list-style-type: none"> A minimum of 2 hours direct solar access to windows of principal living areas and principal areas of open space of nearby residential properties between 9:00am and 3:00pm on 21 June is retained. The development will not result in adverse amenity impacts as a result of overshadowing; 	Yes
Part 2.18 – Landscaping and Open Spaces	<ul style="list-style-type: none"> The subject site requires 20% of the site or 74.18m² of POS with a minimum dimension of 3m. The proposal provides for 75m² or 20% of POS with a minimum dimension of 3m. In excess of 50% of the private open space is to be maintained as pervious landscaping. <p><u>Secondary Dwellings</u></p> <ul style="list-style-type: none"> The setback between the secondary dwelling and the rear boundary is to be landscaped. A condition will be imposed requiring the space between the secondary dwelling and the rear boundary be landscaped. A 4m x 4m of POS has be designated on the plans provided for the secondary dwelling. 	Yes
Part 2.20 – Tree Management	<ul style="list-style-type: none"> The application was referred to Council’s tree officer who raised no objection with the proposal. Conditions were imposed for the retention of 2 street trees and one site tree. Permission was granted for the removal of a Peach Tree near the proposed balcony and the pruning of the tree located on the rear adjoining property behind the secondary dwelling. 	Yes

Part 2.21 – Site Facilities and Waste Management	<ul style="list-style-type: none"> The application was accompanied by a waste management plan in accordance with the Part; and Standard conditions are recommended to ensure the appropriate management of waste during the construction of the proposal. 	Yes
Part 2.25 – Stormwater Management	<ul style="list-style-type: none"> Standard conditions are recommended to ensure the appropriate management of stormwater. 	Yes, subject to conditions

Part 4 – Low Density Residential Development

Control	Assessment	Compliance
Part 4.1.4 – Good Urban Design Practice	<ul style="list-style-type: none"> 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
Part 4.1.5 – Streetscape and Design	<ul style="list-style-type: none"> The development complements the uniformity and visual cohesiveness of the bulk, scale and height of the existing streetscape; The proposal is a contemporary design that complements and/or embellishes the character of the area; 	Yes
<p>Part 4.1.6 – Built form and character</p> <p><u>Front setback</u></p> <ul style="list-style-type: none"> Consistent with adjoining developments <p><u>Side setbacks</u></p> <ul style="list-style-type: none"> Lot width <8m – on merit One storey – 900mm Two storeys – 1.5m <p><u>Rear setback</u></p> <ul style="list-style-type: none"> On merit <p><u>Site coverage</u></p> <ul style="list-style-type: none"> 55% 	<ul style="list-style-type: none"> The existing front setback of the dwelling is to remain unaltered by the proposal; 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; 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 The proposal is permitted a maximum site coverage of 55%, the proposal provides a site coverage of 44%. <p><u>Secondary Dwellings</u></p> <ul style="list-style-type: none"> A detached secondary dwelling requires a side setback of 1.5m the subject proposal provides a 956mm side setback. This is considered satisfactory refer to discussion below A minimum 4m between the secondary dwelling and the primary dwelling. The secondary dwelling provides a separation between 2.317m and 3.477m. This is considered satisfactory, refer to discussion below 	No, but consistent with objectives

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

Control C8 and C11 - Part 4.1.6 MDCP 2011– Built form and character

The proposal does not comply with the requirements of control C8 and C11 within Part 4.1.6 of the Marrickville Development Control Plan 2011 which requires 1.5 metre setbacks for secondary dwellings and for secondary dwellings to be compatible with the scale of development in the vicinity. The secondary dwelling also does not achieve the required building separation of 4m between the primary dwelling and the secondary dwelling. The relevant objectives to consider in relation to the variation are objectives O10,O13 and O14 within Part 4.1.6 of the Marrickville Development Control Plan 2011.

- Notwithstanding the non-complaint building separation the proposed secondary dwelling has been designed to maintain adequate privacy through limiting the windows of the secondary dwelling facing the primary dwelling. The secondary dwelling is provided with the required solar access and has provided an adequate internal layout. All significant openings of the secondary dwelling are located away from the primary dwelling and therefore reduces any detrimental acoustic impacts.
- The secondary dwelling side setback along the eastern boundary of 956mm is considered appropriate in this instance as the secondary dwelling setback is consistent with the minimum setback required for the primary dwellings at the ground floor.
- The setback proposed does not diminish the existing landscaping on site. The proposed development maintains the existing landscaping on site.
- The side setback does not create adverse privacy or overshadowing impacts on the primary dwelling or adjoining dwellings.
- The side setback non-compliance is considered minor and will not create an adverse impact on the streetscape due to the location at the rear of the site.
- The secondary dwelling is of an appropriate bulk and scale consistent with the height and floor area. The secondary dwelling has a floor area well under the permissible floor area of the Housing SEPP

Part 9 – Strategic Context

Control	Assessment	Compliance
<p>Part 9.3 – Stanmore North Precinct (Precinct 3)</p>	<ul style="list-style-type: none"> • The proposal protects the existing period dwelling on the site; • The proposal maintains the single storey streetscape, as the addition is built from the ridge of the period dwelling and will not be visible from the street. 	<p>Yes</p>

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

2 submissions were received in response to the initial notification.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Privacy from the secondary dwelling and balcony

Comment: It is considered that the windows along the eastern elevation of the secondary dwelling will be appropriately screened by the existing fence. The design of the windows will also limit privacy impacts on adjoining properties. The southern elevation is limited to a bedroom window which is considered a low-use room which is considered to have limited privacy impacts on adjoining dwellings.

The reconstructed rear deck has provided appropriate privacy screening along both side elevations to reduce a potential privacy impact on adjoining properties

Issue: Additional drainage concerns due to roof design of the secondary dwelling

Comment: The application was reviewed by Council's development engineer, and it was considered that the concept drainage design is acceptable subject to conditions.

Issue: Solar Access to living areas of adjoining dwellings

Comment: The proposal maintains the required solar access to adjoining properties. The proposed addition to the main dwelling still enables the living area windows of adjoining properties to retain a minimum 2 hours of solar access.

Issue: Inappropriate height of secondary dwelling

Comment: The proposed secondary dwelling is well below the 9.5m height limit afforded to the site and is considered to be in an appropriate location on the site to limit the potential amenity impacts on adjoining properties.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development engineer; and
- Tree management officer.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions 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 \$16,880.29 would be required for the development under Marrickville Section 94/94A 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 premises/properties and the streetscape and is considered to be in the public interest subject to the imposition of appropriate conditions.

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the site area development 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 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/2022/0384 for demolition of part of the premises, carry out alterations and additions to a dwelling house to provide a rear deck and construct a detached secondary dwelling at the rear of the site at 40 Westbourne Street Stanmore subject to the conditions listed in Attachment A below

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
A000, Revision 2	Proposed Site Plan	25/4/22	Jonathan Morehen
A001, Revision 2	Demolition Plan	25/4/22	Jonathan Morehen
A102, Revision 2	First Floor	25/4/22	Jonathan Morehen
A105, Revision 2	Landscape Plan	25/4/22	Jonathan Morehen
A400, Revision 2	Elevations E-01	25/4/22	Jonathan Morehen
A401, Revision A	Elevation E-02	25/4/22	Jonathan Morehen
A402, Revision A	Elevation E-03	25/4/22	Jonathan Morehen
A403, Revision A	Elevation E-04	25/4/22	Jonathan Morehen
A404, Revision 2	Elevation E-05	25/4/22	Jonathan Morehen
A405, Revision 2	Elevation E-06	25/4/22	Jonathan Morehen
1302588S	BASIX Certificate Secondary Dwelling	03/05/22	GAT & Associates

A458092	BASIX Certificate Primary Dwelling	03/05/22	GAT & Associates
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As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

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

Security Deposit:	\$3700.00
Inspection Fee:	\$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.

3. 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.

4. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$16880.29 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014] ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 10 August 2022.

***NB** Contribution rates under Marrickville Section 94/94A Contributions Plan 2014 are indexed quarterly (for the method of indexation refer to Section 2.15 of the Plan).

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Public Amenities Type:	Contribution \$
Recreation Facilities	14800.41
Community Facilities	1743.91
Traffic Facilities	0.00
Plan Administration	335.96
TOTAL	16880.29

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

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.

*NB A 0.75% credit card transaction fee applies to all credit card transactions.

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.

The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :

Botanical/Common Name	Location
2 x <i>Melaleuca bracteata</i> (Black Tea Tree)	Council verge
<i>Magnolia soulangeana</i> (Saucer Magnolia)	Rear

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed;

6. Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
<i>Prunus persica</i> (Peach Tree) - Rear	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

7. Project Arborist

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

8. Waste Management Plan

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

9. 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.

10. 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.

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**12. 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.

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; Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street may be drained to an on-site dispersal system such as an absorption system or otherwise, subject to the roof areas being drained via a suitably sized rainwater tank, no nuisance or concentration of flows to other properties and the feasibility and design of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer;
- 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 systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- e. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- f. 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;
- g. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Section 3.1.2.3(b) of the Building Code of Australia for Class 1 buildings;
- h. 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;

- i. 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;
- j. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; and
- k. No impact to street tree(s).

17. Structural Certificate for retained elements of the building

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

18. Sydney Water – Tap In

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

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

19. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION

20. Tree Protection

To protect the following trees, trunk protection must be installed prior to any works commencing in accordance with the approved *Tree Protection Plan* and/or with Council's *Development Fact Sheet—Trees on Development Sites*:

Botanical/Common Name/Location
2 x <i>Melaleuca bracteata</i> (Black Tea Tree) - Council verge

21. Tree Protection Zone

To protect the following tree, no work must commence until its Protection Zone is fenced off at the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area in accordance with Council's *Development Fact Sheet—Trees on Development Sites*. The fence/s (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Botanical/Common Name	Radius in metres
<i>Magnolia soulangeana</i> (Saucer Magnolia) - Rear	2m

22. Canopy Pruning

Canopy pruning of the following tree which is necessary to accommodate the approved building works must be undertaken by, or directly supervised by, the Project Arborist.

Botanical/Common Name	Radius in metres
<i>Gleditsia triacanthos</i> (Honey Locust) - Neighbouring property	Pruning is limited to those branches that will come into direct contact the built structure and where branch diameter (at its point of attachment) does not exceed 50 mm.

23. Construction Hours – Class 1 and 10

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

24. 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**25. 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.

26. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of one (1) x 75 litre size additional tree, which will attain a minimum mature height of eight (8) metres, must be planted within the rear setback of the property. It should not be planted less than 2.5m from a dwelling house or garage, and may not be planted less than 1m from other structures or services, allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. Tree species listed on C7 Tree Minor Works of the DCP, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement tree is found to be faulty, damaged, dying or dead within twelve (12) months of planting then it must be replaced with the same species (up to 3 occurrences). If the tree is found dead before it reaches a height where it is protected by Council's Tree Management Controls, it must be replaced with the same species.

27. Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the pruning works and the role of the project arborist have been complied with.

28. Aircraft Noise –Alterations and Additions

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

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

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.

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

- a. Application for any activity under that Act, including any erection of a hoarding;

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

Disability Discrimination Access to Premises Code

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

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.

Construction of Vehicular Crossing

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

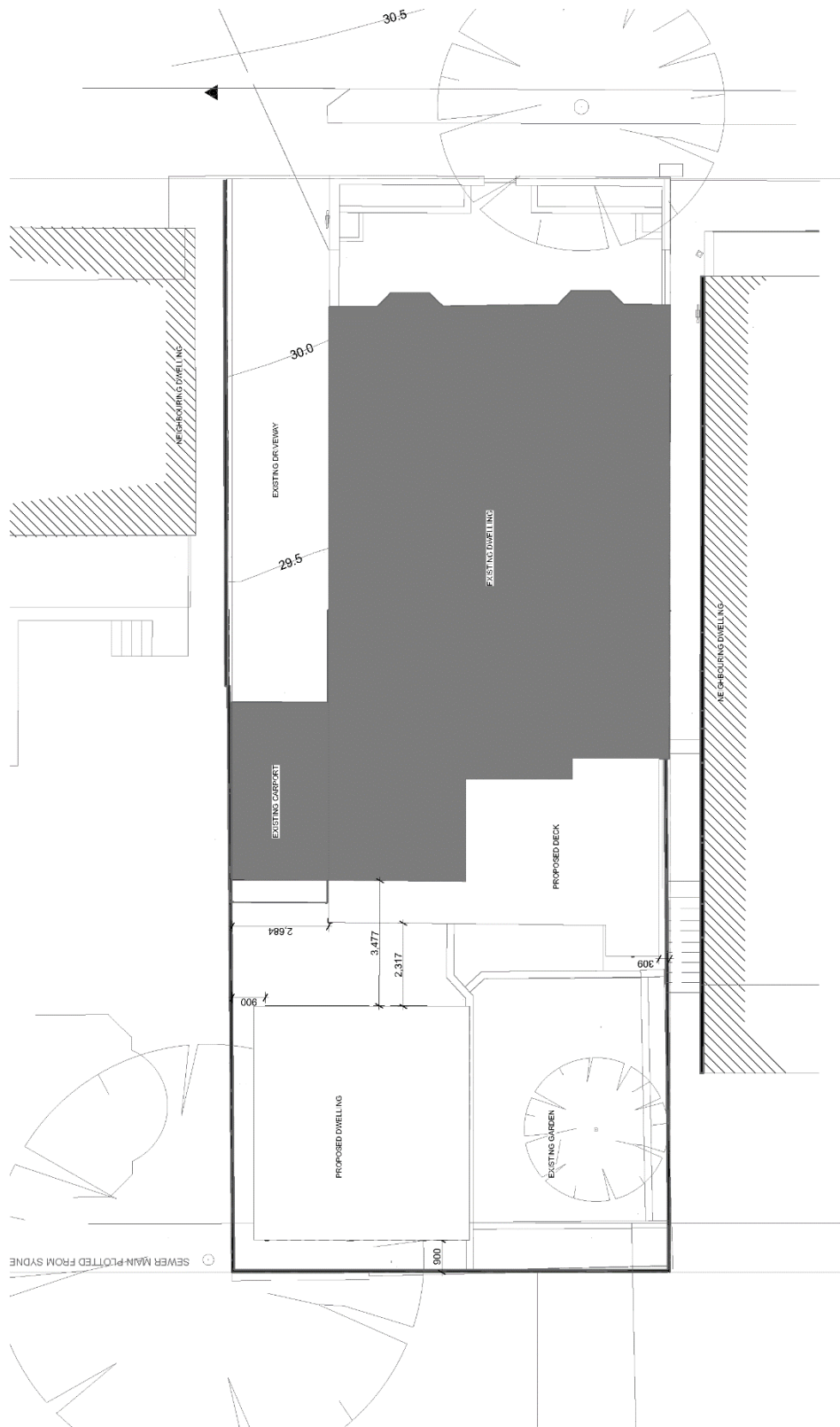
BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies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

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

Street Numbering

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

Attachment B – Plans of proposed development



NOTE
 This plan has been prepared in accordance with the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000. It is intended to be used in conjunction with the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000. It is not to be used as a basis for any other purpose. It is not to be used as a basis for any other purpose. It is not to be used as a basis for any other purpose.

REVISIONS
 2 - WIP
 DRAWING NO
 A000

CLIENT
 Robert Morehen
 42 Westbourne Street
 Westbourne NSW 1570

DESIGNER
 Jonathan Morehen

DRAWING TITLE
 PROPOSED SITE PLAN
 PROJECT NAME
 Westbourne Folie

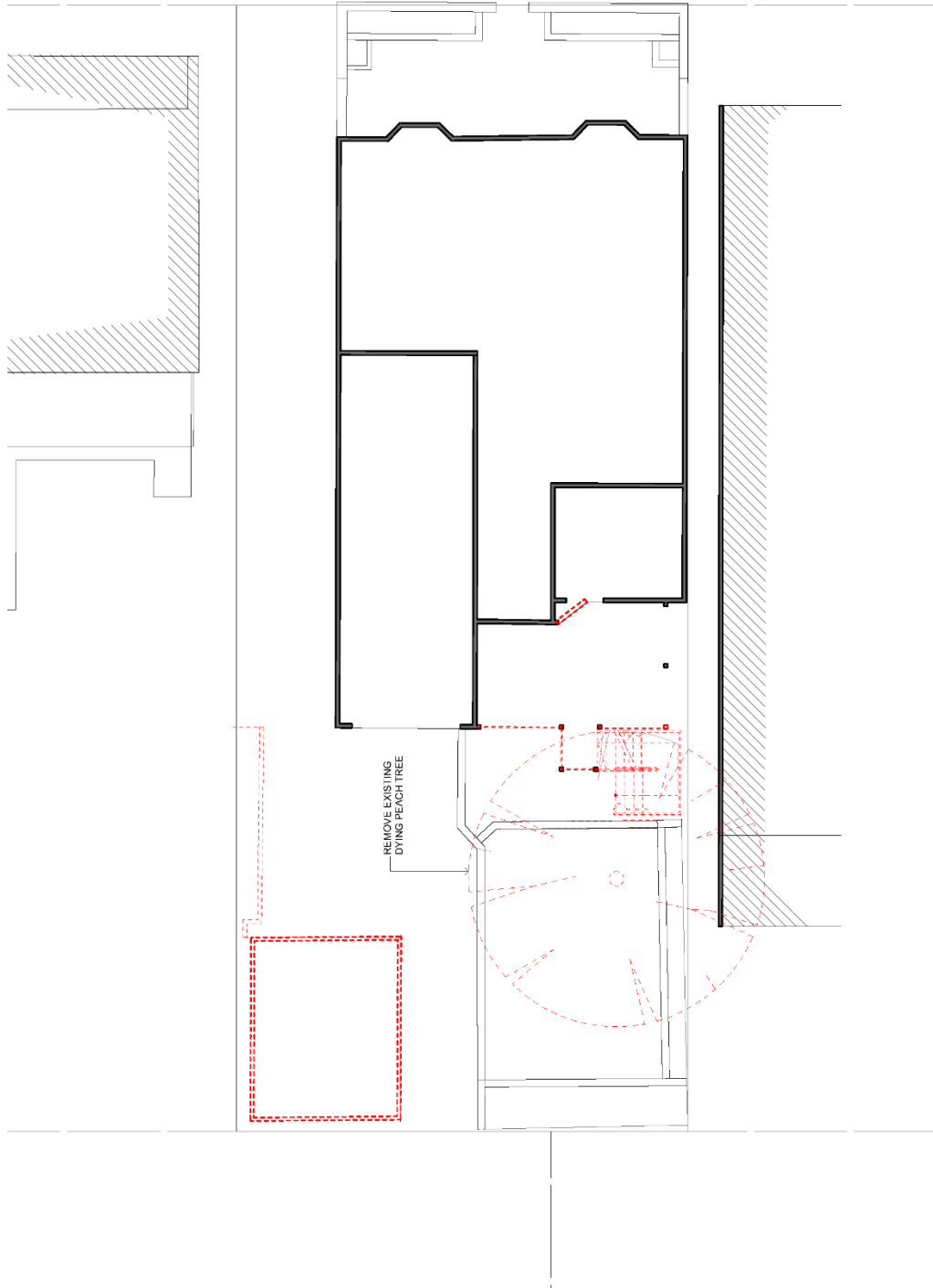
SCALE
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DATE
 23/05/2022

PROJECT NO
 23/05/2022

PROJECT NAME
 Westbourne Folie

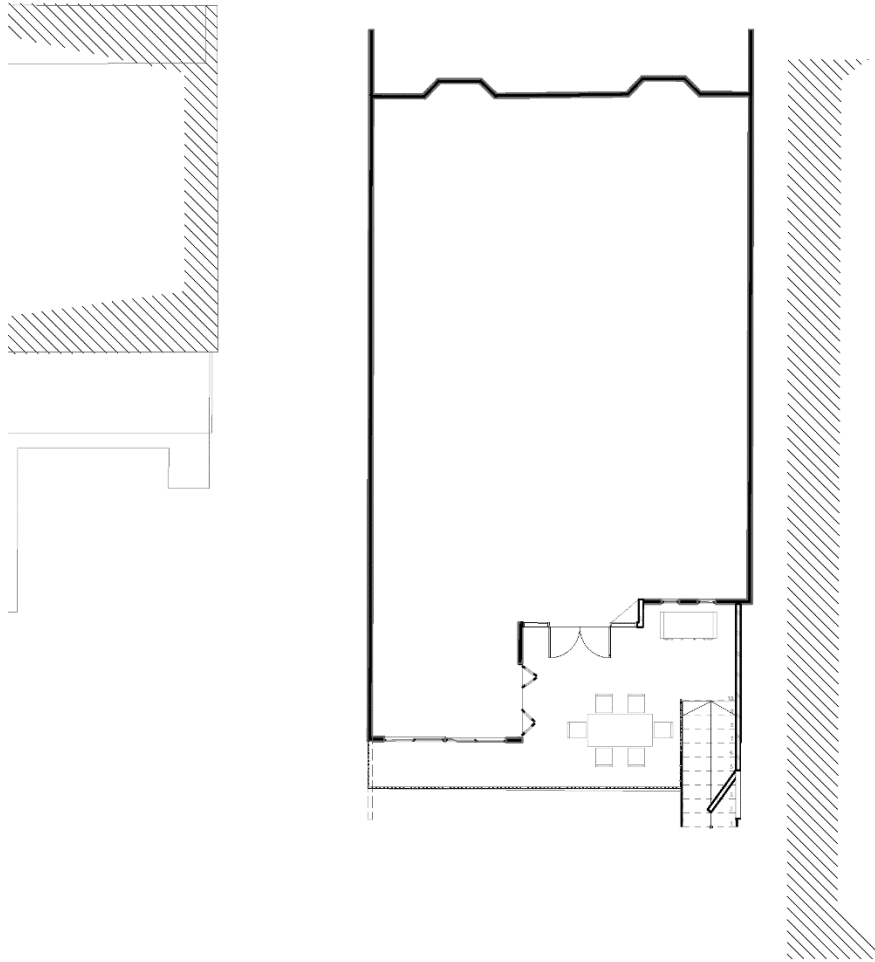
PROJECT ADDRESS
 42 Westbourne Street
 Westbourne NSW 1570



NOTE
This drawing shows the demolition of the existing building and the removal of the existing peach tree. The demolition of the building and the removal of the peach tree is shown in red dashed lines. The demolition of the building and the removal of the peach tree is shown in red dashed lines. The demolition of the building and the removal of the peach tree is shown in red dashed lines.

CLIENT City of Sydney 23/22 Project Name D3	DESIGNER Erik Moller 45 Westbourne Street Sydney NSW 2000	DATE 23/05/2022	PROJECT NAME Westbourne Folie
DRAWING TITLE DEMOLITION PLAN		SITE AND LOCATION	
PROJECT NAME Westbourne Folie		REFERENCE 2 - WIP DRAWING NO A001	

Document Set ID: 3654311
Version: 1, Version Date: 23/05/2022



NOTE
 This drawing is the property of the client and is to be used only for the project and site for which it is prepared. It is not to be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in this drawing or for any consequences arising therefrom. The architect is not responsible for any delays or interruptions in the progress of the project. The architect is not responsible for any costs or expenses incurred by the client in connection with the project. The architect is not responsible for any claims or damages arising from the project. The architect is not responsible for any legal or other consequences arising from the project. The architect is not responsible for any other matters relating to the project.

PROJECT INFORMATION
 Project Name: Westbourne Folie
 Project Address: 45 Westbourne Street, Sydney, NSW 2011
 Project Number: 23/222
 Project Status: DD
 Date: 23/05/2022
 Drawn by: [Name]
 Checked by: [Name]

CLIENT INFORMATION
 Client Name: Jonathan Morehen
 Client Address: [Address]

ARCHITECT INFORMATION
 Architect Name: [Name]
 Architect Address: [Address]

DRAWING TITLE:
 FIRST FLOOR
 PROJECT NAME: Westbourne Folie

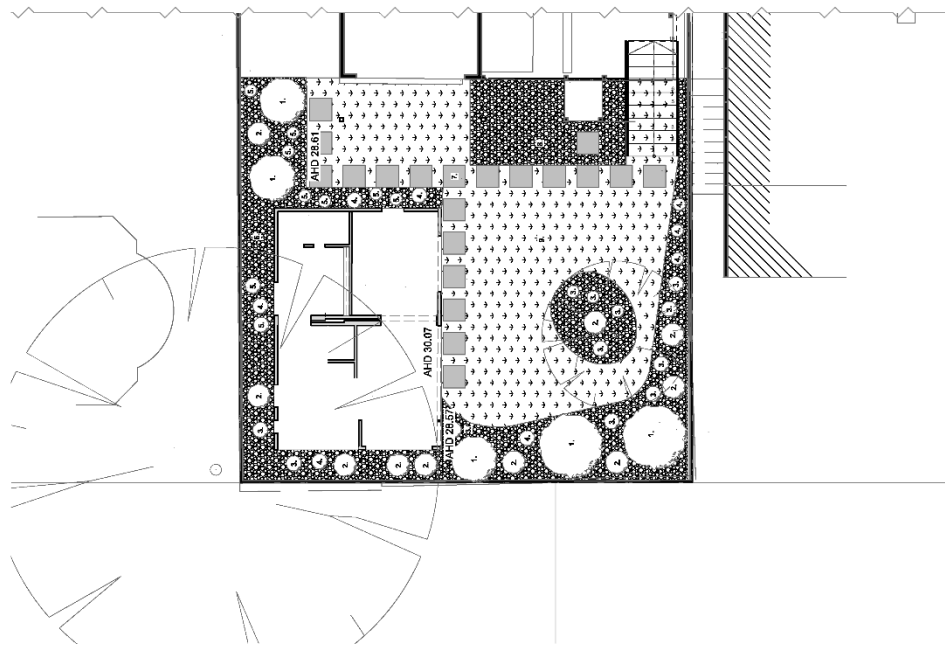
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DATE:
 23/05/2022

PROJECT NO.:
 23/222

PROJECT NAME:
 A102

Document Set ID: 36554311
 Version: 1, Version Date: 23/05/2022



- 1. *Chamaecyparis*
- 2. *Thunbergia*
- 3. *Strobilanthes*
- 4. *Chamaecyparis*
- 5. *Chamaecyparis*
- 6. *Strobilanthes*
- 7. *Blackstone paving*
- 8. *Strobilanthes*
- 9. *Strobilanthes*

NOTE: This plan is based on the site plan and is subject to the approval of the Council. The Council is not responsible for the accuracy of the information provided in this plan. The Council is not responsible for the accuracy of the information provided in this plan. The Council is not responsible for the accuracy of the information provided in this plan.

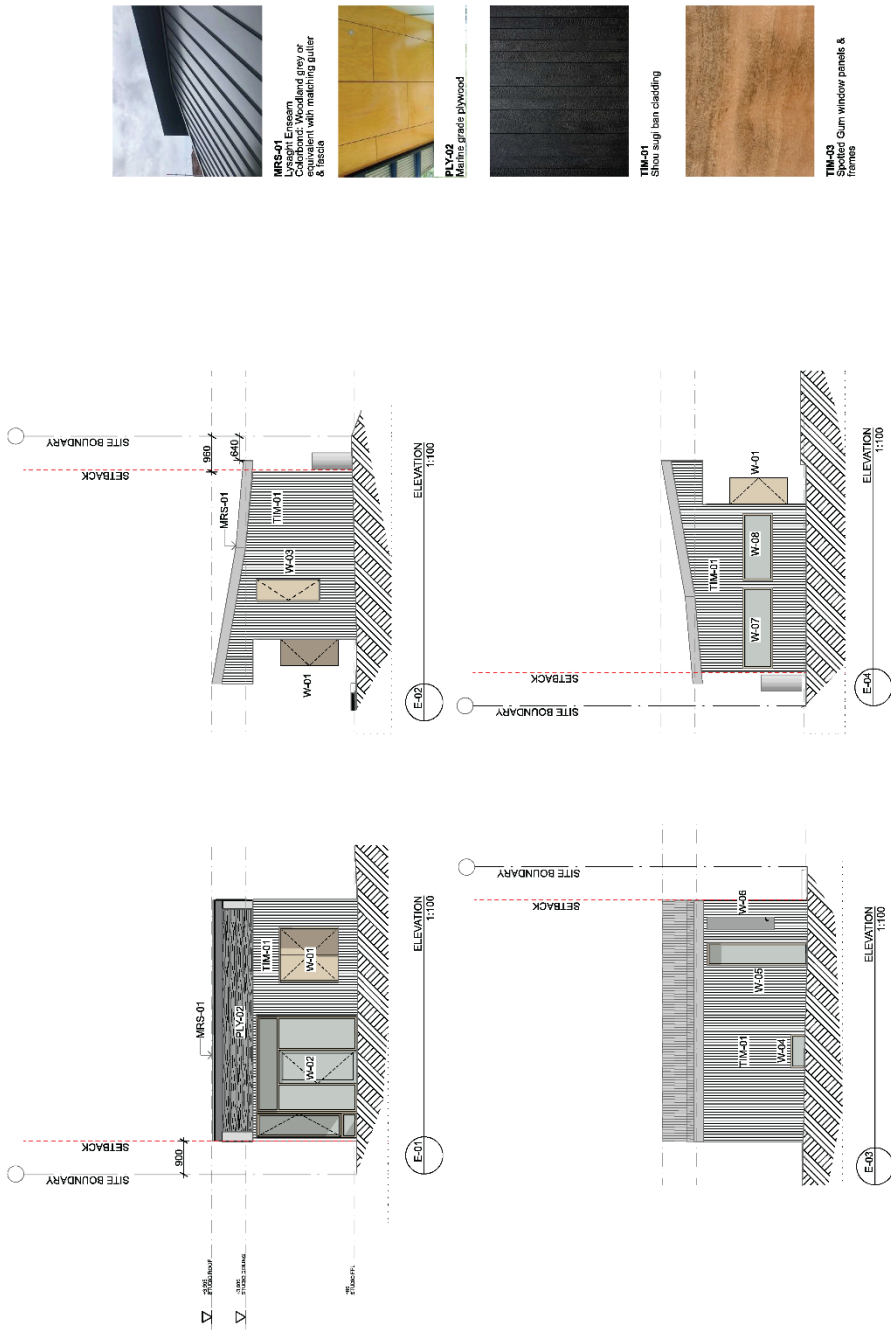
Jonathan Morehan

PERSON NO. 2 - WIP
 DRAWING TITLE: LANDSCAPE PLAN
 PROJECT NAME: Westbourne Folie

Client: Jonathan Morehan
 Project No: 2306/2022
 Date: 23/06/2022
 Scale: 1:100



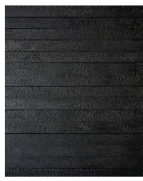
Document SK ID: 38354511
 Version: 1, Version Date: 23/06/2022



MRS-01
Light grey or Colaband Woodland grey or similar with matching gutter & fascia



PLY-02
Marine grade plywood



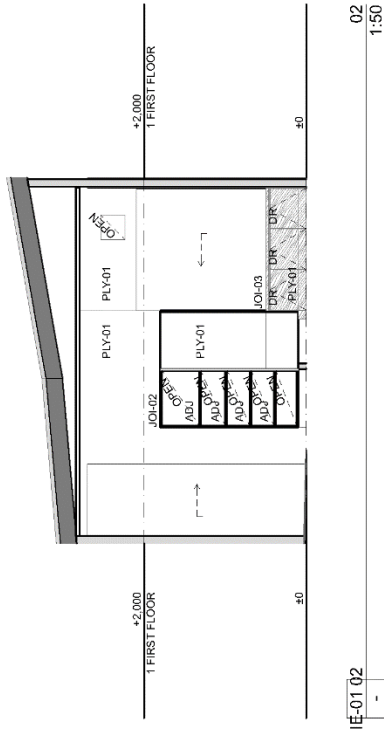
TIM-01
Shou sugi ban cladding



TIM-03
Spotted Gum window panels & frames

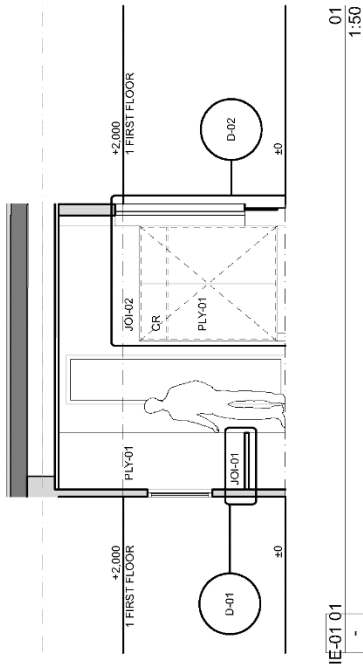
<p>NOTE: This is a preliminary drawing and is for information only. It is not to be used for construction purposes without the approval of the relevant authorities. The client is responsible for ensuring that the drawing is accurate and that all necessary permits are obtained. The client is also responsible for ensuring that the drawing is in accordance with the relevant standards and codes of practice.</p>	<p>Client Name: JM Project No: 2306/2022 Drawing No: E-01</p>	<p>Revision: E-01</p>	<p>Form No: A400</p>
	<p>Project Name: Westbourne Foale</p>	<p>Project No: 2306/2022</p>	<p>Revision: E-01</p>

Document SK ID: 38364311
Version: 1, Version Date: 23/06/2022



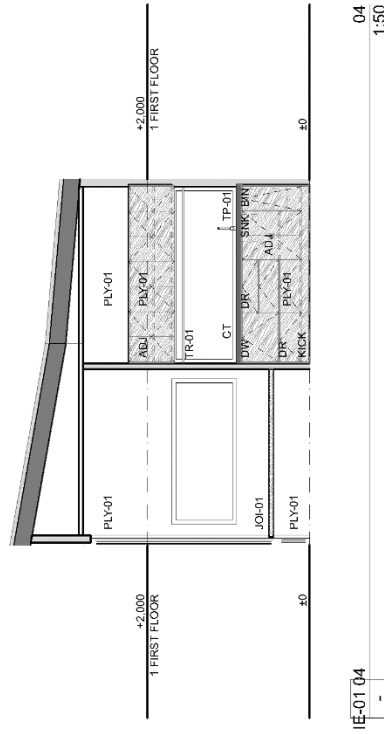
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02
1:50



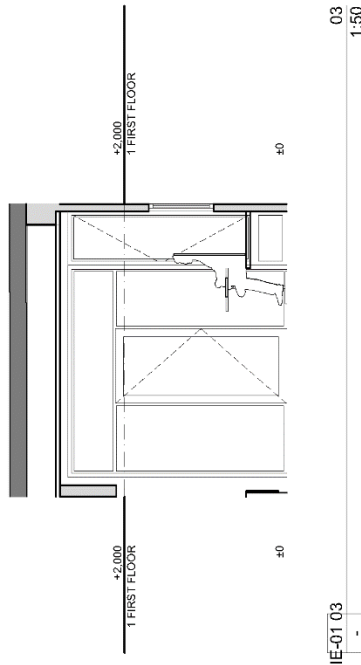
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IE-01 04

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IE-01 03

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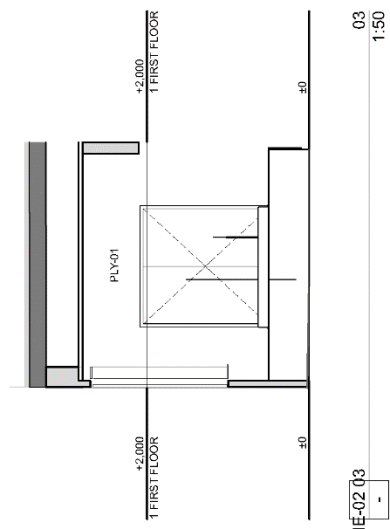
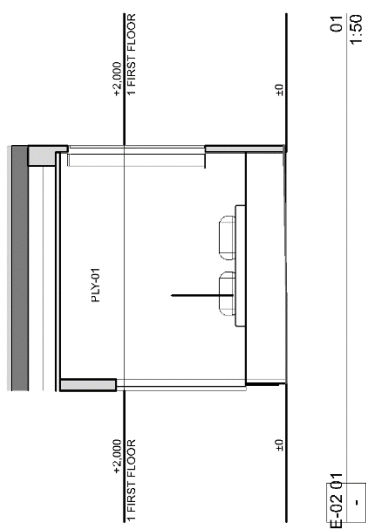
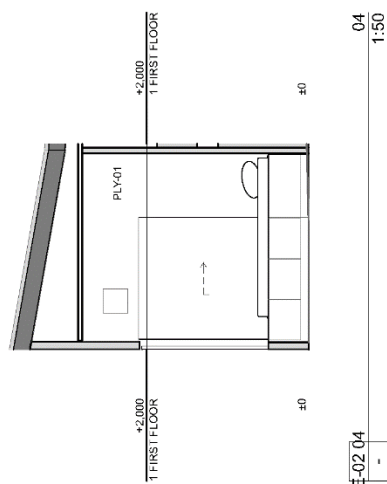
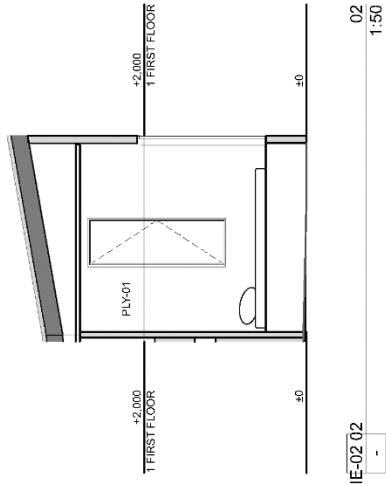
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Client: Jonathan Morehan
Project Name: Westbourne Folie
Date: 23/05/2022
Scale: 1:50
Drawing No: E-02

Project Name: Westbourne Folie

Revision No: A
Drawing No: A401

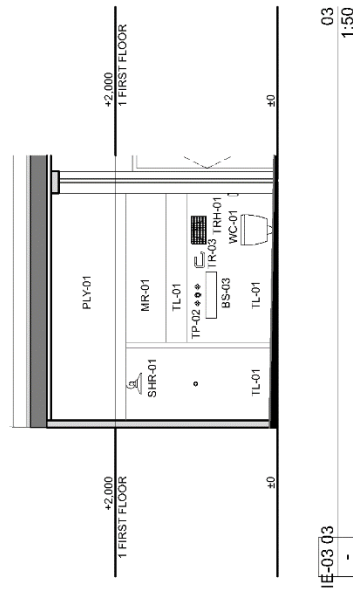
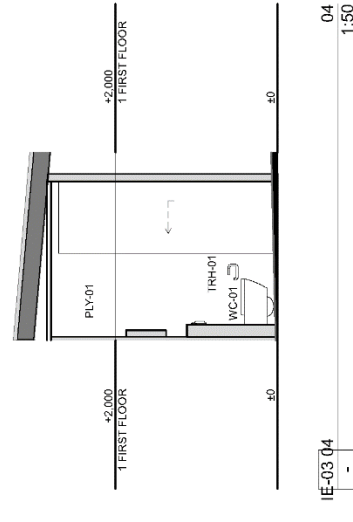
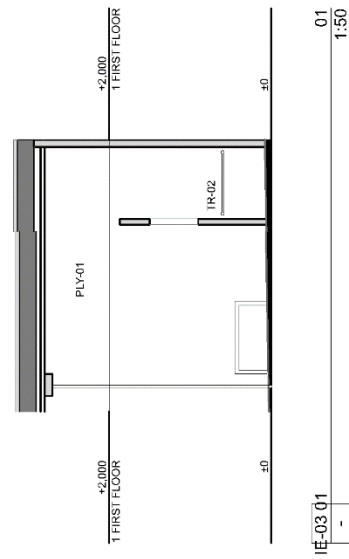
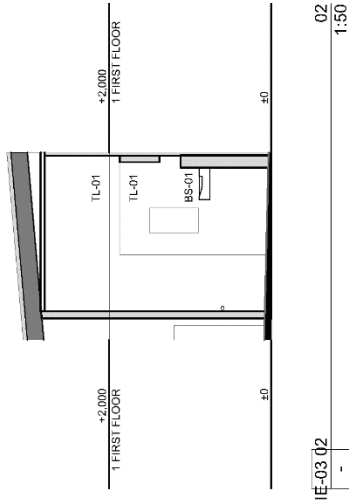
Document Set ID: 36554311
Version: 1, Version Date: 23/05/2022



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Document Set ID: 3654311
Version: 1, Version Date: 23/05/2022

DESIGN TITLE: E-03 PROJECT NAME: Westbourne Folie	SHEET NO: A DRAWING NO: A402
DESIGNER: Jonathan Morehan	CHECKED BY: E-03
PROJECT NO: 23422	PROJECT NAME: Westbourne Folie
DATE: 23/05/2022	PROJECT NAME: Westbourne Folie
DRAWN BY: Jonathan Morehan	PROJECT NAME: Westbourne Folie



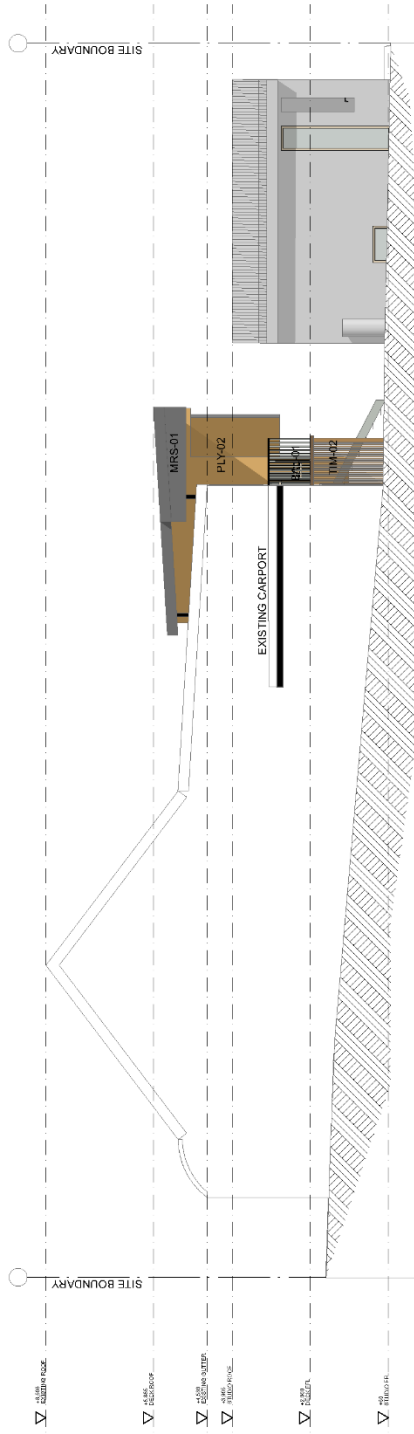
NOTE
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DESIGNER: JONATHAN MOREHAN 45 Westbourne Street Sydney NSW 2000	DRAWING TITLE: ELEVATIONS E-04	SHEET NO: A DRAWING NO: A403
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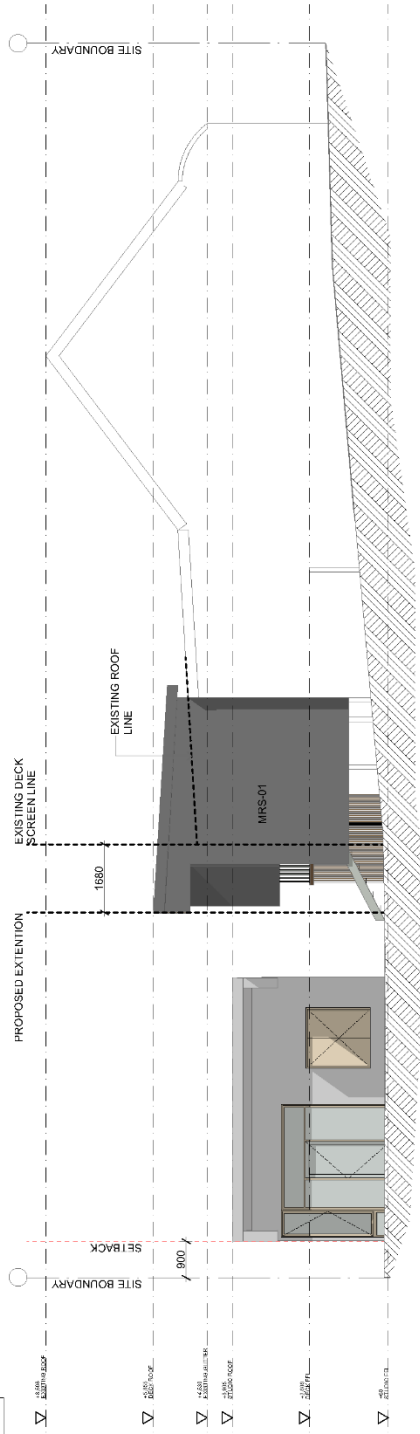
Project Name: Westbourne Folie

Client: Westbourne Street Sydney

Document Set ID: 3654311
Version: 1, Version Date: 23/05/2022



E-05 ELEVATION 1:100



E-07 ELEVATION 1:100

NOTE
This drawing is the property of the client and is not to be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in this drawing. The architect is not responsible for any construction or other work that is not shown in this drawing. The architect is not responsible for any construction or other work that is not shown in this drawing.

DRAWING TITLE: E-05	PROJECT NAME: Westbourne Folie
DESIGNER: Jonathan Morehan	DATE: 23/05/2022
PROJECT NO: 230522	DRAWING NO: A404

Window & Door Schedule
1:100



E-06
ELEVATION
1:100

Window/Door #	Orientation	Area	Frame & Glazing
W-01	W	1500w x 1800h = 2.70m ²	Solid casement window timber frame & panel
W-02	W	3300w x 2700h = 8.91m ²	Clear glazed casement window with fixed panel below, clear celestial panel fixed, clear door panel with 2 clear fixed sidelights, all with timber frame
W-03	S	600w x 1700h = 1.02m ²	Solid casement window Timber frame & panel
W-04	E	600w x 450h = 0.45m ²	Clear fixed panel with timber frame
W-05	E	600w x 2700h = 1.62m ²	Clear fixed panel with timber frame
W-06	E	350w x 1800h = 0.63m ²	Framed clear fixed panel
W-07	N	2250w x 800h = 1.74m ²	Solid casement window timber frame & panel
W-08	N	1800w x 800h = 1.44m ²	Solid casement window timber frame & panel
W-09	W	1800w x 1580h = 2.84m ²	Bifold clear glazed with timber frame
D-01	N	2800w x 2400h = 6.72m ²	Chital galvanneal double swing door system with fixed clear celestial and sidelight p.

NOTE: This schedule is for information only and does not constitute a contract. It is subject to change without notice. The contractor shall be responsible for verifying the accuracy of the information provided. The contractor shall be responsible for obtaining all necessary permits and approvals. The contractor shall be responsible for ensuring that the work is completed in accordance with the relevant building codes and standards. The contractor shall be responsible for ensuring that the work is completed in accordance with the relevant building codes and standards. The contractor shall be responsible for ensuring that the work is completed in accordance with the relevant building codes and standards.

Document SK ID: 38354511
Version: 1, Version Date: 23/06/2022

District Council: AM Project No: 2022 Project Name: 2 - WIP Client: Westbourne Foile Date: 23/06/2022	DRAWING TITLE: ELEVATION E-06	PERSON NO: 2 - WIP SHEET NO: A405
PROJECT NAME: Westbourne Foile		



Single Dwelling

Certificate number: 1302588S

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Definitions" dated 10/09/2020 published by the Department. This document is available at www.basix.nsw.gov.au



Planning, Industry & Environment

Secretary
Date of issue: Tuesday, 03 May 2022
To be valid, this certificate must be lodged within 3 months of the date of issue.

Project summary	
Project name	B2575
Street address	40 WESTBOURNE Street STANMORE 2048
Local Government Area	Inner West Council
Plan type and plan number	deposited 1004
Lot no.	23
Section no.	4
Project type	separate dwelling house - secondary dwelling
No. of bedrooms	1
Project score	
Water	✓ 40 Target 40
Thermal Comfort	✓ Pass Target Pass
Energy	✓ 50 Target 50

Certificate Prepared by	
Name / Company Name:	GAT and Associates
ABN (if applicable):	86107515917

Description of project

Project address	
Project name	B2575
Street address	40 WESTBOURNE Street STANMORE 2048
Local Government Area	Inner West Council
Plan type and plan number	Deposited Plan 1004
Lot no.	23
Section no.	4
Project type	
Project type	separate dwelling house - secondary dwelling
No. of bedrooms	1
Site details	
Site area (m ²)	368
Roof area (m ²)	39
Conditioned floor area (m ²)	25.2
Unconditioned floor area (m ²)	0.0
Total area of garden and lawn (m ²)	32
Roof area (m ²) of the existing dwelling	159
No. of bedrooms in the existing dwelling	3

Assessor details and thermal loads	
Assessor number	20399
Certificate number	0007683774
Climate zone	56
Area adjusted cooling load (MJ/m ² .year)	26
Area adjusted heating load (MJ/m ² .year)	40
Ceiling fan in at least one bedroom	No
Ceiling fan in at least one living room or other conditioned area	Yes
Project score	
Water	✔ 40 Target 40
Thermal Comfort	✔ Pass Target Pass
Energy	✔ 50 Target 50

Schedule of BASIX commitments




The commitments set out below regulate how the proposed development is to be carried out. It is a condition of any development consent granted, or complying development certificate issued, for the proposed development, that BASIX commitments be complied with.

Water Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Landscape			
The applicant must plant indigenous or low water use species of vegetation throughout 31.86 square metres of the site.	✓	✓	
Fixtures			
The applicant must install showerheads with a minimum rating of 4 star (> 6 but <= 7.5 L/min plus spray force and/or coverage tests) in all showers in the development.		✓	✓
The applicant must install a toilet flushing system with a minimum rating of 3 star in each toilet in the development.		✓	✓
The applicant must install taps with a minimum rating of 5 star in the kitchen in the development.		✓	
The applicant must install basin taps with a minimum rating of 5 star in each bathroom in the development.		✓	
Alternative water			
Rainwater tank			
The applicant must install a rainwater tank of at least 800 litres on the site. This rainwater tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities.	✓	✓	✓
The applicant must configure the rainwater tank to collect rain runoff from at least 39 square metres of the roof area of the development (excluding the area of the roof which drains to any stormwater tank or private dam).		✓	✓
The applicant must connect the rainwater tank to: <ul style="list-style-type: none"> • all toilets in the development • at least one outdoor tap in the development (Note: NSW Health does not recommend that rainwater be used for human consumption in areas with potable water supply.) 		✓	✓

Thermal Comfort Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Simulation Method			
The applicant must attach the certificate referred to under "Assessor Details" on the front page of this BASIX certificate (the "Assessor Certificate") to the development application and construction certificate application for the proposed development (or, if the applicant is applying for a complying development certificate for the proposed development, to that application). The applicant must also attach the Assessor Certificate to the application for an occupation certificate for the proposed development.			
The Assessor Certificate must have been issued by an Accredited Assessor in accordance with the Thermal Comfort Protocol.			
The details of the proposed development on the Assessor Certificate must be consistent with the details shown in this BASIX certificate, including the Cooling and Heating loads shown on the front page of this certificate.			
The applicant must show on the plans accompanying the development application for the proposed development, all matters which the Assessor Certificate requires to be shown on those plans. Those plans must bear a stamp of endorsement from the Accredited Assessor to certify that this is the case. The applicant must show on the plans accompanying the application for a construction certificate (or complying development certificate, if applicable), all thermal performance specifications set out in the Assessor Certificate, and all aspects of the proposed development which were used to calculate those specifications.	✔	✔	✔
The applicant must construct the development in accordance with all thermal performance specifications set out in the Assessor Certificate, and in accordance with those aspects of the development application or application for a complying development certificate which were used to calculate those specifications.		✔	✔
The applicant must show on the plans accompanying the development application for the proposed development, the locations of ceiling fans set out in the Assessor Certificate. The applicant must show on the plans accompanying the application for a construction certificate (or complying development certificate, if applicable), the locations of ceiling fans set out in the Assessor Certificate.	✔	✔	✔
The applicant must construct the floors and walls of the dwelling in accordance with the specifications listed in the table below.	✔	✔	✔
Floor and wall construction			
floor - concrete slab on ground	Area All or part of floor area square metres		

Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Hot water			
The applicant must install the following hot water system in the development, or a system with a higher energy rating: solar (electric boosted) with a performance of 15 to 20 STCs or better.	✓	✓	✓
Cooling system			
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 living area: 1-phase airconditioning; Energy rating: 4 star (average zone)		✓	✓
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 bedroom: 1-phase airconditioning; Energy rating: 4 star (average zone)		✓	✓
The cooling system must provide for day/night zoning between living areas and bedrooms.		✓	✓
Heating system			
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 living area: 1-phase airconditioning; Energy rating: 4 star (average zone)		✓	✓
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 bedroom: 1-phase airconditioning; Energy rating: 4 star (average zone)		✓	✓
The heating system must provide for day/night zoning between living areas and bedrooms.		✓	✓
Ventilation			
The applicant must install the following exhaust systems in the development: At least 1 Bathroom: individual fan, ducted to façade or roof; Operation control: manual switch on/off Kitchen: individual fan, ducted to façade or roof; Operation control: manual switch on/off Laundry: individual fan, ducted to façade or roof; Operation control: manual switch on/off		✓ ✓ ✓	✓ ✓ ✓
Artificial lighting			
The applicant must ensure that the "primary type of artificial lighting" is fluorescent or light emitting diode (LED) lighting in each of the following rooms, and where the word "dedicated" appears, the fittings for those lights must only be capable of accepting fluorescent or light emitting diode (LED) lamps: <ul style="list-style-type: none"> at least 1 of the bedrooms / study; dedicated 		✓	✓

Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
<ul style="list-style-type: none"> • at least 2 of the living / dining rooms; dedicated • the kitchen; dedicated • all bathrooms/toilets; dedicated • the laundry; dedicated • all hallways; dedicated 		<p style="text-align: center;">></p> <p style="text-align: center;">></p> <p style="text-align: center;">></p> <p style="text-align: center;">></p> <p style="text-align: center;">></p>	<p style="text-align: center;">></p> <p style="text-align: center;">></p> <p style="text-align: center;">></p> <p style="text-align: center;">></p> <p style="text-align: center;">></p>
Natural lighting			
The applicant must install a window and/or skylight in the kitchen of the dwelling for natural lighting.	>		>
The applicant must install a window and/or skylight in 1 bathroom(s)/toilet(s) in the development for natural lighting.	>		>
Other			
The applicant must install a gas cooktop & electric oven in the kitchen of the dwelling.		>	
The applicant must construct each refrigerator space in the development so that it is "well ventilated", as defined in the BASIX definitions.		>	
The applicant must install a fixed outdoor clothes drying line as part of the development.		>	
The applicant must install a fixed indoor or sheltered clothes drying line as part of the development.		>	

Legend	
In these commitments, "applicant" means the person carrying out the development.	
Commitments identified with a  in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).	
Commitments identified with a  in the "Show on CC/CDC plans and specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.	
Commitments identified with a  in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate (either interim or final) for the development may be issued.	

Description of project

BASIX[®] Certificate
 Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions

Certificate number: A458092

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary

Date of issue: Tuesday, 03, May 2022

To be valid, this certificate must be lodged within 3 months of the date of issue.



Project address	
Project name	B2575 (Alt & Adds)
Street address	40 Westbourne Street Stanmore 2048
Local Government Area	Inner West Council
Plan type and number	Deposited Plan 1004
Lot number	23
Section number	4
Project type	
Dwelling type	Separate dwelling house
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and does not include a pool (and/or spa).

Certificate Prepared by (please complete before submitting to Council or PCA)
Name / Company Name: GAT and Associates
ABN (if applicable): 86107515917

Construction		Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Insulation requirements		✓	✓	✓
<p>The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m², b) insulation specified is not required for parts of altered construction where insulation already exists.</p>				
Construction	Additional insulation required (R-value)	Other specifications		
suspended floor with open subfloor: framed (R0.7).	R0.8 (down) (or R1.50 including construction)			
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)			
flat ceiling, flat roof: framed	ceiling: R3.00 (up), roof: foil/sarking	medium (solar absorptance 0.475 - 0.70)		

Glazing requirements		Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check																							
<p>Windows and glazed doors</p> <p>The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.</p> <p>The following requirements must also be satisfied in relation to each window and glazed door:</p> <p>Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.</p> <p>For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.</p> <p>Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.</p> <p>Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.</p> <p>Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.</p>																											
<p>Windows and glazed doors glazing requirements</p> <table border="1"> <thead> <tr> <th rowspan="2">Window / door no.</th> <th rowspan="2">Orientation</th> <th rowspan="2">Area of glass inc. frame (m²)</th> <th colspan="2">Overshadowing</th> <th rowspan="2">Shading device</th> <th rowspan="2">Frame and glass type</th> </tr> <tr> <th>Height (m)</th> <th>Distance (m)</th> </tr> </thead> <tbody> <tr> <td>W09</td> <td>SW</td> <td>2.84</td> <td>2</td> <td>5.3</td> <td>eave/verandah/pergola/balcony >=900 mm</td> <td>timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)</td> </tr> <tr> <td>D01</td> <td>NW</td> <td>6.78</td> <td>0</td> <td>0</td> <td>eave/verandah/pergola/balcony >=900 mm</td> <td>standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)</td> </tr> </tbody> </table>					Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing		Shading device	Frame and glass type	Height (m)	Distance (m)	W09	SW	2.84	2	5.3	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)	D01	NW	6.78	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing					Shading device	Frame and glass type																		
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D01	NW	6.78	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)																					

Legend
In these commitments, "applicant" means the person carrying out the development.
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.

Attachment C- Clause 4.6 Exception to Development Standards

CLAUSE 4.6 VARIATION TO CLAUSE 53(2)(a) - NON-DISCRETIONARY DEVELOPMENT STANDARDS FOR SECONDARY DWELLINGS OF THE STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

1. Introduction

This submission seeks to address the proposed variation to Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 (SEPP Housing 2021) as it specifically pertains to the minimum site area for the development of a secondary dwelling.

It should be noted that the application for the secondary dwelling is permissible under the Marrickville Local Environmental Plan 2011 (MLEP 2011). Although SEPP Housing 2021 applies, greater weight is relied upon under the MLEP 2011 and Marrickville Development Control Plan 2011 (MDCP 2011). Under those instruments there are no minimum lot size requirements for secondary dwellings. The clause does not preclude a secondary dwelling if the lot is below 450m². Consequently, the site is considered suitable for the use of a secondary dwelling due to the compliance with relevant MLEP 2011 development standards i.e. floor space ratio, height, the sizing of a secondary dwelling, and relevant MDCP 2011 development controls i.e. private open space, landscaping, and solar access.

This submission is made under Clause 4.6 of the MLEP 2011 and is a "written request" as referred to in subclause (3).

The proposed development seeks to demolish part of the premises, carry out alterations and additions to a dwelling house to provide a rear deck, and construct a detached secondary dwelling at the rear of the site.

As detailed in this written request for a variation to Clause 53(2)(a) of the SEPP Housing 2021 as it specifically pertains to the minimum site area for the construction of a secondary dwelling, the proposed development meets the requirements prescribed under Clause 4.6 of the MLEP 2011.

2. Site Background

The subject site is commonly known as 40 Westbourne Street, Stanmore, and is legally referred to as Lot 23 of Section 4 in Deposited Plan 1004. The site is located on the northern side of Westbourne Street and is on a block bounded to the north by Corunna Road, to the west by Charles Street, and to the east by Cannon Lane. Refer to Figure 1 Site Location Map.



Figure 1 Site Location Map (Source: <https://maps.six.nsw.gov.au/>)

The subject site is a single, regular allotment, and provides for a site area of 370.9m². The front and rear boundaries measure 12.19m in width, while the side boundaries measure 30.43m in depth.

Located on the subject site presently is a single storey cottage with a front verandah and a corrugated metal roof. Due to the slope of the site, the dwelling has under-house storage at the rear. The site includes a driveway that runs the eastern boundary to a carport attached to the north-eastern corner of the principal dwelling. An outbuilding is located at the rear of the site.

The site is zoned R2 Low-Density Residential. The existing dwelling house and proposed secondary dwelling are permissible with consent. The streetscape is characterised by a mixture of single and two-storey residential properties of varying housing types (semi-detached dwellings, terrace dwellings, and detached cottages).

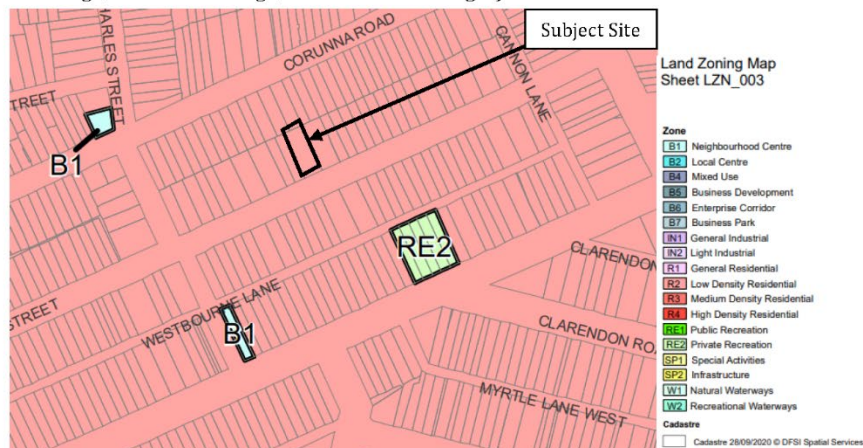


Figure 2: Land Zoning Map (Source: NSW Legislation website)

3. Clause 4.6

This submission is made under Clause 4.6 of the MLEP 2011 – Exceptions to development standards. Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Secretary has been obtained.**
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.**
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**

Note. When this Plan was made it did not include all of these zones.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (caa) clause 5.5,*
 - (ca) clause 6.9, 6.17 or 6.18,*
 - (cb) clause 6.21(4)."*

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1);*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2);*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3);*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under an Environmental Planning Instrument (EPI). Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The Environmental Planning Instrument to which this variation relates is the State Environmental Planning Policy (Housing) 2021. The development standard to which this variation relates is Clause 53(2)(a) – non-discretionary development standards for secondary dwellings. The Clause reads as follows:

- (1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
- (2) *The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—*
 - (a) *for a detached secondary dwelling—a minimum site area of 450m²,*
 - (b) *the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

As outlined in Part 4.15(3) of the Environmental Planning & Assessment Act (The Act) 1979, when an EPI contains a non-discretionary development standard that is not complied with the Act may provide flexibility to a non-discretionary development standard, in this instance Clause 4.6 of the relevant EPI. In this instance a Clause 4.6 Variation is required to provide flexibility to the standard.

4. Extent of Non-Compliance

As noted in accordance with Clause 53(2)(a) of the SEPP (Housing) 2021, for a detached secondary dwelling, a minimum site area of 450m² is required.

The subject site has an area of 370.9m², which results in a short fall of 79.1m² from the relevant development standard. A variation of 17.5% is proposed.

It is our submission that the variation does not impact the site's suitability for the proposed development, specifically, its use for a secondary dwelling. The proposal complies with the relevant development standards of the MLEP 2011 i.e. floor space ratio, building heights, and sizing of secondary dwellings, as well as being compliant with the relevant development controls of the MDCP 2011 i.e. private open space, landscaping, and solar access.

A degree of flexibility is considered reasonable in this instance.

5. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49].

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C states:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (not applicable).</i>
Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

With respect to the standard which requires a minimum site area as it applies to the subject property, the first method is invoked.

Compliance with objectives of the standard

Whilst there are no objectives stated for the development standard itself, the principles of the Housing SEPP 2021 have been considered and are achieved by the proposal notwithstanding the

variation which is being sought to the minimum site area of the Policy. The principles of the SEPP Housing 2021 have been discussed individually below.

The principles of this Policy are as follows—

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

Principles

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*

Comment:

The proposed variation allows the site to provide a diverse housing type with the addition of a secondary dwelling to a detached dwelling house. The secondary dwelling can be used as either low-cost rental accommodation or a separate living area to the principal dwelling.

- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*

Comment:

The proposed secondary dwelling provides an opportunity for affordable rental housing. The proposal does not utilise any incentives in terms of floor space bonuses.

- (c) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

Comment:

The proposed secondary dwelling will meet the needs of all residents as the secondary dwelling is accessible from the street and allow for diversity in housing choice & affordability.

- (d) ensuring new housing development provides residents with a reasonable level of amenity,*

Comment:

The proposed variation does not restrict the proposed secondary dwelling from providing a reasonable level of amenity, by receiving adequate solar access, and allowing the principal dwelling and neighbouring sites to retain adequate solar access. The secondary dwelling will enjoy its separate area of private open space that is suitably landscaped and does not restrict the principal dwelling from retaining a suitable private open space area.

(e) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,

Comment

The secondary dwelling is proposed in a location that is well serviced by existing infrastructure and services.

(f) minimising adverse climate and environmental impacts of new housing development,

Comment

The proposed secondary dwelling complies with relevant thermal and energy requirements as required by SEPP BASIX 2004.

(g) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

Comment

The proposal provides a new contemporary secondary dwelling that reflects and enhances newer development that is located along Westbourne Street.

(h) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,

Comment

The proposed secondary dwelling provides the site an opportunity to provide short or long-term rental accommodation.

(i) mitigating the loss of existing affordable rental housing.

Comment

The proposed works do not result in the loss of affordable rental housing.

In view of the above, the proposal inclusive of its variation is consistent with the aims of the policy.

6. Are there Sufficient Environmental Planning Grounds?

A contravention to Clause 53(2)(a) of SEPP Housing 2021 is justified as there are sufficient environmental planning grounds to do so.

The subject site provides for suitable land uses in the continued use of a dwelling house and the new use of a secondary dwelling. The site is considered to be suitable for the use of a secondary dwelling as the Council's relevant policies of the MLEP 2011 and the MDCP 2011 do not include any restriction on land on which a secondary dwelling can be developed, it only includes restrictions to the sizing of the secondary dwelling, in which the application is compliant.

The secondary dwelling is suitable for the subject site in lieu of providing an adequate site area. This is as the site complies with development standards under the MLEP 2011 such as floor space ratio, height of buildings, and miscellaneous controls for the sizing of secondary dwellings. The site is compliant with key controls under the MDCP 2011, such as an area for private open space, landscaped area, and solar access. It is considered that due to compliance with these key controls, the site is appropriate for a secondary dwelling.

The construction of the secondary dwelling will provide potential low-cost rental housing in an accessible location. The works will also provide for a separate living area for the residents of the site, without adversely altering the period nature of the principal dwelling.

It is considered that there is no adverse environmental impact of varying the minimum site area development standard. The amenity of the residents of the subject site and surrounding properties are retained.

7. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 6.

Furthermore, it is important to also consider the objectives of the R2 Low-Density Residential zone in relation to the development. Additional comments with respect to the proposal's positive response to each objective are also provided below.

The objectives of the zone are as follows:

Zone R2 Low-Density Residential

Objectives of the Zone

- *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.*

Objective

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

Comment:

The proposed secondary dwelling intends to provide the further ability for the site to satisfy the housing needs of the community. The additional secondary dwelling provides a self-contained living space capable of providing useable floor space for the site without altering a period dwelling. The proposed secondary dwelling will better make use of a previously underutilised site to provide new residential accommodation.

Objective

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

Comment:

The proposal enables a separate land use of a secondary dwelling to be used mutualistically with a detached dwelling house to provide facilities to meet the day-to-day needs of its residents.

The proposed development is consistent with the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for an adequate improvement to the rear living areas of the principal dwelling as well as providing a secondary dwelling, that can either be used as low-cost rental housing or a separate living area to the main dwelling. The proposed use is in keeping with the desired land uses and objectives of the R2 Low-Density Residential zone.

Given the site's orientation, location and context it is considered that the site is well suited for development.

The development is generally consistent with the current planning controls.

The variation of the minimum site area will have no obvious difference to a site that complies with the minimum site area. The subject site is compliant with key development controls such as floor space ratio, building height, sizing of the secondary dwelling, private open space, landscaping, and solar access.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the standard which requires a minimum site area for secondary dwellings will not impact the site providing for the orderly and economic development of the site in a manner that achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 5 to 7 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the MLEP 2011 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;

- The development meets the objectives of the R2 Low-Density Residential zoning of the land;
- The proposed development and variation maintain consistency with the Principles of SEPP Housing 2021;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance;
- The subject site is benefited by its proximate location to public transport along with numerous goods and services and amenities which benefit the community and local area; and
- The development provides consistency with key development controls of the MLEP 2011 and MDCP 2011.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.9, 6.17 or 6.18,*
- (cb) clause 6.21(4).”*

Comment:

This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been prepared and submitted with this development application.

The development is not seeking to vary Clause 5.4, or any of the clauses listed under (ca, caa, or cb).

11. Conclusion

The proposal does not strictly comply with Clause 53(2)(a) of the SEPP Housing 2021 as it specifically relates to the minimum site area for secondary dwellings.

Having evaluated the likely impacts arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the MLEP 2011 are satisfied as the breach of the standard does not create any adverse environmental impacts.

The shortfall in site area does not restrict the development from providing for a secondary dwelling that allows the site to remain compliant with key development controls of the MLEP 2011 and MDCP 2011, such as floor space ratio, building height, size of the secondary dwelling, private open space, landscaping, and solar access. Non-compliance with the control does not impact the subject development by providing an ancillary land use to the site with opportunities for separate living areas to the principal dwelling or low-cost rental housing.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular case and the use of Clause 4.6 of the MLEP 2011 to vary this development control is appropriate in this instance.

It is considered that there are sufficient environmental planning grounds to vary the standard, as a variation will result in a better environmental planning outcome.

Based on the above, it is sensible to conclude that strict compliance with the development standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

James Corry
Town Planner
GAT & Associates
Plan 4309