

 DEVELOPMENT ASSESSMENT REPORT			
<b>Application No.</b>	DA/2022/0616		
<b>Address</b>	2/43 Ross Street CAMPERDOWN NSW 2050		
<b>Proposal</b>	To demolish part of the premises and carry out ground floor alterations and additions to a multi dwelling housing development to increase the size of a bedroom at Unit 2		
<b>Date of Lodgement</b>	02 August 2022		
<b>Applicant</b>	Mr Ross Styles		
<b>Owner</b>	Helen G Tait		
<b>Number of Submissions</b>	Initial: 0		
<b>Value of works</b>	\$24,000.00		
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%		
<b>Main Issues</b>	Floor Space Ratio variation		
<b>Recommendation</b>	Approved with Conditions		
<b>Attachment A</b>	Recommended conditions of consent		
<b>Attachment B</b>	Plans of proposed development		
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards - FSR		
			
<b>LOCALITY MAP</b>			
Subject Site		Objectors	 
Notified Area		Supporters	

## 1. Executive Summary

This report is an assessment of the application submitted to Council to demolish part of the premises and carry out ground floor alterations and additions to a multi dwelling housing development to increase the size of a bedroom at Unit 2 at 2/43 Ross Street.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- The existing site currently has a non-compliant FSR of 0.82:1 (318.3sqm). The application results in an increase to the FSR of 0.85:1 (330.5sqm). The resultant non-compliance is 96.8sqm or 41.4% on the site.

The non-compliance is acceptable given:

- The existing development was approved and constructed prior to MLEP 2011 which imposed a maximum FSR of 0.6:1.
- The proposal seeks to occupy an existing undercroft area below Level 1 which forms part of the private open space area.
- The proposal reduces the existing Private Open Space (POS) by 12.2sqm, however the area to be enclosed is hard paved and due to the existing roof, does not receive solar access and despite this the dwelling would maintain in excess of the quantum of POS required for multi dwelling housing under Part 2.18 of MDCP 2011.

Accordingly, the application is recommended for approval.

## 2. Proposal

The proposal seeks to increase the size of the existing Bedroom 2 located on the ground floor of Unit 2 by 12.2sqm. This involves demolishing the exterior wall to Bed 2 and occupying an existing undercroft area below Level 1 which forms part of the private open space area. One (1) new ground floor north facing window is proposed which faces into the existing private open space area.

## 3. Site Description

The subject site is located on the western side of Ross Street near the intersection of Salisbury Road. The site consists of 1 allotment and is generally rectangular in shape and contains 3 units within a strata plan with a total area of 389.5 sqm. The subject of this application is Unit 2 within the existing complex.

The site has a frontage to Ross Street of 10.3 metres and a secondary frontage of approximate 10.55 metres to Salisbury Lane.

The site supports three (3) x three (3) storey units including a common access path along the northern side boundary. The adjoining properties support one to two storey dwelling houses and O'Dea Reserve.

The site is zoned R1 – General Residential under the MLEP 2011.

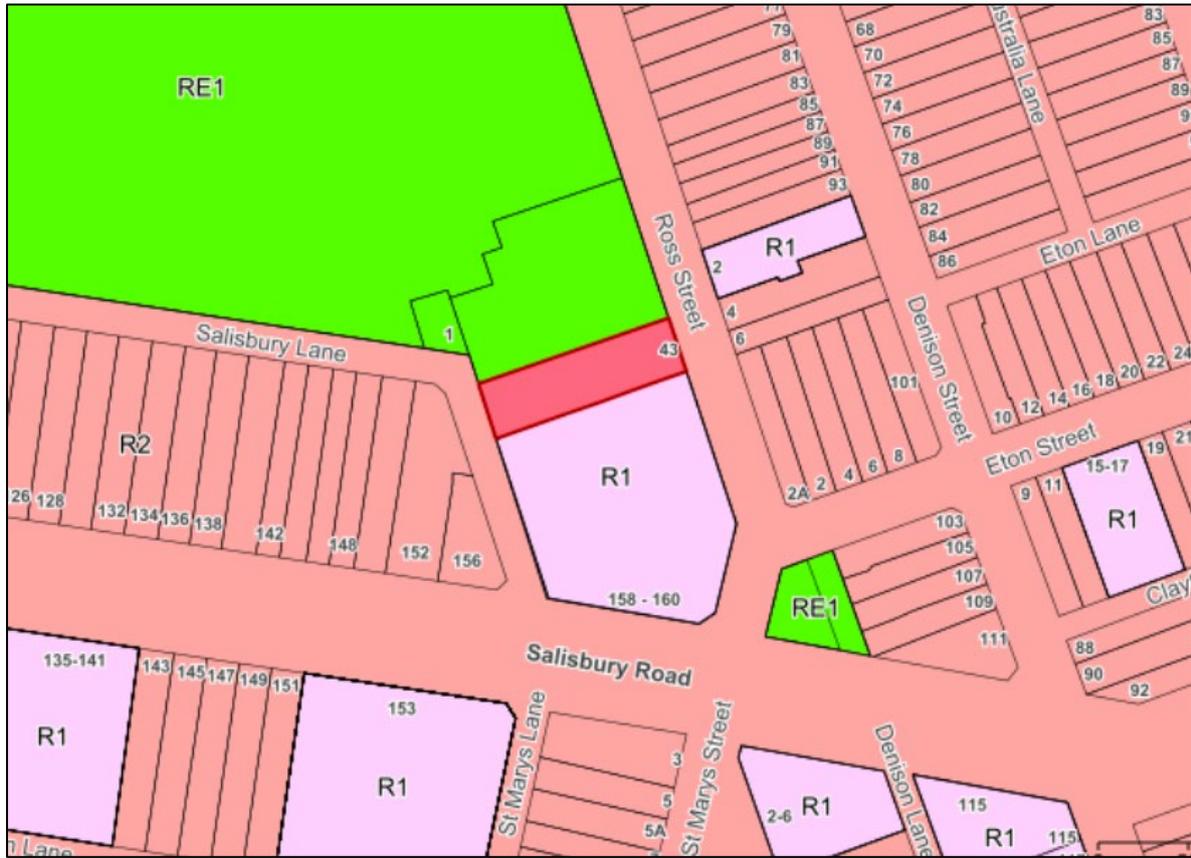


Figure 1: Exert of Zoning Map



Figure 2: The site as viewed from Ross Street



Figure 3: View of subject area for proposed development within Unit 2

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
DA2000000299	For demolition of existing dwelling and erection of a residential flat building containing 3 dwellings.	Approved on 3 November 2000
DA2000000299.01	Application under Section 96 of the Environmental Planning and Assessment Act to modify Determination No200000299 to replace glazed aluminium windows in northern elevation to brick construction with awning windows.	Approved 3 July 2001
PDA/2021/0516	To provide a new window to the northern elevation of each unit and extend a bedroom at Unit 2.	Advice Letter Issued 18 March 2022.

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
08 August 2022	Application Lodged
24 August 2022 to 7 September 2022	Application Notified.

## 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*

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)(i) *Marrickville Local Environment Plan 2011 (MLEP 2011)*

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – 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
<b>Height of Building</b> Maximum permissible: 9.5 metres	8.73m (existing)	N/A	Yes
<b>Floor Space Ratio</b> Maximum permissible: 0.6:1 or 233.7sqm	0.85:1 or 330.5 sqm	96.8 sqm or 41.4%	No

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

The site is zoned R1 under the *MLEP 2011*. The *MLEP 2011* defines the development as:

**Multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R1 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 4.4 - Floor space ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the *Marrickville Local Environmental Plan 2011* by 41.4% (96.8sqm).

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*. The applicant’s justification of the proposed contravention of the development standard is summarised as follows:

- The former planning instrument under which the existing building was approved (Marrickville LEP 2001) did not impose a maximum floor space ratio development standard. It had a minimum site area development standard for dwelling type (by size). It is noted that the original application did not comply with the development standard and Council supported a SEPP 1 objection. This variation allowed 3 large dwellings on the land whilst the standard only permitted two medium and one small dwelling. The non-compliance with the standard at the time was numerically significant. The proposal will also result in a numerically significant noncompliance. In comparison to the original approved application in terms of site density, the additional 12.2sqm for Unit 2 will not alter the dwelling yield. It remains a 3-large dwelling development.
- The non-compliance with the standard arises as a result of providing 12.2sqm of floor space in an undercroft area of the first floor level of Unit 2. The additional floor space is not generally visible externally from the site and does not manifest any unreasonable visual scale and bulk. The appearance of the building externally to the site and from the public domain will remain substantially the same.
- The proposal provides an additional 12.2sqm of floor space for bedroom 2 in Unit 2 by reducing ground floor private open space. A reduction of private open space could be considered to detrimentally impact the amenity of the dwelling. However, the amenity of the existing ground level private open space in terms of qualitative performance is considered to be poor because it is fully below the first floor level. Furthermore, the amenity of Bedroom 2 in terms of its qualitative performance is also considered to be poor because the window serving the room faces an internal blank wall. It has no favourable outlook. The proposal extends Bedroom 2 into the undercroft space and provides a new north-facing window. Although the window will remain below the undercroft first floor level it is closer to the northern boundary. Its outlook and amenity will be significantly improved due to both the aspect and an improved landscaped setting provided in the private open space.
- A reduction in private open space could be considered to be detrimental to the amenity of a dwelling, however, the current ground level private open space is more akin to a service space because of its enclosed nature. Furthermore, the dwelling has a superior area of private open space at first floor level which is directly connected to the dwelling's main living area and has a direct outlook into O'Dea Reserve. As a result, the amenity of the dwelling's private open space is not adversely affected, however, its internal amenity is enhanced without any impacts on adjoining residential neighbours or the locality generally.

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the *Marrickville Local Environmental Plan 2011*. The relevant objectives of the zone are as follows:

- *To provide for the housing needs of the community with a variety of housing types.*
- *To provide for a variety of housing types and densities.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposal involves a small extension to an existing bedroom within Unit 2 and maintains the use of the site for multi dwelling housing. The proposed extension occupies an existing undercroft below Level 1 and does not substantially alter the bulk and scale of the existing dwelling and is not highly visible from the public domain being O'Dea Reserve located adjacent to the north.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the *Marrickville Local Environmental Plan 2011*. The objectives of the standard are as follows:

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

The appearance and bulk of the dwelling remain largely unchanged as a result of the proposal, and given the bulk of the proposed development is within an existing undercroft below Level 1 of Unit 2, it is not considered to result in any adverse impacts on the local amenity including the adjoining O'Dea reserve or the amenity of the site as a whole.

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

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

### 5(b) Inner West Local Environmental Plan 2022

The *Inner West Local Environment Plan 2022* (IWLEP) was gazetted on the 12<sup>th</sup> 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 02 August 2022, on 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(c) Development Control Plans

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

Part 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
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.13 – Biodiversity	Yes
Part 2.17 – Water Sensitive Urban Design	Yes
Part 2.18 – Landscaping and Open Space	No – See Discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 4.2 – Multi Dwelling Housing and Residential Flat Buildings	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

(i) Landscaping and Open Space (Part 2.18)

Part 2.18 of MDCP 2011 requires consideration to be given to landscaping and open space before granting development consent.

The applicant provided a Landscaped Plan drawn by R. Styles and a Statement of Environmental Effects as part of the subject development application that seeks to justify that the proposal satisfies the private open space controls contained in MDCP 2011 in that:

- The dwelling has a ground level private open space area that complies with the area and dimension requirements however it is not directly connected to the main living area, which is located at first floor level. The current private open space on the ground floor is largely covered by the first-floor and it receives minimal sunlight and, as a result, has low amenity.
- Approximately 30sqm of private open space is provided on Level 1 which is directly connected to the main living area and satisfies the dimension and size requirements specified by control C20 within Part 2.18 of MDCP 2011. This open space is north-facing and looks toward O’Dea Reserve. This private open space is unaffected by the proposal and therefore the amenity of this area will be maintained. This provision exceeds the level of private open space required and while not provided at ground level in accordance with control C20, provides a high quality recreation area for the dwelling that is accessible from the living area and is consistent with the relevant objectives within Part 2.18 of MDCP 2011.
- The existing site as a whole does not comply with the 45% total landscaped area at ground level specified by control C19, and given the landscaped area provided on the site is in accordance with the current approval, it is not reasonable for the existing development to comply. Notwithstanding, the proposal increases the soft landscaped area of the ground floor private open space of Unit 2 by introducing deep soil planter boxes as demonstrated in the Landscape Plan (Dwg. No L1) which improves the amenity of unit.

While the development does not strictly meet the current private open space and landscape area provisions contained in the MDCP 2011, the proposal is considered acceptable given the

primary open space area on Level 1 which connects to the main living area is maintained and that the proposal intends to occupy a portion of the ground floor private open space which currently has poor amenity so as to increase amenity to the existing Bedroom 2. Overall, the private open space and landscaping afforded to the dwelling is considered to provide a high level of amenity in the circumstances and is consistent with the relevant objectives within Part 2.18 of MDCP 2011.

#### 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.

No submissions were received in response to the initial notification.

#### 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

The application was referred to any internal sections/officers or any external bodies.

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are not payable for the proposal.

## 8. Conclusion

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

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

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

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of *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 Floor Space Ratio 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 standard and of the zone in which the development is to be carried out.
  
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2022/0616 to demolish part of the premises and carry out ground floor alterations and additions to a multi dwelling housing development to increase the size of a bedroom at Unit 2 at 2/43 Ross Street, Camperdown 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:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
Dwg No. A1	Site Plan	01.05.2022	R. Styles
Dwg No. A2	Ground Level Existing Plan	01.05.2022	R. Styles
Dwg No. A3	Level 1 Existing Plan	01.05.2022	R. Styles
Dwg No. A4	Level 2 Existing Plan	01.05.2022	R. Styles
Dwg No. A5	Section A-A	01.05.2022	R. Styles
Dwg No. A6	Ground Level Proposed Alterations to Unit 2	01.05.2022	R. Styles
Dwg No. A7	Ground Level: Area Analysis	01.05.2022	R. Styles
Dwg No. A8	Level 1: Area Analysis	01.05.2022	R. Styles
Dwg No. A9	Level 2: Area Analysis	01.05.2022	R. Styles
Dwg No. L1	Landscape Plan - Unit 2	01.05.2022	R. Styles

As amended by the conditions of consent.

**GENERAL CONDITIONS****2. Stormwater Drainage System – Simple**

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

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

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

**3. 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.

**4. 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.

**5. 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.

**6. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

**7. Works Outside the Property Boundary**

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

**PRIOR TO ANY DEMOLITION****8. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties (Units 1 and 3 of 43 Ross Street), must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

**9. 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.

**10. 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**

**11. 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.

**12. 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.

**13. 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*

**DURING DEMOLITION AND CONSTRUCTION****14. 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.

**15. 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**

**16. No Encroachments**

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

**17. 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.

**ADVISORY NOTES****Permits**

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

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

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

**Insurances**

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

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

#### **Prescribed Conditions**

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

#### **Other Approvals may be needed**

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

#### **Failure to comply with conditions**

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

#### **Other works**

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

**Obtaining Relevant Certification**

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

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

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

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

**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.

**Dial before you dig**

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

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>

Waste Service - SITA 1300 651 116  
Environmental Solutions [www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

WorkCover Authority of NSW 13 10 50  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Enquiries relating to work safety and asbestos removal and disposal.

#### 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.

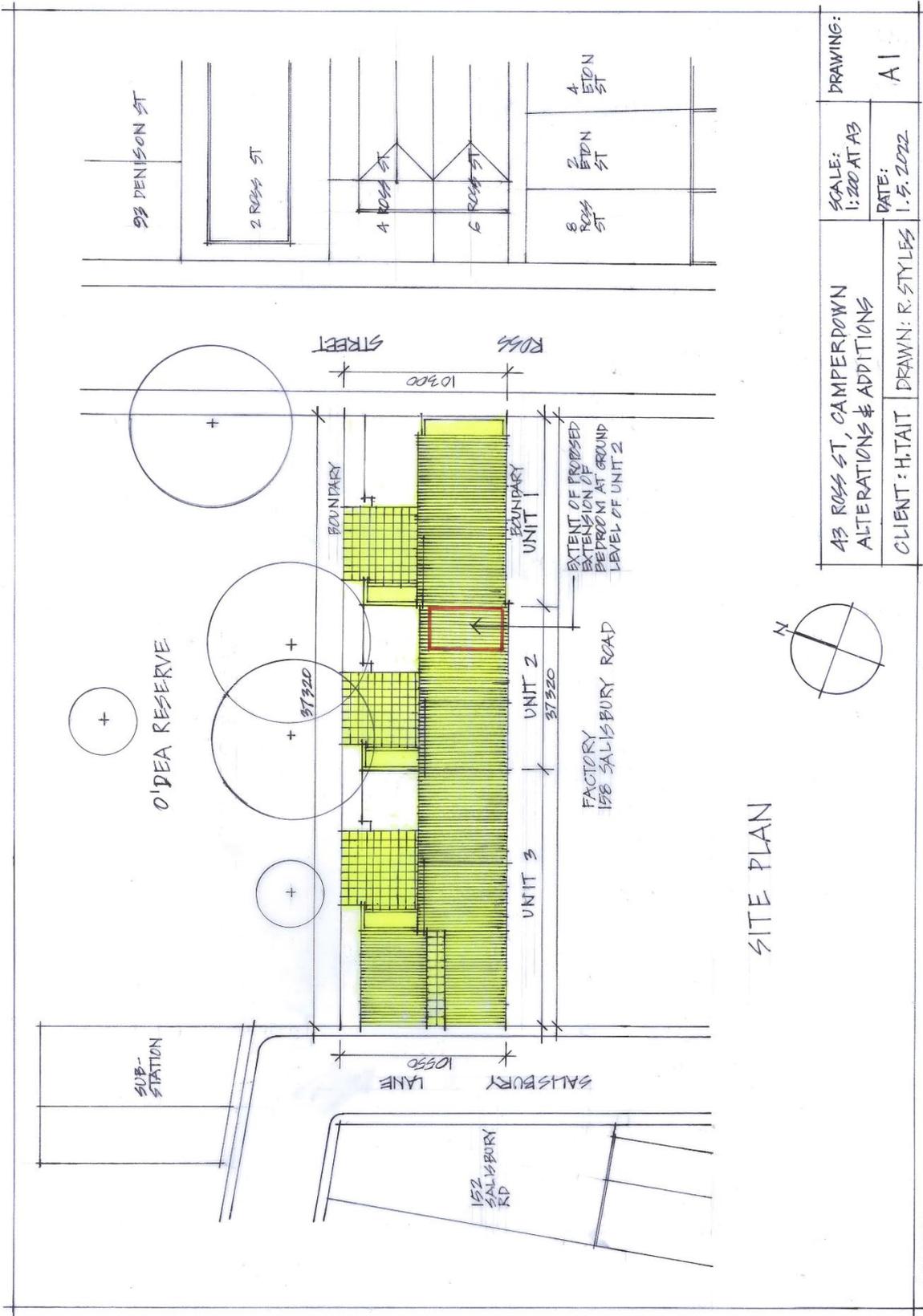
#### Toilet Facilities

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.

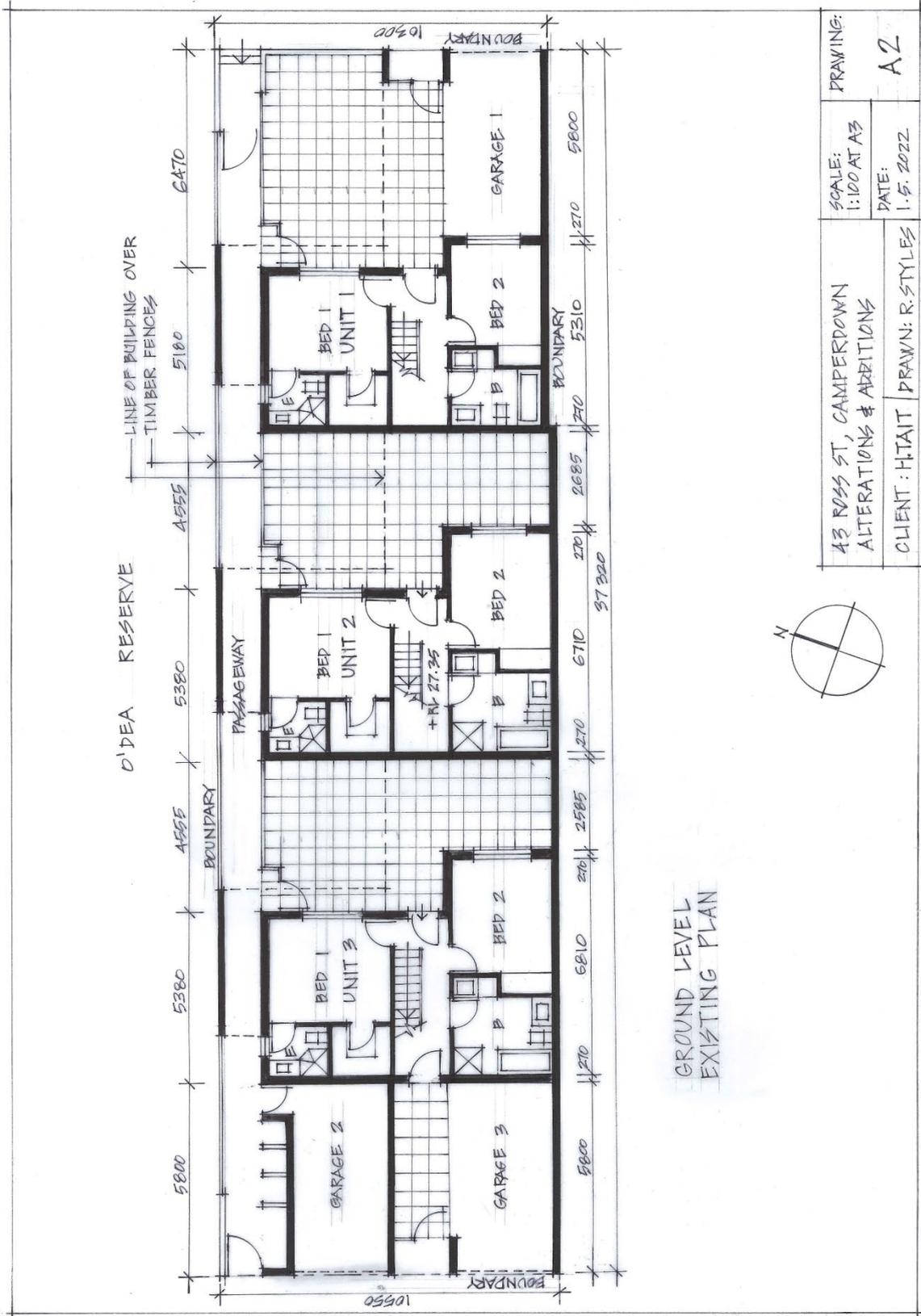
Attachment B – Plans of proposed development



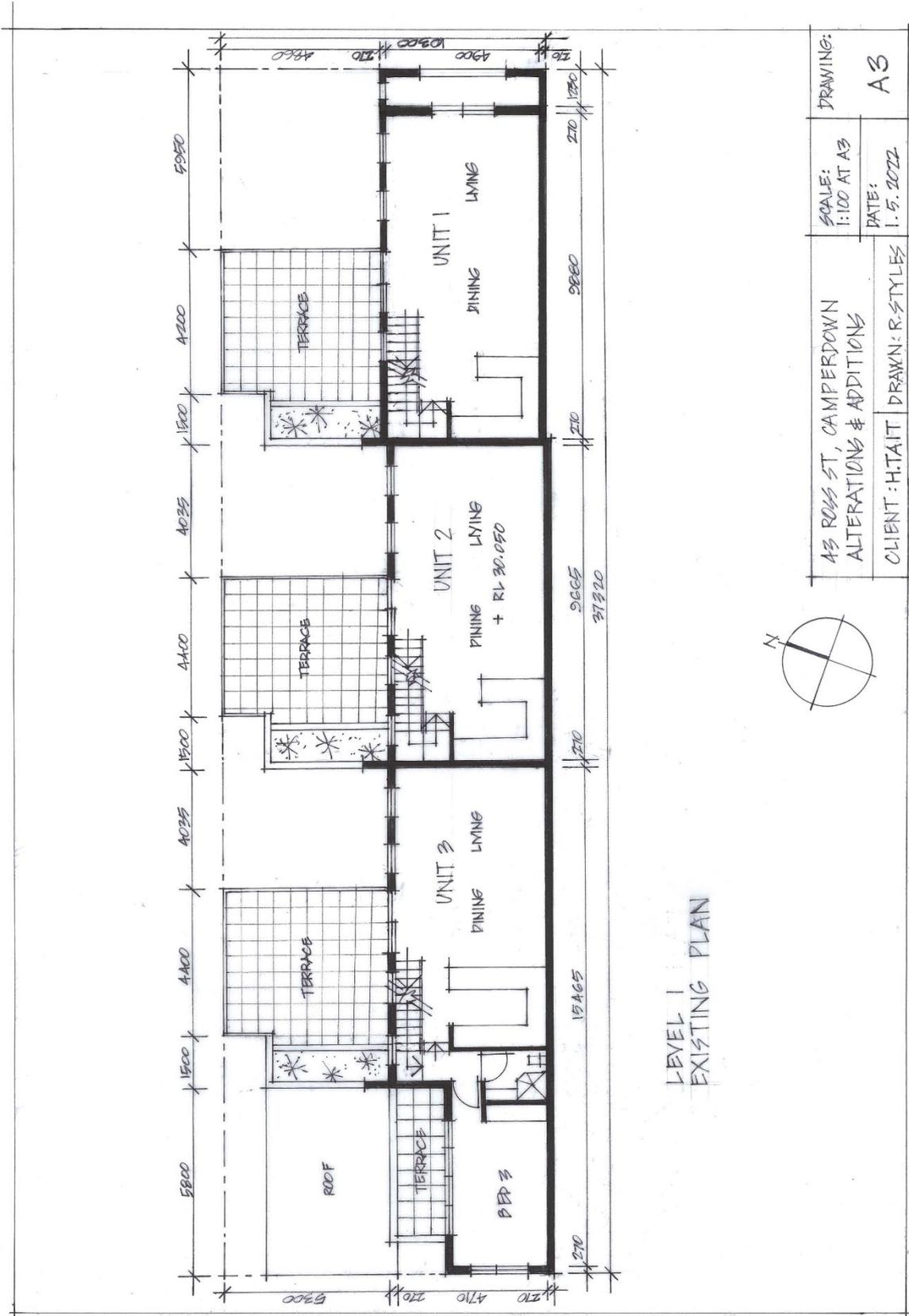
SITE PLAN

DRAWING: A1	SCALE: 1:200 AT A3
	DATE: 1.5.2022
43 ROSS ST, CAMPERDOWN ALTERATIONS & ADDITIONS	
CLIENT: H.TAIT	DRAWN: R.STYLES

Document Set ID: 36647138  
Version: 1, Version Date: 02/08/2022

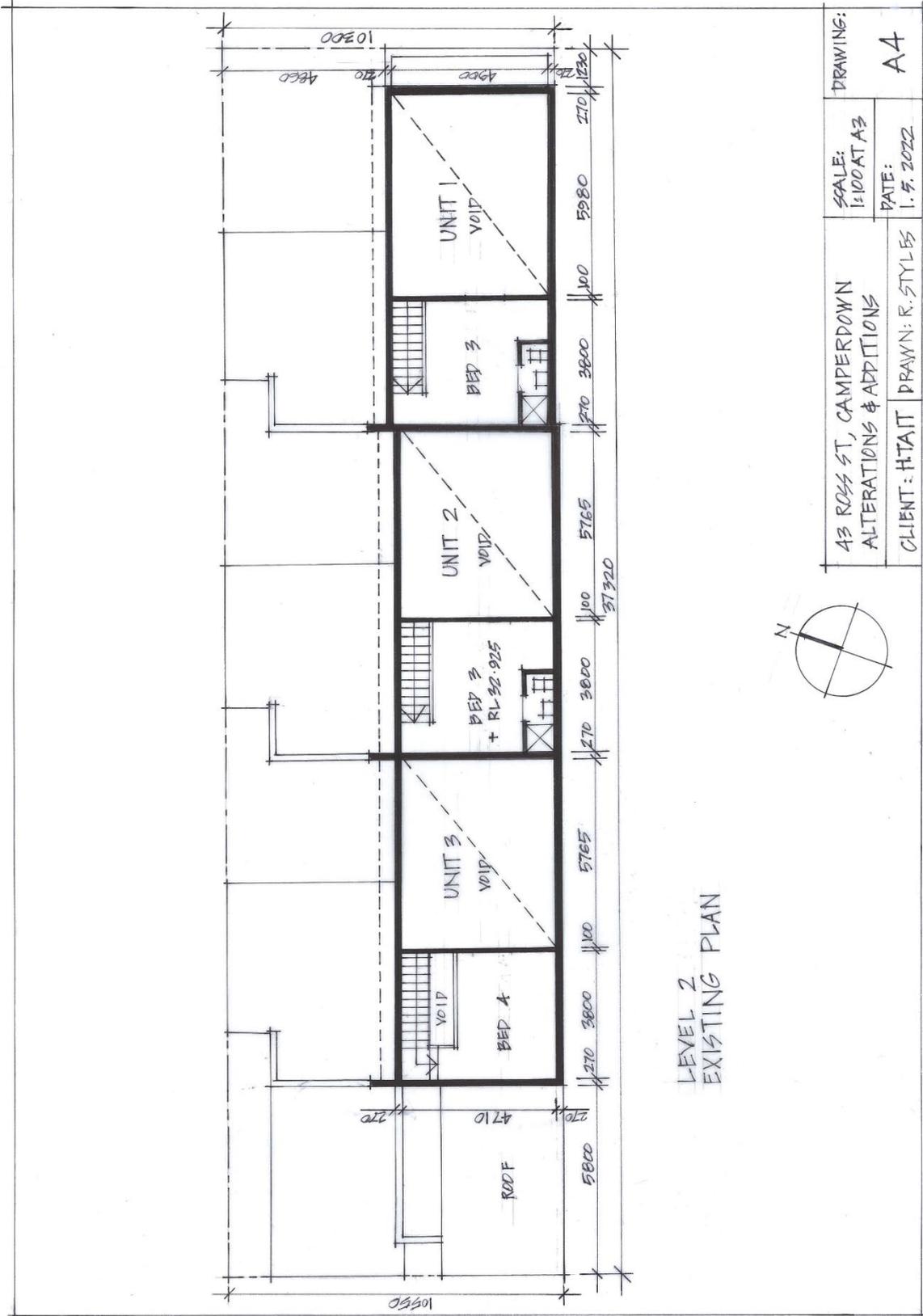


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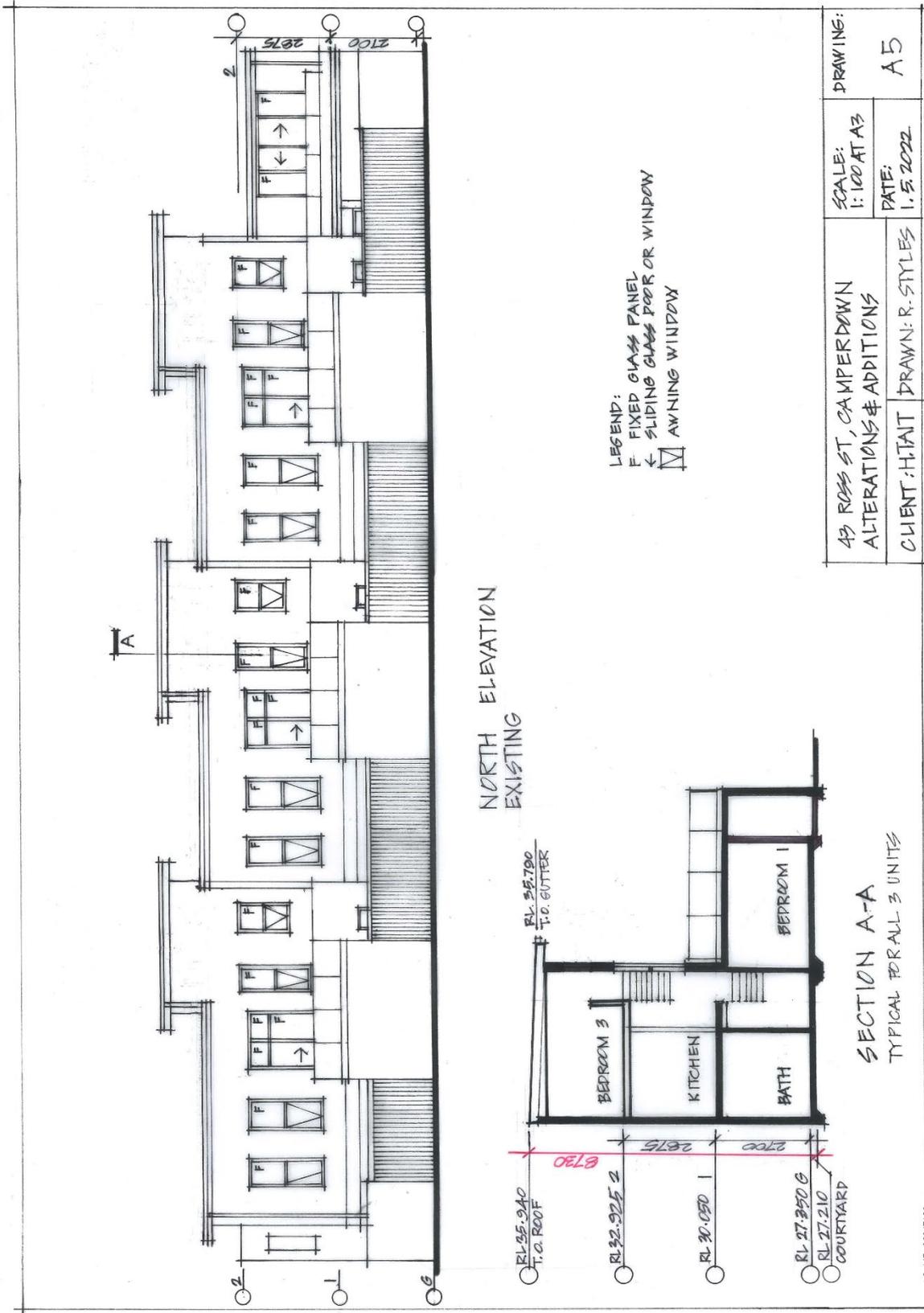
43 ROSS ST, CAMPERDOWN ALTERATIONS & ADDITIONS	SCALE: 1:100 AT A3	DRAWING: A3
CLIENT: H. TAIT	DATE: 1.5.2022	
DRAWN: R. STYLES		

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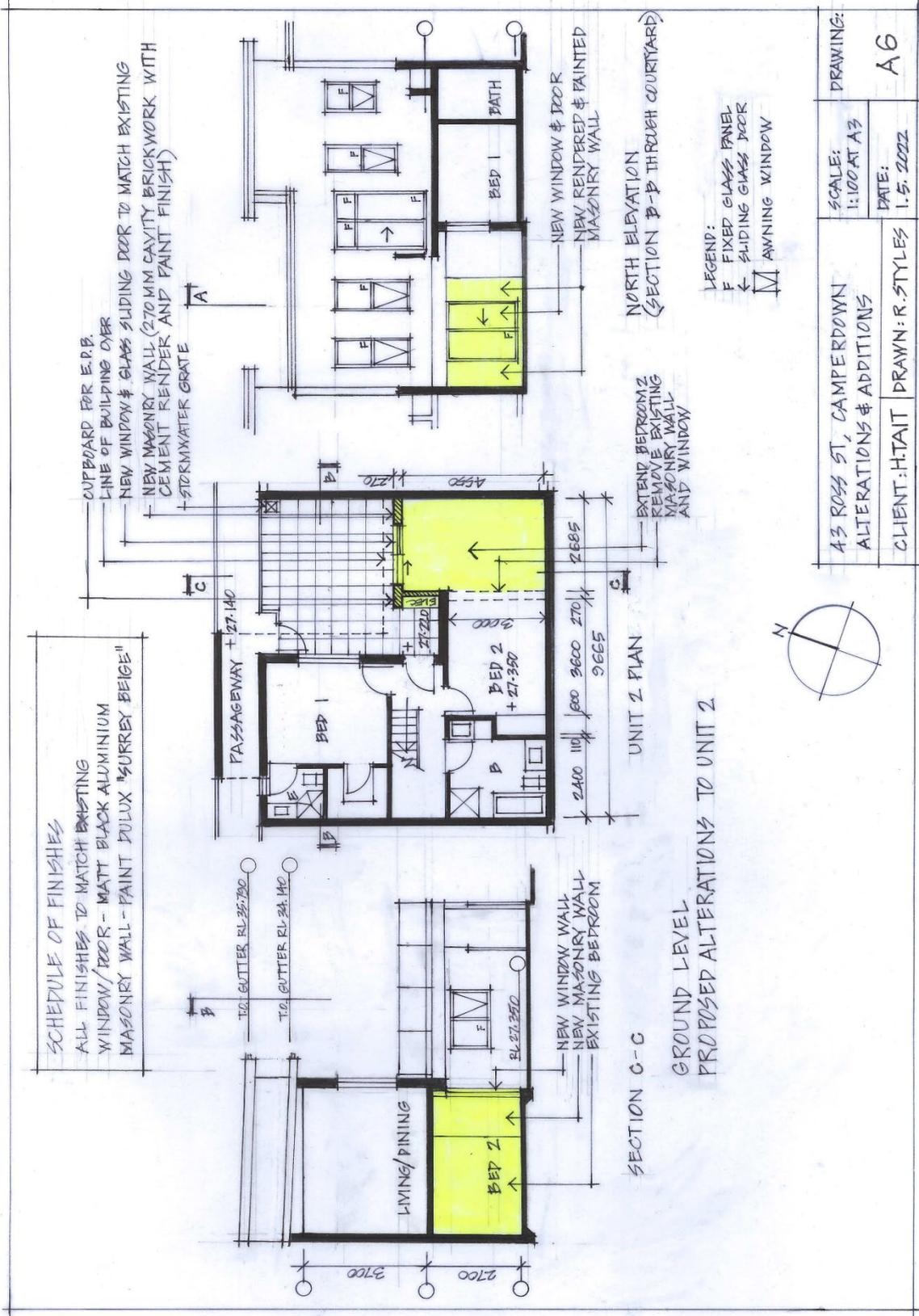


LEVEL 2  
EXISTING PLAN

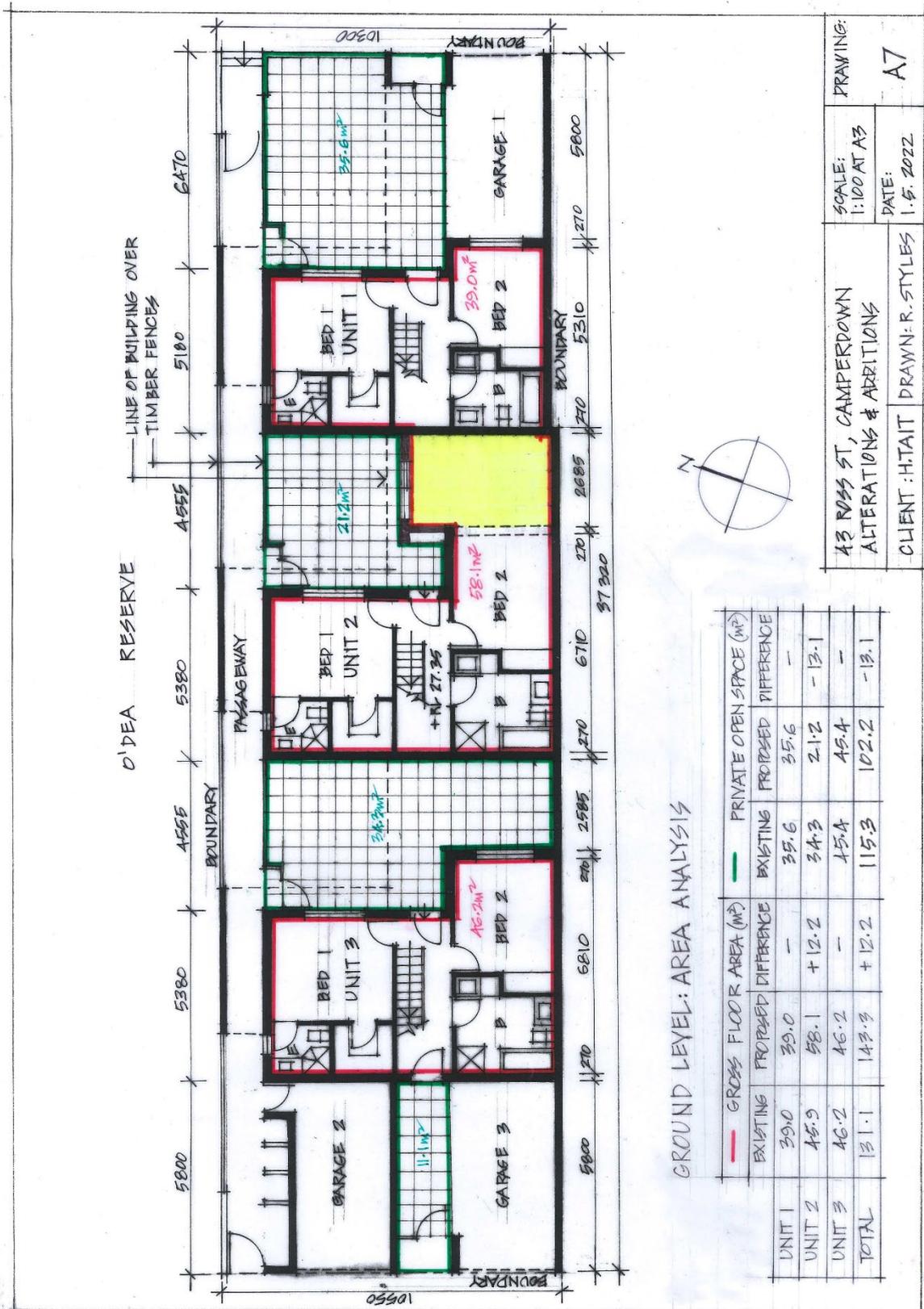
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Version: 1, Version Date: 02/08/2022



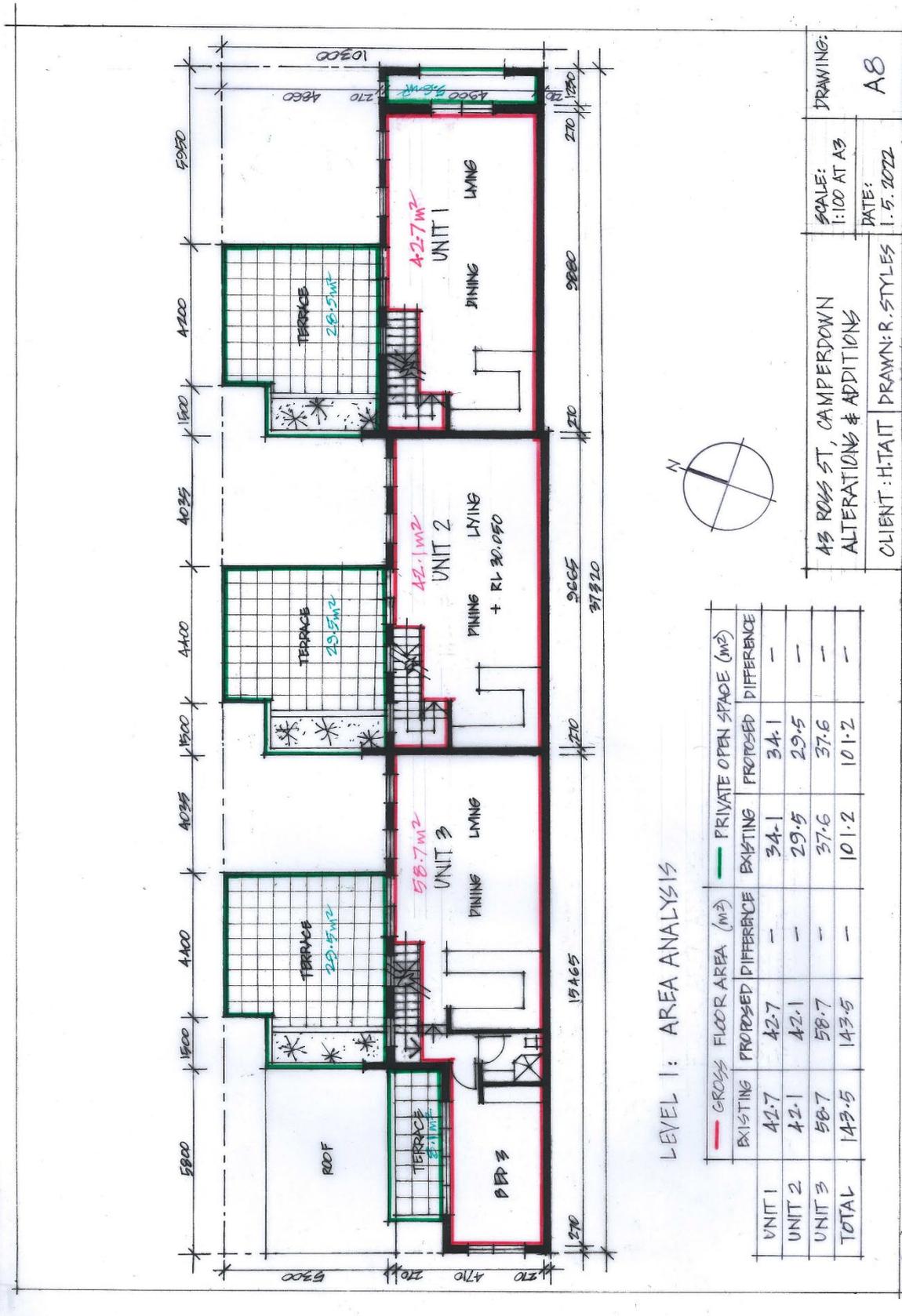
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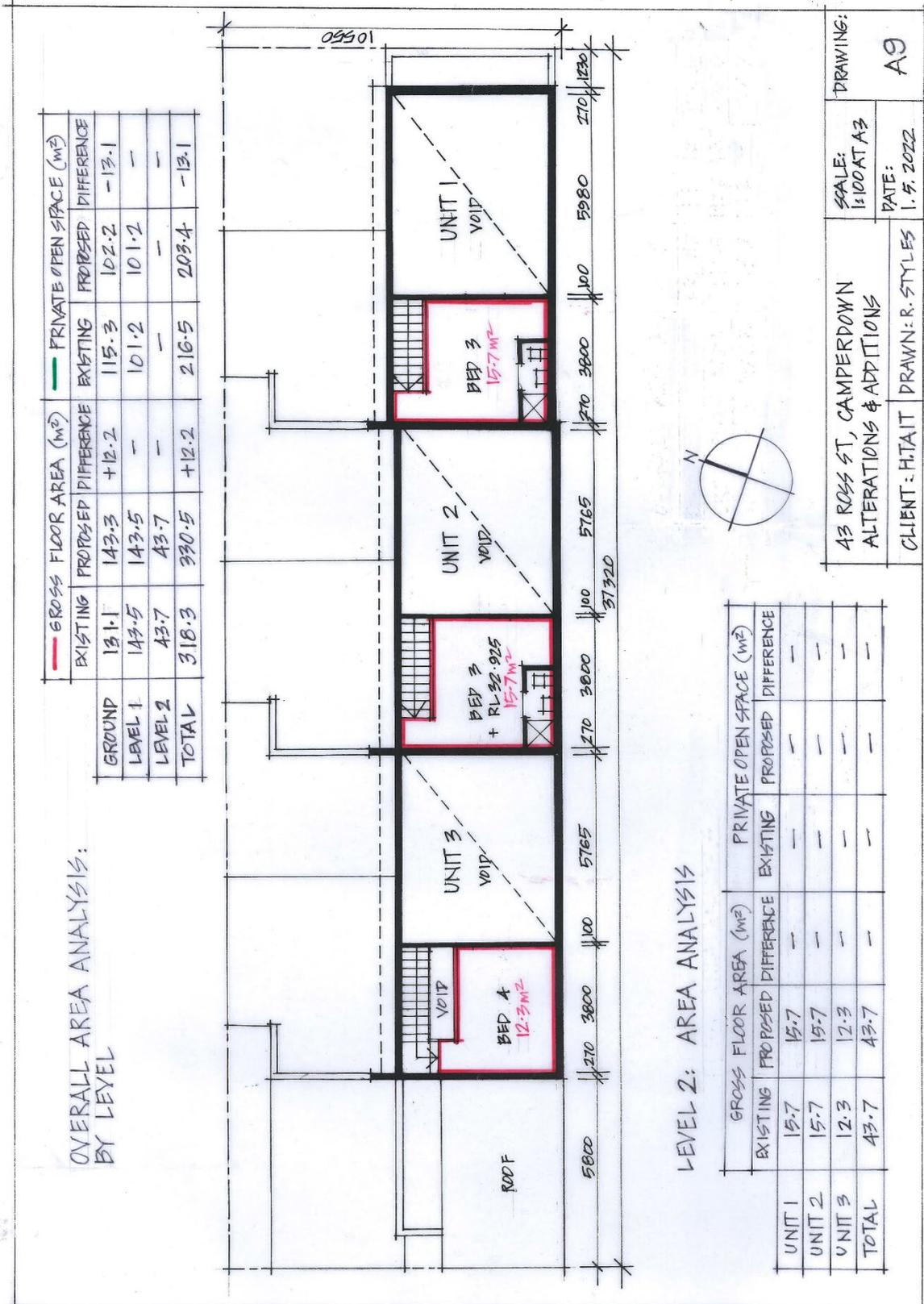


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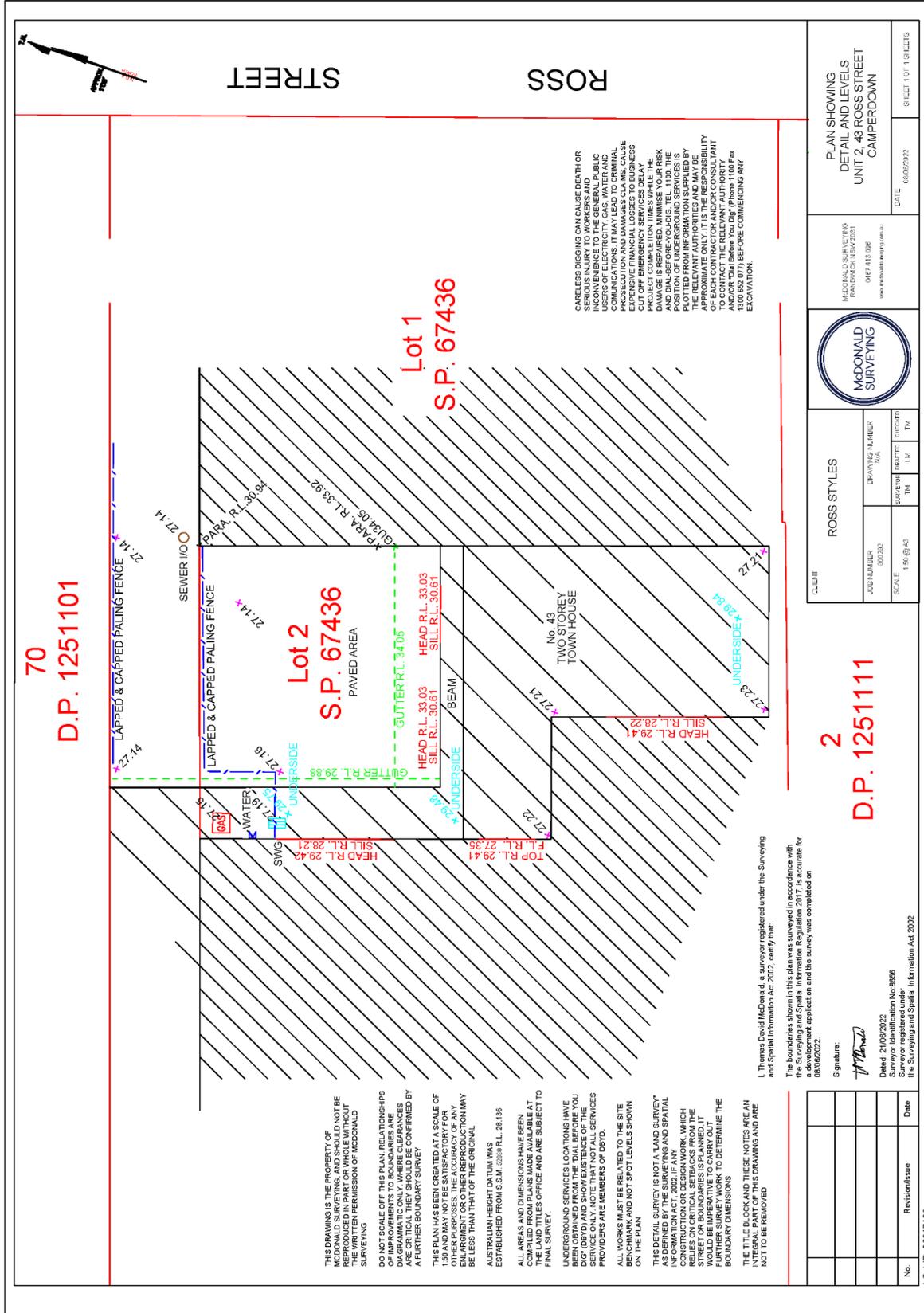
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 Version: 1, Version Date: 02/08/2022





Document Set ID: 36647138  
Version: 1, Version Date: 02/08/2022





70  
D.P. 1251101

Lot 2  
S.P. 67436  
PAVED AREA

Lot 1  
S.P. 67436

ROSS STREET

2  
D.P. 1251111

CARELESS DIGGING CAN CAUSE DEATH OR SERIOUS INJURY TO WORKERS AND DAMAGE TO UNDERGROUND SERVICES. UNDERGROUND SERVICES SUCH AS GAS, WATER AND COMMUNICATIONS. IT MAY LEAD TO CRIMINAL PROSECUTION AND DAMAGES CLAIMS. CAUSE CUT OFF EMERGENCY SERVICES DELAY PROJECT COMPLETION TIMES WHILE THE UNDERGROUND SERVICES ARE REPAIRED. ADVISE ALL CONTRACTORS OF THE LOCATION AND DEPTH OF ALL SERVICES PRIOR TO ANY WORK AND DIAL BEFORE YOU DIG. TEL 1300 THE POSITION OF UNDERGROUND SERVICES IS PLOTTED FROM INFORMATION SUPPLIED BY THE CLIENT. THE SURVEYOR'S LIABILITY IS APPROXIMATE ONLY. IT IS THE RESPONSIBILITY OF EACH CONTRACTOR AND/OR CONSULTANT TO VERIFY THE LOCATION AND DEPTH OF ALL SERVICES PRIOR TO ANY WORK AND/OR 'DIAL BEFORE YOU DIG' (Phone 1300 Fax 1300 662 977) BEFORE COMMENCING ANY EXCAVATION.

THIS DRAWING IS THE PROPERTY OF MCDONALD SURVEYING AND SHOULD NOT BE REPRODUCED IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF MCDONALD SURVEYING

DO NOT SCALE OFF THIS PLAN. RELATIONSHIPS BETWEEN DIMENSIONS AND GRAPHIC DIAGRAMMATIC ONLY. WHERE CLEARANCES ARE CRITICAL THEY SHOULD BE CONFIRMED BY A FURTHER BOUNDARY SURVEY

THIS PLAN HAS BEEN CREATED AT A SCALE OF 1:50 AND MAY NOT BE SATISFACTORY FOR ENLARGEMENT OR OTHER REPRODUCTION WAY BE LESS THAN THAT OF THE ORIGINAL

AUSTRALIAN HEIGHT DATUM WAS ESTABLISHED FROM S.M. 52089 R.L. 28.136

ALL AREAS AND DIMENSIONS HAVE BEEN CHECKED AND FOUND TO BE CORRECT AT THE LAND TITLES OFFICE AND ARE SUBJECT TO FINAL SURVEY.

UNDERGROUND SERVICES LOCATIONS HAVE BEEN OBTAINED FROM THE 'DIAL BEFORE YOU DIG' (DBYD) AND SHOW EXISTENCE OF THE SERVICES. THE SURVEYOR'S LIABILITY IS APPROXIMATE ONLY. PROVIDERS ARE MEMBERS OF DBYD.

ALL WORKS MUST BE RELATED TO THE SITE BENCHMARK AND NOT SPOT LEVELS SHOWN ON THE PLAN

THIS DETAIL SURVEY IS NOT A 'LAND SURVEY' AS DEFINED BY THE SURVEYING AND SPATIAL INFORMATION ACT, 2002. IF ANY WORK IS WHICH RELIES ON CRITICAL SETBACKS FROM THE STREET OR BOUNDARIES IS PLANNED, IT IS THE RESPONSIBILITY OF THE CLIENT TO COMMISSION FURTHER SURVEY WORK TO DETERMINE THE BOUNDARY DIMENSIONS

THE TITLE BLOCK AND THESE NOTES ARE AN INTEGRAL PART OF THIS DRAWING AND ARE NOT TO BE REMOVED

I, Thomas David McDonald, a surveyor registered under the Surveying and Spatial Information Act, 2021, certify that:

The boundaries shown in this plan were surveyed in accordance with the Surveying and Spatial Information Regulation 2017, is accurate for the purposes of the application and the survey was completed on 06/06/2022.

Signature: *[Signature]*

Dated: 21/06/2022

Surveyor Identification No: 8656

Surveyor registered under the Surveying and Spatial Information Act, 2002

ROSS STYLES		DRAWINGS NUMBER: N/A		PROJECT NUMBER: 000202	
SCALE: 1:50 @ A3	DATE: 06/06/2022	REVISION: TM	DATE: 06/06/2022	PROJECT: UNIT 2, 43 ROSS STREET CAMPERDOWN	CLIENT: MCDONALD SURVEYING
PLAN SHOWING DETAIL AND LEVELS			SHEET 1 OF 1 SHEETS		

## Attachment C- Clause 4.6 Exception to Development Standard

2/43 Ross Street, Camperdown: Statement of Environmental Effects

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The site has been used for residential purposes for approximately twenty years (current development) and almost a hundred years for the previous dwelling that occupied the land. There is no reason to believe that it might have been contaminated.

### 4.3 Marrickville Local Environmental Plan 2011

#### 4.3.1 ZONING & OBJECTIVES

Under Marrickville *Local Environmental Plan 2011* (the LEP) the site is zoned R1 General Residential and is subject to development standards for height of buildings and floor space ratio. In the terms of the LEP, the proposal to carry out alterations and additions to the existing dwelling in a townhouse row (multi-dwelling housing as defined) is permissible with consent.

**Clause 2.3** requires the consent authority to have regard to the objectives for development in the zone. The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will, consistent with the relevant objectives, contribute to providing for the housing needs of the community within a low density residential environment.

**Clause 4.3, height of buildings** provides objectives and a development standard for height of buildings.

The objectives of this clause are as follows:

- (a) *to establish the maximum height of buildings,*
- (b) *to ensure building height is consistent with the desired future character of an area,*
- (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The site is subject to a maximum height limit of 9.5m from existing ground level to the highest point of the building (excluding any chimney). The maximum height of the existing building is 8.73-metres (highest point, RL35.94 minus RL27.21 - ground level) and, therefore, **it complies with the standard.**

**Clause 4.4, Floor space ratio**, provides objectives and a development standard for floor space ratio. The objectives of the clause are as follows:

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

The site is subject to a maximum floor space ratio (FSR) of 0.6:1. The site is 389.5m<sup>2</sup> in size and, therefore, a total floor area of 233.7m<sup>2</sup> is allowed.

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In accordance with the guidelines set out in *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181, the architect has calculated the proposal's gross floor area to be 330.5m<sup>2</sup>, which is equivalent to a 0.85:1 FSR and, therefore, it does not comply with the standard.

It should also be noted that the original application (DA 200000299) was approved under Marrickville LEP 1 prior to the current LEP 2011. As stated earlier, LEP 1 did not contain a floor space ratio standard. The floor space ratio can be calculated under that instrument which was 0.93:1. However, under the LEP 2011 (standard template), the existing development has a 0.83:1 FSR. The proposal increases the floor space within the building (318.3m<sup>2</sup>) by 12.2m<sup>2</sup>, resulting in a 0.85:1 FSR, which therefore does not comply with the standard. As a result, a submission pursuant to Clause 4.6 follows.

**Clause 4.6, Exceptions to development standards, states:**

- (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, and*
  - (b) *to achieve better planning 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) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *there are sufficient environmental planning grounds to justify contravening the development standard [and]*
- (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.*

Clause 4.3, Floor Space Ratio is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6.

#### **Relevant Case Law**

There are a number of decisions of the Land and Environment Court that are relevant to clause 4.6 departures including *Four 2 Five v Ashfield*, *Micaul Holdings Pty Ltd v*

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*Randwick City Council, Moskovich v Waverley Council*, as well as *Zhang v Council of the City of Ryde*.

In addition, the decision in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSWLEC 118 confirmed that it is not necessary for a non-compliant scheme to be a better or neutral outcome and that an absence of impact is a way of demonstrating consistency with the objectives of a development standard.

Therefore, this must be considered when evaluating the merit of the departure.

The further decision in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 is authority that requires the consent authority must be satisfied that:

- The written request addresses the relevant matters at Clause 4.6 (3) and demonstrates compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds; and
- The consent authority must consider that there are planning grounds to warrant the departure in their own mind and there is an obligation to give reasons in arriving at a decision.

The approach in *Al Maha* was reinforced by *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 where the Court found that:

*... in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).*

Finally, the decision in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 confirmed that the consent authority must be directly satisfied that the matters are adequately addressed in the written Clause 4.6 variation request.

On that basis it is necessary that:

- The consent authority must be satisfied the written request demonstrates the matters in Clause 4.6(3).
- The consent authority be satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives.
- The development be compatible with the objectives, rather than having to *achieve* the objectives.
- In establishing that '*compliance with the standard is unreasonable or unnecessary in the circumstances of the case*' does not always require the applicant for development to show that the relevant objectives of the standard are achieved by the proposal (the first test in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe*.
- The proposal is required to be in '*the public interest*'.

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In accordance with the guidelines provided by these decisions, this submission addresses the requirements of clause 4.6 in turn.

#### CLAUSE 4.4, FLOOR SPACE RATIO

##### NON-COMPLIANCE

The architect has calculated that the proposal increases the buildings floor space by 12.2m<sup>2</sup>, resulting in a gross floor area of 330.5m<sup>2</sup> on a site 389.5m<sup>2</sup>, which results in a 0.85:1 FSR. The permitted FSR is 0.6:1 or 233.7m<sup>2</sup>. The non-compliance is 96.8m<sup>2</sup> which is equivalent to 41.4%.

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

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. The subsequent cases referred to above have confirmed that these ways are equally applicable under the clause 4.6 regime.

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The objectives of the floor space ratio standard are set out in clause 4.4 as follows:

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

##### establish the maximum floor space ratio:

The meaning of this objective is not clear. It is agreed that the Marrickville LEP 2011 establishes a floor space ratio development standard for land in the former Marrickville local government area. However, the former planning instrument under which the existing building was approved (Marrickville LEP 1) did not provide a maximum floor space ratio development standard. It had a minimum site area development standard for dwelling type (by size). It is noted that the original application did not comply with the development standard and Council supported a SEPP 1 – objection (now Clause 4.6 submission). This variation allowed 3 large dwellings on the land whilst the standard only permitted two medium and one small dwelling. The non-compliance with the standard at the time was numerically significant. The proposal will also result in a numerically significant non-compliance. In comparison to the original approved application in terms of site density, the additional 12.2m<sup>2</sup> for Unit 2 will not alter the dwelling yield. It remains a 3-large dwelling development.

However, the purpose of a maximum floor space ratio development standard is to control the size and form of development. Although the existing building and the proposal exceeds the standard, the additional floor space proposed is located within the existing building envelope below the first floor level of the townhouse. The additional floor space is not manifested externally to the site. It would not be visible from the adjacent units in

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the development or from the O'Dea Reserve and other public areas. Therefore, the visual impact of the building is not altered.

control building density and bulk in relation to the site area in order to achieve the desired future character for different areas:

As discussed previously, the building density of the site remains unaltered. It will remain as 3 large dwellings (as defined under the former Marrickville LEP 1 when approved). The additional floor space provided in the proposal is situated below an undercroft first floor level. It is generally not visible and no unreasonable visual bulk is manifested externally from the site.

It is also noted that Council's controls do not provide an expressed desire future character statement. However, the DCP provides controls which are aimed at ensuring development results in an acceptable built form commensurate with local form and that anticipated under the controls. In this regard, the performance of the proposal when assessed against the controls is acceptable

2. *The objective is not relevant to the development.* This criteria is not applicable to the proposal.
3. *The objective would be defeated or thwarted if compliance was required.* This criteria is not applicable to the proposal.
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.* This criteria is not applicable to the proposal.
5. *The zoning of the land is unreasonable or inappropriate.* This criteria is not applicable to the proposal.

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

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- The non-compliance with the standard arises as a result of providing 12.2m<sup>2</sup> of floor space in an undercroft area of the first floor level of Unit 2. The additional floor space is not generally visible externally from the site and does not manifest any unreasonable visual scale and bulk. The appearance of the building externally to the site and from the public domain will remain substantially the same.
- The proposal provides an additional 12.2m<sup>2</sup> of floor space for bedroom 2 in Unit 2 by reducing ground floor private open space. A reduction of private open space could be considered to detrimentally impact the amenity of the dwelling. However, the amenity of the existing ground level private open space in terms of qualitative performance is considered to be poor because it is fully below the first floor level. Furthermore, the amenity of Bedroom 2 in terms of its qualitative performance is also considered to be poor because the window serving the room faces an internal blank wall. It has no favourable outlook. The proposal extends Bedroom 2 into the undercroft space and provides a new north-facing window. Although the window will remain below the undercroft first floor level it is closer to the northern

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boundary. Its outlook and amenity will be significantly improved due to both the aspect and an improved landscaped setting provided in the private open space.

- A reduction in private open space could be considered to be detrimental to the amenity of a dwelling, however, the current ground level private open space is more akin to a service space because of its enclosed nature. Furthermore, the dwelling has a superior area of private open space at first floor level which is directly connected to the dwelling's main living area and has a direct outlook into O'Dea Reserve. As a result, the amenity of the dwelling's private open space is not adversely affected, however, its internal amenity is enhanced without any impacts on adjoining residential neighbours or the locality generally.

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

In relation to the objectives of the R1 zone:

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

The proposal provides a minor extension to one bedroom in the existing dwelling which will assist to provide for the housing needs of the community.

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

The provision of an additional 12.2m<sup>2</sup> of floor space within one bedroom in the dwelling provides some variety within the development as well as the housing types and densities of the locality.

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

This objective is not relevant, as the proposal is not for a non-residential use.

Concurrence of the Secretary

The concurrence of the Secretary may be assumed by Council. The implications of a development application involving alterations and additions to an attached dwelling on the land that does not comply with the floor space ratio development standard of the Marrickville LEP is local in its scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The floor space ratio of the proposed development is justified as set out above. The variation sought will enhance the utility of the development without significant adverse impacts on neighbouring amenity or the public domain.

Conclusion

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